



**CELINE MARKETING CORPORATION,**  
Opposer,

**-versus-**

**DONNA MAY ALMERON TAN,**  
Respondent- Applicant.

x-----x

} **IPC No. 14-2012-00050**  
}  
} Opposition to:  
} Appln. Serial No. 4-2011-012592  
} Date Filed: 19 October 2011  
} **TM: "BIG & FAB"**

**NOTICE OF DECISION**

**SIOSON SIOSON & ASSOCIATES**  
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Ortigas Center, Pasig City

**DONNA MAY ALMERON TAN**  
Respondent-Applicant  
1229-A Vicente Cruz Street  
Sampaloc, Manila

**GREETINGS:**

Please be informed that Decision No. 2016 - 144 dated May 11, 2016 (copy enclosed) was promulgated in the above entitled case.

Taguig City, May 11, 2016.

For the Director:

**MARILYN F. RETUAL-**  
IPRS IV  
Bureau of Legal Affairs

**CELINE MARKETING CORPORATION,**

Opposer,

-versus-

**DONNA MAY ALMERON TAN,**

Respondent-Applicant.

X ----- X

IPC No. 14-2012-00050

Opposition to Trademark

Application No. 4-2011-012592

Date Filed: 19 October 2011

Trademark: **"BIG & FAB"**

Decision No. 2016- 144

**DECISION**

Celine Marketing Corporation<sup>1</sup> ("Opposer") filed on 27 February 2012 an opposition to Trademark Application Serial No. 4-2011-012592. The contested application, filed by Donna May Almeron Tan<sup>2</sup> (Respondent-Applicant), covers the mark "BIG & FAB" for use on "*clothing namely: dresses, blouses, skirts, pants, shirts, shorts, jackets, tank tops, belts, shoes, sandals, flip-flops, bolardi, jeans, panties, briefs, bra, lingerie, pajamas, hats girdle, corset, cardigan, bathing suits, swimming trunks*" under Class 25 of the International Classification of Goods<sup>3</sup>.

Opposer avers that the trade mark "SO! F.A.B." is duly registered in its favor under Registration No. 4-2010-500548 issued on 17 February 2011 for use on attaché cases, briefcases, vanity cases, bags, backpacks, belts, card cases, leather cases, leather straps, key holders, wallets, purses, travelling trunks, luggages; shoes, sandals, slippers, boots, socks, stockings, shirts, polo, spool shirts, blouses, dresses, jeans, slacks, pants, skirts, shorts, sandos, jackets, sweaters, sweatshirts, vests, gowns, lingerie, brassieres, camisoles, slips, girdles, panties, briefs, coats, suspenders, tights, neckties, swim suits, swimming trunks, scarfs, shawls, gloves (clothing), belts (clothing), hats, cap; and business of manufacturing and marketing of garments, footwear, bags and accessories falling under Classes 18, 25 and 35.

Opposer contends that Respondent-Applicant's mark "BIG & FAB" is a colorable imitation of, and therefore, confusingly similar to its own registered mark. It argues that the approval of the contested application will violate its right to the exclusive use of its registered mark on the goods and services listed in its certificate of registration. It asserts that the registration of the mark "BIG & FAB" will likely

<sup>1</sup> A corporation duly organized and existing under the laws of the Philippines, with business and postal address at 18<sup>th</sup> Floor, Centerpoint Condominium, Garnet Road corner Julia Vargas, Ortigas Center, Pasig City.

<sup>2</sup> With address at 1292-A Vicente Cruz Street Sampaloc, Manila.

<sup>3</sup> 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.

Republic of the Philippines

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cause confusion and/or deception especially that the goods on which the mark will be used are identical and closely related to its own goods and products.

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

1. certified machine copy of Oposer's Amended Articles of Incorporation<sup>4</sup>;
2. certified copy of Certificate of Registration No. 4-2010-500548<sup>5</sup>;
3. duplicate original of the Declaration of Actual Use (DAU) filed within the three-year period from the date of filing the application<sup>6</sup>;
4. representative sales invoice<sup>7</sup>;
5. printout of Respondent-Applicant's mark as published; and,
6. duly notarized affidavit of Chan Kok Bin<sup>8</sup>.

This Bureau served upon Respondent-Applicant a Notice to Answer on 24 October 2012. The Respondent-Applicant, however, did not file an Answer. Accordingly, the Hearing Officer issued Order No. 2013-1070 on 26 July 2013 declaring the Respondent-Applicant in default and deemed submitted for decision.

The issue to be resolved is whether the trademark "BIG & FAB" should be registered in favor of Respondent-Applicant.

Section 123.1 (d) of R.A. No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code") provides that:

***"123.1. A mark cannot be registered if it:***

***(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;***

***xxx."***

Records reveal that at the time Respondent-Applicant sought registration for its mark, "BIG & FAB", the Opposer has a valid and existing registration for the mark "SO! F.A.B" under Certificate of Registration No. 4-2010-500548 issued on 17 February 2011.

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<sup>4</sup> Marked as Exhibit "A".

<sup>5</sup> Marked as Exhibit "B".

<sup>6</sup> Marked as Exhibit "C".

<sup>7</sup> Marked as Exhibits "D" to "D-9".

<sup>8</sup> Marked as Exhibit "E".

Now, to determine whether the marks of Opposer and Respondent-Applicant are confusingly similar, the competing marks are depicted below for comparison:

**SO!**

**F. A. B**

*Opposer's Mark*

**BIG & FAB**

*Respondent-Applicant's Mark*

A practical approach to the problem of similarity or dissimilarity is to go into the *whole* of the two trademarks pictured in their manner of display. Inspection should be undertaken from the viewpoint of a prospective buyer. The trademark complained of should be compared and contrasted with the purchaser's memory (not in juxtaposition) of the trademark said to be infringed. Some such factors as "sound; appearance; form, style, shape, size or format; color; ideas connoted by marks; the meaning, spelling, and pronunciation, of words used; and the setting in which the words appear" may be considered.<sup>9</sup> Thus, confusion is likely between marks only if their over-all presentation, as to sound, appearance, or meaning, would make it possible for the consumers to believe that the goods or products, to which the marks are attached, emanate from the same source or are connected or associated with each other.

From the above illustration, it is notable that the competing marks both appropriate the word "FAB". However, the word "FAB", which stands for "fabulous", is commonly used for marks covering goods under Class 25 and its related products and/or services. A perusal of the Trademark Registry of this Office, which this Bureau can take judicial notice of, shows that there are other registered marks, likewise pertaining to goods under Class 25, appropriating the said word such as "Del Monte Quality Fit 'N Fab 4" and "Cool Fab". Thus, a mark with the word "FAB" is a weak mark and the determination as to whether there is confusing similarity will depend on the other features of the competing marks.

In this case, the characteristics in Respondent-Applicant's mark that makes it distinct from that of the Opposer's are notable. The word "SO" with an exclamation point at the end precedes the word "FAB" in Opposer's mark. This is easily

<sup>9</sup> Etepha A.G. vs. Director of Patents, G.R. No. L-20635, 31 March 1966.

distinguishable from the phrase "BIG &" in Respondent-Applicant's trademark. Also, it is noteworthy that the word "FAB" in Opposer's mark is fancily presented with periods in between each letter. Thus, contrary to Opposer's assertion, there is no likelihood of confusion, much more deception, which may occur. The consumers of both marks will not only remember or recall any of the competing marks simply for the word "FAB" but instead, they will consider the marks in their entirety.

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 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.<sup>10</sup> Based on the above discussion, Respondent-Applicant's trademark sufficiently met this requirement.

**WHEREFORE**, premises considered, the instant opposition is hereby **DISMISSED**. Let the filewrapper of Trademark Application Serial No. 4-2011-012592 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

**SO ORDERED.**

Taguig City, **11 1 MAY 2016**

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

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