ZAMONY VENTURE CORPORATION, Opposer, **-versus-** **HENRY YO SO,** Respondent-Applicant.	} } } } } } } }	**IPC No. 14-2011-00411** Opposition to: Appln. Serial No. 4-2010-002887 Date filed:16 March 2010 **TM: "STARKONZERT"**

x----------x

NOTICE OF DECISION

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GREETINGS:

Please be informed that Decision No. 2012 – 84 dated April 30, 2012 (copy enclosed) was promulgated in the above entitled case.

Taguig City, April 30, 2012.

For the Director:

Atty. PAUSI U. SAPAK
Hearing Officer, BLA

CERTIFIED TRUE COPY
SHARON S. ALCANTARA
Records Officer II
Bureau of Legal Affairs, IPO

ZAMONY VENTURE CORPORATION,
Opposer,

- versus -

HENRY YO SO,
Respondent-Applicant.
x----------x

IPC No. 14-2011-00411
Opposition to:
Appln. Serial No. 4-2010-002887
Date Filed: 16 March 2010
TM: "STARKONZERT"

Decision No. 2012- 84

DECISION

ZAMONY VENTURE CORPORATION ("Opposer")[1] filed on 05 September 2011 an opposition to Trademark Application Serial No. 4-2010-002887. The application, filed by HENRY YO SO ("Respondent-Applicant")[2], covers the mark "STARKONZERT" for use on "*television, DVD player, amplifier, speaker, stereo, RADIO component*" under Class 09 of the International Classification of goods[3]. The Opposer alleges, among other things, that the approval of the said trademark application is contrary to Sections 123.1 and 138 of R.A. 8293 and would violate its right to the exclusive use of its registered trademark "KONZERT (ARTISTIC) AND LOGO" causing damage and injury.

The Opposer's evidence consists of a certified copy of the Opposer's Article of Incorporation; certified copies of Cert. of Reg. No. 4-1993-88768 and Cert. of Reg. No. 4-2000-005492; declarations of actual use submitted on 26 October 2001 and 11 January 2008 (in connection with Reg. No. 4-1993-88768) and on 23 June 2003 and 14 April 2011 (in connection with Reg. No. 4-2000-05492) and representative invoices showing continued commercial use of the Opposer's mark; photographs of products bearing the mark KONZERT; brochures; print out of the Respondent-Applicant's mark; and the duly notarized affidavit of Lito N. Caronan, President of the Opposer corporation.[4]

This Bureau issued a Notice to Answer on 16 September 2011 and served upon a copy thereof to the Respondent- Applicant. The Respondent-Applicant, however, did not file an Answer.

Should the Respondent-Applicant's trademark application be allowed?

It is emphasized that the essence of trademark registration is to give protection to the owners of the trademarks. The function of a trademark is to point out distinctly the origin or ownership of the goods to which it is applied; to secure to him who has been instrumental in bringing into the market a superior article of merchandise; the fruit of his industry and skill; to assure to the public that they are procuring the genuine article; to prevent fraud and imposition; and to protect the manufacturer against substitution and sale of an inferior and different article as his product[5]. Thus, Sec. 123.1(d) of Rep. Act No. 8293, also known as the Intellectual Property Code of the Philippines (''IP Code") provides that a mark cannot be registered if it is identical with a registered mark belonging to a different

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1 A corporation duly organized and existing under Philippine laws with principal place of business and address at 2263 Aurora Boulevard, Pasay City.
2 With address at 267 Tres de Abril St., Saniculas Proper, Cebu City.
3 The Nice Classification is a classification of goods and services for the purpose of registering trademark and services marks, based on the 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 Purpose of the Registration of Marks concluded in 1957.
4 Marked as Exhibits "A" to "L", with sub-markings.
5 *Pribhdas J. Mirpuri v. Court of Appeals*, G.R. No. 115508, 19 Nov. 1999.

proprietor or a mark with earlier filing or priority date, in respect of the same goods or services or closely related goods or services or it nearly resembles such, mark as to be likely to deceive or cause confusion.

In this regard, the records and evidence show that at the time the Respondent-Applicant filed his trademark application on 16 March 2010, the Opposer has existing trademark registrations for the mark "KONZERT (Artistic) and logo of the representation of a loudspeaker" used on "*loudspeaker*" under Class 9 (Reg. No. 4-1993-88767) and for the mark "KONZERT and logo" used on "*loudspeaker, microphone cable, coafeal cable, loudspeaker wire, microphone, amplifier, VCD player, crossover network, megaphone, dividing network*" under Class 9 (Reg. No.4-200-005492). Obviously, the goods indicated in the Respondent-Applicant's trademark application are similar and closely related to the goods covered by the Opposer's trademark registrations.

The question is: Are the competing marks, as shown below, identical or closely resembling each other such that confusion or mistake is likely to occur?

STARKONZERT

Opposer's mark *Respondent-applicant's mark*

The main feature in the Opposer's mark, that which immediately draws the eyes and the ears is the word "KONZERT". The word "KONZERT" is the "product identifier" with or without the accompanying device. Corollarily, trademarks are designed not only for the consumption of the eyes, but also to appeal to the other senses, particularly, the faculty of hearing. Thus, when one talks about the trademark or conveys information thereon, the mark is referred to verbally as "KONZERT".

In this regard, the Respondent-Applicant appropriated the word "KONZERT", paired it with the word "star", and came out with the mark "STARKONZERT". But because the Respondent-Applicant will use or uses the mark on goods or products that are similar and closely related to those covered by the Opposer's registered trademark, the addition of the word "STAR", however, does not diminish the likelihood of the occurrence of mistake, confusion, or even deception.

Obviously, the mark "KONZERT" was derived from the word "concert". But with an additional creative flair as to the spelling and font style, the mark has become highly distinctive. The stylized spelling has an impact on the senses and leaves impression upon the minds of the consumers. As such, when one who had bought a product bearing the Opposer's mark before suddenly encounters a product under the mark "STARKONZERT", it is likely that the consumer may commit mistake or assume that it is also of the Opposer's or just a variation thereof. Such mistake or assumption is also likely when a consumer chances upon products bearing the mark "STARKOZERT" side by side or near the products under the mark

""KONZERT". Consumers may presume that there is a connection between these products or between the Respondent-Applicant's products and the Opposer and vice-versa, or between the parties, when in fact there is none.

Confusion cannot be avoided by merely adding, removing or changing some letters of a registered mark. Confusing similarity exists when there is such a close or ingenuous imitation as to be calculated to deceive ordinary persons, or such resemblance to the original as to deceive ordinary purchaser as to cause him to purchase the one supposing it to be the other[6]. The conclusion created by use of the same word as the primary element in a trademark is not counteracted by the addition of another term[7]. The likelihood of confusion would subsist not only on the purchaser's perception of goods but on the origins thereof as held by the Supreme Court:[8]

> Callman notes two types of confusion. The first is the confusion of goods in which event the ordinarily prudent purchaser would be induced to purchase one product in the belief that he was purchasing the other. In which case, defendant's goods are then bought as the plaintiff's and the poorer quality of the former reflects adversely on the plaintiff's reputation. The other is the confusion of business. Here, though the goods of the parties are different, the defendant's product is such as might reasonably be assumed to originate with the plaintiff and the public would then be deceived either into that belief or into belief that there is some connection between the plaintiff and defendant which, in fact does not exist.

It is inconceivable for the Respondent-Applicant to have come up with the mark "STARKONZERT" without having been inspired by or motivated by an intention to imitate the mark "KONZERT". It is highly improbable for another person to come up with an identical or nearly identical mark for use on the same or related goods purely by coincidence. The field from which a person may select a trademark is practically unlimited. As in all cases of colorable imitation, the answered riddle is why, of the millions of terms and combination of letters and available, the Respondent-Applicant had come up with a mark identical or so clearly similar to another's mark if there was no intent to take advantage of the goodwill generated by the other mark[9].

WHEREFORE, premises considered, the instant opposition is hereby **SUSTAINED**. Let the file wrapper of Trademark Application Serial No. 4-2010-002887 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 30 April 2012.

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

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[6] See *Societe Des Produits Nestle , S.A v. Court of Appeals*, G.R. No.112012, 4 April 2001, 356 SCRA 207, 217
[7] Ref.: *Continental Connector Corp. v. Continental Specialties Corp.*, 207 USPQ 60.
[8] See *Converse Rubber Corporation v. Universal Rubber Products, Inc., et al.*, G.R. No. L-27906, 08 Jan. 1987.
[9] See *American Wire and Cable Co. v. Director of Patents et.* al (SCRA 544), G.R. No. L-26557, 18 Feb. 1970.