

SUYEN CORPORATION,
Opposer,

-versus-

EMMANUEL JOSE MARIA DELA CRUZ QUIBILAN,
Respondent-Applicant.

X-----X

IPC No. 14-2014-00375

Opposition to:

Appln. Serial No. 4-2014-001117

Date Filed: 28 January 2014

TM: EAULALA

NOTICE OF DECISION

MIGALLOS & LUNA LAW OFFICES

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Makati City 1210

EMMANUEL JOSE MARIA DELA CRUZ QUIBILAN


Respondent- Applicant
12 Sylvia Street, BF Homes Almazan II
Las Piñas City 1750

GREETINGS:

Please be informed that Decision No. 2017 - 17 dated 19 January 2017 (copy enclosed) was promulgated in the above entitled case.

Pursuant to Section 2, Rule 9 of the IPOPHL Memorandum Circular No. 16-007 series of 2016, any party may appeal the decision to the Director of the Bureau of Legal Affairs within ten (10) days after receipt of the decision together with the payment of applicable fees.

Taguig City, 23 January 2017.


MARILYN F. RETUTAL
IPRS IV
Bureau of Legal Affairs

Republic of the Philippines
INTELLECTUAL PROPERTY OFFICE

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**EMMANUEL JOSE MARIA DELA
CRUZ QUIBILAN,**
Respondent-Applicant.

X ----- X

IPC No. 14-2014-00375
Opposition to Trademark
Application No. 4-2014-001117
Date Filed: 28 January 2014

Trademark: **"EAULALA"**

Decision No. 2017- 17

DECISION

Suyen Corporation¹ ("Opposer") filed an opposition to Trademark Application Serial No. 4-2014-001117. The contested application, filed by Emmanuel Jose Maria Dela Cruz Quibilan² ("Respondent-Applicant"), covers the mark "EAULALA" for use on "*fragrances, perfumes, body mists, eau de toilette, colognes, lotions, hand and body wash, hand sanitizers*" under Class 03 of the International Classification of Goods³.

The Opposer alleges, among others, that it was incorporated in 1985 as manufacturing company dealing in clothing apparel, garments and accessories. It initially offered only men's t-shirt when it opened it 1987. At present, it is in the business of manufacturing, marketing, advertising, distributing and selling apparel and lifestyle products carrying different brands and trademarks, including "BENCH" which it registered on 30 June 1989. On September 2009, it introduced a new collection of body sprays, the "SEXY DEO BODY SPRAY", which come in deodorant formulation. One of the scents in this collection is "OOH LALA!". On 17 December 2010, it filed an application for the "OOH LALA!" trademark and the same was eventually issued registration on 19 May 2011. It thus contends that the Respondent-Applicant's mark is identical or confusingly similar to its own "OOH LALA!" trademark. In support of their Opposition, the Opposer submitted the affidavit of Dale Gerald G. Dela Cruz, with annexes.⁴

A Notice to Answer was issued and served upon the Respondent-Applicant on 05 November 2014. The latter, however, did not file an Answer. Thus, the Adjudication Officer issued Order No. 2015-360 on 06 March 2015 declaring the

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 Filipino with known address at 12 Sylvia Street, BF Homes Almanza II, Las Piñas City 1750, 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 "I", inclusive.

Respondent-Applicant in default. On 16 June 2015, the Opposer appeared for the ex-parte presentation of evidence. After which, the case is submitted for decision.

The issue to be resolved in this case is whether the Respondent-Applicant's trademark application for "EAULALA" 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 28 January 2014, the Opposer has already registered the mark "OOH LALA!" under Certificate of Registration No. 4-2010-013790 issued on 19 May 2011.⁵

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

OOH LALA!

Eaulala

Opposer's Marks

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

⁵ Exhibit "D".

"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.⁶ 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.

The only similarity in the competing marks is the use of the word and/or syllables "LALA". The presentation of "LALA" in both marks, however, will not lead to a conclusion that the said word and/or syllables are the prevalent feature of the marks. As such, both marks should be appreciated in their entirety. The Opposer's mark, which consists of two separate words "OOH" and "LALA!", can easily be differentiated from the Respondent-Applicant's mark, which comprises of the words "EAU" and "LALA" combined. The competing marks are different visually and in impression that the common use of "LALA" pales in significance.

Moreover, the Trademark Registry, which this Adjudication Officer may take judicial notice, shows that there are other registered trademarks that appropriate the syllables and/or word "LALA" such as "LU LA LA" under Certificate of Registration No. 4-1998-004896 issued on 14 December 2003 and "OOH LA-LASH" under Certificate of Registration No. 4-2002-009639 issued on 05 August 2004. Noteworthy, these aforementioned marks were filed for application and/or registered even before the Opposer was issued registration for the mark "OOH LALA!". As it appears that "LALA" has already been used in trademarks for goods under Class 03, similarity in this aspect alone is not enough to prevent a junior user registration of its mark provided that the later mark is endowed with other distinguishing features and characteristics such as that of the Respondent-Applicant's.

Furthermore, 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.⁷ Based on the above discussion, Respondent-Applicant's trademark sufficiently met this function.


⁶ Etepha A.G. vs. Director of Patents, G.R. No. L-20635, 31 March 1966.

⁷ Pribhdas J. Mirpuri vs. Court of Appeals, G.R. No. 114508, 19 November 1999.

WHEREFORE, premises considered, the instant opposition is hereby **DISMISSED**. Let the filewrapper of Trademark Application Serial No. 4-2014-01117 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, **19 JAN 2017**


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