



UNIVERSAL GADGETS MANILA, INC.,
Petitioner,

-versus-

REGINALD JOSEPH CHUA,
Respondent-Registrant.

IPC No. 14-2014-00512
Petition for Cancellation:
Reg. No. 4-2013-00002878
Date Issued: 19 June 2014
TM: "HAPPY MOBILE"

NOTICE OF DECISION

BENGZON NEGRE UNTALAN
Counsel for the Petitioner
Second Floor SEDCCO Building
Rada corner Legaspi Streets
Legaspi Village, Makati City


REGINALD JOSEPH CHUA
Respondent-Registrant
24th Floor Robinsons Galleria Corporate Center
Ortigas Avenue, Quezon City

GREETINGS:

Please be informed that Decision No. 2015 - 39 dated March 25, 2015 (copy enclosed) was promulgated in the above entitled case.

Taguig City, March 25, 2015.

For the Director:


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



UNIVERSAL GADGETS MANILA, INC.,
Petitioner,

- versus -

REGINALD JOSEPH CHUA,
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X ----- X

IPC No. 14-2014-00512

Cancellation of:

Reg. No. 4-2013-0002878

Date Issued: 19 June 2014

Trademark: **"HAPPY MOBILE"**

Decision No. 2015 - 39

DECISION

UNIVERSAL GADGETS MANILA, INC. ("Petitioner")¹ filed a petition for cancellation of Trademark Registration No. 4-2013-0002878. The registration, issued to REGINALD JOSEPH CHUA (Respondent-Registrant)², covers the mark "HAPPY MOBILE" for use of goods under class 09³ namely: *cellular phones*.

The following are the pertinent allegations of the petition:

"Petitioner is the first registrant, prior bona fide user and true owner of the mark 'HAPPY' and 'HAPPYMOBILE'. Hence, it is damaged and will continue to be damaged unless the registration of the mark 'HAPPY MOBILE' in favor of Respondent-Registrant under Trademark Registration No. 4-2013-0002878 is cancelled by this Honorable Office.

"7. In 2013, Mr. Sytin and his business partners decided to embark on a new business - marketing, distributing and selling their own brand of mobile phones, tablets and like gadgets. They worked on incorporating their company and began the hunt for the perfect brand for their own mobile phones, tablets and like gadgets.

"8. In November 2013, they reserved the name 'UNIVERSAL GADGETS MANILA, INC.' in the Securities and Exchange Commission (SEC). They eventually went on to incorporate Petitioner and were issued a Certificate of Incorporation. As shown in Petitioner's Articles of Incorporation, the primary purpose of Petitioner was 'to engage in, conduct, and carry on the business of buying, selling, distributing, assembling, manufacturing, servicing and marketing at wholesale and retail in so far as may be permitted by law, all kinds of goods like cell phones, televisions, appliances, communication and telecommunication equipment, audio and video equipment, spare parts, accessories, batteries, memory cards and related products, wares and merchandise of every kind and description; to enter into all kinds of contracts for the export, import, purchase, service, acquisition, sale at wholesale or retail and other disposition for its own account as principal or in representative capacity as manufacturer's representative, merchandise broker, indenter, commission merchant, factors or agents, upon consignment of all kinds of goods related therein, wares, merchandise products whether natural or artificial.'

¹ A corporation duly organized and existing under Philippine laws with principal office at 1032 EDSA Munoz, Bagong Bantay, Quezon City, Metro Manila.

² With address at 24th Floor, Robinsons Galleria Corporate Center, Ortigas Avenue, Quezon City.

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

"9. With regard to finding the perfect brand for their own mobile phones and other gadgets, Mr. Sytin and his business partners thought of the brand 'HAPPYMOBILE' because they are a devoted, passionate and fun-loving group of individuals who came together to start their company. Their mission was to make their market happy by providing them with exciting and innovative products and service at a very reasonable price. Hence, Mr. Sytin and his business partners thought that the brand 'HAPPYMOBILE' perfectly captured their mission and vision.

"10. But before investing in the brand and engaging the services of a graphic artist to make the logo, they first ensured that the mark is not yet registered in favor of another proprietor.

"11. Thus, on 9 December 2013, Petitioner filed before the IPOPHL Trademark Application No. 4-2013-14645 for the mark 'HAPPY' for use on 'mobile phones and tablet' and related goods under Class 9.

x x x

"15. Having confirmed through the BOT's issuance of the Notice of Allowance that the mark 'HAPPY' for mobile phones and tablets is not yet registered in favor of another proprietor, Petitioner immediately began building up the 'HAPPYMOBILE' brand and using the 'HAPPY' mark for mobile phones and tablets.

x x x

"19. Further, Petitioner engaged the services of GFX Creative Imaging, Inc. ('GFX') to come up with a logo for 'HAPPYMOBILE'. On 26 February 2014, Petitioner sought the registration of this logo by filing Trademark Application No. 4-2014-002477 for the composite mark 'HAPPYMOBILE' for use on 'mobile phones and tablets' and related goods under Class 9.

"20. As for Petitioner's Trademark Application No. 4-2013-14645 for the mark 'HAPPY', significantly the same was not opposed despite due publication. Thus, Petitioner's Trademark Application No. 4-2013-14645 for the mark 'HAPPY' was granted registration by the IPOPHL on 6 March 2014.

"21. Upon the advice of personnel from the IPOPHL, Petitioner secured the domain www.happymobile.com.ph on 7 March 2014 and invested in the services of a web designer in designing a web site that matches its brand 'HAPPYMOBILE'.

"22. Petitioner also went on to design and procure the box packaging for its 'HAPPYMOBILE' branded mobile phones and tablets.

"23. The popularity of the brand is rapidly growing especially given petitioner's presence in social media through the following accounts:

Facebook Account:

<https://www.facebook.com/HappyMobilePhilippines>

Twitter Account: <https://twitter.com/happymobileph>

Instagram Account: @HappyMobilePH

"24. Petitioner likewise has publicity through the endorsement of famous actress, Heart Evangelista, and several write-ups regarding the 'HAPPYMOBILE' brand, including but not limited to the write-ups in the following urls:

<http://www.gadgetpilipinas.net/2014/happymobileph/>

<http://www.speed-mag.com/happy-mobile-philippines/>

<http://www.unbox.ph/gadget/meet-happy-mobile-the-phs-newest-smartphone-brand/>

"25. Likewise, the distribution of 'HAPPYMOBILE' branded mobile phones and tablets of Petitioner is rapidly growing."

The Petitioner's evidence consists of the following:

1. Exhibit "A" - Secretary's Certificate;
2. Exhibit "B" - Affidavit of Mr. Kenneth Lim Sytin, Petitioner's President;
3. Exhibit "C" - Certificate of Registration inclusive of Corporate Name Registration Payment Confirmation, Articles of Incorporation and Joint Affidavit of Undertaking to Change Name;
4. Exhibit "D" - Print-out of electronic mail correspondence;
5. Exhibit "E" - Trademark application for the mark HAPPY in IPOPHL;
6. Exhibit "F" - Notice of Allowance dated 15 January 2014;
7. Exhibit "G" - Print-out of the E-Gazette publication for the mark HAPPY;
8. Exhibit "H"- "J" - Application for Customer Premises Equipment, Radio Communication Equipment and Certification issued by CCIT International Limited;
9. Exhibit "K" - CPE Approval issued by the National Telecommunications Communication (NTC);
10. Exhibit "L" - Print-out of electronic mail of GFX to Petitioner;
11. Exhibit "M" - Trademark Application for composite mark HAPPYMOBILE;
12. Exhibit "N" - Certificate of Registration No. 4-2013-00014645;
13. Exhibit "O" - Print-out of electronic mail from GoDaddy.com confirming Petitioner's domain name registration;
14. Exhibit "P" - Print-out of Petitioner's domain name registration from dotPH;
15. Exhibit "Q"- "R" - Print-outs of electronic mails by Mauve Creatives;
16. Exhibit "S"- "T" - Print-outs of web articles;
17. Exhibit "U" - Print-outs of web articles on HAPPYMOBILE brand;
18. Exhibit "V" - Print-out of report on the current distribution of 'HAPPYMOBILE' mobile phones and tablets; and,
19. Exhibit "W" - Registrability Report dated 11 September 2014;
20. Exhibit "X" - Response to Mr. Chester Cinco;
21. Exhibit "Y" - Letter to Secretary Domingo, Department of Trade and Industry; and,
22. Exhibit "Z" - Letter issued by Director General Blancaflor, IPOPHL.

This Bureau issued and served upon the Respondent-Registrant a Notice to Answer on 28 November 2014. Respondent-Registrant however, did not file an answer. Thus, he is declared in default and this case is deemed submitted for decision.⁴

Should Respondent-Registrant's trademark HAPPY MOBILE be cancelled?

Section 151.1 of the IP Code⁵ provides:

x x x A petition to cancel a registration of a mark under this Act may be filed with the Bureau of Legal Affairs by any person who believes that he is or will be damaged by the registration of a mark under this Act as follows:

x x x

⁴ Order No. 2015-362 dated 06 March 2015.

⁵ The Intellectual Property Code of the Philippines, R.A. No. 8293.

(b) At any time, if the registered mark becomes generic name for the goods or services, or a portion thereof, for which it is registered, or has been abandoned, or its registration was obtained fraudulently or contrary to the provisions of this Act, or if the registered mark is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used. x x x

It is emphasized that the essence of trademark registration is to give protection to the owners of trademarks. The function of a trademark is to point out distinctly the origin or ownership of the goods to which it is affixed; to secure to him, who has been instrumental in bringing out into the market a superior 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.⁶

Sec. 123.1 (d) of the IP Code provides:

Sec. 123. Registrability. - 123.1. A mark cannot be registered if it:

x x x

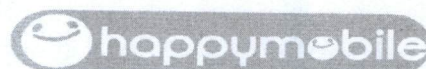
(d) **Is identical with a registered mark belonging to a different proprietor** or a mark with an earlier filing or priority date, in respect of:

- (i) The same goods or services, or
- (ii) Closely related goods or services, or
- (iii) **If it nearly resembles such a mark as to be likely to deceive or cause confusion;**
(Emphasis Supplied)

Records show that at the time the Respondent-Registrant was issued registration for its trademark HAPPY MOBILE on 19 June 2014⁷, herein Petitioner has already an existing registration for its trademark HAPPY on 06 March 2014⁸, and has also a pending application for the mark HAPPYMOBILE.⁹

The following marks are hereby reproduced for comparison:

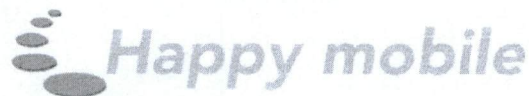
HAPPY



happymobile

Petitioner's Trademarks

⁶ Pribhdas J. Mirpuri v. Court of Appeals, G.R. No. 114508, 19 Nov. 1999. See also Article 15, par. (1), Art. 16, par. 91 of the Trade-related Aspect of Intellectual Property (TRIPS Agreement).
⁷ File wrapper records.
⁸ Exhibit "N" of Petitioner.
⁹ Exhibit "M" of Petitioner.



Respondent-Registrant's Trademark

The contending marks contain the identical word mark HAPPY. Significantly, Respondent-Registrant disclaimed the use of the word MOBILE in its HAPPY MOBILE trademark because it refers to the product covered by said trademark. It is likewise observed that the slight difference in the font and device used in the marks are insignificant. With respect to the goods covered, the aforementioned marks are used on goods that are similar and/or closely related to each other in class 09 - mobiles and tablets. These goods flow on the same channels of trade and catered to the same class of purchasers.

Therefore, there is the likelihood that the consumers will have the impression that these goods or products originate from a single source or origin. The confusion or mistake would subsist not only on the purchaser's perception of goods but on the origin thereof as held by the Supreme Court, to wit:¹⁰

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. Hence, 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 which, in fact does not exist.

The public interest, therefore, requires that the two marks, identical to or closely resembling each other and used on the same and closely related goods, but utilized by different proprietors should not be allowed to co-exist. Confusion, mistake, deception, and even fraud, should be prevented. It is emphasized that the function of trademark is to point out distinctly the origin or ownership of the goods to which it is affixed; 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 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.¹¹

In this instant case, Petitioner proved to be the owner of the contested mark. It has submitted evidence relating to the origin of its HAPPY and HAPPY MOBILE trademarks. Among the pieces of evidence are the affidavit of its witness¹²; the Certificate of Registration for the trademark HAPPY, which confers upon the owner thereof the exclusive right to prevent all third parties not having the owner's consent from using in the course of the trade identical or similar signs for goods which are identical or similar to those in respect of which the trademark is registered where such would result in a likelihood of confusion¹³; and, other documents showing the actual and continuous operation of its mark in the Philippines¹⁴.

¹⁰ Converse Rubber Corporation v. Universal Rubber Products Inc., et al., G.R. No. L-27906, 08 Jan. 1987.

¹¹ Pribhdas J. Mirpuri v. Court of Appeals, G.R. No. 114508, 19 Nov. 1999.

¹² Exhibit "B" of Petitioner.

¹³ Sec. 147.1, IP Code.

¹⁴ Exhibits "H"- "J", "K", "L", "O", "P", "Q"- "R", "S"- "T", "U" and "V" of Petitioner.

Also, a review of the filewrapper of Reg. No. 4-2013-0002878, the contents of which this Bureau can take cognizance of via judicial notice, reveals that while it may be true that the Respondent-Registrant may have filed its trademark application, which later ripened into Reg. No. 4-2013-00028778, earlier than the Petitioner, the same was in fact previously declared abandoned. The application was eventually revived only on 12 May 2014. The Petitioner was issued Reg. No. 4-2013-14645 on 06 March 2014.

It must be emphasized that the Respondent-Registrant was given opportunity to defend his trademark registration. He, however, failed to do so.

WHEREFORE, premises considered, the instant Petition for the Cancellation of Trademark Registration No. 4-2013-0002878 is hereby **SUSTAINED**. Let the filewrapper of the subject trademark application be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 25 March 2015.


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