



SUYEN CORPORATION,
Opposer,

-versus-

INSPIRED SCENTS INTERNATIONAL INC.,
Respondent- Applicant.

X-----X

} **IPC No. 14-2015-00054**
} Opposition to:
} Appln. Serial No. 4-2014-008834
} Date Filed: 15 July 2014
} **TM: "INSPIRED SCENTS**
} **INTERNATIONAL"**
}
}
}
}

NOTICE OF DECISION

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GREETINGS:

Please be informed that Decision No. 2016 - 172 dated June 13, 2016 (copy enclosed) was promulgated in the above entitled case.

Taguig City, June 13, 2016.

For the Director:


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

Republic of the Philippines
INTELLECTUAL PROPERTY OFFICE

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SUYEN CORPORATION,

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INSPIRED SCENTS INTERNATIONAL,
INC.,

Respondent-Applicant.

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IPC No. 14-2015-00054

Opposition to:

Application No. 4-2014-008834

Date Filed: 15 July 2014

Trademark: "INSPIRED
SCENTS INTERNATIONAL"

Decision No. 2016- 172

DECISION

SUYEN CORPORATION¹ ("Opposer") filed an opposition to Trademark Application Serial No. 4-2014-008834. The application, filed by Inspired Scents International, Inc.² ("Respondent-Applicant"), covers the mark "INSPIRED SCENTS INTERNATIONAL" for use on "*soaps, perfume, lotions, cosmetics, hair shampoo, hair conditioner, body colognes, essential oils and fragrance/aromatic oils*" under Class 03 and "*retailer of perfume & beauty products*" under Class 35 of the International Classification of Goods and Services.³

The Opposer alleges:

x x x

"IV.

"DISCUSSION

"4.1 Opposer submits that the INSPIRED mark of respondent-applicant is confusingly similar with the registered INSPIRE Trademark of opposer. Ordinary purchasers will be misled into the belief that respondent-applicant's products are those of or among the products of, and/or are connected with or under the sponsorship of, opposer.

"4.2 The registration of respondent-applicant's mark is contrary to the provisions of Section 123.1 of the Intellectual Property Code, as amended (hereinafter the 'IP Code'), which prohibits the registration of a mark that '[I]s identical with a registered trademark 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 x x

¹A domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with offices located at Bench Tower, 30th St., corner Rizal Drive, Crescent Park West 5, Bonifacio Global City, Taguig City Philippines 1634.

²A domestic corporation with address at 2796 Daan Hari Street, United Hills Subdivision, Paranaque City, Metro Manila, Philippines.

³The Nice Classification is a classification of goods and services for the purpose of registering trademark and service marks, based on a 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 Purposes of the Registration of Marks concluded in 1957.

"4.3 As early as 1987, the rationale for the need for protection of trademarks had been established. Confusion causes damage to the owner of the older mark or trade name, as well as to the buying public, who has to rely upon his memory of the earlier mark. The Supreme Court has said that the risk of damages is not limited to a possible confusion of goods but also to confusion of reputation if the public could reasonably assume that the goods or services of the parties originated from the same source x x x

"4.4 The confusion in the present case is further highlighted by the fact that the goods on which respondent-applicant's mark are or will be used, i.e. soaps, perfume, lotions, cosmetics, hair shampoo, hair conditioner, body colognes, essential oils and fragrance/aromatic oils (Class 3), directly compete with the INSPIRE products of Suyen.

"4.5 There is trademark infringement when '[A]ny person who shall, without the consent of the owner of the registered mark: xx 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 x x x

"4.6 Opposer is the registered owner of the INSPIRE Trademark having obtained a Certificate of Registration from the IPOPHL as of 18 March 2010 x x x

"4.7 Under Section 138 of the IP Code, '[A] certificate of registration of a mark shall be prima facie evidence of the validity of the registration, the registrant's ownership of the mark, and of the registrant's exclusive right to use the same in connection with the goods or services and those that are related thereto specified in the certificate.'

"4.8 Opposer, as the registered owner of the INSPIRE Trademark, has the exclusive right to prevent all third parties not having its consent from using in the course of trade identical or similar signs. Section 147.1 of the IP Code provides:

x x x

"Opposer did not consent to the use by respondent-applicant of the identical mark INSPIRED. No authority was given by Suyen to respondent-applicant to appropriate INSPIRE and/or INSPIRED as a mark or apply said marks on goods manufactured and marketed by respondent-applicant.

"4.9 There is no doubt that the mark covered by respondent-applicant's application is confusingly similar to the registered INSPIRE Trademark of opposer. The marks are not only visually similar, the marks are also phonetically similar so much that when they are pronounced, the sound effects are the same. Consumers will almost definitely associate respondent-applicant's INSPIRED products with INSPIRE and Suyen-manufactured products.

"4.10 One of the tests used and applied in our jurisdiction in determining whether there exists confusing similarity between two marks is the Dominancy Test. x x x

"4.11 There is no doubt that the dominant word or feature of opposer's Trademark is the word 'INSPIRE.' Opposer's INSPIRE Trademark, its products bearing the said trademark, and all its promotional materials are based on the use of the word

'INSPIRE.' The INSPIRE mark was specifically adopted by Suyen to promote its 'HAVE FAITH...BE INSPIRED...SAVE A LIFE' campaign and to associate it with Suyen's partnership with the Pink for Life Foundation in raising funds for women with breast cancer. x x x

"4.12 It is not necessary to constitute trademark infringement that every word of a trademark should be appropriated, but it is sufficient that enough be taken to deceive the public in the purchase of a protected article. x x x

"4.13 Where a trademark contains a dominating or distinguishing word and the purchasing public has come to know and designate the article by such dominating word, the use of such word by another in marking similar goods may constitute infringement, though the marks aside from such dominating word may be dissimilar.

"4.14 Under the IP Code, colorable imitation is deemed sufficient for a trademark infringement (Section 155.1). It has been held that if an exact reproduction, counterfeit, copy or imitation of the genuine trademark is required, it would make the remedy available in very few cases, since most traders, desirous of filching the trade of others in this way, will use colorable imitations or suggestive reproductions of the trademark which they intend to appropriate, rather than exact counterfeits x x x

"4.15 The similarity between the two words is inescapable. 'INSPIRE' literally means 'to cause (something) to happen or be created' or 'to give (someone) an idea about what to do or create.' It is simply pronounced as 'ins-pire' x x x 'INSPIRED', on the other hand, is a derived form of INSPIRE which means 'having a particular cause or influence', and is pronounced as 'ins-pired', hence, phonetically and aurally similar to the mark INSPIRE of opposer.

"4.16 The words 'SCENTS INTERNATIONAL' following the dominant word 'INSPIRED' in respondent-applicant's mark do not create any meaningful difference or do not make respondent-applicant's mark distinctive from the INSPIRE trademark of opposer. In fact, opposer's trademark also contains the word 'SCENTS' which makes respondent-applicant's mark all the more confusingly similar with opposer's trademark.

"4.17 The Supreme Court in Prosource International, Inc. vs. Horphaq Research Management SA, 605 SCRA 523 (2009), applying the dominance test, found confusing similarity between the marks PYCNOGENOL and PCO-GENOLS. x x x

"4.18 In Societe Des Produits Nestle, S.A. vs. Martin T. Dy, Jr., 627 SCRA 222 (2010), the Supreme Court applied the dominance test and found that 'NANNY' is confusingly similar to 'NAN'. 'NAN' is the prevalent feature of Nestle's line of infant powdered milk products. It is written in bold letters and used in all products. x x x

"4.19 As early as 1954, in the case of Co Tiong SA vs. Director of Patents, supra, the Supreme Court, finding that the dominant feature 'FREEMAN' was imitated by applicant's trademark 'FREEDOM,' following the test on dominance, held that:

x x x

"4.20 Even under the Holistic Test, where competing marks are compared as they appear in their respective labels or packaging, respondent-applicant's INSPIRED mark is confusingly similar with opposer's INSPIRE Trademark. The appearance alone of the word 'INSPIRE' or 'INSPIRED' on a label, even if this is set against a distinctive

background or design, will cause confusion with and infringement of the INSPIRE Trademark. Indeed, an INSPIRED product can easily, and will easily, be mistaken to be a mere variant of opposer's INSPIRE product.

"4.21 Indeed, the Supreme Court held in *Del Monte Corporation v. Court of Appeals* (181 SCRA 410, 419 [1990]) that:

x x x

"4.22 It has been repeatedly held by the Supreme Court, in a number of cases including *Converse Rubber Corporation vs. Universal Rubber Product, Inc.*, 147 SCRA 154 (1987) and *Del Monte Corporation et al. vs. Court of Appeals, et al.*, supra, that 'the person who infringes a trade mark does not normally copy out but only makes colorable changes, employing enough points of similarity to confuse the public with enough points of differences to confuse the courts.'

"4.23 What is undeniable is the fact that when a manufacturer such as respondent-applicant prepares to package his product, he has before him a boundless choice of words, phrases, colors and symbols sufficient to distinguish his product from others. When as in this case, respondent-applicant chose, without a reasonable explanation, to use the combination of the words INSPIRED SCENTS, though the field of its selection was so broad, the inevitable conclusion is that it was done deliberately to deceive x x x

"4.24 The likelihood of confusion of goods and business is made more manifest by the fact that respondent-applicant's INSPIRED mark is used on same or similar goods, or goods that directly compete with the products of opposer.

"4.25 Both marks are used on similar products falling under Class 03 of the International Classification of goods. Respondent-applicant seeks the registration of the mark INSPIRED SCENTS INTERNATIONAL for 'soaps, perfume, lotions, cosmetics, hair shampoo, hair conditioner, body colognes, essential oils and fragrance/aromatic oils.' The INSPIRE Trademark of oppose are used on exactly the same products i.e. cologne and fragrances. The two (2) marks are used on goods sold within the same channels of trade and industry.

"4.26 There will be a confusion of goods (product confusion), where the ordinary prudent purchaser would be induced to purchase respondent-applicant's perfume products in the belief that he was purchasing the perfume products of opposer; and confusion of business (source or origin of confusion), where a product bearing the mark INSPIRED might reasonably be assumed to originate from the opposer and the public would then be deceived either into that belief or into belief that there is some connection between two parties, though inexistent x x x

"4.27 As discussed above, opposer registered and has used the INSPIRE Trademark long before respondent-applicant adopted and used the INSPIRED mark.

"4.28 Opposer has exerted substantial efforts and has spent tremendous amounts to use, promote and popularize its products bearing the INSPIRE Trademark. It has acquired goodwill in the said trademark through continued long use and promotion. There is therefore no doubt that the registration of the confusingly similar INSPIRED mark will cause substantial and irreparable damage to Suyen and violates Suyen's rights to its INSPIRE Trademark.

"4.29 It must be stressed that it is the '...function of a trademark xxx 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' x x x

"4.30 Furthermore, opposer's goodwill would be at stake due to any resulting confusion of reputation should respondent be allowed to register and use its INSPIRED mark. As stated above, respondent-applicant's mark is actually being used on perfume products imitating foreign perfume brands. The purchasing public may and will be led to the mistaken belief that opposer has branched out to copying fragrances of other well-known perfume brand, damaging to the lifestyle espoused by Suyen and its products.

"4.31 Section 168 of the Intellectual Property Code prohibits unfair competition, thus:

"4.32 It is clear that by using the mark INSPIRED, respondent-applicant has given its products a trade-dress that will confuse the public into believing that its products are part of or among the INSPIRE products of oppose and/or are manufactured by or under the sponsorship of opposer. Even assuming arguendo that respondent-applicant has no intention to unfairly compete, the mark subject of its application may definitely be used for unfair competition and is unfairly competing with opposer's INSPIRE Trademark and products.

The Opposer's evidence consists of the Affidavit of Mr. Dale Gerald G. Dela Cruz, Suyen's AVP-Brand Marketing for local brands; copy of the Certificate of Registration No. 4-2008-011621 for the trademark "FAITH Scents for Life"; copy of Certificate of Registration No. 4-2008-011614 for the trademark "INSPIRE Scents for Life"; product pictures of the FAITH and INSPIRE eau de toilette; event photos taken by the Philippine Entertainment Portal (PEP), one of the media partners which covered the unveiling of the Scents for Life Collection; articles published on-line by PEP about the Scents for Life event; printouts from the website of the Pink for Life Foundation showing photos from the event and an on-line article on the Suyen (Bench) and Pink for Life Foundation partnership; copies of newspaper articles regarding launching of the Scents for Life Collection including the FAITH and INSPIRE eau de toilette; copy of the promotional poster for the Scents for Life Collection; screen shots of Suyen's Scents for Life Collection; and printouts of the "INSPIRED" products of respondent-applicant taken from its Facebook page.⁴

This Bureau issued a Notice to Answer and served a copy thereof upon Respondent-Applicant on 06 April 2015. The Respondent-Applicant filed their Answer on 03 July 2015 and avers the following:

x x x

"The Respondent-Appellant raises the following special and affirmative defenses.

⁴Marked as Exhibits "A" to "M", inclusive.

"11. Opposer obfuscates Section 123.1 of the Intellectual Property Code ('IP Code'). Opposer's trademark is not identical to the trademark being applied for by the Respondent-Appellant.

"12. Opposer claims that the identical mark is 'INSPIRED'. It also alleges that it has trademark rights over the word 'INSPIRE'. This is far from the truth. A perusal of Opposer's Certificate of Registration would readily show that its trademarks are 'FAITH SCENTS FOR LIFE' and 'INSPIRE SCENTS FOR LIFE' (Opposer's Exhibits 'B' and 'C'). Opposer's trademarks are included in its Scents for Life Products.

"13. It alleged that the public might confuse their products from the products of Respondent-Appellant. In *Del Monte Corporation v. Court of Appeals*, the Supreme Court held that:

x x x

"14. When placed side by side, the products of Opposer and Respondent-Applicant are easily identifiable. A normal person would be able to distinguish and discern the difference between the products. It is not amiss to point out that Opposer's products are sold at Bench stores.

"15. Suffice to state that Respondent-Applicant's business model is direct selling. It does not have any stand-alone stores in malls. Opposer promotes its Bench products through word of mouth. Moreover, Opposer has admitted that its Scents for Life Collection is part of the wide range of Bench products. Clearly, the public would be able to distinguish between the products of Bench and Respondent-Appellant. The public will NEVER get confused between these products.

"16. Opposer harks that it has sole use to the word 'INSPIRE'. It is a falsity. The word 'INSPIRE' is only one of the words in its trademark. It is a generic word that is incapable of exclusive use. Generic terms cannot be appropriated.

"17. In *Asia Brewery, Inc. v. Court of Appeals*, a case involving competing claims by beer companies on the right to use the words 'PALE PILSEN', the Supreme Court held that 'PALE PILSEN' are generic words. 'PALE' being the actual name of the color and 'PILSEN' being the type of beer, a light bohemian beer with a strong hops flavor that originated in Pilsen City in Czechoslovakia and became famous in the Middle Ages, and hence incapable of appropriation by any beer manufacturer. Under Section 123.1 (h) of the IP Code states that a mark cannot be registered if it consists exclusively of signs that are generic for the goods or services that they seek to identify.

"18. Under Rule 608 of the Rules and Regulations on Trademarks, Service Marks, Tradenames and Marked or Stamped Containers, a generic term has to be disclaimed.

x x x

"19. In this case, the word 'INSPIRE' is a generic word that has to be disclaimed. In fact, it would readily be seen that the word 'INSPIRE' is part of a composite mark 'INSPIRE SCENTS FOR LIFE'. Hence, there is no basis for Opposer to claim

that it has sole and exclusive use over the word 'INSPIRE'. Moreover, the use of additional words are allowed to distinguish between trademarks.

"20. Opposer alleges that Respondent-Appellant copied its fragrance. It describes its 'INSPIRE SCENTS FOR LIFE' product as pink grapefruit melds with refined iris flower over a perfume base of full and earthy woods. It bears stressing that smell per se cannot be the subject of a trademark.

"21. In fact, the word 'INSPIRE' is quite commonly used among fragrances. A cursory Google search and visit to the shopping malls in Metro Manila would readily show that the word 'INSPIRE' and its derivatives are used by various fragrances (Annex '1'), to wit:

- "a. Christina Aguilera Inspire
- "b. Ellen Tracy Inspire
- "c. GAP 1969 Inspire
- "d. Charles Jordan Inspiration
- "e. Autograph Inspire by Marks and Spencer
- "f. Lacoste Inspiration

"22. Clearly, these fragrances have been offered to the public. It is quite surprising that Opposer contests the use of the word 'INSPIRE' by Respondent-Appellant when its use is quite prevalent among fragrance brands. The word 'INSPIRE' and its derivatives are indeed generic terms for perfumes or fragrances.

"23. In applying the Holistic or Totality Test, the Supreme Court in Mead Johnson & Co. v. N.V.J. Van Dorp, Ltd. ruled that conflicting trademarks should be seen in their entirety thus allowing the registration of 'ALASKA' mark over Mead Johnson's 'ALACTA'. The Supreme Court held that:

x x x

"24. The Opposer's product is labeled and marketed as 'INSPIRE SCENTS FOR LIFE'. Such trademark should be seen in its entirety. In addition, packaging and bottling includes the word 'Bench' which clearly identifies the source of the product and distinguishes the product distinctively x x x

"25. In the case of Emerald Garment Manufacturing Corp. vs. Court of Appeals, the Supreme Court ruled in favour of using the Holistic Test in determining whether there is likelihood of confusion between the complaining mark 'LEE' as against 'STYLISTIC MR. LEE', with both marks being used for clothing apparels, particularly denim jeans. In justifying the use of the Holistic Test to resolve the issue of the conflicting marks in the same goods, the Supreme Court held that Filipinos, as 'ordinary purchasers' of jeans, are fastidious consumers.

x x x

"26. Similar to buying jeans, 'ordinary purchasers' of perfumes are fastidious and meticulous consumers. Purchasers of perfumes carefully inspect and try out perfumes before buying such products. Because of this consumer behavior, Opposer's product cannot be easily be mistaken to be the same or confusingly similar to that of Respondent-Applicant.

"27. Assuming arguendo that the Holistic or Totality Test is not applicable, the Dominancy Test is applicable. Opposer submitted its trademarks under the Scents for Life Collection. It presented its registered trademarks 'INSPIRE SCENTS FOR LIFE' and 'FAITH SCENTS FOR LIFE'. Taken as a whole it would show that the dominant feature of the trademarks is 'SCENTS FOR LIFE'.

"28. Under the Dominancy Test, there is infringement and likelihood of confusion when there is similarity in the competing trademarks. Applying the Dominancy Test over Opposer's trademark would indicate that the dominant feature is 'SCENTS FOR LIFE'. It is a common feature among its trademarks e.g. 'FAITH SCENTS FOR LIFE' and 'INSPIRE SCENTS FOR LIFE'. This is further buttressed by Opposer's documents e.g. media announcements, online store, etc. that Bench introduced a Scents for Life perfume collection - in which one of the fragrances is 'INSPIRE SCENTS FOR LIFE' x x x

"29. Unlike the products in the case of Societe Des Produits Nestle v. Court of Appeals, the products in this case are not mere household products. Perfumes or fragrances cannot be considered as a Fast Moving Consumer Goods (FMCG). FMCG is defined as consumer goods products that sell quickly at relatively low cost- items such as milk, gum, fruit and vegetables, toilet paper, soda, beer and over-the-counter drugs like aspirin.

"30. Unlike the purchasers in the Societe Des Produits Nestle case, purchasers of perfumes are not 'undiscerningly rash in buying' in their purchases. They sample, test and spray the products on their skin to smell if indeed they like the fragrance.

"31. To reiterate, the public will not confuse Respondent-Applicant's products from the Opposer's 'INSPIRE SCENTS FOR LIFE' product.

"32. As for Opposer's claim of unfair competition, Respondent-Applicant has not made nor attempted to pass off upon the public that its products are of the same or similar to that of the Opposer. As discussed, Respondent-Applicant's business model is direct selling. Far different from that of the Opposer's. Likewise, a quick look of the Respondent-Applicant's labels and packaging will show that it has no intention of deceiving the public or pass off its products to be that of the Opposer's x x x

"33. In the case of Republic Gas Corporation v. Petron Corporation, the Court has echoed the classic definition of the term which is 'the passing off (or palming off) or attempting to pass off upon the public of the goods or business of one person as the goods or business of another with the end and probable effect of deceiving the public. Passing off (or palming off) takes place where the defendant, by imitative devices on the general appearance of the goods, misleads prospective purchasers into buying his merchandise under the impression that they are buying that of his competitors. x x x

"34. The element of fraud is wanting in this present case; hence there can be no unfair competition.

"35. Respondent-Applicant finally affirmatively alleges that it also has a pending trademark application with the IPOPHL for the mark 'INSPIRED

SCENTS INTERNATIONAL' under class 35 of the International Nice Classification. This was published in the Electronic Gazette of the IPOPHL on December 22, 2014. That is not being opposed by the Opposer as it is not included in any of its allegations in the Notice of Opposition; therefore the registration certificate under this class be issued.

The Respondent-Applicant's evidence consists of photos of various fragrances using the word "INSPIRE" and its derivatives as labels or marks.⁵

On 04 February 2016, the Preliminary Conference was terminated and the parties were directed to file their respective position papers. Thereafter, the case was deemed submitted for resolution.

Should the Respondent-Applicant be allowed to register the trademark INSPIRED SCENTS INTERNATIONAL?

The Opposer anchors its opposition on Sections 123.1, paragraph (d) and 147.1 of Republic Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code"), to wit:

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;"

Sec. 147.*Rights Conferred.* - 147.1. The owner of a registered mark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs or containers for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use, of an identical sign for identical goods or services, a likelihood of confusion shall be presumed.

Records show that at the time the Respondent-Applicant filed its trademark application on 15 July 2014, the Opposer has an existing trademark registration for the mark INSPIRE SCENTS FOR LIFE (Reg. No. 4-2008-011614) issued on 18 March 2010. The registration covers "cologne and fragrances" under Class 03. This Bureau noticed that the products indicated in the Respondent-Applicant's trademark application, i.e. soaps, perfume, lotions, cosmetics, hair shampoo, hair conditioner, body colognes, essential oils and fragrance/aromatic oils under Class 03, are similar or closely-related to the Opposer's.

⁵Marked as Exhibits "1" to "5", inclusive.

Hence, the question, does INSPIRED SCENTS INTERNATIONAL resemble INSPIRE SCENTS FOR LIFE such that confusion or deception is likely to occur? The marks are shown below:

Inspire
SCENTS FOR LIFE

inspired
Scents International

Opposer's trademark

Respondent-Applicant's mark

The Respondent-Applicant's mark INSPIRED SCENTS INTERNATIONAL is confusingly similar to Opposer's trademark INSPIRE SCENTS FOR LIFE. Even with the accompanying words SCENTS INTERNATIONAL, to the Bureau's mind, the dominant feature of the trademark is the word INSPIRED. Both marks bear the word INSPIRE/INSPIRED that is similar, including their meanings. Respondent-Applicant's mark INSPIRED SCENTS INTERNATIONAL covers "*perfume, colognes, essential oils and fragrance/aromatic oils*" under Class 03, goods which the Opposer deals in under the mark INSPIRE SCENTS FOR LIFE. It is likely therefore, that a consumer who wishes to buy perfume, colognes and/or fragrances and is confronted with the mark INSPIRED SCENTS INTERNATIONAL, will think or assume that the mark or brand is just a variation of or is affiliated with the Opposer's.

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:

Callman notes two types of confusion. The first is the confusion of goods in which event the ordinary 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 belief that there is some connection between the plaintiff and defendant which, in fact does not exist.⁶

In conclusion, the Bureau finds that the Respondent-Applicant's trademark application is proscribed by Sec. 123.1 (d) (iii) of the IP Code.

⁶ *Converse Rubber Corp. v. Universal Rubber Products, Inc. et. al.*, G.R. No. L-27906, 08 Jan. 1987.

WHEREFORE, premises considered, the instant Opposition to Trademark Application No. 4-2014-00008834 is hereby SUSTAINED. Insofar as Respondent-Applicant's retailer of perfume and beauty products under Class 35, the instant Opposition to Trademark Application No. 4-2014-00008834 is likewise SUSTAINED as the services deals with retail or merchandising of goods covered by Opposer's trademark registration. 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, 13 JUN 2016.


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