INTELLECTUAL PROPERTY
OFFICE OF THE PHILIPPINES

CREATIVE PROGRAMS, INC., Opposer, **-versus-** **LICENSING IP INTERNATIONAL S.A.R.L.,** Respondent- Applicant.	**IPC No. 14-2014-00392** Opposition to: Appln. Serial No. 4-2013-012781 Date Filed: 23 October 2013 **TM: "LIFESTYLE TV"**

x----------x

NOTICE OF DECISION

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GREETINGS:

Please be informed that Decision No. 2017 - 359 dated October 23, 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, October 24, 2017.

Marilyn F. Retutal

MARILYN F. RETUTAL
IPRS IV
Bureau of Legal Affairs

INTELLECTUAL PROPERTY
OFFICE OF THE PHILIPPINES

CREATIVE PROGRAMS, INC., *Opposer,*	**IPC No. 14-2014-00392**
-versus-	**Opposition to:** **Application No. 4-2013-012781** **Date Filed: 23 October 2013** **Trademark: "LIFESTYLE TV"**
LICENSING IP INTERNATIONAL S.A.R.L, *Respondent-Applicant.*	
x----------x	*Decision No. 2017-* 359

DECISION

CREATIVE PROGRAMS, INC.[1] ("Opposer") filed an opposition to Trademark Application Serial No. 4-2013-012781. The application, filed by Licensing IP International S.A.R.L.[2] ("Respondent-Applicant"), covers the mark "LIFESTYLE TV" for use on "*on-line retail store services*" under Class 35, "*broadcasting programs via a global computer network, television broadcasting*" under Class 38 and "*distribution of television programming to cable and satellite television systems, mobile wireless devices, and global computer network, entertainment in the nature of on-going television programs and website, entertainment namely, production of television shows, entertainment services, namely, providing a television program via cable, satellite, mobile wireless devices, and global computer network, production of television programs, providing on-line graphics, videos and films, provision of non-downloadable films and TV programs via a video-on-demand service, provision of over-the-top content via a global computer network, provision of internet protocol and subscription television*" under Class 41 of the International Classification of Goods and Services.[3]

The Opposer alleges:

x x x

"35. The IP Code provides that a mark cannot be registered if it resembles a registered mark with an earlier filing date as to likely deceive or cause confusion. Section 123.1 (d) of the IP Code provides:

xxx

"36. Opposer filed its trademark application for the word mark 'LIFESTYLE NETWORK' on 21 March 2003. The registration for the said mark was granted on 02 October 2006. The opposed application was just filed on 23 October 2013, or more than

[1]With address at 8th Florr, Eugenio Lopez Communications Center, Eugenio Lopez Drive, Quezon City, Philippines.
[2]With address at 32. Boulevard Royal, Luxembourg, L-2449, Luxembuorg.
[3]The 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.

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ten (10) years from the filing of Opposer's trademark application and at least seven (7) years after Opposer's 'LIFESTYLE NETWORK' word mark was registered.

"37. Even as compared to Opposer's mark for  , the opposed application was filed six (6) months after  's filing date of 15 April 2013. In addition, Opposer's  mark was registered two (2) months after Respondent-Applicant filed its applications for the marks "LIFESTYLE TV".

"38. Moreover, at the time Respondent-Applicant filed its applications for the "LIFESTYLE TV" marks, Opposer had already been continuously broadcasting the LIFESTYLE NETWORK channel for over fourteen (14) years.

"39. Being the junior applicant and user of the mark, Respondent-Applicant's Application No. 4-2013-00012781 should not have been allowed considering that both marks cover not only the same International Class 41 but the same 'entertainment' services.

"40. Section 138 of the IP Code provides: '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.'

"41. Opposer was issued Certificate of Registration No. 4-2003-002655 for the word mark 'LIFESTYLE NETWORK' on 02 October 2006, while its Certificate of Registration No. 4-2013-004253 for  was issued on 12 December 2013. Both marks were registered in International Class 41 for 'entertainment' services. These Certificates of Registration are proof of Opposer's exclusive right to use the 'LIFESTYLE NETWORK' marks in Class 41 for 'entertainment' services. Since Respondent-Applicant's mark also covers identical 'entertainment services' in International Class 41, allowing Respondent-Applicant's mark to proceed to registration is violative of Opposer's exclusive right as the prior user and registered owner of the marks which should not be allowed by the Honorable Bureau.

"42. It is of no moment that Respondent-Applicant's trademark application for the mark 'LIFESTYLE TV' also covers International Classes 35 and 38. Being a multi-class application, the registrability of Respondent-Applicant's mark will be determined for each and every class. Should the multi-class application be found to be unregistrable for one class, the whole application fails. As will be discussed below, individual applications for the mark 'LIFESTYLE TV' in Classes 35 and 38 will also fail the test of registrability.

"43. In addition, the Supreme Court has elucidated that the exclusive right to a trademark is a creation of use. Thus, the adoption of a mark per se does not give the applicant the exclusive right to use such mark. The right to exclusive use is based on the reliance of purchasers that the mark indicates the origin or source of the goods and/or services on which it is used. This affords the trader the right to protect the business that he has built and protect the goodwill that he has accumulated from the use of the marks. The fact that Opposer has been continuously using the name and marks 'LIFESTYLE

NETWORK' in the Philippine and abroad to designate its lifestyle channel for the past fourteen (14) years clearly establishes Opposer's exclusive right to use such marks.

"44. Section 123.1 of the IP Code defines a trade name as 'the name or designation identifying or distinguishing an enterprise.' A trade name represents a business and its goodwill as opposed a trademark or service mark which refers to goods and services. The name 'LIFESTYLE NETWORK' has been used by Opposer to distinguish its LIFESTYLE NETWORK enterprise. The channel LIFESTYLE NETWORK is an identifiable business unit of Opposer. It has its own revenue and income distinguishable from other income sources of Opposer like operating and/or providing content to other cable channels. Its expenses are also booked separately and charged against LIFESTYLE NETWORK's own income.

"45. LIFESTYLE NETWORK represents Opposer's cumulative efforts in developing and maintaining the television channel's distinctive brand of programming in the highly competitive television and cable industry.

"46. Under Section 165.2 of the IP Code, tradenames, such as Opposer's 'LIFESTYLE NETWORK,' is protected from junior users even without registration, to wit:

> "a. Notwithstanding any laws or regulations providing for any obligation to register trade names, such names shall be protected, even prior to or without registration, against any unlawful act committed by third parties.
>
> "b. In particular, any subsequent use of the trade name by a third party, whether as a trade name or a mark or collective mark, or any such use of a similar trade name or mark, likely to mislead the public, shall be deemed unlawful.

"47. As such, the Honorable Bureau is mandated by law to protect trade names like Opposer's 'LIFESTYLE NETWORK,' even without registration, from any kind of unauthorized use 'on the broad ground of enforcing justice and protecting one in the fruits of his toil.' On this ground alone, the denial of the subject application is justified.

"48. Respondent-Applicant's 'LIFESTYLE TV' marks should be denied registration since it resembles Opposer's 'LIFESTYLE NETWORK' marks as to likely deceive or cause confusion.

"49. An examination of Opposer's 'LIFESTYLE NETWORK' marks and Respondent-Applicant's 'LIFESTYLE TV' marks shows that all marks predominantly use the word 'LIFESTYLE'. In fact, both Opposer's and Respondent-Applicant's marks begin with the said word. More importantly, Respondent-Applicant has disclaimed the word 'TV' in both of its applications for the marks 'LIFESTYLE TV.'

"50. Based on the foregoing, it is immediately apparent that the word 'LIFESTYLE' is the dominant element of both Opposer's and Respondent-Applicant's marks. Having the same dominant element, 'LIFESTYLE', it is undeniable that Respondent-Applicant's marks are confusingly similar to Opposer's marks which have prior filing and registration dates.

"51. In the case of McDonald's Corporation v. L.C. Big Mak Burger, Inc., 437 SCRA 10 (2004), the Supreme Court ruled that the applicable test to determine likelihood of confusion under the IP Code is the test of dominancy:

x x x

"52. Section 155 of the IP Code clearly provides that trademark infringement is committed by:

x x x

"53. Under the dominancy test, courts give greater weight to the similarity of the appearance of the marks arising from the adoption of the dominant features of the registered mark, disregarding minor differences:

x x x

"54. In the instant case, there is no doubt that the word 'LIFESTYLE' is the dominant element of Opposer's 'LIFESTYLE NETWORK' marks. It should be noted that the use of the word 'NETWORK' in both of Opposer's registrations is disclaimed. In addition, the use of the word 'NETWORK' in the names of television stations/channels is an industry practice as can be seen in the names of popular television channels such 'THE FOOD NETWORK' and 'CARTOON NETWORK.' Attached hereto as Exhibit 'Z' are screenshots of the search results of the IPO online trademark database for trademarks in Class 41 for entertainment services that use the word 'NETWORK.' Thus, the distinguishing element of Opposer's marks is the word 'LIFESTYLE.'

"55. On the other hand, the word 'LIFESTYLE' is likewise the dominant element of Respondent-Applicant's 'LIFESTYLE TV' marks considering that the word 'TV' has been disclaimed for its descriptiveness of Respondent-Applicant's services.

"56. The fact that Opposer incorporated a stylized 'L' design for its logos does not detract from the fact that the word 'LIFESTYLE' is the dominant element of Opposer's 'LIFESTYLE NETWORK' marks. To stress, the mark  also uses the words 'LIFESTYLE NETWORK'. More importantly, the letter 'L' is also the first letter of the word 'LIFESTYLE', the dominant element of Opposer's 'LIFESTYLE NETWORK' marks. Also, the stylized 'L' is always used with the word 'LIFESTYLE NETWORK' for which Opposer has a separate application. Thus, the word 'LIFESTYLE' is the dominant element of Opposer's 'LIFESTYLE NETWORK' marks.

"57. Neither can it be argued that the dominant element of Respondent-Applicant's mark is the device which is a representation of the letters 'L' and 'S' within a circle. It should also be noted that Respondent-Applicant has another application for the mark 'LIFESTYLE TV' under Trademark Application No. 4-2013-00127832 which is composed of identical elements as the subject mark and is likewise being objected to by Opposer in a separate opposition proceeding. The only difference in the representation of Respondent-Applicant's mark is the positioning of the words 'LIFESTYLE TV' and the LS Device. Moreover, Respondent-Applicant's device is composed of the letters 'LS' which is obviously an abbreviation of the word 'LifeStyle.' These facts point to no other conclusion than that the dominant element of Respondent-Applicant's marks is the word 'LIFESTYLE'.

"58. Since the word 'LIFESTYLE' is the dominant element of Opposer's and Respondent-Applicant's marks, the viewing public will focus simply on the word 'LIFESTYLE' when comparing these marks with each other.

"59. At any rate, Respondent-Applicant's use of the word 'TV' highlights the probability of confusion because both words 'NETWORK' and 'TV' are used interchangeably in the business of television and cable programming and broadcasting.

"60. With the use of the same dominant element 'LIFESTYLE' on the same 'entertainment' services in International Class 41, there is a high likelihood that the public will mistake Respondent-Applicant's marks as a related television station or channel of Opposer's LIFESTYLE NETWORK. It may even happen that regular viewers of LIFESTYLE NETWORK will watch Respondent-Applicant's 'LIFESTYLE TV' expecting to see Opposer's popular originally-produced shows. More importantly, considering that LIFESTYLE NETWORK is identified as part of ABS-CBN's group of television and cable channels, there is a great possibility as well that Respondent-Applicant's mark may be mistaken for one of the television channels mistaking Respondent-Applicant's 'LIFESTYLE TV' marks as designating the LIFESTYLE NETWORK.

"61. In a worst case scenario, it is even likely that programs offered under Respondent-Applicant's 'LIFESTYLE TV' marks be mistaken as sourced from Opposer's LIFESTYLE NETWORK which should be emphasized that LIFESTYLE NETWORK is recognized as the premiere Filipino lifestyle cable channel. Thus, viewers have an expectation of the quality of its programming borne from its more than fifteen (15) years of continuous operations in the Philippines and recently even in the United States, Canada, and Australia. This expectation may be tarnished by sub-par television programs or even a different marketing strategy that has distinguished LIFESTYLE NETWORK through the years. Such confusion will surely damage the reputation that LIFESTYLE NETWORK has painstakingly built which the Honorable Bureau should not allow to happen.

"62. The Philippine Supreme Court has consistently held in several cases that a similarity in the dominant features of two (2) marks that are in the same line of business or offer the same products will necessarily lead to a high probability of confusion between the two (2) marks.

"63. As early as 2002, the High Court held in the case of Industrial Refractories Corp. of the Phil. vs. Court of Appeals, et al., 390 SCRA 252 (2002), that confusion is likely to arise where two (2) corporate names contain identical words and both corporations cater to the steel industry. Thus:

x x x

"64. Then in the 2007 case of McDonald's Corp. vs. Macjoy Fastfood Corp., 514 SCRA 95 (2007), the Supreme Court again applied the dominancy test and found that there is confusing similarity between the two (2) trademarks used for fastfood products. Thus:

x x x

"65. In the more recent case of Coffee Partners, Inc. vs. San Francisco Coffee & Roastery, Inc., 614 SCRA 113 (2010), the Supreme Court conclusively held that the

likelihood of confusion is higher in cases where the business of one corporation is the same or substantially the same as that of another corporation. Thus:

x x x

"66. In the case at bar, Respondent-Applicant seeks to enter the business of providing 'entertainment' and 'broadcasting' services which Opposer has been engaged in under the name and marks 'LIFESTYLE NETWORK' for over fourteen (14) years. Respondent-Applicant is entering an industry where competition is fierce to say the least. Being in the same field of service, it is easy for the public to be misled with regard to the origin of a particular content. The public would possibly think that Respondent-Applicant's 'LIFESTYLE TV' channel is the same or is related to Opposer's LIFESTYLE NETWORK.

"67. Based on Section 123.1 (d) of the IP Code, since Opposer's 'LIFESTYLE NETWORK' marks were the first to be filed, used and registered, it has a clear and established right to prevent later applications for marks that use its same dominant element 'LIFESTYLE' for 'entertainment' services in International Class 41 like Respondent-Applicant's 'LIFESTYLE TV' marks.

"68. In addition, Respondent-Applicant's 'LIFESTYLE TV' marks should not be registered even for Classes 35 and 38. Section 123.1 (d) of the IP Code also prohibits the registration of confusingly similar marks when they are used on closely related services or where a confusion of business may arise.

"69. Confusion of services happens when the ordinarily prudent purchaser is induced to avail of a service believing that he is availing of the services of another. Respondent-Applicant's 'LIFESTYLE TV' is sought to be registered for services under Class 38, particularly: 'broadcasting programs via a global computer network, television broadcasting' which is essentially the same services of the 'LIFESTYLE NETWORK' marks since LIFESTYLE NETWORK is a television channel broadcast on pay-per-view television.

x x x

"70. Respondent-Applicant's application for 'on-line retail store services' under Class 35 cannot also be allowed. Jurisprudence is well-settled that the registered owner of a mark enjoys protection in markets that are within the normal potential expansion of its business. Thus, in McDonald's Corporation v. L.C. Big Mak Burger, Inc., supra, the Supreme Court held that:

x x x

"71. Opposer's 'LIFESTYLE NETWORK' marks are currently identified as the premiere lifestyle cable channel of the Philippines. To allow the registration of Respondent-Applicant's 'LIFESTYLE TV' marks for 'online retail store services' under Class 35 will hamper Opposer's normal potential expansion into internet television. It should also be noted that LIFESTYLE NETWORK has a website which is available at www.lifestylenetwork.com.ph and accounts on social networking sites. Allowing Respondent-Applicant's application for Class 35 will confuse the public into thinking that such online stores of Respondent-Applicant are associated with Opposer or sell LIFESTYLE NETWORK merchandise.

"72. Based on the foregoing, the registration of Respondent-Applicant's 'LIFESTYLE TV' marks must be denied since its use of the dominant element

'LIFESTYLE' in the same International Class 41 and in the closely related Classes 35 and 38 opens the door for potential deception on the part of hundreds of thousands of Opposer's subscribers of LIFESTYLE NETWORK in the Philippines as well as throughout the world.

"73. As previously discussed, LIFESTYLE NETWORK' began airing on 11 July 1999. Since the commencement of its operations LIFESTYLE NETWORK has continuously aired under the said name for over fifteen (15) years and has emerged as the Philippines' leading lifestyle cable channel dedicated to bringing the best in Filipino lifestyle, culture, cuisine, fashion and entertainment. Its distinctive brand of programming has led to its success which led to an expansion beyond Philippine shores to cater to the lifestyle, fashion and entertainment needs of the global Filipino. Having established a long track record, Opposer has been identified as the owner of the 'LIFESTYLE NETWORK' marks for International Class 41, particularly for television programming, broadcasting, and entertainment. Hence, Respondent-Applicant's use of the marks 'LIFESTYLE TV' for the same International Class 41 and for identical and similar services for which Opposer is engaged in business is but a sly attempt on the part of Respondent-Applicant to cash on the goodwill established by Opposer.

"74. The 'LIFESTYLE NETWORK' marks represent the cumulative goodwill of Opposer's continuous airing in the highly-competitive Philippine television and cable industry for over fifteen (15) years. Opposer uses the 'LIFESTYLE NETWORK' marks in all its broadcasts to immediately inform its viewers that they are watching the LIFESTYLE NETWORK.

"75. In addition, since its conceptualization and commencement of operation on 11 July 1999, Opposer has

"76. Contributing to Opposer's goodwill in the 'LIFESTYLE NETWORK' marks is the fact that LIFESTYLE NETWORK is available in all major cities and provinces all over the Philippines through numerous regional cable operators. Moreover, LIFESTYLE NETWORK's reputation has developed a global demand which has led to its availability to foreign cable providers based in the United States, Canada, and Australia.

"77. With the emergence of the internet and social media, Opposer has also developed the 'LIFESTYLE NETWORK' brand of programming through its own website, Facebook Fan Page, and Twitter and Instagram accounts.

"78. Considering that Opposer was the first to file, use and register the 'LIFESTYLE NETWORK' marks, Respondent-Applicant's adoption of the identical dominant element 'LIFESTYLE' for its 'LIFESTYLE TV' marks gives doubt as to the good faith of its use and adoption. When a competitor adopts a distinctive or dominant feature of another trademark, the intent to pass to the public his product as that of the other is quite obvious.

"79. Respondent-Applicant's 'LIFESTYLE TV' marks were applied for registration only on 23 October 2013. At that time, Opposer has already been operating LIFETYLE NETWORK as the Philippines' premiere lifestyle cable channel for over fourteen (14) years. When a competitor like Respondent-Applicant, with prior knowledge of the existence of the similar mark, adopts the exact same dominant element 'LIFESTYLE' for identical 'entertainment services' in the same International Class 41, or even related services such as broadcasting programs via a global computer network or

television broadcasting in Class 38, or even on-line retail store services in Class 35 which are the normal potential expansion of business of Opposer, the intent to free ride on Opposer's goodwill as the prior adoptor and registrant of the marks is more than evident. The Supreme Court has repeatedly held that there is intent to deceive prospective purchasers and to take advantage of established goodwill when there is a conspicuous similarity in the features of a senior mark and junior mark, which is seen in the instant case.

"80. The registration of the 'LIFESTYLE TV' marks in the name of Respondent-Applicant would not only violate the intellectual property rights of Opposer but also cause Respondent-Applicant to unfairly benefit from, and piggy back on, the business reputation and goodwill of Opposer over its 'LIFESTYLE NETWORK' marks causing irreparable injury and damage to Opposer.

The Opposer's evidence consists of a printout of Opposer's Articles of Incorporation ; printouts of the pertinent pages of the IPO e-Gazette showing bibliographic details of Trademark Application No. 4-2013-012781; a copy of Order No. 2014-1162 issued by the Bureau; a copy of ABS-CBN's Articles of Incorporation; a copy of ABS-CBN's 2013 Annual Report; printouts of posters advertising the availability of LIFESTYLE NETWORK on Sky Cable and Destiny Cable; the Affidavit of Stephanie Benedito, channel head of "LIFESTYLE NETWORK"; a copy of Certificate of Registration No. 4-2003-002655 for LIFESTYLE NETWORK in the name of Opposer; a copy of Application No. 4-2014-011050 for "LIFESTYLE NETWORK (WORDMARK)" as filed with the IPO; a copy of Certificate of Registration No. 4-2013-004253; a printout of the 10th Anniversary commemorative poster of LIFESTYLE NETWORK using its new slogan "Live Your Passions."; printouts of posters advertising LIFESTYLE NETWORK's programs Listed, Curiosity Got the Chef, FoodPrints and Chefscapades; a copy of news article published on 29 April 2011 featuring the LIFESTYLE NETWORK's coverage of the 2011 Royal Wedding of Prince William and Kate Middleton; a copy of Philippine Star News article published on 22 February 2014 featuring the LIFESTYLE NETWORK's coverage of the 86th Academy Awards; a copy of The Freeman news article published on 14 June 2014 featuring the LIFESTYLE NETWORK's coverage of the 68th Tony Awards; a copy of The Freeman news article published on 26 August 2014 featuring the LIFESTYLE NETWORK's coverage of the 66th Primetime Emmy Awards; printouts of the posters of events of LIFESTYLE NETWORK with these events' themes highlighting or revolving around LIFESTYLE NETWORK's programming blocks; a printout of a poster for LIFESTYLE NETWORK's "Summer Soul 2013"; a copy of Manila Bulletin news article published on 08 September 2013 featuring the LIFESTYLE NETWORK's launch party; a copy of Philippine Star news article published on 31 January 2014 featuring the LIFESTYLE NETWORK's "Heal Our Land" benefit concert; print outs of news articles featuring LIFESTYLE NETWORK's "Around the Philippines in Small Plates"; printouts of LIFESTYLE NETWORK's Facebook Fan Page as of 28 August 2014; printout of LIFESTYLE NETWORK's Twitter Page as of 28 August 2014; printout of LIFESTYLE NETWORK's Instagram Page as of 28 August 2014 and screenshots of the

search results of the IPO online trademark database for trademarks in Class 41 for entertainment services that use the word "NETWORK".[4]

This Bureau issued a Notice to Answer and served a copy thereof upon Respondent-Applicant on 27 October 2014. Respondent-Applicant has until 25 January 2015 to submit its Answer, however, instead of the Answer, Respondent-Applicant filed on 24 February 2015 a Motion with Leave for Extension of Time to file Verified Answer Cum Ad Cautelam, which extension was already beyond the allowable 90-day period under Section 9 (b), Rule 2 of the amended Regulations on Inter Partes Proceedings (promulgated through Office Order No. 99, s. 2011). Pursuant to Sec. 10 of the said rules, the Respondent-Applicant was declared in default for failure to file the Answer on time.

Should the Respondent-Applicant be allowed to register the trademark **LIFESTYLE TV?**

Sec. 123.1 (d) of Republic Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code") provides:

> 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;"

Records show that at the time the Respondent-Applicant filed its trademark application on 23 October 2013, the Opposer has existing trademark registrations for LIFESTYLE NETWORK under Certificate of Registration Nos. 4-2003-002655 issued on 02 October 2006 and 4/2013/004253 issued on 12 December 2013. The registrations cover "entertainment" in Class 41. This Bureau noticed that the services indicated in the Respondent-Applicant's trademark application are similar or closely-related to the Opposer's.

A comparison of the competing marks reproduced below:

[4]Marked as Exhibits "A" to "Z", inclusive.

LIFESTYLE NETWORK

Opposer's trademarks *Respondent-Applicant's mark*

shows that confusion is likely to occur. Even with the presence of a logo and capitalized L and S in the combined words LifeStyle with the TV suffix word, what draws the eyes and the ears with respect to the Respondent-Applicant's mark is the word "LIFESTYLE". The word "LIFESTYLE" is the prominent, in fact, the definitive feature of the Opposer's trademarks LIFESTYLE NETWORK and  . This Bureau noticed that the services covered by the marks are similar or closely-related. Designated as LIFESTYLE TV, Respondent-Applicant's services are "on-line retail store services" under Class 35, "broadcasting programs via a global computer network, television broadcasting" under Class 38 and "distribution of television programming to cable and satellite television systems, mobile wireless devices, and global computer network, entertainment in the nature of on-going television programs and website, entertainment namely, production of television shows, entertainment services, namely, providing a television program via cable, satellite, mobile wireless devices, and global computer network, production of television programs, providing on-line graphics, videos and films, provision of non-downloadable films and TV programs via a video-on-demand service, provision of over-the-top content via a global computer network, provision of internet protocol and subscription television" under Class 41. Opposer's service/s covered under LIFESTYLE NETWORK and  marks are specifically "entertainment" in Class 41.

Confusion is likely in this instance because of the close resemblance between the marks, both contain the dominant word LIFESTYLE, and the services are intimately related. There is no doubt, therefore, that the subject trademark application is covered by the proscription under Sec. 123.1 (d) of the IP Code, with respect to "broadcasting programs via a global computer network, television broadcasting" under Class 38 and "distribution of television programming to cable and satellite television systems, mobile wireless devices, and global computer network, entertainment in the nature of on-going television programs and website, entertainment namely, production of television shows, entertainment services, namely, providing a television program via cable, satellite, mobile wireless devices, and global computer network, production of television programs, providing on-line graphics, videos and films, provision of non-downloadable films and TV programs via a video-on-demand service, provision of over-the-top content via a global computer network, provision of internet protocol and

subscription television" under Class 41, as these services of Respondent-Applicant's are similar to Opposer's entertainment services. As to other services of Respondent-Applicant's namely "on-line retail store services" under Class 35, these are likewise included for they are closely related to Opposer's. Opposer's and the Respondent-Applicant's services are in the category of entertainment, television programs and broadcasting services. The Supreme Court in *ESSO Standard Eastern, Inc. vs. Court of Appeals, et. al,*[5] defined what are essentially closely related goods/services under the trademark law as :

> "Goods are related when they belong to the same class or have the same descriptive properties; when they possess the same physical attributes or essential characteristics with reference to their form, composition, texture or quality. They may also be related because they serve the same purpose or are sold in grocery stores. Thus, biscuits were held related to milk because they are both food products."

As such, there is likelihood that the public will be confused or mistaken into believing that Respondent-Applicant's mark is just a variation of Opposer's trademarks or assume that the mark or brand is sponsored by or is affiliated with the Opposer's.

The confusion or mistake would subsist not only on the purchaser's perception of goods/ services 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]

Public interest therefore requires, that two marks, identical to or closely resembling each other and used on the same and closely related goods or services, but utilized by different proprietors should not be allowed to co-exist. Confusion, mistake, deception, and even fraud, should be prevented. It is emphasized that the function of a trademark is to point out distinctly the origin or ownership of the goods/services 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]

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[5] 201 Phil 803.

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

[7] *Pribhdas J. Mirpuri v. Court of Appeals*, G.R. No. 114508, 19 November 1999, citing *Ethepa v. Director of Patents, supra, Gabriel v. Perez*, 55 SCRA 406 (1974). See also Article 15, par. (1), Art. 16, par. (1), of the Trade Related Aspects of Intellectual Property (TRIPS Agreement).

Succinctly, the field from which a person may select a trademark is practically unlimited. As in all other cases of colorable imitations, the unanswered riddle is why of the millions of terms and combinations of letters and designs available, the Respondent-Applicant had to come up with a mark identical or so closely similar to another's mark if there was no intent to take advantage of the goodwill generated by the other mark.[8]

The intellectual property system was established to recognize creativity and give incentives to innovations. Similarly, the trademark registration system seeks to reward entrepreneurs and individuals who through their own innovations were able to distinguish their goods or services by a visible sign that distinctly points out the origin and ownership of such goods or services.

WHEREFORE, premises considered, the instant Opposition to Trademark Application No. 4-2013-012781 is hereby SUSTAINED. 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, 23 OCT 2017.

Atty. JOSEPHINE C. ALON
Adjudication Officer, Bureau of Legal Affairs

[8] *American Wire & Cable Company v. Director of Patents*, G.R. No. L-26557, 18 Feb. 1970.