



THE WORLD OF TILES, INC.,
Opposer,

-versus-

ASIAHOME TRADING CORPORATION,
Respondent-Applicant.

X-----X

IPC No. 14-2010-00253

Opposition to:

Appln. Serial No. 4-2008-010949

Date Filed: 9/10/2008

TM: "FLOOR CENTER CERAMIC &
GRANITE TILES AND DEVICE"

NOTICE OF DECISION

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GREETINGS:

Please be informed that Decision No. 2012 – 178 dated September 20, 2012 (copy enclosed) was promulgated in the above entitled case.

Taguig City, September 20, 2012.

For the Director:


Atty. EDWIN DANILO A. DATING
Director III
Bureau of Legal Affairs



THE WORLD OF TILES, INC.,
Opposer,

- versus -

ASIAHOME TRADING CORP.,
Respondent-Applicant.

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IPC No. 14-2010-00253

Opposition to:
Appln. Serial No.: 4-2008-010949
(Filing Date: 10 Sept. 2008)
Title: "FLOOR CENTER CERAMIC
& GRANITE TILES AND DEVICE"

Decision No. 2012- 178

DECISION

THE WORLD OF TILES, INC. ("Opposer")¹ filed on 26 October 2010 an opposition to Trademark Application Serial No. 4-2008-010949. The application, filed by ASIAHOME TRADING CORP.² ("Respondent-Applicant"), covers the mark "FLOOR CENTER CERAMIC & GRANITE TILES AND DEVICE" for use on "*ceramic and granite tiles*" under Class 19 of the International Classification of goods.³ The Opposer alleges, among other things, the following:

"1) Opposer is the prior owner, adopter and user of the tradename/trademark 'FLOOR CENTER' for the products under class 19. It therefor enjoys under Sections 165 and 165.2 of Republic Act (R.A) No. 8293, otherwise known as the Intellectual Property Code (IP Code), to exclude others from using an identical and/or confusingly similar tradename/trademark.

"2) Opposer's 'FLOOR CENTER' mark is part of its tradename that is protected under Article 8 of the Paris Convention⁴ and Section 165.2 of the IP Code.

"3) There is a likelihood of confusion between Opposer's 'FLOOR CENTER' tradename/ trademark for goods under class 19 and Respondent-Applicant's trademark 'FLOOR CENTER CERAMIC & GRANITE TILES AND DEVICE' for tiles under class 19, because the latter is identical and/or confusingly similar to Opposer's 'FLOOR CENTER' tradename/trademark.

"4) There is no doubt that the use of Respondent-Applicant's trademark 'FLOOR CENTER CERAMIC & GRANITE TILES AND DEVICE' under class 19 would indicate a connection between these goods and the Opposer. Likewise, the interests of the Opposer are likely to be damaged by Respondent-Applicant's use of the trademark 'FLOOR CENTER CERAMIC & GRANITE TILES AND DEVICE' for goods under class 19.

"5) The Respondent-Applicant, by using 'FLOOR CENTER CERAMIC & GRANITE TILES AND DEVICE' as its trademark for goods belonging to class 19, has given them the general appearance of the products of the Opposer which would likely influence purchasers to wrongly believe that these products originate from the Opposer, thereby deceiving the public and defrauding the Opposer of its

¹ A domestic corporation duly organized and existing under Philippine laws with address at Unit 314, Level 3, SM City North EDSA, Quezon City.

² A domestic corporation duly organized and existing under Philippine laws with address at RCC Center, 107 Shaw Boulevard, Pasig City.

³ The Nice Classification is a classification of goods and services for the purpose of registering trademark and service marks, based on a multilateral treaty administered by the World Intellectual Property Organization. The treaty is called the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks concluded in 1957.

⁴ Article 8 Trade Names – A trade name shall be protected in all the countries of the Union without the obligation of filing or registration, whether or not it forms part of a tradename.

legitimate trade. Hence, Respondent-Applicant is guilty of unfair competition as provided in Section 168.3 of R.A. No. 8293.

"Opposer relies on the following facts to support its opposition, reserving the right to present other evidence to prove these facts and other as may appear necessary or expedient in the course of the proceedings:

"1) The Opposer is the owner, first to adopt and use the 'FLOOR CENTER' tradename/trademark in the Philippines.

Opposer is the first to adopt and use the 'FLOOR CENTER' tradename/trademark for its goods falling under class 19 in the Philippines. Specifically, Opposer's 'FLOOR CENTER' tradename/trademark was conceptualized, created and coined by the Opposer's incorporator, Dr. Rebecca W. Halabisaz Zanjani, sometime in the 1990's for the latter's business. Dr. Halabisaz Zanjani was one of the incorporators and major stockholders of the Opposer's predecessor company, Floor Center (SM City), Inc. Copy of the Article of Incorporation of Floor Center (SM City), Inc. dated April 22, 1997 is hereto attached as Exhibit 'A'.

After the opening and success of Dr. Halabisaz Zanjani's Persian Carpet Palace in SM City, North Edsa and the flourishing of the construction business in the Philippines in the 1990's, Dr. Halabisaz Zanjani decided to venture into trading of finishing materials for construction. She and her husband then undertook an intensive study for the viability of a one-stop-shop for flooring and walling materials. Hence, the Floor Center (SM City), Inc. was organized and incorporated. 'It was a natural direction to go for diversification coming from a highly successful 15-year experience in the carpet business.'⁵

In 2002, Opposer was incorporated and named 'The World of Tiles, Inc.', doing business under the name and style of 'FLOOR CENTER' with Dr. Halabisaz Zanjani as the majority stockholder. Copies of the Opposer's Article of Incorporation and Amended Article of Incorporation dated August 28, 2001 and September 25, 2001, respectively, are hereto attached as Exhibits 'C' and 'D'. Aside from directly importing ceramic and granite tiles from China and Spain. Opposer also sells tile grout, adhesives, tile trims, water closets and other locally-produced finishing materials. Since it was organized, Opposer has expanded to several branches in Metro Manila, North Luzon, Visayas and Mindanao and supplied tiles and finishing materials to a number of dealers nationwide. Copies of the sample sales receipts, delivery receipts, invoices and inventories are attached as Exhibits 'E' series.

"2) There is a likelihood of confusing similarity between Respondent-Applicant's trademark 'FLOOR CENTER CERAMIC & GRANITE TILES AND DEVICE' AND Opposer's 'FLOOR CENTER' tradename/trademark.

Respondent-Applicant's trademark 'FLOOR CENTER CERAMIC & GRANITE TILES AND DEVICE' is identical and/or confusingly similar to Opposer's 'FLOOR CENTER' trademark hence, would likely influence the purchasers to believe that it belongs to the Opposer.

In sound, spelling, meaning, style and appearance, Respondent-Applicant's 'FLOOR CENTER CERAMIC & GRANITE TILES AND DEVICE' products is to likely cause confusion to the consuming public as that of the Opposer's 'FLOOR CENTER' products. The similarities of the marks are specifically illustrated as follows: x x x

In both marks, the dominant features, namely the words 'FLOOR CENTER' and 'FC Logo' are identical. The similarities are so obvious, indubitable and glaring. Therefore, deception and confusion are certain.

"3) The use of Respondent-Applicant's trademark 'FLOOR CENTER CERAMIC & GRANITE TILES AND DEVICE' for tiles belonging to class 19 would indicate a connection to the products covered in Opposer's 'FLOOR CENTER' trademark/ tradename, hence the interests of the Opposer are likely to be damaged.

⁵ The Opposer's profile as Exh. "B".

The use of the Respondent-Applicant's trademark 'FLOOR CENTER CERAMIC & GRANITE TILES AND DEVICE' for tiles under class 19 definitely misleads the public into believing that the products originate from or are licensed or sponsored by Opposer or that Respondent-Applicant is associated with or an affiliate of the Opposer. This is greatly reinforced by the fact that Respondent-Applicant's product (tiles) are identical and/or related to those of the Opposer's.

Respondent-Applicant has appropriated the trademark 'FLOOR CENTER CERAMIC & GRANITE TILES AND DEVICE' for the obvious purpose of capitalizing upon or riding on the valuable reputation, goodwill and popularity in Philippine market for the 'FLOOR CENTER' products which Opposer gained through tremendous effort and expense over a long period of time. This clearly constitutes an invasion of Opposer's intellectual property rights.

Undoubtedly, the use of the 'FLOOR CENTER CERAMIC & GRANITE TILES AND DEVICE' and the sale and distribution of tile products falling under class 19 bearing the trademark 'FLOOR CENTER CERAMIC & GRANITE TILES AND DEVICE' by the Respondent-Applicant are inflicting considerable damage to the interest of the Opposer. To allow Respondent-Applicant to register 'FLOOR CENTER CERAMIC & GRANITE TILES AND DEVICE' trademark, will constitute a mockery of our laws protecting intellectual property rights as it will legitimize Respondent-Applicant's unfair and unlawful business practice.

"4) Opposer's evidence such affidavits of its witnesses are hereto attached and made integral parts hereof as Exhibits 'F' to 'G'.

"5) Opposer reserves the right to present such other documents as may be necessary to prove the foregoing allegations in the course of the proceedings."

The Respondent-Applicant filed its Verified Answer on 01 April 2011 alleging the following:

"1. The application of The World of Tiles, Inc. for the registration of the trademark 'Floor Center & FC Logo' under Application No. 4-2008-014119 was refused registration by the Intellectual Property Office ('IPO'). As such, any claim of a right over such trademark by the World of Tiles, Inc., as it does now in its Verified Notice of Opposition, is totally baseless and unfounded.

"2. A trade name is different from a trademark. Yet, The World Tiles, Inc. conveniently confuses one with the other or uses them together to prevent Asiahome Trading Corporation's perfectly valid application for registration of the 'The Floor Center Ceramic & Granite Tiles and Device' Trademark. Asiahome Trading Corporation has established that it had complied with all the legal requirements under Republic Act No. 8293 for the registration of the applied mark. On the other hand, The World of Tiles, Inc. miserably failed to discharge its burden of showing that registration of the applied mark in favor of Asiahome Trading Corporation suffers from a legal impediment under Section 123 of Republic Act No. 8293. Asiahome Trading Corporation's application of the 'Floor Center Ceramic & Granite Tiles and Device' Trademark should therefore be given due course.

"3. Significantly, The World of Tiles, Inc. claims that Floor Center (SM City), Inc. is its predecessor company. Yet, Floor Center (SM City), Inc. is a juridical entity separate and distinct from The World of Tiles, Inc., which apparently still subsists at present. How then can The World of Tiles, Inc. rightfully claim that it is the successor of Floor Center (SM City), Inc.? At any rate, The World of Tiles, Inc. cannot claim any right, if any, from Floor Center (SM City), Inc. just because some of their incorporators and stockholders are similar.

x x x

"AFFIRMATIVE ALLEGATIONS AND DEFENSES

"Asiahome repleads the foregoing where relevant and further states:

"13. Asiahome is a corporation duly organized and existing under Philippine laws. Asiahome was incorporated on 25 October 2004 and is engaged in the business of 'trading of goods such as bathroom

accessories, flooring and construction materials on wholesale/retail business'. Attached hereto are certified true copies of Asiahome's Certificate of Incorporation, with the Articles of Incorporation, and Certificate of Filing of Amended Articles of Incorporation, with the Amended Articles of Incorporation, as Exhibits '2' and '3', respectively.

"14. Asiahome operates under the business or trade name 'Asiahome Floor Center', as indicated in its Amended Articles of Incorporation itself (Exhibit '2'). While its principal office is located at Penthouse RCC Center, 104 Shaw Blvd., Brgy. Kapitolyo, PASig City, Asiahome has established branches or sales outlets in nine (9) locations, all of which uses the business or trade name 'Asiahome Floor Center'.

14.1. On 22 November 2004, Asiahome obtained Certificates of Registration from the Department of Trade and Industry for the use of the business or trade name 'Asiahome Floor Center' for its branches in Glorietta, MC Home Depot Makati City and EDSA Danlig Makati. Copies of Certificates No. 00501056, Certificates No. 00501065, and Certificates No. 00501071 are attached hereto as Exhibits '4', '5' and '6', respectively.

14.2. Asiahome obtained a DTI Certificate of Registration dated 19 October 2005, for the use of the trade or business name 'Asiahome Floor Center' for its MC Home Depot Ortigas Branch. Attached hereto as Exhibits '7' is a copy of Certificate No. 00253940.

14.3. Asiahome obtained a DTI Certificate of Registration dated 27 October 2005, for the use of the trade or business name 'Asiahome Floor Center' for its Ortigas Home branch. Attached hereto as Exhibit '8' is a copy of Certificate No. 00259471.

14.4. Asiahome obtained a DTI Certificate of Registration dated 28 October 2005, for the use of the trade or business name 'Asiahome Floor Center' for its MC Home Depot Fort branch. Attached hereto as Exhibit '9' is a copy of Certificate No. 00260532.

14.5. Asiahome obtained a DTI Certificate of Registration dated 1 February 2008, for the use of the trade or business name 'Asiahome Floor Center' for its Rosario, Pasig City branch. Attached hereto as Exhibit '10' is a copy of Certificate No. 00327356.

"15. Asiahome has also been using the trade name 'Asiahome Floor Center' in the BIR Certificate forms submitted by its various branches, as evidenced by several BIR Form No. 2303 attached hereto as Exhibit '11-Series'.

15.1. Asiahome has also used the trade name 'Asiahome Floor Center' or 'Floor Center' only in several government-issued permits and documents. Attached hereto as Exhibits '12' and '13' are copies of the Mayor's Permit issued by Taguig on 29 November 2005, and the Fire Safety Inspection Certificate from the City of Makati dated 05 April 2005, both issued to Asiahome Floor Center-MC Fort Branch. Attached hereto as Exhibits '14', '15', '16' and '17' are copies of the Building Permit, electrical Permit, Mechanical Permit, Sanitary/Plumbing Permit issued by the City of Makati for the year 2005, all issued to Floor Center.

15.2. Asiahome has used the business or trade name 'Asiahome Floor Center' or 'Floor Center' only in the conduct of its business operations, as evidenced by the sales invoices and various receipts issued to its customers, as well as Tag Price stickers used on the goods sold by it. Attached hereto as Exhibits '18-A' and '18-B' are copies of Sales Invoice No. 1 dated 27 September 2006 of Asiahome MC Home Depot-Fort Branch and Sales Invoice No. 11065 dated 14 January 2011 of EDSA-Danlig Branch. Attached hereto as Exhibits '19' is a Z-Reading of Point of Sales (POS) Machine dated 31 October 2005 of Asiahome's MC Home Depot Makati Branch. Various Point of Sales Receipts from Asiahome's Ortigas Home Depot Branch, Attached as Exhibits '20', '20-A' and '20-B'. Sample Tag Price stickers used by Asiahome since the start of its operation are attached hereto as Exhibit '21'.

15.3. Asiahome has also identified itself as 'Asiahome Floor Center' of 'Floor Center' only to its suppliers, customers and other companies which it had dealt with. Attached hereto as Exhibit '22' is a copy of the BIR Form 2307 (Certificate of Creditable Tax withheld covering first quarter of the year 2007) issued by Asiahome's client in MC home Depot-Fort Branch, designating Asiahome as 'Floor Center'. A copy of a supplier's quotation issued to 'Floor Center' dated 21 October 2005 is attached hereto as Exhibit '23'. A copy of Asiahome Floor Center's Purchase Order Form dated 24 April 2007 is attached hereto as Exhibit '24'. Copies of supplier's receipts issued to 'Floor Center', referring to Asiahome are attached as Exhibits '25' and '25-A'. A copy of the Insurance Policy dated 18 January 2006 issued by Monarch Insurance Company, Inc. to Asiahome Floor Center is attached hereto as Exhibit '26'. A copy of the letter dated 04 October 2007 from the HSBC addressed to Asiahome Trading Corporation (Floor Center) is attached as Exhibit '27'.

"16. Significantly, Asiahome acquired a right over the trade name 'Floor Center' not only in its own right, by actual adoption and use thereof, but also by acquiring the ownership over a similar trade name when it was validly assigned to it by MTSS Corporation several other corporations which operated the various Floor Center branches. The latter, in turn, acquired the trade or business name from Galleria Floor Center, Inc. The affidavit of Olivia Talampas, a former MTSS Corporation employee, attesting to such facts is attached hereto as Exhibit '28'.

16.1. Galleria Floor Center, Inc. was incorporated on 16 October 1996, while MTSS Corporation was incorporated on 28 February 2001. Both corporations pre-date the incorporation of World of Tiles on 28 August 2001. However, Galleria Floor Center, Inc. stopped its business operations in 1999 and thereafter transferred all its properties and assets, including the trade or business name 'Floor Center' to MTSS through a Deed of Assignment executed on 02 January 2001. In said Deed of Assignment, Galleria Floor Center, Inc. assigned and transferred all of its rights, title and interest in and to the Business Name 'FLOOR CENTER' to MTSS Corporation. All the assets, properties and interests of MTSS Corporation and the subsequent corporations which operated the Floor Center branches were eventually transferred to Asiahome.

"17. Significantly, Asiahome has continuously adopted and actually used the 'Floor Center Ceramic and Granite Tiles' Trademark to identify its goods, specifically ceramic and granite tiles, since its formation in 2004. Asiahome distributes and retails ceramic and granite tiles, bathroom accessories, grout, adhesive and tile trims for use in bathrooms, kitchens, dining rooms, living rooms and other rooms of homes, offices and other buildings.

"18. The 'Floor Center Ceramic & Granite Tiles' trademark is composed of the Roman letters spelling the word 'Floor Center Ceramic & Granite Tiles'. The words 'Floor Center' are at the top of the word 'Ceramic & Granite Tiles'. The font color of the words 'Floor Center' is white with color red background, and the font color of the words 'Ceramic & Granite Tiles' is red with color white background. At the left side of the words 'Floor center & Granite Tiles' is a diamond with the letters F and C inside. Below is the trademark applied for: x x x

"19. Asiahome actually uses the 'Floor Center Ceramic & Granite Tiles and Device' trademark to identify its ceramic and granite tiles, either in the goods themselves and/or Asiahome's signages, brochures and other materials.

19.1. The trademark is shown in the goods themselves where stickers containing the mark are attached thereto. Attached as Exhibits '29'-series are original print-outs of digital photographs of various goods of Asiahome with the trademark.

19.2. The trademark is prominently displayed and utilized in signages in Asiahome's various branches and showrooms. Attached hereto as Exhibits '30-series' are original print-outs of digital photographs of the signages used in Asiahome's several branches and showrooms. Some original photographs of other signages have been earlier submitted to this Honorable Office as part of

Asiahome's application for registration, copies of which are attached hereto as Exhibits '30-A-series'.

19.3. Asiahome utilizes the trademark in brochures, leaflets and promotional materials, which have also been submitted to this Honorable Office. Attached hereto as Exhibits '31-series' are copies of said sample brochures, leaflets and promotional materials.

19.4. Asiahome utilizes the trademark in its corporate uniforms, shirts, cards and documents. Attached hereto as Exhibits '32-series' are photographs of the corporate uniforms, shirts, cards and documents showing the trademark.

"20. In view of its adoption and prior use of the trademark, Asiahome filed an application for its registration with this Honorable Office under the IP Code in order to protect its intellectual property rights over the mark. Specifically, Asiahome filed its trademark application for 'Floor Center Ceramic & Granite Tiles and Device' on 10 September 2008 for goods and services under Class 19 with Serial No. 4-2008-010949.

20.1. In contrast, World of Tiles filed its application for the 'Floor Center and FC Logo' trademark with this Honorable Office much later, specifically on 18 November 2008. This was, however, refused registration by this Honorable Office.

"21. World of Tiles filed an Opposition to Asaihome's trademark application for 'Floor Center Ceramic & Granite Tiles and Device' on 14 October 2010.

21.1. Upon verification with the SEC, it appears that World of Tiles was incorporated on 28 August 2001.

21.2. The documents submitted by World of Tiles show that it did not use 'Floor Center' as its corporate name. Rather its corporate name as stated in its Certificate of Incorporation is 'The World of Tiles, Inc.' World of Tiles also failed to show that it has registered the trade name 'Floor Center' before the DTI. Moreover, some of the documents attached by World of Tiles itself (Exhibits 'E-2', 'E-6', 'E-7', 'E-8', 'E-9' and 'E-10') show that it uses the trade name The World of Tiles, Inc., not 'Floor Center'. The other documentary evidence it submitted were dated back in 1997 to 1999 when it was not yet formed and incorporated.

21.3. World of Tiles has no rights and interest over the trade name 'Floor Center', much less in any 'Floor Center' trademark as in fact, no such trademark is registered in World of Tiles' name. Significantly, its application for the 'Floor Center' trademark was refused registration by this Honorable Office.

21.4. No competent authority has declared the 'Floor Center' trademark allegedly used by World of Tiles to be a well-known mark in the Philippines.

"22. On 03 January 2011, Asiahome received a Notice to Answer and the Verified Opposition dated 14 October 2010 filed by World of Tiles.

"23. Hence, this Verified Answer.

"A. Asiahome is entitled to the registration of the 'Floor Center Ceramic & Granite Tiles and Device' trademark as it has complied with all the legal requirements for its registration under the IP Code.

"24. The rights in a mark shall be acquired through registration made validly in accordance with the IP Code. Section 124 of the IP Code, in turn, enumerates the requirements for application of a trademark.
x x x

"25. Asiahome has complied with all the requirements for registration under the IP Code, specifically Section 124 thereof.

25.1. Asiahome has duly filed its trademark application for 'Floor Center Ceramic & Granite Tiles and Device' on 10 September 2008 for goods under Class 19 with Serial No. 4-2008-010949.

25.2. It has also filed a declaration of actual use of the mark as part of the trademark application, along with the evidence of such use, as prescribed by the IP Code and its Regulations.

25.3. Asiahome has paid the required filing fee.

25.4. The said registration has been examined and was duly accorded its filing date, which was on 10 September 2008. The application has also been given its appropriate application number, Serial No. 4-2008-010949.

25.5. This Honorable Office has examined and determined that the application meets the requirements of Section 124 and the mark as defined in Section 121 is registrable under Section 123 of the Intellectual Property Code.

25.6. Since this Honorable Office has determined that application meets the requirements for filing and publication, it caused the said application to be published in the IPO Electronic Gazette, which was officially released on 28 June 2010. Asiahome duly paid the prescribed fee for the publication of the application.

"26. Asiahome, in its own right, has acquired the intellectual property rights over the 'Floor Center Ceramic & Granite Tiles and Device' trademark by its adoption and actual use of the mark in commerce. It has also acquired any right over the trade name 'Floor Center' from MTSS Corporation and Galleria Floor Center, Inc.

26.1. Since its incorporation, Asiahome has been doing business under the business or trade name 'Asiahome Floor Center'. In fact, it had acquired Certificates of Registration for the use of such business or trade name in its various branches and showrooms.⁶ Asiahome has also used said business or trade name in its various corporate documents and governmental submissions.⁷

26.2. Asiahome has likewise actually used the applied trademark since its incorporation. The tiles, when displayed, sold and delivered, contain the applied mark. The trademark is prominently displayed and utilized in signages in branches and showrooms. Asiahome utilizes the trademark in brochures, leaflets and promotional materials, as well as in its corporate uniforms, shirts, cards and documents.⁸

26.3. Moreover, Galleria Floor Center Inc. and MTSS Corporation have used the trade or business name 'Floor Center' since 1996, pre-dating the incorporation of World of Tiled or even of Floor Center (SM City), Inc. Significantly, Asiahome acquired ownership over the assets, properties and interests of MTSS Corporation and the subsequent corporations which operated the Floor Center branches.

"27. Clearly, Asiahome has established its right of registration over the 'Floor Center Ceramic and Granite Tiles and Device' trademark.

⁶ Exh. "3" to "9".

⁷ Exh. "11" to "26".

⁸ Exh. "28-series" to "31-series".

"B. There is no legal hindrance to the registration of the 'Floor Center Ceramic & Granite Tiles and Device' trademark under Section 123 of the IP Code

"28. Under Section 123 of the IP Code, a mark cannot be registered if it: x x x

"29. None of these disqualifications exists in Asiahome's application. World of Tiles has also failed to prove any such disqualifications in its Opposition.

29.1. The disqualifications mentioned in numbers 1, 2, 3, 9, 11, 12 and 13 are obviously inapplicable to the 'Floor Center Ceramic & Granite Tiles and Device' trademark.

29.2. The disqualifications in item 4 of Section 123.1 does not exist in this case since the 'Floor Center Ceramic & Granite Tiles and Device' trademark is not identical with a registered mark belonging to a different proprietor or a mark with an earlier filing date. In fact, World of Tiles has not registered the mark for 'Floor Center and FC Logo'. Its application, which was filed much later, specifically on 18 November 2008, was actually refused registration.

29.3. The 'Floor Center Ceramic & Granite Tiles and Device' trademark is also not disqualified under item 5 of Section 123.1, as it is not identical with, or confusingly similar to, or constitutes a translation of a mark which is considered by the competent authority of the Philippines to be well-known internationally and in the Philippines, and used for identical or similar goods or services. No competent authority has declared the 'Floor Center and FC Logo' allegedly used by World of Tiles to be a well-known mark internationally or in the Philippines.

29.4. For the same reasons as those stated above, the 'Floor Center Ceramic & Granite Tiles and Device' trademark is not disqualified under item 6 of Section 123.1 of the IP Code. No such well-known mark which is registered in the Philippines, with respect to goods or services not similar to the applied mark, has been alleged and proved by World of Tiles.

29.5. The 'Floor Center Ceramic & Granite Tiles and Device' trademark is not likely to mislead the public, particularly as to the nature, quality, characteristics or geographical origin of the goods or services, as Asiahome has consistently adopted and used the 'Floor Center Ceramic & Granite Tiles and Device' trademark. Since then, Asiahome has identified its goods with the 'Floor Center Ceramic & Granite Tiles and Device' trademark in the eyes of its customers, dealers, suppliers and the public at large.

29.6. The 'Floor Center Ceramic & Granite Tiles and Device' trademark does not consist exclusively of signs that are generic for the goods or services that they seek to identify.

29.7. The 'Floor Center Ceramic & Granite Tiles and Device' trademark, likewise, does not consist exclusively of signs or of indications that have become customary or usual to designate the goods or services in everyday language or in bona fide and established trade practice. In fact, from the time Asiahome used the 'Floor Center Ceramic & Granite Tiles and Device' trademark, the trademark has become distinctive in relation to the tiles sold by Asiahome.

"30. From the foregoing, it is clear that there is no legal hindrance to the registration of the 'Floor Center Ceramic & Granite Tiles and Device' trademark under Section 123 of the IP Code in favor of Asiahome.

"C. The Opposition filed by World of Tiles is without factual and legal bases"

"31. World of Tiles has failed to register the 'Floor Center and FC Logo' trademark under the IP Code. In fact, World of Tiles filed its application for the 'Floor Center and Logo' trademark with this Honorable Office on a later date, specifically on 18 November 2008. Obviously, Asiahome's application

has a Prior Filing Date. More importantly, the application of World of Tiles' for registration of the 'Floor Center' trademark was refused by this Honorable Office.

"32. If there is confusing similarity or likelihood of confusion, then it is World of Tiles' mark which is infringing on Asiahome's trademark and which should be the one removed.

"33. It is to noted that World of Tiles has not amply shown that it acquired rights over the 'Floor Center' trade name through actual use in commerce. As the documents submitted by World of Tiles show, World of Tiles did not use 'Floor Center' as its corporate name. Rather its corporate name as stated in its Certificate of Incorporation is 'The World of Tiles, Inc.' It has not also shown that it has registered the trade name 'Floor Center' before the DTI. Moreover, some of the documents attached by World of Tiles itself show that it uses the trade name, 'The World of Tiles, Inc.', not 'Floor Center'. More importantly, several exhibits were prepared sometime in 1997 to 1999 when World of Tiled has not yet been incorporated.

"34. World of Tiles cannot also claim any right, if any, belonging to Floor Center (SM City), Inc. as the two are two separate and distinct juridical entities. That the two companies have similar incorporators and stockholders does not suffice for World of Tiles to acquire any right over Floor Center (SM City), Inc. Let it be emphasized that World of Tiles has failed to submit any contract, document or other written instrument transferring any right by Floor Center (SM City), Inc. to World of Tiles. Any belated submission of such document is highly irregular and suspicious, as World of Tiles has erroneously claimed a right over the trade name 'Floor Center' from Floor Center (SM City), Inc. on the sole basis that they have the same incorporators and stockholders.

"35. From the foregoing, World of Tiles has failed to established any right or interest over the trade name 'Floor Center', much less in any 'Floor Center and FC Logo' trademark. Necessarily, no damage or prejudice will be caused to World of Tiles by the registration of the 'Floor Center Ceramic & Granite Tiles and Device' trademark in favor of Asiahome.

"36. In varying language, our Rules of Court, in speaking of burden of proof in civil cases, states that each party must prove his own affirmative allegations and that the burden of proof lies on the party who would be defeated if no evidence were given on either side. Thus, in civil case, the burden of proof is generally on the plaintiff, with respect to his complaint. Even in administrative proceedings, it still the complainant, or in this case, the opposer, who has the burden of proving, with substantial evidence, the allegations in the complaint or, in this case, the opposition. In the case at bar, it is World of Tiles' burden to prove by substantial evidence the allegations in its Opposition. It failed to do so. Indubitably, this Opposition must fail for utter lack merit.

"Asiahome reserves the right to present such other documents as may be necessary to prove the foregoing allegations in the course of the proceedings."

The case was referred to mediation but the parties failed to reach an amicable settlement. The Opposer then filed on 15 April 2011 a "REPLY and MOTION TO EXPUNGE RESPONDENT-APPLICANT'S ANSWER WITH EVIDENCE" alleging that the Answer lacks proper verification because no "board resolution" was presented to show the authority of the person who signed the verification. This prompted the Respondent-Applicant to file on 05 May 2011 a "REJOINDER", pointing out to the verification was authorized through an appropriate Special Power of Attorney⁹. Then after, the preliminary conference was set on 22 September 2011. The Opposer's counsel however failed to attend the conference. Consequently, the Opposer filed its Position Paper on 03 October 2011 while the Respondent-Applicant did so on 13 October 2011. The Respondent-Applicant objected to the Opposer's filing of a Position Paper on the ground that the latter waived its right to do so when it failed to attend the preliminary conference.

⁹ See Exh. "33".

Rule 2, Sec. 14.3 of the Regulations on Inter Partes Proceedings, as amended by Office Order No. 79, s. 2005 and which govern this opposition case, explicitly provides that *"a party who fails to attend the preliminary conference shall be deemed to have waived the right to submit position paper and draft decision."* This rule is carried into and stated with more clarity in the latest amendments to the Regulations, promulgated via Office Order No. 99, s. 2011 and which took effect on 17 July 2011.¹⁰ It is stressed nonetheless that regardless whether a position paper - which is just a summation by one party of the proceedings and arguments - is filed or not, this Bureau decides the case on the basis of the allegations of the parties, the records and evidence submitted.

Should the Respondent-Applicant be allowed to register in its favor the mark FLOOR CENTER CERAMIC GRANITE TILES AND DEVICE?

This Bureau agrees with the Respondent-Applicant that a trade name or business name is technically different from a trademark. However, it is emphasized that the Opposer anchors its case on Sec. 165 of Rep. Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code"), which provides:

SEC 165. Trade name or business name- 165.1. A name or designation may not be used as a trade name if by its nature or use to which such name or designation may be put, it is contrary to public order or morals and if, in particular, it is liable to deceive trade circles or the public as to the nature of the enterprise identified by that name.

Section 165.2(a) Notwithstanding any laws or regulations providing for any obligation to register trade names, such names shall be protected, even prior to or without registration, against any unlawful act committed by third parties.

(b) In particular, any subsequent use of the trade name by a third party, whether as a trade name or a mark or collective mark or any such use of a similar name or mark, likely to mislead the public, shall be deemed unlawful.

The protection is against any subsequent use of the trade name by a third party, whether as a trade name or a mark or collective mark or any such use of a similar name or mark, likely to mislead the public, and which shall be deemed unlawful. If the use by a party of a trade name already belonging to another is unlawful, it follows that the said party's application for the registration of the name as a trademark cannot prosper.

In this regard, the records and evidence show that the Opposer uses FLOOR CENTER as a trade name. The Security and Exchange Commission ("SEC") issued on 28 August 2001 a "Certificate of Incorporation" to the Opposer.¹¹ Subsequently, on 25 September 2001, the SEC issued to the Opposer a "Certificate of Filing of Amended Articles of Incorporation"¹². Depicted below, the document says that the Opposer is doing business under the name and style "FLOOR CENTER":

¹⁰ Rule 2, Sec. 13 reads: "A party who fails to attend the preliminary conference or represented by a counsel or any other person without the necessary power of attorney or appropriate corporate authorization shall be deemed to have waived the right to submit position papers."

¹¹ Exh. "C".

¹² Exh. "D".

EXHIBIT "E-1"

WORLD OF FILES, INC. EXHIBIT "E-2"

0028

EXHIBIT "E"

020 4/28
150 4/28

001

FLOOR CENTER, INC.
Owned & Operated by: The World of Tiles, Inc.
1250 EDSA, Suburban - Quezon City

Client Branch Copy
D.R. No. 15879

DELIVERY RECEIPT

Delivered to: Mrs. [Signature]

0036

NOT: is a bill of sale and understood by and between the parties of the goods
all over on it is signed by of Floor Center, Inc. and a no the sign to make possession
will fully paid for and better business responsibility in case of damage or loss by B.O.T.
01302

Received by: [Signature]
By: [Signature]
Received by: [Signature]

Checked by: [Signature]
Approved by: [Signature]

Page 2 of Amended Articles of Incorporation of the Opposer show Zanjani as an incorporator¹⁵:

[illegible]

The Opposer also presented the original duplicates of documents submitted to the Bureau of Internal Revenue IR showing stamped mark of receipt by the said agency in January 1999¹⁶.

Floor Center, Inc.

EXHIBIT 8-3

Senary Wares

DESCRIPTION	QTY	Cost	TOTALS
AMERICAN STANDARD			
Waterless Toilet	1	2,875.00	2,875.00
Waterless Toilet	1	2,800.00	7,775.00
Vatless - Toilet	1	2,800.00	11,575.00
Waterless Toilet	1	2,800.00	14,375.00
Waterless Toilet	1	2,800.00	17,175.00
Waterless Toilet	1	2,800.00	20,000.00
Waterless Toilet	1	2,800.00	22,800.00
Waterless Toilet	1	2,800.00	25,600.00
Waterless Toilet	1	2,800.00	28,400.00
Waterless Toilet	1	2,800.00	31,200.00
Waterless Toilet	1	2,800.00	34,000.00
Waterless Toilet	1	2,800.00	36,800.00
Waterless Toilet	1	2,800.00	39,600.00
Waterless Toilet	1	2,800.00	42,400.00
Waterless Toilet	1	2,800.00	45,200.00
Waterless Toilet	1	2,800.00	48,000.00
Waterless Toilet	1	2,800.00	50,800.00
Waterless Toilet	1	2,800.00	53,600.00
Waterless Toilet	1	2,800.00	56,400.00
Waterless Toilet	1	2,800.00	59,200.00
Waterless Toilet	1	2,800.00	62,000.00
Waterless Toilet	1	2,800.00	64,800.00
Waterless Toilet	1	2,800.00	67,600.00
Waterless Toilet	1	2,800.00	70,400.00
Waterless Toilet	1	2,800.00	73,200.00
Waterless Toilet	1	2,800.00	76,000.00
Waterless Toilet	1	2,800.00	78,800.00
Waterless Toilet	1	2,800.00	81,600.00
Waterless Toilet	1	2,800.00	84,400.00
Waterless Toilet	1	2,800.00	87,200.00
Waterless Toilet	1	2,800.00	90,000.00
Waterless Toilet	1	2,800.00	92,800.00
Waterless Toilet	1	2,800.00	95,600.00
Waterless Toilet	1	2,800.00	98,400.00
Waterless Toilet	1	2,800.00	101,200.00
Waterless Toilet	1	2,800.00	104,000.00
Waterless Toilet	1	2,800.00	106,800.00
Waterless Toilet	1	2,800.00	109,600.00
Waterless Toilet	1	2,800.00	112,400.00
Waterless Toilet	1	2,800.00	115,200.00
Waterless Toilet	1	2,800.00	118,000.00
Waterless Toilet	1	2,800.00	120,800.00
Waterless Toilet	1	2,800.00	123,600.00
Waterless Toilet	1	2,800.00	126,400.00
Waterless Toilet	1	2,800.00	129,200.00
Waterless Toilet	1	2,800.00	132,000.00
Waterless Toilet	1	2,800.00	134,800.00
Waterless Toilet	1	2,800.00	137,600.00
Waterless Toilet	1	2,800.00	140,400.00
Waterless Toilet	1	2,800.00	143,200.00
Waterless Toilet	1	2,800.00	146,000.00
Waterless Toilet	1	2,800.00	148,800.00
Waterless Toilet	1	2,800.00	151,600.00
Waterless Toilet	1	2,800.00	154,400.00
Waterless Toilet	1	2,800.00	157,200.00
Waterless Toilet	1	2,800.00	160,000.00
Waterless Toilet	1	2,800.00	162,800.00
Waterless Toilet	1	2,800.00	165,600.00
Waterless Toilet	1	2,800.00	168,400.00
Waterless Toilet	1	2,800.00	171,200.00
Waterless Toilet	1	2,800.00	174,000.00
Waterless Toilet	1	2,800.00	176,800.00
Waterless Toilet	1	2,800.00	179,600.00
Waterless Toilet	1	2,800.00	182,400.00
Waterless Toilet	1	2,800.00	185,200.00
Waterless Toilet	1	2,800.00	188,000.00
Waterless Toilet	1	2,800.00	190,800.00
Waterless Toilet	1	2,800.00	193,600.00
Waterless Toilet	1	2,800.00	196,400.00
Waterless Toilet	1	2,800.00	199,200.00
Waterless Toilet	1	2,800.00	202,000.00
Waterless Toilet	1	2,800.00	204,800.00
Waterless Toilet	1	2,800.00	207,600.00
Waterless Toilet	1	2,800.00	210,400.00
Waterless Toilet	1	2,800.00	213,200.00
Waterless Toilet	1	2,800.00	216,000.00
Waterless Toilet	1	2,800.00	218,800.00
Waterless Toilet	1	2,800.00	221,600.00
Waterless Toilet	1	2,800.00	224,400.00
Waterless Toilet	1	2,800.00	227,200.00
Waterless Toilet	1	2,800.00	230,000.00
Waterless Toilet	1	2,800.00	232,800.00
Waterless Toilet	1	2,800.00	235,600.00
Waterless Toilet	1	2,800.00	238,400.00
Waterless Toilet	1	2,800.00	241,200.00
Waterless Toilet	1	2,800.00	244,000.00
Waterless Toilet	1	2,800.00	246,800.00
Waterless Toilet	1	2,800.00	249,600.00
Waterless Toilet	1	2,800.00	252,400.00
Waterless Toilet	1	2,800.00	255,200.00
Waterless Toilet	1	2,800.00	258,000.00
Waterless Toilet	1	2,800.00	260,800.00
Waterless Toilet	1	2,800.00	263,600.00
Waterless Toilet	1	2,800.00	266,400.00
Waterless Toilet	1	2,800.00	269,200.00
Waterless Toilet	1	2,800.00	272,000.00
Waterless Toilet	1	2,800.00	274,800.00
Waterless Toilet	1	2,800.00	277,600.00
Waterless Toilet	1	2,800.00	280,400.00
Waterless Toilet	1	2,800.00	283,200.00
Waterless Toilet	1	2,800.00	286,000.00
Waterless Toilet	1	2,800.00	288,800.00
Waterless Toilet	1	2,800.00	291,600.00
Waterless Toilet	1	2,800.00	294,400.00
Waterless Toilet	1	2,800.00	297,200.00
Waterless Toilet	1	2,800.00	300,000.00
Waterless Toilet	1	2,800.00	302,800.00
Waterless Toilet	1	2,800.00	305,600.00
Waterless Toilet	1	2,800.00	308,400.00
Waterless Toilet	1	2,800.00	311,200.00
Waterless Toilet	1	2,800.00	314,000.00
Waterless Toilet	1	2,800.00	316,800.00
Waterless Toilet	1	2,800.00	319,600.00
Waterless Toilet	1	2,800.00	322,400.00
Waterless Toilet	1	2,800.00	325,200.00
Waterless Toilet	1	2,800.00	328,000.00
Waterless Toilet	1	2,800.00	330,800.00
Waterless Toilet	1	2,800.00	333,600.00
Waterless Toilet	1	2,800.00	336,400.00
Waterless Toilet	1	2,800.00	339,200.00
Waterless Toilet	1	2,800.00	342,000.00
Waterless Toilet	1	2,800.00	344,800.00
Waterless Toilet	1	2,800.00	347,600.00
Waterless Toilet	1	2,800.00	350,400.00
Waterless Toilet	1	2,800.00	353,200.00
Waterless Toilet	1	2,800.00	356,000.00
Waterless Toilet	1	2,800.00	358,800.00
Waterless Toilet	1	2,800.00	361,600.00
Waterless Toilet	1	2,800.00	364,400.00
Waterless Toilet	1	2,800.00	367,200.00
Waterless Toilet	1	2,800.00	370,000.00
Waterless Toilet	1	2,800.00	372,800.00
Waterless Toilet	1	2,800.00	375,600.00
Waterless Toilet	1	2,800.00	378,400.00
Waterless Toilet	1	2,800.00	381,200.00
Waterless Toilet	1	2,800.00	384,000.00
Waterless Toilet	1	2,800.00	386,800.00
Waterless Toilet	1	2,800.00	389,600.00
Waterless Toilet	1	2,800.00	392,400.00
Waterless Toilet	1	2,800.00	395,200.00
Waterless Toilet	1	2,800.00	398,000.00
Waterless Toilet	1	2,800.00	400,800.00
Waterless Toilet	1	2,800.00	403,600.00
Waterless Toilet	1	2,800.00	406,400.00
Waterless Toilet	1	2,800.00	409,200.00
Waterless Toilet	1	2,800.00	412,000.00
Waterless Toilet	1	2,800.00	414,800.00
Waterless Toilet	1	2,800.00	417,600.00
Waterless Toilet	1	2,800.00	420,400.00
Waterless Toilet	1	2,800.00	423,200.00
Waterless Toilet	1	2,800.00	426,000.00
Waterless Toilet	1	2,800.00	428,800.00
Waterless Toilet	1	2,800.00	431,600.00
Waterless Toilet	1	2,800.00	434,400.00
Waterless Toilet	1	2,800.00	437,200.00
Waterless Toilet	1	2,800.00	440,000.00
Waterless Toilet	1	2,800.00	442,800.00
Waterless Toilet	1	2,800.00	445,600.00
Waterless Toilet	1	2,800.00	448,400.00
Waterless Toilet	1	2,800.00	451,200.00
Waterless Toilet	1	2,800.00	454,000.00
Waterless Toilet	1	2,800.00	456,800.00
Waterless Toilet	1	2,800.00	459,600.00
Waterless Toilet	1	2,800.00	462,400.00
Waterless Toilet	1	2,800.00	465,200.00
Waterless Toilet	1	2,800.00	468,000.00
Waterless Toilet	1	2,800.00	470,800.00
Waterless Toilet	1	2,800.00	473,600.00
Waterless Toilet	1	2,800.00	476,400.00
Waterless Toilet	1	2,800.00	479,200.00
Waterless Toilet	1	2,800.00	482,000.00
Waterless Toilet	1	2,800.00	484,800.00
Waterless Toilet	1	2,800.00	487,600.00
Waterless Toilet	1	2,800.00	490,400.00
Waterless Toilet	1	2,800.00	493,200.00
Waterless Toilet	1	2,800.00	496,000.00
Waterless Toilet	1	2,800.00	498,800.00
Waterless Toilet	1	2,800.00	501,600.00
Waterless Toilet	1	2,800.00	504,400.00
Waterless Toilet	1	2,800.00	507,200.00
Waterless Toilet	1	2,800.00	510,000.00
Waterless Toilet	1	2,800.00	512,800.00
Waterless Toilet	1	2,800.00	515,600.00
Waterless Toilet	1	2,800.00	518,400.00
Waterless Toilet	1	2,800.00	521,200.00
Waterless Toilet	1	2,800.00	524,000.00
Waterless Toilet	1	2,800.00	526,800.00
Waterless Toilet	1	2,800.00	529,600.00
Waterless Toilet	1	2,800.00	532,400.00
Waterless Toilet	1	2,800.00	535,200.00
Waterless Toilet	1	2,800.00	538,000.00
Waterless Toilet	1	2,800.00	540,800.00
Waterless Toilet	1	2,800.00	543,600.00
Waterless Toilet	1	2,800.00	546,400.00
Waterless Toilet	1	2,800.00	549,200.00
Waterless Toilet	1	2,800.00	552,000.00
Waterless Toilet	1	2,800.00	554,800.00
Waterless Toilet	1	2,800.00	557,600.00
Waterless Toilet	1	2,800.00	560,400.00
Waterless Toilet	1	2,800.00	563,200.00
Waterless Toilet	1	2,800.00	566,000.00
Waterless Toilet	1	2,800.00	568,800.00
Waterless Toilet	1	2,800.00	571,600.00
Waterless Toilet	1	2,800.00	574,400.00
Waterless Toilet	1	2,800.00	577,200.00
Waterless Toilet	1	2,800.00	580,000.00
Waterless Toilet	1	2,800.00	582,800.00
Waterless Toilet	1	2,800.00	585,600.00
Waterless Toilet	1	2,800.00	588,400.00
Waterless Toilet	1	2,800.00	591,200.00
Waterless Toilet	1	2,800.00	594,000.00
Waterless Toilet	1	2,800.00	596,800.00
Waterless Toilet	1	2,800.00	599,600.00
Waterless Toilet	1	2,800.00	602,400.00
Waterless Toilet	1	2,800.00	605,200.00
Waterless Toilet	1	2,800.00	608,000.00
Waterless Toilet	1	2,800.00	610,800.00
Waterless Toilet	1	2,800.00	613,600.00
Waterless Toilet	1	2,800.00	616,400.00
Waterless Toilet	1	2,800.00	619,200.00
Waterless Toilet	1	2,800.00	622,000.00
Waterless Toilet	1	2,800.00	624,800.00
Waterless Toilet	1	2,800.00	627,600.00
Waterless Toilet	1	2,800.00	630,400.00
Waterless Toilet	1	2,800.00	633,200.00
Waterless Toilet	1	2,800.00	636,000.00
Waterless Toilet	1	2,800.00	638,800.00
Waterless Toilet	1	2,800.00	641,600.00
Waterless Toilet	1	2,800.00	644,400.00
Waterless Toilet	1	2,800.00	647,200.00
Waterless Toilet	1	2,800.00	650,000.00
Waterless Toilet	1	2,800.00	652,800.00
Waterless Toilet	1	2,800.00	655,600.00
Waterless Toilet	1	2,800.00	658,400.00
Waterless Toilet	1	2,800.00	661,200.00
Waterless Toilet	1	2,800.00	664,000.00
Waterless Toilet	1	2,800.00	666,800.00
Waterless Toilet	1	2,800.00	669,600.00
Waterless Toilet	1	2,800.00	672,400.00
Waterless Toilet	1	2,800.00	675,200.00
Waterless Toilet	1	2,800.00	678,000.00
Waterless Toilet	1	2,800.00	680,800.00
Waterless Toilet	1	2,800.00	683,600.00
Waterless Toilet	1	2,800.00	686,400.00
Waterless Toilet	1	2,800.00	689,200.00
Waterless Toilet	1	2,800.00	692,000.00
Waterless Toilet	1	2,800.00	694,800.00
Waterless Toilet	1	2,800.00	697,600.00
Waterless Toilet	1	2,800.00	700,400.00
Waterless Toilet	1	2,800.00	703,200.00
Waterless Toilet	1	2,800.00	706,000.00
Waterless Toilet	1	2,800.00	708,800.00
Waterless Toilet	1	2,800.00	711,600.00
Waterless Toilet	1	2,800.00	714,400.00
Waterless Toilet	1	2,800.00	717,200.00
Waterless Toilet	1	2,800.00	720,000.00
Waterless Toilet	1	2,800.00	722,800.00
Waterless Toilet	1	2,800.00	725,600.00
Waterless Toilet	1	2,800.00	728,400.00
Waterless Toilet	1	2,800.00	731,200.00
Waterless Toilet	1	2,800.00	734,000.00
Waterless Toilet	1	2,800.00	736,800.00
Waterless Toilet	1	2,800.00	739,600.00
Waterless Toilet	1	2,800.00	742,400.00
Waterless Toilet	1	2	

[illegible]

¹⁵ Exh. "D".

¹⁶ Exh. "E-3" and "E-3-10".

There is credence, therefore, in the Opposer's claim that Floor Center Inc. (SM City) is its predecessor-in-interest. Not only are Opposer and the Floor Center Inc. (SM City) have a common incorporator, the Opposer also has in its possession originals or duplicates or certified copies of documents belonging to Floor Center, Inc. (SM City). But whether Floor Center Inc. (SM City) is the predecessor-in-interest of the Opposer or not, the fact remains that the trade name or business name FLOOR CENTER together with the FC Logo belong to and used in trade or commerce by a party long before the Respondent-Applicant came into existence. The Opposer has the right to file the opposition under Sec. 134 of the IP Code because it is a party that will be damaged if the Respondent-Applicant is able to obtain its desired trademark registration. If that happens, the Respondent-Applicant would have exclusive right to use the mark and those that are identical or confusingly similar thereto in respect of floor tiles and related goods.

Aptly, the mark applied for registration by the Respondent-Applicant and the Opposer's trade name need not even be identical in order for the latter to successfully invoke and claim the protection under Sec. 165 of the IP Code. It is sufficient that the feature or features common to the parties is/are the prominent or the ones that draw the eyes and/or ears of the consumers.¹⁷ In this instance, the Respondent-Applicant appropriated not only the trade name FLOOR CENTER, it also included in its trademark the FC logo, to wit:



Even before the Respondent-Applicant trademark application was allowed for publication and opposition purposes, the Opposer was issued trademark No. 4-2008-014356 on 24 Nov. 2009 for the mark "TILE DEPOT & FC LOGO". The registered mark contains the same "FC logo" discussed above.

The Respondent-Applicant claims that it acquired its right to register the mark from a certain "MSST Corporation" which in turn allegedly derived the rights from another entity, Galleria Floor Center, submitting an affidavit executed by Olivia M. Talampas¹⁸. This Bureau noticed, however, that Talampas is the Respondent-Applicant's Finance and Administrative Manager. In fact, she was the one who signed the verification attached to the Respondent-Applicant's Answer to the opposition. Thus, her affidavit must be treated with utmost caution, its contents, in essence, self-serving. Talampas points to a deed of assignment to prove that Galleria Floor Center supposedly assigned to MTSS Corporation the trade name or business name FLOOR CENTER. This Bureau, however, cannot give any probative value to this paper.¹⁹ A scrutiny thereof shows that it was allegedly signed by only one person, Teresita Maherolnagsh, supposedly in her capacity as "Corporate President" for both Galleria Floor Center and MTSS Corporation. No evidence was presented to show that Teresita Maherolnagsh is a Corporate President for Galleria Floor Center and MTSS Corporation and has the authority to execute such transaction. The paper does not even bear any sign of having been acknowledged before a notary public.

¹⁷ See *Coffee Partner, Inc. v. San Francisco Coffee Roastery, Inc.*, G.R.No.169504, 03 March 2010.

¹⁸ Exh. "28".

¹⁹ Exh. "39".


Worst, there is no affidavit or testimony from Maherolnagsh to prove the execution and existence of said document. This Bureau also takes judicial notice of Inter Partes Case No. 14-2010-00248, which is an opposition filed by Galleria Floor Center also against the Respondent-Applicant's trademark application. The opposition contradicts the Respondent-Applicant's claim that Galleria Floor Center transferred to it the rights over the name or mark FLOOR CENTER.

If the Respondent-Applicant failed to substantiate its claim that Galleria Floor Center assigned trade name or business name rights or ownership to MTSS Corporation, as regards its allegation that MTSS Corporation in turn transferred to it such rights. The juridical personality or existence of the MTSS Corporation was not even clearly established. What the Respondent-Applicant submitted were photocopies of papers purportedly relating to employment and personnel matters. The Respondent-Applicant submitted the affidavits executed by Daisy Alejado, Joan Paula De Guzman and Mary Ann Mangubat²⁰. These "witnesses", however, like Olivia Talampas, are the Respondent-Applicant's own employees such that their uncorroborated "testimonies", are deemed self-serving. The affidavits in fact contain "observations" which do not prove the MTSS Corporation's alleged rights over the trade name or business name FLOOR CENTER much less the transfer of such rights to the Respondent-Applicant.

WHEREFORE, premises considered, the instant opposition is hereby **SUSTAINED**. Let the filewrapper of Trademark Application Serial No.4-2008-010949 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 20 September 2012.



ATTY. NATHANIEL S. AREVALO
Director IV, Bureau of Legal Affairs

²⁰ Exh. "36" to "38".