

THE PROCTER & GAMBLE COMPANY,
Opposer,

-versus-

BEDA JOY B. ELOT,
Respondent-Applicant.

IPC No. 14-2013-00049
Opposition to:
Appln. Serial No. 4-2012-740221
Date Filed: 31 August 2012

TM: VIDA SALON & DESIGN

X-----X

NOTICE OF DECISION

CESAR CRUZ AND PARTNERS

Counsel for Opposer
3001 Ayala Life-FGU Center
6811 Ayala Avenue, Makati City

BEDA JOY B. ELOT

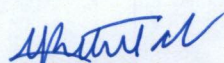
Respondent- Applicant
Montesa and Associates Law Offices
Caspitrano-Luna Streets,
9000 Cagayan de Oro City

GREETINGS:

Please be informed that Decision No. 2017 - 41 dated 16 February 2017 (copy enclosed) was promulgated in the above entitled case.

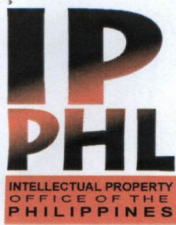
Pursuant to Section 2, Rule 9 of the IPOPHL Memorandum Circular No. 16-007 series of 2016, any party may appeal the decision to the Director of the Bureau of Legal Affairs within ten (10) days after receipt of the decision together with the payment of applicable fees.

Taguig City, 20 February 2017.


MARILYN F. RETUTAL
IPRS IV
Bureau of Legal Affairs

Republic of the Philippines
INTELLECTUAL PROPERTY OFFICE

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THE PROCTER & GAMBLE COMPANY,
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IPC No. 14-2013-00049
Opposition to:

Appln. No. 4-2012-740221
Date Filed: 31 August 2012
Trademark: **"VIDA SALON
AND DESIGN"**

Decision No. 2017 - 41

DECISION

THE PROCTER & GAMBLE COMPANY ("Opposer")¹, filed a verified opposition to Trademark Application Serial No. 4-2012-740221. The application, filed by BEDA JOY B. ELOT ("Respondent-Applicant")², covers the mark "VIDA SALON AND DESIGN" for use on goods under class 44³ namely: "*beauty salon.*"

The Opposer alleges that it is the owner of and has exclusive rights over the VIDAL SASSOON trademarks, which are registered with the Philippine Intellectual Property Office, in connection with personal care products and services in various classes. The trademark VIDA SALON AND DESIGN of Respondent-Applicant is confusingly similar to its VIDAL SASSOON trademarks. According to Opposer, its VIDAL SASSOON trademarks are internationally well-known marks, which enjoy substantial goodwill and recognition in the Philippines and worldwide such as United States of America, China, Colombia, Indonesia, Malaysia, Singapore, Thailand, Venezuela and Vietnam, among others. The first salon bearing the VIDAL SASSOON name was opened in London, England in 1954. Products bearing the famous VIDAL SASSOON trademarks were first launched in the United States of America in the early 1970's. Opposer has also extensively promoted its products and services bearing the VIDAL SASSOON trademarks worldwide. It has gained significant worldwide exposure in various media, including television commercials, advertisements, internationally well-known print publications, the internet and other promotional events.

The Opposer submitted the following evidence:

1. Original notarized Verified Notice of Opposition;
2. Certificate and Special Power of Attorney executed by Tara M. Rosnell;
3. Affidavit executed by Tara M. Rosnell;

¹ A corporation duly organized and existing under the laws of Ohio, United States of America, with principal place of business at one Procter & Gamble Plaza, Cincinnati, Ohio 45202, United States of America.
² Owner and manager of VIDA SALON AND DESIGN with business address at Capistrano Street, Cagayan de Oro City.
³ The Nice Classification of goods and services is for registering trademark and service marks, based on a 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.

5. Printouts from Opposer's websites, www.vidalsassoon.com and www.sassoon.com;
6. Table showing the details of Opposer's applications and registrations for the VIDAL SASSOON trademarks worldwide;
7. Representative samples of Certificates of Registration for the VIDAL SASSOON trademarks from foreign countries;
8. Trademark Registration No. 53379 issued by the Philippine Intellectual Property Office on 4 September 1992 for VIDAL SASSOON in class 3; and,
9. Trademark Registration No. 4-2011-003213 issued by the Philippine Intellectual Property Office on 22 September 2011 for VIDAL SASSOON in classes 8,9, 11,21, 41 and 44.

On 02 July 2013, Respondent-Applicant filed an Answer. She alleges that there is no likelihood of confusion and that the marks are visually and aurally different. In fact, even a child can easily spot the glaring differences between the general appearance of the two trademarks. Respondent-Applicant differentiated the products as to their prevalent features or description, dominant colors, class, descriptive words or spelling, location of business, phonetic sound, general usage or meaning, and origins. Moreover, Respondent-Applicant argued that the word "vida" is a very popular name for girls meaning "life" in languages such as Spanish and Portuguese, and "salon" means an establishment where a hairdresser, beautician, or courier works; whereas, the word "vidal" is a popular name for boys taken from its Spanish and Latin origin meaning "life-giving"; and "sassoon" is a common family name shared by the Armenian and Kurdish nationalities. In the Philippines, "vidal" is a common Filipino last name derived from Spanish origin meaning "life".

The Preliminary Conference was held on 04 March 2014. The Respondent-Applicant waived her right to submit position paper because of non-appearance in the scheduled conference.

Should the Respondent-Applicant be allowed to register the trademark VIDA SALON AND DEVICE?

As culled from the records and evidence, the Opposer has valid and existing registrations for the mark "VIDAL SASSOON", consisting of Registration Nos. 53379⁴ and 4-2011-003213⁵ dated 04 September 1992 and 22 September 2011, respectively. On the other hand, Respondent-Applicant filed its application for the subject trademark "VIDA SALON AND DEVICE" only on 31 August 2012.

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

VIDAL SASSOON



Opposer's Trademark

Respondent-Applicant's Trademark

⁴ Exhibit "D" of Opposer.

⁵ Exhibit "E" of Opposer.

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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 "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 eyes can easily see that the marks are different. The similarity between the marks manifests in the word VIDA which is part of the word mark VIDAL of Opposer's VIDAL SASSOON trademark. Such resemblance is not sufficient to conclude that confusion is likely to occur. The appearance of the respective marks in its entirety, obviously, cannot cause confusion or deception on the purchasers despite the mentioned similarity. Respondent-Applicant has disclaimed the words SALON and YOUR BEAUTY HUB, leaving the word VIDA as against Opposer's VIDAL SASSOON. This alone creates a distinguishable visual and aural presentation of the marks.

Moreover, the goods covered by the marks do not belong to the same classification. While it may be true that the goods and the service are related because of the nature and characteristics of Opposer's goods which may be used in the salon service of Respondent-Applicant, a consumer could easily discern the absence of association or connection of the marks because of the individual character and reputation of the respective marks. In fact, the Opposer's various advertisements, promotional items and publications⁷ will show the distinct appearance and market appeal of VIDAL SASSOON trademark.

Corollarily, the enunciation of the Supreme Court in the case of Mighty Corporation vs. E. & J. Gallo Winery⁸ aptly states that:

"A very important circumstance though is whether there exists likelihood that an appreciable number of ordinarily prudent purchasers will be misled, or simply confused, as to the source of the goods in question. The 'purchaser' is not the 'completely unwary consumer' but is the 'ordinarily intelligent buyer' considering the type of product involved. he is 'accustomed to buy, and therefore to some extent familiar with, the goods in question. The test of fraudulent simulation is to be found in the likelihood of the deception of some persons in some measure acquainted with an established design and desirous of purchasing the commodity with which that design has been associated. The test is not found in the deception, or the possibility of deception, of the person who knows nothing about the design which has been counterfeited, and who must be indifferent between that and the other. The situation, in order to be objectionable, must be such as appears likely to mislead the ordinary intelligent buyer who has a need to supply and is familiar with the article that he seeks to purchase."

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

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

⁷ Exhibits "C", "C-1" and "C-2" of Opposer.

⁸ G.R. No. 154342, 14 July 2004.

substitution and sale of an inferior and different article as his product.⁹ This Bureau finds that the Respondent-Applicant's mark meets this function.

WHEREFORE, premises considered, the instant opposition is hereby **DISMISSED**. Let the filewrapper of Trademark Application Serial No. 4-2012-740221 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City. **16 FEB 2017**



Atty. GINALYN S. BADIOLA, LL.M.
Adjudication Officer, Bureau of Legal Affairs

⁹ Pribhdas J. Mirpuri vs. Court of Appeals, G.R. No. 114508, 19 November 1999.