



ATLAS BONANZA CHEMICALS,
Opposer,

-versus-

ORYZA SATIVA/RUSHMARC LARIOSA,
Respondent-Applicant.

X-----X

} IPC No. 14-2008-00233
} Opposition to:
} Appln. Serial No. 4-2007-013304
} Date filed: 03 December 2007
} TM: "RESULBAR AND
} LABEL DESIGN"

NOTICE OF DECISION

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GREETINGS:

Please be informed that Decision No. 2012 – 208 dated October 18, 2012 (copy enclosed) was promulgated in the above entitled case.

Taguig City, October 18, 2012.

For the Director:

Edwin A. Dating
Atty. EDWIN DANILO A. DATING
Director III
Bureau of Legal Affairs



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Decision No. 2012- 208

DECISION

ATLAS BONANZA CHEMICALS INC. ("Opposer")¹ filed on 29 September 2008 an opposition to Trademark Application Serial No. 4-2007-013304. The application, filed by RUSHMARC E. LARIOSA² covers the mark "RESULBAR AND LABEL DESIGN" for use on "agricultural fungicide" under Class 05 of the International Classification of goods³.

The Opposer alleges the following:

"1. With all due respect, the Respondent-Applicant's application for the trademark of the brand 'RESULBAR AND LABEL DESIGN' would constitute a serious violation of the rights of the Complainant-Oppositor considering that the above-cited fertilizer brand has been produced and manufactured by the latter since the 1980s. It is the humble contention of the herein complainant-oppositor that they have as much right to have said trademark registered in their name in as much as they (complainant-oppositor) have been the long-time manufacturers or producers of the said product;

"2. To open and enlighten the mind of this Honorable Office, Mr. Rosendo Estoye, Jr. had long been engaged in the business of fertilizers and the like products. He ran the business by himself (Atlas Bonanza Chemicals) and had a secretary and confidant in the person of Mrs. Erlinda Alcontin, who is the aunt of the respondent-applicant. When Mr. Estoye Jr. died, little did the heirs know, that Mrs. Alcontin was engaged in the business that their father was in and was in fact manufacturing products very much the same as those produced by their father. In fact, Mrs. Alcontin together with the respondent-applicant have committed misrepresentations claiming to use the FPA Registration No. 001 and Patent No. 31671 in the marketing of one of their products named 'RESTORER' considering that the same are the exact registration numbers and patent registration issued to Atlas Bonanza Incorporated in the manufacture of their fertilizer also known as 'RESTORER'. This fact had been brought to the attention of the Fertilizer and Pesticide Authority (FPA) by the heirs of the late Rosendo Estoye Jr. A photocopy of the said letter and the product label containing the questioned FPA Registration and Patent Nos. are hereto attached as Annexes 'A' and 'B' respectively;

"3. In fact, in a letter sent to Atty. William Boco, counsel for the respondent-applicant dated 20 May 2008 (hereto attached as Annex 'C'), the Fertilizer and Pesticide Authority refused to accept the registration of the brand names 'Restorer Mango Flower Inducer' and 'Restorer Foliar' for the reason that such names are already registered under Atlas Bonanza Chemicals Inc. The foregoing clearly shows the propensity of the respondent-applicant to use and copy the

¹Opposition filed by Maria Lope Estoye Layco, of Nonoc Homes, Tabunok, Talisay, Cebu claiming to be a daughter and one of the children of Atlas Bonanza Chemicals Proprietor Rosendo Estoye, Jr.

²Proprietor of Oriza Sativa, with address at 622 Dumlog, Talisay City, Cebu.

³The 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.

products then manufactured by Atlas Bonanza Chemicals including the instant product being opposed;

"4. As earlier stated, the complainant-oppositor has discovered that one of the proprietors of Oryza-Sativa enterprises, Ms. Erlinda Alcontin was the former employee and confidant of the late Rosendo Romero Estoye Jr. the owner of ATLASBONANZA CHEMICALS INC. and that unknown to the company Ms. Alcontin has been discreetly operating a competing business against ATLAS BONANZA CHEMICALS INC. through her nephew Rushmarc E. Lariosa by producing the same products such as 'Restorer Foliar Fertilizer' 'Resulbar Fungicide' and 'Rebloom Flower Inducer'. The same products which ATLAS BONANZA CHEMICALS INC. has been manufacturing and distributing for the past 20 years. She has even surreptitiously attempted to change the name of the company Atlas Bonanza Chemicals to Oryza Sativa when in fact the company is still very much in existence and will not cease to exist till 2009 per DTI registration. Photocopies of her letter and the DTI registration are hereto attached as Annexes 'D' and 'E' respectively.

"5. As pointed out by paragraph a of Sec. 71 of the Intellectual Property Code: x x x

Corollary to that, Section 71.2 of the same Code also provides that:
x x x

"6. In the present case, it is undeniable that the products by which the respondent-applicant seeks for approval, is an infringement of the products of ATLAS BONANZA CHEMICALS INC., a product that the latter has been producing ever since, hence it cannot be a novel item. What is apparent is that even records of the Fertilizer and Pesticide Authority acknowledge that respondent-applicant's products was denied registration as the same products are similar, if not a direct copy of the products, the complainant-oppositor.

"7. Of course, in the natural course of things, the only difference the two products have are in the appearance of the packaging and the fonts of the letters, an irregularity which is not substantial to warrant a difference in the products both parties are producing.

"8. It may not amiss to stress that, no amount of denial on the part Ms. Alcontin that her company's knowledge in the manufacturing of fertilizers was obtained through her constant familiarity with the business while she was connected with ATLAS BONANZA CHEMICALS INC. for it, would be highly impossible for Ms. Alcontin to have secured the information without her dipping her hands in company's confidential information.

"9. Moreover, it cannot be denied that she had access to the manufacturing process as she is the chief confidant of the late complainant-appellee Rosendo Romero Estoye Jr. She even claimed that she was the Operations Manager of Atlas Bonanza Chemicals Inc;

"10. It would be highly improbable for Oryza Sativa Enterprises to develop products like 'Resulbar' which make or component has a close if not perfect resemblance or similarity to the products produced by the complainant-oppositor if the proprietors were not privies to the company of the complainant-oppositor.

"11. In sum, it is respectfully submitted that the application of the respondent-applicant be denied as prudence dictates that no one must unjustly enrich himself at the expense of another. It is worthy of note that the complainant-oppositor has pending application for approval of their trademark for the same product, Resulbar Serial No. 04-2008-011815."

The Respondent filed an Answer on 15 December 2008, alleging among other things, the following:

"12. the real issue is: can 'Resultbar', be applied for trademark registration by herein respondent-applicant? To which, it strongly believes so:

- a. Atlas Bonanza Chemicals is a sole proprietorship and, as such, its existence is as good as the life of its proprietor; It is co-terminus with that of its sole proprietor; Thus, for all intents and purposes, upon the death of Rosendo Estoye, Jr, Atlas Bonanza Chemicals ceased to exist;
- b. An action, such as this instant opposition, in the name of Atlas Bonanza Chemicals cannot be instituted other than by its proprietor Rosendo Estoye, Jr., and after his death, by no one else even by his alleged heirs;
- c. It is even safe to say, that if ever there is anyone who has a better right to file this case, it is no other than Erlinda Alcontin, after all, she was as much a part of Atlas Bonanza Chemicals as Rosendo Estoye, Jr. was;
- d. Maria Lope Estoye Layco, who brought this instant opposition has, therefore, no legal personality whatsoever to file the same in behalf of Atlas Bonanza Chemicals and, therefore, this opposition must be denied;
- e. On the other hand, there is no record attached to the opposition that would show that 'Resultbar' have been issued a Certificate of Registration by the then Philippine Patent Office; but just like the other two products of Atlas Bonanza Chemicals 'Restorer' and 'Rebloom' where there is showing that sometime in the late seventies these trademarks were registered, respondent-applicant believes 'Resultbar' too was issued registration;
- f. Early on, Rushmarc E. Lariosa checked with the Intellectual Property Office on these trademarks and found out that 'Restorer' was a registered trademark back in March 22, 1983 but which registration was cancelled on March 6, 1998, copy of its cancellation is hereto attached as Annex '1'; As to 'Resultbar' and 'Rebloom', the IPO records were not yet available or still in the process of being updated so that, no such information was secured;
- g. Be that, as it may, opposer has not attached to its opposition proof of its registration. But in most likelihood, akin to the information gathered by Rushmarc Lariosa, registration of 'Resultbar' must in all likelihood already been cancelled, much in the same was as 'Restorer';
- h. Its cancellation is because of the failure of Rosendo Estoye, Jr., to comply requirement set forth by Sec. 12 of RA 166; Considering that this is just a simple compliance of submitting an affidavit of use or non-use at specified periods, the failure of Rosendo Estoye, Jr. showed his complete disregard to follow government directives, unless pressed against the wall, which is not surprising as it was typical of him to act as he did;
- i. Without further need to emphasize that rights to label, tradenames, trademarks and patents cannot be claimed by anyone for posterity as these prescribes, among others, either by expiration of the period given and by inaction or non-compliance of registrant to requirements asked by the Intellectual Property Office, in which case, its registration is cancelled;
- j. Such inaction by Rosendo Estoye, Jr. is clearly a case of 'abandonment' of its right over these trademarks and these becomes public domain that can be applied for registration by others such as herein respondent-applicant;
- k. Section 9-A of Trade Mark Law provides fro the application of equitable principles of laches, estoppel and acquiescence maybe applied in appropriate cases such as in this instant; It says: *'in opposition proceedings and all other inter partes proceedings in the Patent Office under this Act, equitable principles of laches, estoppel and acquiescence where applicable, may be considered'*;
- l. In the case of Pagasa Industrial Corporation vs. CA, et. al, the Supreme Court states *'presumption of neglect already amounting to abandonment of a right xx such as inaction on the part of respondent entitles petitioner to the equitable principle of lache'*;
- m. Finally, on another point, after the Philippine Patent Office has cancelled the registration of 'Resultbar' and similar trademark registered in the name of Rosendo Estoye, Jr., he no longer was the owner of these trademarks as these has become again part of public domain;

- n. Thus, even during the time of Rosendo Estoye, Jr., he cannot rightfully give or bequeath these trademarks to anyone, neither can anyone receive or accept the same for him; Verily, no trademark was given by him nor, received by any of his heirs;
- o. And, being part of the public domain, such abandoned trademark can be the subject of an application for registration by herein respondent-applicant, who in this case, has applied for its registration well ahead of opposer; In fact, it is only herein respondent-applicant who has filed with the Intellectual Property Office for the registration of "Resultbar", to whom, the first to apply principle favors him;"

The preliminary conference was scheduled, conducted and terminated on 21 January 2009. Only the Opposer, represented by counsel, appeared. But on 23 January 2009, this Bureau received from the Respondent-Applicant an "Urgent Motion for Resetting" sent by the Respondent-Applicant requesting that the preliminary conference be held instead in March 2009. The Hearing Officer thus issued on 03 February 2009 Order No. 2009-294 the dispositive portion of which reads:

"WHEREFORE, premises considered, Respondent-Applicant is hereby deemed to have waived the right to submit position paper and draft decision. Consequently, Opposer is hereby given a non extendible period of ten (10) days from receipt of this Order within which to file its position paper and/or draft decision. After which, the case shall be deemed submitted for decision."

The Respondent-Applicant filed on 24 February 2009 a "Motion for Reconsideration" while the Opposer filed its position paper on 06 March 2009.

After a judicious evaluation of the records and evidence, this Bureau finds no cogent reason to sustain the instant opposition.

The Opposer failed to substantiate its allegation that it has been producing products bearing the mark **RESULBAR AND LABEL DESIGN** since the 1980s. It must be emphasized that the issue to be resolved in an opposition case grounded on conflicting claims of ownership of the subject mark is who between the disputants is the creator, originator and first user of the mark; and not as to who is the prior manufacturer or dealer of the goods.

A scrutiny of the documents submitted by the Opposer shows that only two of these mention "RESULBAR", specifically the purported "License" from the Fertilizer and Pesticide Authority and a "sample product label". Like the other documents, the alleged license is just a photocopy. Moreover, this piece of paper and the label do not prove or establish that the Opposer is the owner of the mark **RESULBAR**. The Opposer according to these papers is only a "DISTRIBUTOR".

The Opposer in its position paper argued that **RESULBAR AND LABEL DESIGN** is descriptive and therefore cannot be registered. It cited paragraphs (h) and (j) of the IP Code which provides that a mark cannot be registered if it:

- (h) Consists exclusively of signs that are generic for the goods or services that they seek to identify;
- (j) Consists exclusively of signs or of indications that may serve in trade to designate the kind, quality, quantity, intended purpose, value, geographical origin, time or production of the goods or rendering of the services, or other characteristics of the goods or services.

While this argument is obviously an afterthought on the part of the Opposer, the issue not having been raised in the Opposition, this Bureau deems in the interest of justice to resolve the same.

In this regard, it is true that in relation to the goods or products indicated in the Respondent-Applicant's trademark application, the words "*fungicide*", "*bactericide*", "*your pesticide for: rice, corn, sugarcane, vegetables, fruits, flowers and many others*", along with the representation of plants and different kinds of fruits and vegetables, are generic or descriptive. In fact, the Respondent-Applicant made the necessary disclaimers⁴. However, the word **RESULBAR** appears to be not generic or descriptive. The mark applied for registration by the Respondent-Applicant therefore is not composed exclusively of generic or descriptive words or signs.

Succinctly the function of a trademark is to point out distinctly the origin or ownership of the goods to which it is affixed; to secure 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 product⁵. This Bureau finds and concludes that the mark applied for registration by the Respondent-Applicant sufficiently meets this function.

WHEREFORE, premises considered, the instant opposition is hereby **DISMISSED**. Let the filewrapper of Trademark Application Serial No. 4-2007-013304 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City. 18 October 2012.


ATTY. NATHANIEL S. AREVALO
Director IV, Bureau of Legal Affairs

⁴See filewrapper of Trademark Application Serial No. 4-2007-013304.
⁵*Pribhdas J. Mirpuri v. Court of Appeals*, G.R. No. 114508, 19 Nov. 1999.