



INTELLECTUAL PROPERTY  
OFFICE OF THE PHILIPPINES

**COLLINS INTERNATIONAL TRADING CORP.,**  
*Opposer,*

**-versus-**

**SLIMTEX INDUSTRIES INCORPORATED,**  
*Respondent-Applicant.*

**IPC No. 14-2016-00149**

Opposition to:

Appln. Ser. No. 4-2013-008019

Date Filed: 09 July 2013

**TM: DO-WELL**

X-----X

### NOTICE OF DECISION

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### GREETINGS:

Please be informed that Decision No. 2017 - 411 dated 11 December 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, 11 December 2017.

  
**MARILYN F. RETUTAL**  
IPRS IV

Bureau of Legal Affairs



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Trademark: **"DO-WELL"**

Decision No. 2017- 411

**DECISION**

Collins International Trading Corporation,<sup>1</sup> ("Opposer") filed an opposition to Trademark Application Serial No. 4-2013-008019. The application, filed by Slimtex Industries Incorporated ("Respondent-Applicant")<sup>2</sup>, covers the mark "DO-WELL" for use on *"all purpose chemical solution for cleaning purposes, namely: dish washing liquid, powder detergent, toilet bowl cleaner, liquid detergent, hand sanitizer, bar detergent, glass cleaner, car shampoo, air freshener, bar soap, fabric softener, bleach"* under Class 03 of the International Classification of goods and services<sup>3</sup>.

The Opposer alleges, among others, that the company Automatic Builder's Inc. was first incorporated on 13 September 1977. On 12 August 1980, the said company name was amended to now Opposer Collins International Trading Corporation. It is primarily engaged in the marketing and distribution of consumer durable products. During height of the Asian financial crisis in 1998, it realized that the only viable option to sustain its business is to stimulate local demand for its products. To do this, it introduced a new line of kitchen and home essentials to cater the Philippine market's demand for high quality appliances with reasonable and affordable prices. Thus, the brand "DOWELL" was launched, coined from the words "DO" and "WELL". First, the brand represents its commitment to ensure that by using "DOWELL" appliances, the "consumers will always be DOING their household chores WELL and feeling good and satisfied". Second, the same is a testament to its humble beginning and to remind it to "do well in times of adversity".

According to the Opposer, it filed a trademark application for the "DOWELL" mark for Class 09 as early as 1999. It later on filed application for the same mark to include Classes 07 and 11. It has used the said mark in commerce and has exerted

<sup>1</sup> A corporation duly organized and existing under the laws of the Philippines with business address at 412 Amang Rodriguez Avenue, Manggahan, Pasig City.

<sup>2</sup> With known address at 12 N.S. Amoranto Street, La Loma, Quezon City, Metro Manila.

<sup>3</sup> The Nice Classification is a classification of goods and services for the purpose of registering trademarks 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 Purpose of the Registration of Marks concluded in 1957.



efforts and resources to develop and maintain the goodwill created by the brand. The Opposer thus contends that the Respondent-Applicant's applied mark "DO-WELL" is confusingly similar to its "DOWELL" mark and that the registration of the former will diminish the distinctiveness and dilute the goodwill of its mark. In support of its opposition, the Opposer submitted the following:<sup>4</sup>

1. certified true copies of Certificate of Registration Nos. 4-2003-011741, 4-2012-012207 and 4-2012-006266;
2. pertinent page of the IPO e-Gazette;
3. copy of Order Nos. 2016-583 and 2016-739;
4. certified true copy of its Certificate of Incorporation;
5. copy of its Certificate of Filing of Amended Articles of Incorporation;
6. affidavit of Crisanta L. Ferrer, its Vice-President-Comptroller;
7. copy of the IPO public file index of its application for "DOWELL" under Class 09;
8. samples of sales invoices for "DOWELL" goods;
9. samples of representative advertisements using its mark;
10. copy of the Summary of Ads and Promo Expenses and samples of receipts of its marketing expenditures;
11. copy of the Respondent-Applicant's Response to the Registrability Report Document No. 2014/22724 dated 02 May 2014;
12. copy of its product catalogue and online advertisements;
13. list of "DOWELL" active dealers in the Philippines; and,
14. sales breakdown for "DOWELL" products.

A Notice to Answer was issued and served upon the Respondent-Applicant on 20 June 2016. The Respondent-Applicant, however, did not comply. On 24 April 2017, Order No. 2017-985 was issued declaring the Respondent-Applicant in default and the case submitted for decision.

Records reveal that at the time the Respondent-Applicant filed its application on 09 July 2013, the Opposer has valid and existing registrations of "DOWELL" issued as early as 26 March 2007 under Certificate of Registration No. 4-2013-011741.

To determine whether there is confusing similarity, the competing marks are reproduced as follows:

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<sup>4</sup> Marked as Exhibits "A" to "R", inclusive.



*Opposer's marks:*

**Dowell** **Dowell**  
grandesa

*Respondent-Applicant's mark*

**DO-WELL**

Looking at the Opposer's marks, what is impressed in the eyes and mind is the word "DOWELL". The Respondent-Applicant's mark, on the other hand, similarly appropriates the word "DO-WELL". The only difference visually obvious is the hyphen between the letters "O" and "W" in the applied. Be that as it may, this Adjudication Officer finds that the applied mark may be allowed registration. Section 123.1 (d) of Republic Act No. 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"***(Emphasis supplied.)

Confusion, much more deception, is highly unlikely in this case because of the disparity of the goods involved. The Opposer's "DOWELL" marks cover appliances. It does not have any application and/or registration for the said mark under Class 03. Just because appliances are also found in the household, the same does not automatically imply that these goods are closely related to all-purpose chemical solutions for cleaning purposes, which the Respondent-Applicant uses or intends to use "DO-WELL". Therefore, the consumers of one will not be confused, misled and/or deceived that the Opposer's products are in any way related or connected with the Respondent-Applicant's.

Moreover, it is noteworthy that the Opposer's goods are the types which are thoughtfully chosen by its target consumers. Cast in this particular controversy, the



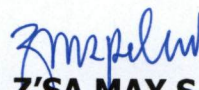
ordinary purchaser is not the "completely unwary consumer" but is the "ordinarily intelligent buyer" considering the type of product involved. The definition laid down in *Dy Buncio v. Tan Tiao Bok* is better suited to the present case. There, the "ordinary purchaser" was defined as one "accustomed to 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 simulation, 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."<sup>5</sup>

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.<sup>6</sup> The Respondent-Applicant's mark sufficiently met this function.

**WHEREFORE**, premises considered, the instant opposition is hereby **DISMISSED**. Let the filewrapper of Trademark Application Serial No. 4-2013-008019 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

**SO ORDERED.**

Taguig City, **11 DEC 2017**

  
**ATTY. Z'SA MAY S. PE LIM**  
Adjudication Officer  
Bureau of Legal Affairs

<sup>5</sup> *Victorio P. Diaz vs. People of the Philippines*, G.R. No. 180677, 18 February 2013.

<sup>6</sup> *Pribhdas J. Mirpuri vs. Court of Appeals*, G.R. No. 114508, 19 November 1999.