SUYEN CORPORATION,
Opposer,

-versus-

SANXIAO PHILIPPINES, INC.,
Respondent- Applicant.

IPC No. 14-2014-00310
Opposition to:
Appln. Serial No. 4-2013-014160
Date Filed: 27 November 2013
TM: "BODYFIX"

NOTICE OF DECISION

MIGALLOS & LUNA LAW OFFICES
Counsel for Opposer
7th Floor, The Phinma Plaza
39 Plaza Drive, Rockwell Center
Makati City, 1210

SANXIAO PHILIPPINES, INC.
Respondent- Applicant
109 Panay Avenue, South Triangle
Quezon City

GREETINGS:

Please be informed that Decision No. 2016 - 391 dated October 27, 2016 (copy enclosed) was promulgated in the above entitled case.

Taguig City, 27 October 2016.

MARILYN F. RETUTAL
IPRS IV
Bureau of Legal Affairs

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Opposer,

-versus-

SANXIAO PHILIPPINES, INC.,
Respondent-Applicant.
x ---------- x

IPC No. 14-2014-00310
Opposition to Trademark
Application No. 4-2013-014160
Date Filed: 27 November 2013

Trademark: **"BODYFIX"**

Decision No. 2016- 391

DECISION

Suyen Corporation[1] ("Opposer") filed an opposition to Trademark Application Serial No. 4-2013-014160. The contested application, filed by Sanxiao Philippines, Inc.[2] ("Respondent-Applicant"), covers the mark "BODYFIX" for use on *"soaps, perfumery, essential oils, cosmetics"* under Class 03 of the International Classification of Goods[3].

According to the Opposer, it was incorporated in 1985 as manufacturing company dealing in clothing apparel, garments and accessories. At present, it is in the business of manufacturing, marketing, advertising, distributing and selling apparel and lifestyle products carrying different brands and trademarks, including its flagship brand "BENCH". Among others, it has penetrated the service industry including beauty salon services under the name "FIX BENCH SALON, which is operated by B Cut, Inc., its sister company. Even before it opened its first salon in 2001, it has already manufactured, advertised, distributed and sold hair products under its "FIX" trademark.

The Opposer maintains that the mark "FIX" was issued registration on 01 July 2004. It likewise claims to have registered the marks "FIX", "FIX BENCH SALON", "I-FIX & Device of letter I" and "Bench/FIX PROFESSIONAL". It thus contends that the Respondent-Applicant's mark "BODYFIX" is identical or confusingly similar to its own "FIX" trademarks. In support of their Opposition, the Opposer submitted the affidavit of its Assistant Vice-President – Brand Marketing for local brands, Mr. Dale Gerald G. Dela Cruz, with annexes.[4]

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[1] A corporation organized and existing under the laws of the Republic of the Philippines with office address at Bench Tower, 30th Street corner Rizal Drive, Crescent Park West 5, Bonifacio Global City, Taguig 1634.
[2] A domestic corporation with office address at 109 Panay Ave., South Triangle, Quezon City, Metro Manila.
[3] The Nice Classification is a classification of goods and services for the purpose of registering trademark and services marks, based on the multilateral treaty administered by the World Intellectual Property Organization. The treaty is called the Nice Agreement Concerning the International Classification of Goods and Services for the Purpose of the Registration of Marks concluded in 1957.
[4] Marked as Exhibits "A" to "EE", inclusive.

A Notice to Answer was issued and served upon the Respondent-Applicant on 01 October 2014. The latter, however, did not file an Answer. Thus, the Adjudication Officer issued Order No. 2015-224 on 02 February 2015 declaring the Respondent-Applicant in default and the case submitted for decision.

The issue to be resolved in this case is whether the Respondent-Applicant's trademark application for "BODYFIX" should be allowed.

Section 123.1 (d) of RA 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 the Respondent-Applicant filed its application for registration of the contested mark on 27 November 2013, the Opposer has already registered the mark "FIX" under Certificate of Registration No. 4-2000-00133 issued on 01 July 2004 for *"hair lotion, hair gel, hair crème, hair polish, hair shampoo, hair conditioner"* under Class 03.[5] The Opposer likewise holds registration for the marks "FIX BENCH SALON", "I-FIX & Device OF LETTER I" and "BENCH/FIX PROFESSIONAL" issued on 07 February 2004, 16 July 2006 and 18 September 2006, respectively.[6]

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

Opposer's Marks

FiX FiX bench salon

[5] Exhibit "B".
[6] Exhibits "C", "D" and "E".

Respondent-Applicant's Mark

BODY**FIX**

The Opposer's marks consist of the word "FIX" alone or in conjunction with other words and/or device. As such, the said word is the prevalent feature of the Opposer' marks. The Respondent-Applicant's mark "BODYFIX", on the other hand, is also comprised of "FIX" combined with the word "BODY". It appears that the Respondent-Applicant adopted the same pattern as the Opposer in arriving at the applied mark. Noteworthy, the word "FIX" in the Respondent-Applicant's mark is in bold letters thereby highlighting the said word. Succinctly, confusion cannot be avoided by merely adding, removing or changing some letters of a registered mark. Confusing similarity exists when there is such a close or ingenuous imitation as to be calculated to deceive ordinary persons, or such resemblance to the original as to deceive ordinary purchased as to cause him to purchase the one supposing it to be the other.[7]

Moreover, since the Respondent-Applicant will also use or uses the mark on goods also falling under Class 03, the slight differences in the competing marks will not diminish the likelihood of the occurrence of confusion, mistake and/or deception. After all, the determinative factor in a contest involving registration of trade mark 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.[8]

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[7] Societe des Produits Nestle,S.A. vs. Court of Appeals, GR No. 112012, 04 April 2001.
[8] American Wire & Cable Company vs. Director of Patents, G.R. No. L-26557, 18 February 1970.

Furthermore, it is settled that the likelihood of confusion would not extend not only as to the purchaser's perception of the goods but likewise on its origin. Callman notes two types of confusion. The first is the *confusion of goods* "in which event the ordinarily prudent purchaser would be induced to purchase one product in the belief that he was purchasing the other." In which case, "defendant's goods are then bought as the plaintiff's, and the poorer quality of the former reflects adversely on the plaintiff's reputation." The other is the *confusion of business*: "Here though the goods of the parties are different, the defendant's product is such as might reasonably be assumed to originate with the plaintiff, and the public would then be deceived either into that belief or into the belief that there is some connection between the plaintiff and defendant which, in fact, does not exist."[9]

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.[10] Based on the above discussion, Respondent-Applicant's trademark failed to meet this function.

Accordingly, this Bureau finds and concludes that the Respondent-Applicant's trademark application is proscribed by Sec. 123.1(d) of the IP Code.

WHEREFORE, premises considered, the instant opposition is hereby **SUSTAINED**. Let the filewrapper of Trademark Application Serial No. 4-2013-014160 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 27 OCT 2016

Atty. Z'SA MAY B. SUBEJANO-PE LIM
Adjudication Officer
Bureau of Legal Affairs

[9] Societe des Produits Nestle, S.A. vs. Dy, G.R. No. 172276, 08 August 2010.
[10] Pribhdas J. Mirpuri vs. Court of Appeals, G.R. No. 114508, 19 November 1999.