

**NOKIA CORPORATION,**  
Opposer,

**-versus-**

**BRIXTON CONSTRUCTION AND  
INDUSTRIAL SUPPLY CORPORATION,**  
Respondent- Applicant.

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} **IPC No. 14-2015-00016**  
}  
} **Opposition to:**  
} **Appln. Serial No. 4-2014-503800**  
} **Date Filed: 27 August 2014**  
} **TM: "NOKI"**  
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}

### **NOTICE OF DECISION**

**BETITA CABILAO CASUELA SARMIENTO**  
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Ayala Alabang, Muntinlupa City


**BRIXTON CONSTRUCTION AND  
INDUSTRIAL SUPPLY CORPORATION**  
Respondent-Applicant  
Rm. 202 Armon's Building  
Kamias Road cor. Anonas St.,  
Quezon City

### **GREETINGS:**

Please be informed that Decision No. 2017 - 138 dated April 24, 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, April 24, 2017.

  
**MARILYN F. RETUTAL**  
IPRS IV  
Bureau of Legal Affairs

**NOKIA CORPORATION,**

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} **IPC NO. 14-2015-00016**

} Opposition to:

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} Date Filed: 27 August 2014

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} Trademark: "NOKI"

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} Decision No. 2017- 138

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### DECISION

NOKIA CORPORATION, (Opposer)<sup>1</sup> filed an opposition to Trademark Application Serial No. 4-2014-503800. The application, filed by BRIXTON CONSTRUCTION AND INDUSTRIAL SUPPLY CORPORATION, (Respondent-Applicant)<sup>2</sup>, covers the mark "NOKI", for use on "agricultural and marine diesel engines, agricultural and marine gasoline engines, agricultural and marine kerosene engines and accessories thereof, agricultural machines and apparatus namely power tillers, reapers, threshers, mowers, haulers, brush cutters, chainsaws, pressure washers and sprayers, irrigation pumps, gasoline and diesel generators other than for land vehicles, air compressors, welding machines, drilling machines, and grinders, light construction equipment namely concrete mixers, concrete cutters, plate compactors, tamping rammers, power trowels, finishing screeds, concrete vibrators, porta-lift hoists, mortar mixers, concrete hollow block machines, wood floor sanding machines, electric motors, jet pumps, centrifugal pumps, sewage pumps, submersible pumps" under Class 7 the International Classification of Goods<sup>3</sup>.

The Opposer relies on the following grounds in support of the opposition:

"1. The registration of NOKI mark is contrary to the provisions of Section 123.1 (d) and Section 123.1 (f) of Republic Act No. 8293, as amended, which prohibit the registration of a mark that:

- (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:

<sup>1</sup> A corporation duly organized and existing under the laws of Finland with office at Karaponti 3, 02610 Espoo, Finland

<sup>2</sup> Philippine corporation with address at Rm 202 Armon's Building, Kamias Road, Quezon City

<sup>3</sup> The Nice Classification of Goods and Services is for registering trademarks and service marks based on multilateral treaty administered by the WIPO, called the Nice Agreement Concerning the International Classification of Goods and Services for Registration of Marks concluded in 1957.

Ad

- (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.

(e) Is identical with, or confusingly similar to, or constitutes a translation of a mark with which is considered by the competent authority of the Philippines to be well-known internationally and in the Philippines, whether or not it is registered here, as being already the mark of a person other than the applicant for registration, and used for identical or similar goods or services: *Provided*, That in determining whether a mark is well-known, account shall be taken of the public at large, including knowledge in the Philippines which has been obtained as a result of the promotion of the mark;

(f) Is identical with or confusingly similar to, or constitutes a translation of a mark, considered well known in accordance with the preceding paragraph, which is registered in the Philippines with respect to goods and services which are not similar to those with respect to which registration is applied for: *Provided*, that the use of the mark in relation to the goods or services would indicate a connection between those goods or services, and the owner of the registered mark: *Provided further*, that the interests of the owner of the registered mark are likely to be damaged by such use.

“2. The Opposer is the owner of the well-known NOKIA mark and related marks (collectively NOKIA marks), among others, which are registered with the Philippine Intellectual Property Office. Xxx

“3. The NOKIA marks are also registered or pending registration in the name of the Opposer in various countries around the world. Xxx

“4. Respondent’s mark is confusingly similar to the Opposer’s NOKIA Marks as to be likely to deceive or cause confusion. Xxx

“8. The Opposer has used the NOKIA marks in the Philippines and elsewhere prior to and before the filing date of Respondent’s mark. The Opposer continues to use the NOKIA Marks in the Philippines and in numerous countries worldwide.

“9. The Opposer has also extensively promoted its NOKIA marks worldwide. Over the years, the Opposer has obtained significant exposure for the goods and services upon which the Nokia marks are used in various media, including television commercials, outdoor advertisements, internationally well-known print publications, and other promotional events. Opposer also maintains its website, <http://company.nokia.com/en> which is accessible to users worldwide, including those from the Philippines.xxx”

To support its opposition, the Opposer submitted as evidence the following:

1. Notarized and legalized verified Notice of Opposition;
2. Notarized and legalized Affidavit of Jeremie Vaquer dated 18 February 2015;
3. Print-out of the trademark details of Opposer's "NOKIA" trademarks from the IPO website; and
4. Notarized and legalized Special Power of Attorney signed by Jeremie Vaquer dated 18 February 2015<sup>4</sup>

This Bureau served upon the Respondent-Applicant a "Notice to Answer" on 8 April 2015. The Respondent-Applicant, however, did not file an Answer. Thus, the Hearing Officer issued on 13 August 2015 Order No. 2015-1161 declaring the Respondent-Applicant to have waived its right to file an Answer.

Should the Respondent-Applicant be allowed to register the mark "NOKI"?

Records show that at the time Respondent-Applicant applied for registration of the mark "NOKI" the Opposer already registered the mark "NOKIA" under Registration No. 4-1994-095656 on 29 October 1999 for goods under class 9; Registration No. 4-1998-005692 on 24 August 2003 for goods under classes 9, 16, 28, 35, 37, 38, 41 and 42; Registration No. 4-2001-001587 on 27 April 2006 for goods under class 25; and Registration No. 4-2007-006291 for class 39.

But are the competing marks, depicted below identical or closely resembling each other such that confusion, even deception, is likely to occur?

Opposer's mark

**NOKIA**

Respondent-Applicant's mark

**NOKI**

The marks are similar with respect to the four letters, "N-O-K-I", differing only in the last letter "A" of Opposer's mark. Such similarity however, is not sufficient to conclude that confusion among the consumers is likely to occur. Even if the marks of the parties are almost identical, the kind, nature or type of goods upon which the marks are to be applied must be considered in determining the likelihood of confusion. The Opposer uses its mark on class 9 goods, particularly "apparatus for recording, storing transmission, software applications, telephones, etc" while the Respondent-Applicant uses its mark on "agricultural and marine diesel engines, agricultural and marine gasoline engines, agricultural and marine kerosene engines and accessories thereof etc." under class 7. Because the marks are used on products of different nature, confusion and deception is unlikely. There is no likelihood of confusion of business. The goods are unrelated and non-competing. The channels of trade where the goods flow are worlds apart. The target market or consumers are also different, thus it is unlikely that the public would be vulnerable to confusion much less deception.

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<sup>4</sup> Exhibits "A" to "G" inclusive of submarkings

In Canon Kabushiki Kaisha v. Court of Appeals<sup>5</sup> the Supreme Court held:


xxx petroleum products on which the petitioner therein used the trademark ESSO, and the product of respondent, cigarettes are "so foreign to each other as to make it unlikely that purchasers would think that petitioner is the manufacturer of respondent's goods". Moreover, the fact that the goods involved therein flow through different channels of trade highlighted their dissimilarity xxx

Thus, the evident disparity of the products of the parties in the case at bar renders unfounded the apprehension of petitioner that confusion of business or origin might occur if private respondent is allowed to use the mark CANON."

**WHEREFORE**, premises considered, the instant Opposition to Trademark Application No. 4-2014-503800 is hereby **DISMISSED**. Let the filewrapper of the subject trademark be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

**SO ORDERED.**

Taguig City, 24 APR 2017

  
**ATTY. ADORACION U. ZARE, LL.M.**  
Adjudication Officer  
Bureau of Legal Affairs