



ROVIO ENTERTAINMENT LTD.,
Opposer,

-versus-

DWI PUTRA RAHARDJO T.,
Respondent-Applicant.

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}
} IPC No. 14-2013-00062
} Opposition to:
} Appln No. 4-2012-010700
} Date Filed: 03 September 2012
} TM: "CRAZY BIRDS & DESIGN"

NOTICE OF DECISION

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GREETINGS:

Please be informed that Decision No. 2015 - 158 dated July 31, 2015 (copy enclosed) was promulgated in the above entitled case.

Taguig City, July 31, 2015.

For the Director:


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



ROVIO ENTERTAINMENT LTD.,
Opposer,

-versus-

IPC No. 14-2013-00062

Opposition to Trademark
Application No. 4-2012-010700
Date Filed: 03 September 2012

DWI PUTRA RAHARDJO T.,
Respondent-Applicant.

Trademark: **"CRAZY BIRDS & DESIGN"**

x ----- x

Decision No. 2015- 158

DECISION

Rovio Entertainment¹ ("Opposer") filed an opposition to Trademark Application No. 4-2012-010700. The contested application, filed by Dwi Putra Rahardjo T.² ("Respondent-Appellant"), covers the mark "CRAZY BIRDS & DESIGN" for use on *"toys, blocks (building-)(toys); board games; assemblable children toys, jigsaw puzzles; puzzle (educational paper sponge toy with 3D); games"* under Class 28 of the International Classification of Goods³.

The Opposer anchors its opposition on Section 123 subparagraphs (d), (e) and (f) of R.A. No. 8293, also known as the Intellectual Property Code ("IP Code"). It contends that the applied mark "CRAZY BIRDS & DESIGN" is confusingly similar to its own "ANGRY BIRDS" mark, which is covered by Certificate of Registration No. 4-2011-005838 issued on 29 March 2012. It asserts that "BIRDS" in conjunction with the word "CRAZY" closely resembles the "ANGRY" plus "BIRDS" configuration and ostensibly approximates the concept of its own registered mark, with "CRAZY" denoting a mental state of madness or being "ANGRY". It claims to have used "ANGRY BIRDS" in the Philippines and elsewhere prior to the Respondent-Applicant and to have extensively promoted the said mark.

In support of its Opposition, the Opposer submitted the following documents:

1. table showing the details of the applications and/or registrations for "ANGRY BIRDS" mark worldwide;
2. certified copies of representative samples of the trademark registrations for the "ANGRY BIRDS" mark;
3. screenshots of the Opposer's website www.angrybirds.com;

¹ A company duly organized and existing under the laws of Finland, with principal business address at Keilaranta 17, 02150 Espoo, Finland.

² A citizen of the Republic of Indonesia with address at JL. Pinang Perak II/3, Kelurahan Pondok Pinang Kec, Kebayoran Lama Jakarta Selatan, Indonesia.

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. computer printout of Registration No. 4-2011-005484;
5. copy of Finland Trademark Registration No. 249429; and
6. copy of Canada Trademark Registration No. TMA824,313.⁴

For its part, the Respondent-Applicant filed his Answer alleging that the two marks are completely different as "CRAZY" is easily distinguishable from "ANGRY" in sound, appearance and meaning. He asserts that the different prefixes of the marks are sufficient to warn the unwary customer that he is purchasing a different product. He believes that while there are similarities in the two marks, they are only to a relative extent and are outweighed by the dissimilarities. He also argues that it was not shown that the requisite Declaration of Actual Use (DAU) was filed and/or that the Opposer is in actual use of the mark for all the classes covered by the registration.

The Respondent-Applicant's evidence consists of the following:

1. his sworn statement;
2. applications for registration of "CRAZY BIRDS & DESIGN" in Indonesia, with English translations;
3. copy of World-record Museum certificate; and
4. specimen of use of "CRAZY BIRDS & DESIGN" for various characters.

The Preliminary Conference was conducted on 19 November 2013. Upon termination, both parties were directed to submit their respective position papers. After which, the case is deemed submitted for resolution.

The issue to be resolved is whether the trademark application of Respondent-Applicant for "CRAZY BIRDS & DESIGN" should be granted.

Records reveal that at the time the Respondent-Applicant filed her application for "CRAZY BIRDS & DESIGN" on 03 September 2012, the Opposer already has a pending application for its mark "ANGRY BIRDS" filed on 20 May 2011. The same was eventually allowed and issued registration on 29 March 2012.

But are the competing marks, as shown below, confusingly similar?

ANGRY BIRDS

Opposer's mark

CRAZYBIRDS

Respondent-Applicant's mark

⁴ Marked as Exhibits "B" to "E", inclusive.

Both marks consist of the word "BIRDS" compounded preceded by an adjective. Despite the differences in their first words "ANGRY" and "CRAZY", the pattern is obvious and evident that it is inconceivable for the Respondent-Applicant to come up with a mark "CRAZY BIRDS & DESIGN" without having been inspired or motivated by an intention to imitate the Opposer's mark. After all, 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 purchased as to cause him to purchase the one supposing it to be the other.⁵

As in all other cases of colorable imitations, the unanswered riddle is why, of the millions of terms and combinations of letters and designs available, the appellee had to choose those so closely similar to another's trademark if there was no intent to take advantage of the goodwill generated by the other mark.⁶ While it may be true that there are slight differences between the two marks, they pale in significance especially that both marks are used or to be used for goods under Class 28. Comparing the representative samples of promotional materials for "ANGRY BIRDS"⁷ and the specimens of use of "CRAZY BIRDS & DESIGN"⁸, the glaring similarities in the products and/or presentation thereof are evident. Hence, it is almost impossible not to associate the goods of one for the other.

Succinctly, it is settled that the likelihood of confusion, mistake and/or deception will subsist not only as to the consumer's perception of the goods but also on the origins thereof. Aptly, in the case of **Societe des Produits Nestle, S.A. vs. Dy,**⁹ the Supreme Court ruled that:

"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 the belief that there is some connection between the plaintiff and defendant which, in fact, does not exist.'"

Finally, 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

⁵ Societe des Produits Nestle, S.A. vs. Court of Appeals, GR No. 112012, 04 April 2001.

⁶ American Wire & Cable Company vs. Director of Patents, G.R. No. L-26557, 18 February 1970.

⁷ Exhibit "B-1".

⁸ Exhibit "5".

⁹ G.R. No. 172276, 08 August 2010.

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.¹⁰ Respondent-Applicant's trademark falls short in meeting this function.

Accordingly, this Bureau finds and concludes that the Respondent-Applicant's trademark application is proscribed by Sec. 123.1(d) of the IP Code which provides that a mark cannot be registered if it is identical with a registered mark belonging to a different proprietor with an earlier filing or priority date, with respect to the same or closely related goods or services, or has a near resemblance to such mark as to likely deceive or cause confusion.¹¹

WHEREFORE, premises considered, the instant opposition is hereby **SUSTAINED**. Let the filewrapper of Trademark Application No. 4-2012-010700 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 31 July 2015.


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

¹⁰ Pribhdas J. Mirpuri vs. Court of Appeals, G.R. No. 114508, November 19, 1999.

¹¹ Great White Shark Enterprises, Inc. vs. Danilo M. Caralde, G.R No. 192294, 21 November 2012.