



INTEL CORPORATION,
Complainant,

-versus-

**COOLINTEL, INC. and the SECURITIES
AND EXCHANGE COMMISSION,**
Respondents.

x-----x

IPC No. 10-2014-00004

**For: Infringement
and Damages**

NOTICE OF DECISION

POBLADOR BAUTISTA & REYES

Counsel for Complainant
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COOLINTEL, INC.

Respondent
Unit 1608 Jollibee Plaza Building
Emerald Avenue, Ortigas Center
Pasig City

SECURITIES AND EXCHANGE COMMISSION

Respondent
SEC Building
EDSA, Greenhills, Mandaluyong City

GREETINGS:

Please be informed that Decision No. 2016 - 06 dated June 08, 2016 (copy enclosed) was promulgated in the above entitled case.

Taguig City, June 08, 2016.

For the Director:

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

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DECISION

Intel Corporation ("Complainant")¹ filed a complaint against Coolintel, Inc.² ("Respondent") for infringement and damages. The Complainant impleads the Securities and Exchange Commission ("SEC") as a nominal party.

The Complainant alleges the following:

"4. INTEL CORPORATION is primarily engaged in the business of designing, producing, distributing and selling microprocessors, integrated circuit components, system boards, and other computer or computer-related electronic and electronic-related products. It is the world's largest producer of microprocessors, integrated circuits and other computer-related electronic products. Also, as part of its business, INTEL CORPORATION provides various computer-related services.

5. INTEL CORPORATION was originally incorporated in the United States in July 1968 under the name 'NM Electronics.' It subsequently adopted the word 'INTEL' for its corporate name in August 1968.

x x x

6. INTEL CORPORATION has since acquired a very sizeable share of the electronics and computer industry market. To date, INTEL CORPORATION has earned as much as Six Hundred Three Billion Three Hundred Fifty-Four Million Five Hundred Ninety-Two Thousand Five Hundred Forty-Six U.S. Dollars (US\$603,354,592.546.00) in net revenue for the year ended 31 December 2011. In fact, INTEL CORPORATION reported a revenue of Thirteen Billion Five Hundred Million (US\$13,500,000.00) United States Dollars for its 2013 third quarter alone.

x x x

7. For over 40 years, INTEL CORPORATION has used its 'INTEL' family of marks (including 'INTEL' and other 'INTEL'-formative marks) as a trade name,

¹ A corporation organized and existing under the laws of the State of Delaware, United States of America, with principal place of business at 2200 Mission College Boulevard, Santa Clara, California 95052, USA.

² With known address at Unit 1608 Jollibee Building, Emerald Ave., Ortigas Center, Pasig City.

trademark and service mark to identify virtually its entire line of products and services.

x x x

8. 'INTEL' has become one of the most valuable, respected and famous names and trademarks in the world. For 2013, independent third party Interbrand's Best Global Brands survey ranks the 'INTEL' brand ninth (9th) in the world, with an estimated value of US\$ 37.257 billion. x x x

Because of the extensive sales, advertising, promotion, and use of the 'INTEL' and 'INTEL' formative trademarks, has developed enormous recognition for its products and services under the 'INTEL' mark and 'INTEL'-formative marks and has acquired invaluable reputation and goodwill under said marks. For instance, in 1991, Complainant invested millions of dollars when it launched the 'Intel Inside® Program,' which is a cooperative advertising and licensing program. As part of this program, INTEL CORPORATION licensed the 'INTEL' mark to PC manufacturers (or the OEMs) to communicate to the end-customer that the manufacturers' products, such as the personal desktop computers, laptop computers and workstations, were fitted out with genuine 'INTEL' microprocessors - - 'Intel Inside®.'

10. To protect the goodwill of its internationally well-known trademark, trade name, and corporate name, INTEL CORPORATION has registered the name INTEL® as a trade/service mark in over one hundred eighty-seven (187) countries worldwide, including Australia, Austria, Brazil, Canada, China, France, Germany, Hong Kong, Indonesia, India, Italy, Japan, Mexico, Singapore, South Africa, Switzerland, Thailand, United Kingdom, Philippines and the United States, to name a few.

x x x

11. In the Philippines, INTEL CORPORATION has been using the name 'INTEL' since the incorporation of its Philippine subsidiary, Intel Philippines Manufacturing, Inc. ('IPMI'), on 5 April 1995.

x x x

12. INTEL CORPORATION'S 'INTEL' and 'INTEL' formative trademarks were also registered with the Intellectual Property Office of the Philippines ('IPO') in multiple classes of goods and services. More particularly, it is the owner and registrant of the 'INTEL' mark for Class 42 goods/services under: (i) Registration No. 4-1998-005714 issued on 26 June 2003; and (ii) Registration No. 4-2000-002529 issued on 13 January 2006.

x x x

16. Sometime in August 2012, through the SEC's online search facility, INTEL CORPORATION discovered that the corporate name 'COOLINTEL, INC.' was registered with the SEC.

17. INTEL CORPORATION then conducted an investigation on COOLINTEL and found that its primary purpose is to engage in the real estate business. Its

registered address is at Unit 1608 Jollibee Plaza Building, Emerald Avenue, Ortigas Center, Pasig City.

18. On 7 December 2012, INTEL CORPORATION, through undersigned counsel, attempted to serve an inquiry letter upon COOLINTEL at its registered address via registered mark.

18.1 In the said letter, INTEL CORPORATION explained that the corporate name 'COOLINTEL, INC.' bears the term 'INTEL' which is identical with INTEL CORPORATION's marks and names. INTEL CORPORATION also requested that COOLINTEL and its responsible officers confirm whether COOLINTEL is still operational and/or doing business and, if so, what the nature of the business is.

18.2. However, COOLINTEL could not be located at the given address. Thus, the inquiry letter was returned to INTEL CORPORATION. x x x

19. INTEL CORPORATION was thus constrained to serve similar inquiry letters to COOLINTEL's Directors, namely, Ms. Beth F. Dojillo, Ms. Lorna R. Pangan, Mr. Arnel N. Escalona, Ms. Marilyn V. Flordeliza, and Ms. Teresita A. Navarro, at their respective residential addresses appearing in the company's 2010 General Information Sheet.

19.1 Except for the letter to Ms. Navarro, all inquiry letters to COOLINTEL's Directors were returned to INTEL CORPORATION either because the addressee could not be located in the given addresses, is unknown thereat, or had moved out. x x x

20. As for the letter to Ms. Navarro, the Caloocan Central Post Office has issued a certification dated 11 October 2013 certifying that the letter was received by Ms. Navarro herself on 12 March 2012. Despite such receipt, Ms. Navarro has yet to answer INTEL CORPORATION's inquiry letter.

x x x

21. On 6 May 2013, the Office of the Treasurer of Pasig issued a Certification that COOLINTEL, INC. that COOLINTEL, INC. retired its business registration on 21 January 2011.

22. However, COOLINTEL continues to use INTEL CORPORATION's 'INTEL' mark as part of its corporate name, as shown by research results gathered from the SEC's i-Register. x x x"

A Notice to Answer was issued but the same cannot be served upon the Respondent in the address provided by the Complainant. On 02 April 2014, Order No. 2014-44 was issued directing the Complainant to provide the Bureau the correct address of the Respondent or cause the Notice to Answer be published in accordance with the Rules of Court. On 14 June 2016, the Complainant filed a Manifestation and Compliance stating that it caused the publication of the Notice to Answer with the Malaya Business Insight on 2 June 2014. Despite the same, the Respondent did not file its Answer. On Despite the same, the Respondent did

not file an Answer. Consequently, the Respondent was declared in default and the Complainant presented its evidence ex-parte. On 26 August 2015, the Complainant filed a Formal Offer of Evidence, which consists of the following:³

1. copy of Certificate of Registration Nos. 4-2000-002520, 4-2006-000219, 4-2006-000094, 4-2006-000094, 4-2006-000095, 4-1998-005715, 4-1998-005717, 4-1998-002045, 4-1998-002042, 4-2998-005716, 4-1998-001398, 4-2009-002773 and 4-1998-002044;
2. copy of the Amended Articles of Incorporation of Intel Philippines Manufacturing, Inc., now known as Silicon Philippines, Inc., and Intel Technology Philippines, Inc.;
3. copy of the 2013 General Information Sheet (GIS) of Intel Philippines Manufacturing, Inc.;
4. copy of the 2012 GIS of Intel Technology Philippines; Inc.
5. copy of the record of Trademark Registration Nos. 4-0006858-000, 4-0042011-000, 4-0030443-000 and 4-0030418-000 issued by the National Office of the Intellectual Property of Vietnam on 20 November 1992, 11 July 2002, 29 March 1999, and 26 March 1999, respectively;
6. copy of the record of Trademark Registration Nos. 85181390, 4244794 and 4261858 issued by the US Patent and Trademark Office on 19 November 2010, 20 November 2012 and 18 December 2012, respectively;
7. copy of record of Trademark Registration Nos. TMA796531, TMA555697, TMA186082, TMA563813, TMA556032 and TMA756716 issued on 03 May 2011, 19 December 2001, 13 October 1972, 20 June 2002, 07 January 2002 and 11 January 2010, respectively;
8. copy of record of Community Trademark Nos. EU000000464 and EU000000539 issued by the United Kingdom Intellectual Property Office on 02 February 1998 and 15 October 1997, respectively;
9. copy of Record of Trademark Registration Nos. 541003 and 557557 issued by the Industrial Property Office of Australia on 12 June 1991 on 28 August 1990 and 12 June 1991, respectively;
10. copy of record of Trademark Registration Nos. T0903542A, T9801122A and T05269501 issued by the Intellectual Property Office of Singapore on 18 January 2010, 13 September 2000 and 12 February 2007, respectively;
11. copy of record of Trademark Registration Nos. 4007006750000 and 4006938010000 issued by the Trademark, Industrial Design and Geographical Indication Office (TIDGIO) of the DPR of Korea on 05 March 2007 and 12 January 2007, respectively;

³ Marked as Exhibits "A" to "DD", inclusive.

12. copy of record of Trademark Registration Nos. 3399208 and 96639580 issued by the National Institute of Industrial Property of France on 22 December 2005 and 27 August 1996, respectively;
13. copy of record of Trademark Registration Nos. 0000625740, 0001563157 and 0001460294 issued by the Italian Patent and Trademark Office on 17 June 1994, 07 October 2013 and 22 September 2011, respectively;
14. original compact disc Audited Annual Financial Reports (Form 10-K) filed by the Complainant with SEC;
15. copies of its various advertisements;
16. copy of the surveys, articles and features of "INTEL";
17. printout of Korean Intellectual Property Tribunal's Decision in Intel Corporation v. EntelSystem Co., Ltd., Trail no. 2001 Dang 2053, 25 July 2002;
18. printout of the Turkish Intellectual and Industrial Rights Civil Court's Decision in Intel Corporation v. Turkish Patent Institute and Entel Enerji Ve Telekom Sis. San. Tic. Ltd. Sti., Gist No. 2002/792, Decision No. 2003/666, 12 September 2003;
19. printout of the Intellectual Property Ecuadorian Institute's Decision in Intel Corporation v. Empresa Nacional de Telecomunicaciones, S.A., Resolution No. 975099, 17 January 2000;
20. copy of its verified opposition in IPC No. 14-2007-0168;
21. copy of 21 December 2007 Decision in IPC No. 14-2007-0168;
22. original compact disc containing a compilation of articles, books and publications on the international fame of the Complainant and its mark;
23. original printout of the Amended Articles of Incorporation and GIS of the Respondent issued on 20 April 2007;
24. copy of the 22 November 2012 letter addressed to the Respondent;
25. copy of the 27 February 2013 letters addressed to Beth Dojillo, Lorna Pangan, Arnel Escalona, Marilyn Flordeliza and Teresita Navarro;
26. certification issued by the Caloocan Central Post Office;
27. certification issued by the Office of the Treasurer of Pasig City;
28. printout of SEC's i-Report search results;
29. copy of the 30 July 2014 decision of the Court of Appeals in CA-G.R. No. 118835 and its Entry of Judgment;
30. affidavit of Atty. Luis S. Clemente dated 04 May 2015 and his signature;
31. affidavit of Ms. Marcelina S. Balabbo dated 08 July 2015 and her signature;
32. original of the Summary of Legal Fees and Out-Of-Pocket Expenses;
33. original certification of issued by Ms. Balabbo;
34. copies of Statements of Account issued by PBR Law Offices for different periods;
35. copies of official receipts issued by PBR Law Offices.

Complainant thereafter submitted a Memorandum as directed. After which, the case is deemed submitted for decision.

The primordial issue of this case is whether Respondent may be held guilty of trademark infringement.

Section 155 of R.A. No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code"), defines what constitutes trademark infringement, to wit:

"Sec. 155. Remedies; Infringement. – Any person who shall, without the consent of the owner of the registered mark:

155.1. Use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark or the same container or a dominant feature thereof in connection with the sale, offering for sale, distribution, advertising of any goods or services including other preparatory steps necessary to carry out the sale of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; or

155.2. Reproduce, counterfeit, copy or colorably imitate a registered mark or a dominant feature thereof and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive, shall be liable in a civil action for infringement by the registrant for the remedies hereinafter set forth: Provided, That infringement takes place at the moment any of the acts stated in Subsection 155.1 or this subsection are committed regardless of whether there is actual sale of goods or services using the infringing material."

The elements of infringement under the IP Code are as follows:

(1) The trademark being infringed is registered in the Intellectual Property Office; however, in infringement of trade name, the same need not be registered;

(2) The trademark or trade name is reproduced, counterfeited, copied, or colorably imitated by the infringer;

(3) The infringing mark or trade name is used in connection with the sale, offering for sale, or advertising of any goods, business or services; or the infringing mark or trade name is applied to labels, signs, prints, packages,

wrappers, receptacles or advertisements intended to be used upon or in connection with such goods, business or services;

(4) The use or application of the infringing mark or trade name is likely to cause confusion or mistake or to deceive purchasers or others as to the goods or services themselves or as to the source or origin of such goods or services or the identity of such business; and

(5) It is without the consent of the trademark or trade name owner or the assignee thereof.⁴

For a trademark infringement case to prosper, it is indispensable that the Complainant has registered its mark. In this case, it is undisputed the Complainant is the owner of various registrations of the mark "INTEL", including Certificate of Registration No. 4-1998-001398 registered on 08 February 2003⁵. On the other hand, the Respondent registered the corporate name "COOLINTEL, INC." with the SEC but has no registration and/or pending application with this Office. The Complainant alleges that it did not consent the Respondent's use of the said corporate name. Therefore, the first and fifth requisites for trademark infringement are present.

As to the three remaining elements, however, this Bureau finds that the same are not established in the instant case. Firstly, the corporate name "COOLINTEL, INC." is not a counterfeit, reproduction or colorable imitation of the Complainant's "INTEL" marks. The prevalent portion in the Complainant's mark is the word "INTEL". Looking at the Respondent's corporate name, one cannot draw the same conclusion. The "INTEL" in "COOLINTEL" is not highlighted and therefore, should not be appreciated separately from "COOL". When one sees the word "COOLINTEL", the same is taken as a whole. Therefore, it is impossible for one to associate "COOLINTEL" with the Complainant's marks; and vice-versa.

Succinctly, it is the tendency of the allegedly infringing mark to be confused with the registered trademark that is the gravamen of the offense of infringement of a registered trademark.⁶ Colorable imitation denotes such a close or ingenious imitation as to be calculated to deceive ordinary persons, or such a resemblance to the original as to deceive an ordinary purchaser giving such attention as a purchaser usually gives, as to cause him to purchase the one supposing it to be the other.⁷ Absent this element, there can be no trademark infringement.

⁴ Prosource International, Inc. vs. Horphag Research Management SA, G.R. No. 180073, 23 November 2009.

⁵ Exhibit "A-9".

⁶ Victorio P. Diaz vs. People of the Philippines, G.R. No. 180667, 18 February 2013.

⁷ Societe Des Produits Nestle, S.A. vs. Court of Appeals, G.R. No. 112012, 04 April 2001.

Secondly, the Complainant did not present proof that the Respondent uses "COOLINTEL, INC." in connection with the sale, offering for sale, or advertising of any goods, business or services. Nor it presented labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used upon or in connection with such goods, business or services. Perusing the evidence presented, the bulk thereof only proves that the Complainant owns and uses the "INTEL" marks, not the Respondent's use of the allegedly copied mark.

Thirdly, a crucial issue in any trademark infringement case is the likelihood of confusion, mistake or deceit as to the identity, source or origin of the goods or identity of the business as a consequence of using a certain mark. Likelihood of confusion is admittedly a relative term, to be determined rigidly according to the particular (and sometimes peculiar) circumstances of each case.⁸ In this case, because of the disparity of the goods covered by the Complainant's mark on one hand and the goods and/or services of the Respondent-Applicant, it is doubtful if the consumers in encountering the mark "COOLINTEL, INC." will have in mind or be reminded of the trademark "INTEL". The Complainant itself alleges that upon investigation, it found that the primary purpose of the Respondent is to engage in the real estate business. On the other hand, it has not shown that it registered its "INTEL" marks for the same or similar service but mainly for computer and computer-related goods and services.

Noteworthy, not only are the goods and/or services involved evidently different, they are not ordinary household items. Accordingly, the casual buyer is predisposed to be more cautious and discriminating and would prefer to mull over his purchase. Confusion and deception is less likely.⁹ Aptly, Section 155 of the IP Code requires that to be liable for trademark infringement, the Respondent's use of the mark must likely to cause confusion, mistake or deception. Therefore, the fourth element is also absent.

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.¹⁰ It is found that the Respondent-Applicant's mark sufficiently met this function.

⁸ Mighty Corporation vs. E. & J. Gallo Winery, G.R No. 154342, 14 July 2004.

⁹ Victorio P. Diaz vs. People of the Philippines, G.R. No. 180677, 18 February 2013.

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

All told, based on the requisites laid down by governing laws as well as those recognized by jurisprudence, this Bureau concludes that Respondent is not liable for trademark infringement. Consequently, it cannot be held liable to damages.

WHEREFORE, the instant Complaint is hereby **DISMISSED** for lack of merit.

SO ORDERED.

Taguig City, 08 JUN 2016


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