

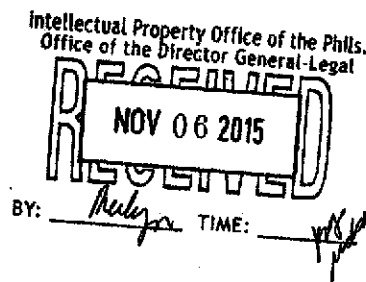
REPUBLIC OF THE PHILIPPINES
COURT OF APPEALS
Manila

EMPIRE CHEMICAL CO.,
Petitioner,

- versus -

CA-G.R.SP No. 138007

SINOPEC JIANGHAN SALT &
CHEMICAL COMPLEX and L.G.
ATKIMSON IMPORT- EXPORT, INC.,
Respondents.



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NOTICE OF DECISION

October 26, 2015

Sir/Madam:

Please take notice that on * October 26, 2015, a decision copy attached, was issued by the FIRST DIVISION, Court of Appeals, in the above-entitled case, the original of which is now on file in this office.

You are hereby required to inform this Court within five (5) days from receipt hereof of the date you received the notice with copy of the decision.

Very truly yours,

ATTY. VENUS MAGDAYA-TALOMA
Division Clerk of Court

COPY FURNISHED:

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* October 26, 2015, 2:00 P.M. (date & time of receipt)

kjn/

Republic of the Philippines
COURT OF APPEALS
Manila

FIRST (1ST) DIVISION

EMPIRE CHEMICAL CO.,
Petitioner,

CA-G.R. SP No. 138007

Members:

-versus-

REYES, JR., A.B.,
Chairperson,
BARZA, R.F., and
REYES-CARPIO, A., JJ.

**SINOPEC JIANGHAN SALT &
CHEMICAL COMPLEX and L.G.
ATKIMSON IMPORT-EXPORT,
INC.,**

Promulgated:

Respondents.

OCT 26 2015

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DECISION

REYES-CARPIO, A., J.:

"The question of whether or not respondent's trademarks are considered 'well-known' is factual in nature, involving as it does the appreciation of evidence adduced before the BLA-IPO. The settled rule is that the factual findings of quasi-judicial agencies, like the IPO, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect, but, at times, even finality if such findings are supported by substantial evidence."¹

Before the Court is a Petition for Review² under Rule 43 of the Rules of Court filed by Empire Chemical Co., Inc. (hereinafter referred to as Empire), which seeks to reverse and set aside the Decision dated October 2, 2014³ of the Office of the Director General of the Intellectual Property Office, the dispositive portion of which reads:

¹ *Sehwani Incorporated v. In-N-Out Burger Inc.*, G.R. No. 171053, October 15, 2007.

² Rollo, pp. 3-19.

³ Rollo, pp. 21-25.

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"WHEREFORE, premises considered, the instant appeal is hereby DISMISSED. Let a copy of this Decision as well as the trademark application and records be furnished and returned to the Director of the Bureau of Legal Affairs for appropriate action. Further, let also the Director of the Bureau of Trademarks and the library of the Documentation, Information and Technology Transfer Bureau be furnished a copy of this decision for information, guidance, and records purposes.

*SO ORDERED."*⁴

THE FACTS

Petitioner is a domestic corporation organized and existing under the laws of the Philippines, while Sinopec Jiangnan Salt & Chemical Complex (hereinafter referred to as Sinopec) is a company organized and existing under the laws of the People's Republic of China. Sinopec is engaged in the manufacture of water treatment chemicals such as calcium hypochloride or chlorine. It is the alleged owner of the mark Super-Chlor and Device. On the other hand, L.G. Atkinson Import-Export (hereinafter referred to as L.G. Atkinson) is a corporation organized and existing under the laws of the Philippines, and is one of the alleged importers of Sinopec's Super-Chlor calcium hypochloride.

Empire is engaged in the business of importing various chemicals from different suppliers abroad for the purpose of selling them in Manila. It used to import calcium hypochlorite from Sinopec which would arrived in containers of various weight, in plain white container, and without the brand Super-Chlor and Device. In 2012, Empire secured the services of other suppliers and stopped the importation of calcium hypochlorite from Sinopec.

On March 26, 2012, Empire applied for the registration of the Trademark for goods belonging to and under Class 1⁵ which was opposed by Sinopec and L.G. Atkinson. In their Verified Opposition,⁶ they stated:

"4. Opposers submit that Respondent-Applicant's mark

⁴ Rollo, p. 25.

⁵ Docketed as Application No. 4-2012-003764.

⁶ Rollo, pp. 136-145.

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Super-Chlor and Device for goods under Class 1' (calcium hypochlorite) is identical or confusingly similar to Opposer Sinopec's mark Super-Chlor for goods under Class 1 (calcium hypochlorite). The identity or substantial similarity of the two marks is likely to deceive or cause confusion as to the source of goods and the quality and character of said goods. x x x

[5]. *How Respondent-Applicant was able to come up with a mark identical or so confusingly similar to Opposer Sinopec's mark as above-shown is easily explained. Respondent-Applicant is an importer of chemicals which it sells in the Philippines, and among the products it imports is Opposer's Sinopec's calcium-hypochlorite with the brand Super-Chlor.*

[6] *Opposer Sinopec Jiangnan Salt & Chemical Complex is an enterprise engaged in the manufacture of water treatment chemicals such as calcium hypochlorite or chlorine, which it exports to many countries and regions such as Australia, Philippines, Vietnam, Brazil, the USA, Canada, South Africa and the European Union. Information on the company and its products is globally available on the internet at its official website <http://www.jscc.com.cn>. For easy reference, information on the company and its calcium hypochlorite products, from Sinopec's official website, are attached hereto as Exhibits 'C and C-1' respectively. Information on Opposer Sinopec and its calcium hypochlorite products is also available on the website of China Yellowpage <http://h2h.11467.com>, screen-captures of which are attached hereto as Exhibits 'D' and 'D-1' for easy reference.*

[7] *In the Philippines, Sinopec has various importers of its Super-Chlor calcium chlorite products, such as Respondent-Applicant Empire Chemical Co., Inc. Other importers include UAS Agri-Products Corporation and Opposer L.G. Atkinson Import-Export, Inc. which will be damaged by Respondent-Applicant's registration of the trademark Super-Chlor in its own name. Such registration will grant Respondent-Applicant monopoly on the use of the Super-Chlor brand on calcium-hypochlorite. The importation and sale by these importers of Opposer Sinopec's Super-Chlor calcium hypochlorite will become illegal and infringing acts. Samples of Commercial Invoices of transactions between Sinopec and these Philippine companies from September-October 2011 are respectively attached hereto as Exhibits 'E', 'E-1' and 'E-2'.*

[8] *It must be pointed out that as per the sample Commercial Invoice between Opposer Sinopec and Respondent-Applicant (Exhibit 'E'), the latter has purchased calcium hypochlorite from Opposer*

⁷ Chemicals used in industry, science and photography, as well as in agriculture, horticulture and forestry; unprocessed artificialresis, unprocessed plastics; manures, fire extinguishing compositions; tempering and soldering preparations; chemical substances for preserving foodstuffs; tanning substances; adhesives used in industry. (Nice Classification, Ninth Edition), see www.ipophil.gov.ph/index.php/trademark/nice-classification-9th-edition, visited on August 26, 2015). The Nice Classification Tenth Edition took effect on January 1, 2015.

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Sinopec prior to its application for the registration of Opposer's mark use of the brand Super-Chlor on its calcium hypochlorite products before applying for said mark. Thus, its application for the same mark with the IPO on 26 March 2012 was done in bad faith and with clear intent to misappropriate for itself Opposer Sinopec's mark.

x x x

[10] As an importer and distributor of Opposer Sinopec's Super-Chlor calcium hypochlorite in the country, Respondent-Applicant has no right to register said mark under its own name. x x x⁸

The mediation proceedings failed and after the submission of the Position Papers, the Bureau of Legal Affairs, through Atty. Nathaniel S. Arevalo, the Director IV of the said Bureau, issued a Decision dated October 29, 2013,⁹ disposing as follows:

"WHEREFORE, premises considered, the instant Opposition to the Trademark Application No. 4-2012-003764 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."*¹⁰

Empire appealed before the Office of the Director General of the Intellectual Property Office. The case was referred to mediation, which likewise failed. Eventually, it was referred back to the Office of the Director General for proper disposition.

In its assailed Decision, the Office of the Director General ratiocinated:

"x x x the two marks are confusingly similar if not entirely identical. These marks have distinctive characteristics which embody a combination of words and designs indicating a very remote possibility of two entities independently creating these identical or similar marks. Thus, to allow the Appellant to register SUPER-CHLOR & DEVICE would enable it to prevent the Appellees from using this mark in their business on calcium hypochlorite products to the prejudice and damage of the interests of the Appellees.

A certificate of registration is a prima facie evidence of the validity of the registration, the registrant's ownership of the mark or

⁸ Rollo, pp. 138-139.

⁹ Rollo, pp. 90-96.

¹⁰ Rollo, p. 96.

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trade name and of the registrant's exclusive right to use the same in connection with the goods, business or services specified in the certificate. In addition, the discussion by the Supreme Court of the Philippines in one case is instructive.

Of course, 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.

It is, thus, surprising why the Appellant is insisting in registering SUPER-CHLOR & DEVICE when it has "millions of terms and combinations of letters and designs available". The intellectual property system was established to recognize creativity and give incentives to innovations. Similarly, the trademark registration system seeks to reward entrepreneurs and individuals who through their own innovations were able to distinguish their goods or services by a visible sign that distinctly points out the origin and ownership of such goods or services. The intellectual property system is not a haven for people who would take advantage of the intellectual creation of others, whether a local resident or a foreigner.¹¹

Hence, this Petition, on this ground:

"THE HONORABLE DIRECTOR GENERAL COMMITTED A REVERSIBLE ERROR WHEN IT AFFIRMED THE DECISION OF THE DIRECTOR OF THE BUREAU OF LEGAL AFFAIRS SUSTAINING THE OPPOSITION TO THE REGISTRATION OF SUPER-CHLOR & DEVICE IN FAVOR OF THE PETITIONER."¹²

In Our Resolution dated April 6, 2015,¹³ We directed private respondents to comment on the Petition within ten days from notice. Private respondents complied on May 15, 2015.¹⁴ Since petitioner failed to file a Reply, We deemed the case submitted for decision, in Our Resolution dated July 21, 2015.¹⁵

We now resolve.

¹¹ Rollo, p. 25.

¹² Rollo, p. 7.

¹³ Rollo, p. 317.

¹⁴ Rollo, pp. 322-345.

¹⁵ Rollo, p. 424.

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To Our mind, the petition may be resolved by answering the question of whether or not Sinopec's trademark is well-known internationally and here in the Philippines. If the answer is affirmative, then private respondents may successfully invoke the Paris Convention.

The Philippines became a signatory to the Paris Convention on September 27, 1965. Our own Supreme Court emphasized that the Philippines is obligated to assure nationals of countries of the Paris Convention that they are afforded an effective protection against violation of their intellectual property rights in the Philippines in the same way that their own countries are obligated to accord similar protection to Philippine nationals.¹⁶

The Paris Convention states:

"ARTICLE 6bis

(i) The countries of the Union undertake either administratively if their legislation so permits, or at the request of an interested party, to refuse or to cancel the registration and to prohibit the use of a trademark which constitutes a reproduction, imitation or translation, liable to create confusion or a mark considered by the competent authority of the country as being already the mark of a person entitled to the benefits of the present Convention and used for identical or similar goods. These provisions shall also apply when the essential part of the mark constitutes a reproduction of any such well-known mark or an imitation liable to create confusion therewith."

Article 6bis of the Paris Convention has been administratively implemented in the Philippines through two directives of the then Ministry (now Department) of Trade and Industry, which directives were upheld by the Supreme Court in *Mirpuri v. Court of Appeals*,¹⁷ *Puma Sportschuhfabriken Rudolf Dassler; K.G. v. IAC*,¹⁸ and *La Chemise Lacoste, S.A. v. Hon. Fernandez, etc., et al.*¹⁹

It must be stressed that then Minister of Trade Luis Villafuerte directed the Director of Patents to reject, pursuant to the Paris Convention, all pending applications for Philippine registration of

¹⁶ See *La Chemise Lacoste, S.A. v. Hon. Fernandez, etc., et al.*, G.R. Nos. 63796-97, May 21, 1984.

¹⁷ G.R. No. 114508, November 19, 1999.

¹⁸ G.R. No. 75067, February 26, 1988.

¹⁹ G.R. Nos. 63796-97, May 21, 1984.

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signature and other world-famous trademarks by applicants other than their original owners in his Memorandum on November 20, 1980. This Memorandum was reaffirmed by Minister Roberto Ongpin, who for his part issued a Memorandum dated October 25, 1983, directing the Director of Patents to implement measures necessary to comply with the Philippines' obligations under the Paris Convention, specifically:

"1. Whether the trademark under consideration is well-known in the Philippines or is a mark already belonging to a person entitled to the benefits of the CONVENTION, this should be established, pursuant to Philippine Patent Office procedures in inter partes and ex parte cases, according to any of the following criteria or any combination thereof:

(a) a declaration by the Minister of Trade and Industry that the trademark being considered is already well-known in the Philippines such that permission for its use by other than its original owner will constitute a reproduction, imitation, translation or other infringement;

(b) that the trademark is used in commerce internationally, supported by proof that goods bearing the trademark are sold on an international scale, advertisements, the establishment of factories, sales offices, distributorships, and the like, in different countries, including volume or other measure of international trade and commerce;

(c) that the trademark is duly registered in the industrial property office(s) of another country or countries, taking into consideration the dates of such registration;

(d) that the trademark has been long established and obtained goodwill and general international consumer recognition as belonging to one owner or source;

(e) that the trademark actually belongs to a party claiming ownership and has the right to registration under the provisions of the aforestated PARIS CONVENTION.

2. *The word trademark, as used in this MEMORANDUM, shall include tradenames, service marks, logos, signs, emblems, insignia or other similar devices used for identification and recognition by consumers.*

3. *The Philippine Patent Office shall refuse all applications for, or cancel the registration of, trademarks which constitute a reproduction,*

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translation or imitation of a trademark owned by a person, natural or corporate, who is a citizen of a country signatory to the PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY.

xxx xxx xxx²⁰

To be protected under the two directives of the Ministry of Trade, an internationally well-known mark need not be registered or used in the Philippines. What is required is that the mark is well-known internationally and in the Philippines for identical or similar goods, whether or not the mark is registered or used in the Philippines.²¹

Section 123.1 (e) of R.A. No. 8293²² now categorically states that "a mark which is considered by the competent authority of the Philippines to be well-known internationally and in the Philippines, whether or not it is registered here," cannot be registered by another in the Philippines. Section 123.1 (e) does not require that the well-known mark be used in commerce in the Philippines but only that it be well-known in the Philippines. Moreover, Rule 102 of the Rules and Regulations on Trademarks, Service Marks, Trade Names and Marked or Stamped Containers, which implemented R.A. No. 8293, provides:

"Rule 102. Criteria for determining whether a mark is well-known. In determining whether a mark is well-known, the following criteria or any combination thereof may be taken into account:

(a) the duration, extent and geographical area of any use of the mark, in particular, the duration, extent and geographical area of any promotion of the mark, including advertising or publicity and the presentation, at fairs or exhibitions, of the goods and/or services to which the mark applies;

(b) the market share, in the Philippines and in other countries, of the goods and/or services to which the mark applies;

²⁰ As quoted in *Fredco Manufacturing Corp. v. President and Fellows of Harvard College*, G.R. No. 185917, June 1, 2011.

²¹ *Fredco Manufacturing Corp. v. President and Fellows of Harvard College*, G.R. No. 185917, June 1, 2011.

²² An Act Prescribing The Intellectual Property Code And Establishing The Intellectual Property Office, Providing For Its Powers And Functions, And For Other Purposes" (approved June 6, 1997; took effect January 1, 1998).

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- (c) *the degree of the inherent or acquired distinction of the mark;*
- (d) *the quality-image or reputation acquired by the mark;*
- (e) *the extent to which the mark has been registered in the world;*
- (f) *the exclusivity of registration attained by the mark in the world;*
- (g) *the extent to which the mark has been used in the world;*
- (h) *the exclusivity of use attained by the mark in the world;*
- (i) *the commercial value attributed to the mark in the world;*
- (j) *the record of successful protection of the rights in the mark;*
- (k) *the outcome of litigations dealing with the issue of whether the mark is a well-known mark; and*
- (l) *the presence or absence of identical or similar marks validly registered for or used on identical or similar goods or services and owned by persons other than the person claiming that his mark is a well-known mark.*

Is the trademark of Sinopec well-known internationally and in the Philippines?

Both the decisions of the Bureau of Legal Affairs and the Office of the Director General are silent on this pivotal question.

While Sinopec claims that "it exports to many countries and regions such as Australia, Philippines, Vietnam, Brazil, the USA, Canada, South Africa and the European Union," there is no proof that the trademark is well-known in those countries. We do not see from the records any document bearing the brand Super-Chlor and Device.

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It must be noted that Sinopec's calcium hypochlorite which petitioner imported would arrive in plain white containers without the brand Super-Chlor and Device. It would be unnatural that those exported to the aforementioned countries carry the brand, while those that are exported to the Philippines were merely on plain white containers without any brand.

That there is an official website of Sinopec does not necessarily mean it is well-known internationally either. To rule otherwise would open floodgates of abuse, as any group or entity would simply create a webpage and thereafter claim that it is well-known internationally.

Neither is the availability of information about Sinopec and its products at the China Yellowpage sufficient to elevate it to a well-known status.

Thus, its "well-known" status is not duly proven and established. **It could only mean that the registration of petitioner's trademark is proper.** This must be so because the procedure for the application for the registration of a trademark, as well as the opposition to it, is well-settled and which this Court cannot simply brush aside.

The Intellectual Property Code provides under its Sec. 10.3 that the Director General of the IPO shall establish the procedure for the application for the registration of a trademark, as well as the opposition to it:

Section 10. The Bureau of Legal Affairs. — The Bureau of Legal Affairs shall have the following functions:

x x x

10.3. The Director General may by Regulations establish the procedure to govern the implementation of this Section.

Thus, IPO Office Order No. 79-05, which was issued on August 15, 2005, provided for the following:

Section 12. Evidence for the Parties. —

12.1. The verified petition or opposition, reply if any, duly marked affidavits of the witnesses, and the documents submitted, shall

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constitute the entire evidence for the petitioner or opposer. The verified answer, rejoinder if any, and the duly marked affidavits and documents submitted shall constitute the evidence for the respondent. Affidavits, documents and other evidence not submitted and duly marked in accordance with the preceding sections shall not be admitted as evidence.

12.2. Affidavits of witnesses shall be allowed and admitted as evidence provided that for non-residents of the Philippines, it is duly authenticated by the concerned Philippine consular or diplomatic office, and for local residents, duly notarized. In both instances, no cross-examination shall be allowed.
(Emphasis and underscoring supplied)

We are not incapable of determining the "well-known" status of the subject trademark. However, We are left with no option but to determine the "well-known" status of Sinopec's trademark **within** (not outside) the pieces of documentary evidence presented below.

Simply stated, if the evidence presented in opposition to the application is insufficient, this Court is not to cure such deficiency but rather uphold the right of the applicant to register its trademark.

Having answered the pivotal question, We nonetheless proceed with the following discussion of whether the brand Super-Chlor and Device was used priorly and actually in the Philippines by the Oppositor, through its dealings with the importers in the Philippines which included petitioner Empire.

Vital to the resolution of the case is the "first-to-file" rule. In ***E.Y Industrial Sales, Inc. v. Shen Dar Electricity and Machinery Co., Ltd.***,²³ the Supreme Court made the following discussion:

RA 8293 espouses the "first-to-file" rule as stated under Sec. 123.1 (d) which states:

Section 123. Registrability. — 123.1. A mark cannot be registered if it:

xxx	xxx	xxx
(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	

²³ G.R. No. 184850, October 20, 2010

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- (iii) *If it nearly resembles such a mark as to be likely to deceive or cause confusion. (Emphasis supplied)*

Under this provision, the registration of a mark is prevented with the filing of an earlier application for registration. This must not, however, be interpreted to mean that ownership should be based upon an earlier filing date. While RA 8293 removed the previous requirement of proof of actual use prior to the filing of an application for registration of a mark, proof of prior and continuous use is necessary to establish ownership of a mark. Such ownership constitutes sufficient evidence to oppose the registration of a mark.

(Emphasis in the original; Underscoring Ours)

First, there is no showing that Sinopec applied for registration of its trademark either here or abroad. Hence, following the "first-to-file rule," Empire is the first to file for the trademark in question.

Second, Sinopec failed to present proof of prior and continuous use of the trademark. The documents it presented, including the advertisements in China and its website do not establish the timeline of its use of the trademark.

While the available documents show that Sinopec exported the products here in the Philippines, there are no documents presented that they used the brand Super-Chlor and Device. The available documents do not bear the brand Super-Chlor and Device, **but merely the name of Sinopec.**

To stress, it is not disputed that Sinopec's calcium hypochlorite which petitioner imported would arrive in plain white containers without the brand Super-Chlor and Device.

One may make advertisements, issue circulars, distribute price lists on certain goods, but these alone will not inure to benefit the claim of ownership of the mark until the goods bearing the mark are sold to the public in the market.²⁴

There is therefore no proof advanced by Sinopec that it actually used the brand Super-Chlor and Device in the Philippines.

Meanwhile, a reading of both the decisions of the Bureau of Legal Affairs and the Office of the Director General shows that the

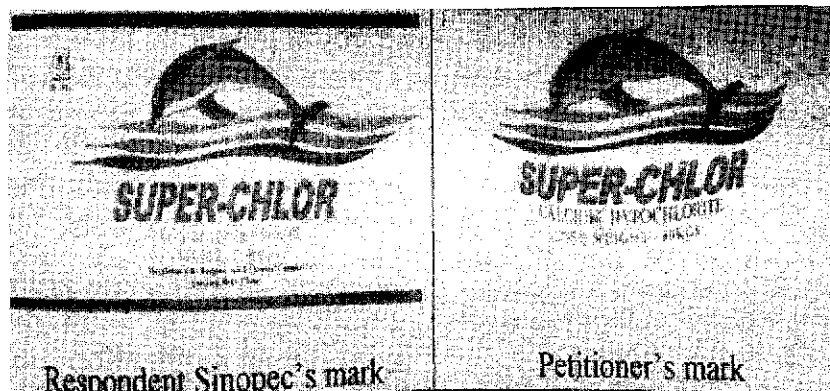
²⁴ Berris Agricultural Co. Inc. v. Abdayang, G.R. No. 183404, October 13, 2010

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denial of the application is due to the marks being "identical" and that the "only noticeable difference is that the manufacturer's company name is indicated in the mark of Opposer Sinopec Jiangnan Salt & Chemical Complex."²⁵

In trademark cases, in ascertaining whether one trademark is confusingly similar to another, no rigid set rules can be formulated. Each case must be decided on its merits, with due regard to the goods or services involved, the usual purchaser's character and attitude, among other things.²⁶

The two marks are:



The "only noticeable difference" which the Bureau of Legal Affairs noted, although minimal, is sufficient to distinguish one mark from the other. To be sure, We cannot make a big deal with the word "Super-Chlor," as the same is not peculiar to either Empire or Sinopec.²⁷

In any event, side-by-side comparison is not the final test of similarity.²⁸

²⁵ Rollo, p. 92.

²⁶ Taiwan Kolin Corp. Ltd. v. Kolin Electronics Co., Inc., G.R. No. 209843, March 25, 2015.

²⁷ A search on the web showed that in 2005, Wardley Super Chlor Plus (under Class 1) was applied for trademark registration. It was applied by the Hartz Mountain Corporation on July 22, 2005. See <https://trademarks.justia.com/786/76/wardley-super-chlor-plus-78676083.html>. Visited on August 26, 2015. See also www.Tmfile.com/mark/?q=786760830, visited on August 26, 2015. Super-Chlor is likewise a trademark of G.S. Robins & Company. See www.trademarkia.com/mobile/trademark_detail.aspx?sid+712969924. Visited on August 26, 2015.

²⁸ Del Monte Corporation v. Court of Appeals, G.R. No. 78325, January 25, 1990 citing Stuart v. F.G. Stewart Co., 91 F 243.

DECISION

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The determinative factor in ascertaining whether or not marks are confusingly similar to each other "is not whether the challenged mark would actually cause confusion or deception of the purchasers but whether the use of such mark would likely cause confusion or mistake on the part of the buying public. It would be sufficient, for purposes of the law, that the similarity between the two labels is such that there is a possibility or likelihood of the purchaser of the older brand mistaking the new brand for it."²⁹

In here, the products are not ordinary consumable household items, like catsup, soy sauce or soap which are of minimal cost. The casual buyer is predisposed to be more cautious and discriminating in and would prefer to mull over his purchase. Confusion and deception, then, is less likely.³⁰

At this point, other factors must likewise be considered. Thus, in **Del Monte Corporation v. Court of Appeals**,³¹ the Supreme Court held:

"We also note that the respondent court failed to take into consideration several factors which should have affected its conclusion, to wit: age, training and education of the usual purchaser, the nature and cost of the article, whether the article is bought for immediate consumption and also the conditions under which it is usually purchased. Among these, what essentially determines the attitude of the purchaser, specifically his inclination to be cautious, is the cost of the goods. To be sure, a person who buys a box of candies will not exercise as much care as one who buys an expensive watch. As a general rule, an ordinary buyer does not exercise as much prudence in buying an article for which he pays a few centavos as he does in purchasing a more valuable thing. Expensive and valuable items are normally bought only after deliberate, comparative and analytical investigation. But mass products, low priced articles in wide use, and matters of everyday purchase requiring frequent replacement are bought by the casual consumer without great care. In this latter category is catsup." (Emphasis Ours)

In here, a forty kilogram of super-chlor is not a mass product which ordinary consumers purchase in malls or groceries, as they are not directly connected with water treatment.³² The price, the

²⁹ Converse Rubber Corporation v. Universal Rubber Products Inc., G.R. No. L-27906, January 8, 1987

³⁰ Taiwan Kolin Corp. Ltd. v. Kolin Electronics Co., Inc., G.R. No. 209843, March 25, 2015.

³¹ G.R. No. 78325, January 25, 1990.

³² Super chlorination is a water treatment process in which the addition of excess amounts of chlorine to a water supply speed chemical reactions or insure disinfection within a short contact time. It is most commonly used when water has a very high bacteria content and

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frequency of use, and the effectiveness of the product would likewise affect the choice of the buyer, more than the trademarks. In other words, the purchasers would naturally do a comparative, analytical and deliberate study before buying either Empire's product or that of Sinopec.

Finally, private respondents claim that since Empire was just an importer and distributor of the Super-Chlor calcium hypochlorite from Sinopec, it means it cannot register the mark under its name, citing *Unno Commercial Enterprises, Inc. v. General Milling Corporation*,³³ and *Superior Commercial Enterprises, Inc. v. Kunnan Enterprises Ltd.*³⁴

The cases cited are not wholly in point, however. It must be stressed that what petitioner imported from Sinopec was a generic matter, calcium hypochlorite or chlorine contained in white plastic containers without the trademark in question.

WHEREFORE, in the light of the foregoing discussions, the petition is **GRANTED**. The Decision dated October 2, 2014 of the Office of the Director General of the Intellectual Property Office is **REVERSED** and **SET ASIDE**. Accordingly, the Trademark Application No. 4-2012-003764 for Super-Chlor and Device is **GRANTED**.

SO ORDERED.

ORIGINAL SIGNED
AGNES REYES-CARPIO
Associate Justice

WE CONCUR:

ORIGINAL SIGNED
ANDRES B. REYES, JR.
Presiding Justice

ORIGINAL SIGNED
ROMEO F. BARZA
Associate Justice

generally comes from river sources or where some form of pollution has occurred. It is likewise an important part of swimming pool maintenance because it keeps chlorine content at the right level to effectively kill bacteria and other contaminants. See www.corrosionpedia.com/definition/1049/superchlorination. Visited on August 26, 2015.

³³ G.R. No. L-28554, February 28, 1983.

³⁴ G.R. No. 169974, April 20, 2010.

ATTY. VENUS B. MAGLAYA-TALOMA
Division Clerk of Court

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CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ORIGINAL SIGNED
ANDRES B. REYES, JR.
Presiding Justice
Chairperson, First Division