

[G.R. No. 248021. September 30, 2020.]

**PROSEL PHARMACEUTICALS & DISTRIBUTORS, INC.,** *petitioner*, **vs. TYNOR DRUG HOUSE, INC.,** *respondent*.

## DECISION

**CARANDANG, Jp:**

This is a Petition for Review on *Certiorari* **1** under Rule 45 of the [Rules of Court](#) assailing the Decision **2** dated January 28, 2019 and the Resolution **3** dated June 21, 2019 of the Court of Appeals (CA) in CA-G.R. CV No. 102569. The Decision and the Resolution enjoined Prosel Pharmaceuticals & Distributors, Inc. (petitioner) from using CEEGEEFER as a brand name as it was a violation of Tynor Drug House, Inc.'s (respondent) CHERIFER + Logo trademark.

Petitioner alleged that CEEGEEFER was an improved version of its previous product, Selvon C — a product that was granted a Bureau of Food and Drugs (BFAD) Certificate of Product Registration on December 3, 1999. **4** Petitioner claimed that since it was a customary practice in the pharmaceutical industry for companies to use the generic names of products as basis for creating brand names, it phonetically derived CEEGEEFER from one of its ingredients, Chlorella **5** Growth Factor (CGF). Being an improved version of Selvon-C, the packaging used for CEEGEEFER was the same as Selvon C's in order to expedite the approval of its application for registration of CEEGEEFER with BFAD. **6**

However, petitioner received respondent's Demand Letter **7** dated March 28, 2007 requiring petitioner to: (1) stop distributing CEEGEEFER products; (2) recall CEEGEEFER products that were already distributed; and (3) execute an undertaking to stop using or imitating respondent's trademark and design. The Demand Letter claimed that CEEGEEFER was confusingly similar to respondent's multivitamin product, CHERIFER. **8**

Although petitioner denied any confusing similarity between the two products in a Letter-Reply **9** dated April 13, 2007, petitioner still undertook to withdraw all of CEEGEEFER's promotional materials that bore any resemblance to the trade box of CHERIFER. Petitioner then issued an internal Memorandum **10** dated April 12, 2007 instructing its field personnel and medical representatives to withdraw all promotional materials that resembled CHERIFER's trade box. As to products already in possession of its exclusive distributor, Metro Drug, Inc. (MDI), petitioner claimed that they would need time to coordinate with MDI for MDI to remove its CEEGEEFER stocks. Petitioner then submitted a sample of its new trade box design to BFAD for approval. **11**

For its part, respondent claimed that it formulated CHERIFER in 1993 and incorporated its mark to its packages since March 10, 1993. On July 3, 2002, Respondent deposited a copy of the packaging material with the Philippine National Library, which resulted in the issuance of a Certificate of Copyright Registration and Deposit **12** on July 25, 2002. On July 8, 2004, respondent's Certificate of Registration No. 4-2002-004546 **13** was registered and its trademark described as follows:

CHERIFER + LOGO

(THE MARK CONSISTS OF THE WORD CHERIFER WITH A LOGO OF A YOUNG BOY DUNKING AND TOUCHING THE BASKETBALL GOAL. THE YOUNG BOY IS WEARING A RED BASKETBALL UNIFORM WITH A WHITE STRIPE, AND RUBBER SHOES. THE BASKETBALL SHIRT HAS A "C" PRINT ON IT IN BASKETBALL SHIRT HAS A "C" PRINT ON

IT IN BLUE INK. ABOVE THE HEAD IS A SLOGAN THAT READS "HEIGHT IS MIGHT" PRINTED ON BLUE & PINK ARK. BEHIND THE BOY IS A GREEN TRIANGULAR BACKGROUND WITH SHADOW)

In 2007, respondent received reports that petitioner is promoting and selling CEEGEEFER, whose logo and packaging is similar, if not identical, to respondent's registered trademark and copyrighted packaging. Thus, it sent petitioner a demand letter directing petitioner to stop distributing its products using respondent's trademark and design. **14**

For failure to cause the immediate recall of petitioner's products from the market, respondent filed a Complaint **15** for trademark and copyright infringement, unfair competition, and damages, with applications for temporary restraining order and/or a writ of preliminary injunction with the Regional Trial Court (RTC). Respondent prayed for the seizure of petitioner's products, a minimum of P500,000.00 each as nominal damages, exemplary damages, and attorney's fees, and P100,000.00 as litigation expenses. A Writ of Preliminary Injunction **16** was issued on February 21, 2008. **17**

### **Ruling of the Regional Trial Court**

In a Decision **18** dated December 23, 2013, the RTC dismissed respondent's complaint and lifted the Writ of Preliminary Injunction. Respondent's preliminary injunction bond was awarded to petitioner as nominal damages to vindicate petitioner's rights. **19**

The RTC rejected respondent's claim that CEEGEEFER and CHERIFER are confusingly similar, following the principle of *idem sonans*. By reiterating this Court's ruling that *idem sonans* is applicable when "the attentive ear finds difficulty in distinguishing [two names] when pronounced," **20** the RTC held that the parties' consumers are attentive enough to distinguish between CEEGEEFER and CHERIFER. The RTC refused to apply this Court's ruling in the case of *Del Monte Corporation v. Court of Appeals* **21** because this Court's pronouncement in the case of *Asia Brewery, Inc. v. Court of Appeals* **22** warned against the application of *Del Monte* to all kinds of products. In *Asia Brewery, Inc.*, trial courts were directed to consider several other factors like the consumer's age, training, and education; the nature and cost of the article; and the conditions under which a product is purchased in determining infringement and unfair competition. **23**

The RTC ruled that there was no copyright infringement as the overall appearances of the subject products do not substantially look alike. The RTC noted that the colors orange and yellow (which CEEGEEFER and CHERIFER use, respectively) are easily associated with citrus, a source of vitamin C. Citing *Alhambra Cigar v. Mojica*, **24** the trial court ruled that respondent failed to prove that petitioner tried to pass off CEEGEEFER as CHERIFER especially since CEEGEEFER was designed from its predecessor product, Selvon C — a product that has been used since 1999. **25**

Aggrieved, respondent filed an appeal under Rule 41 of the [Rules of Court](#) with the CA. **26**

### **Ruling of the Court of Appeals**

In its Decision **27** dated January 29, 2018, the CA reversed the RTC and found petitioner liable for trademark infringement. On the other hand, petitioner was not found liable for copyright infringement. The CA then ordered petitioner to pay respondent P500,000.00 as nominal damages and P100,000.00 as attorney's fees. Petitioner was also enjoined from using CEEGEEFER as a brand name and from using the CHERIFER + Logo trademark in any of petitioner's goods. **28**

The CA deduced that petitioner knew CEEGEEFER had some colorable imitation of CHERIFER because petitioner admitted the similarity between the two brands in its letter-reply. **29** The CA pointed out that petitioner could not explain why the suffix "fer" in

CEEGEEFER was used, whereas the same suffix in CHERIFER referred to its original ingredient, *ferrous sulfate*. The packaging of both products were also found to be similar, particularly on the following points: (1) color combination used; (2) picture of a young boy doing a basketball dunk; (3) logo of an arc with the slogan "Height is Might" for CHERIFER and "Healthy and Mighty" for CEEGEEFER; and (4) use of ribbon in the packaging. **30**

The CA ruled that there was no unfair competition because petitioner indicated itself as the manufacturer of CEEGEEFER. Hence, there was no attempt to deceive the public that the goods originated from respondent. **31**

On respondent's claim for damages, the appellate court awarded P500,000.00 as nominal damages following Article 2222 **32** of the [Civil Code](#). Attorney's fees were also awarded because respondent hired lawyers and incurred expenses to protect its right. The CA rejected respondent's claims for exemplary damages due to respondent's failure to prove its entitlement thereto. **33**

Petitioner filed a Motion for Reconsideration **34** but was denied by the CA in its Resolution **35** dated June 21, 2019. This prompted petitioner to file the instant Petition for Review on *Certiorari* **36** under Rule 45 of the [Rules of Court](#).

In the instant petition, petitioner insists that there is no confusing similarity between CHERIFER and CEEGEEFER's sound and spelling. It claims that respondent's failure to oppose the CEEGEEFER mark when it was first offered in the market bolsters respondent's allegation that there is no confusing similarity between the two. The *idem sonans* rule cannot apply because the only similarity between both brands is the suffix "*fer*." **37** Petitioner reiterated that since CEEGEEFER was phonetically coined from the product's Chlorella Growth Factor, it used "*fer*" as a slang for the last word "*factor*." Thus, it denied respondent's claim that petitioner also used the same suffix to imitate respondent (with respondent explaining the use of "*fer*" to describe *ferrous sulfate*, a component present in earlier formulations of CHERIFER). **38**

Petitioner also differentiates the two products. According to petitioner, the products are not used in the sale of the same goods: CEEGEEFER is a drug with vitamin C and CGF as its components while CHERIFER is only a multivitamin without a vitamin C component. **39**

Petitioner also insists that CEEGEEFER and CHERIFER are still not confusingly similar even if the holistic test was used because the logos are different. While both logos show a boy wearing a basketball jersey and cap doing a slam dunk, petitioner enumerates the variances between the two logos, *viz.*:

Features of logo	CEEGEEFER	CHERIFER
Boy's built	Fit	Heavy
Boy's face	Chiseled with a genuine smile	Round with a fake smile
Boy's action	Reverse slam dunk	Ordinary slam dunk with feet curled up together
Boy's baseball cap	Strapback cap with hook & loop fastener in reverse	Fitted cap in reverse
Boy's hair	Long with bangs reaching the nose	Cannot be discerned/hidden in the baseball cap

Boy's socks	Low-cut and loosely fitted	Mid-cut and fitted
Slogan	"Healthy & Mighty" referring to the effect of taking the product	"Height is Might" also referring to the effect of taking the product <b>40</b>

Petitioner noted other differences between CEEGEEFER and CHERIFER — claiming CEEGEEFER to be more expensive because of its vitamin C component. Anent the target market, petitioner avers that the purchaser will not be confused between the two products because it is the mother who buys them and not the child who will be drinking it. **41**

In its Comment **42** dated November 29, 2019, respondent sought to have the instant petition dismissed because of petitioner's defective Verification and Certification against Forum Shopping — having been executed a day earlier than the instant petition (dated August 16, 2019), or on August 15, 2019. **43**

On the merits, respondent avers that the CA's ruling is consistent with the facts and the law. Respondent echoes the appellate court's finding of a colorable imitation between CEEGEEFER and CHERIFER and explains that not all details have to be copied to constitute a colorable imitation. **44** Respondent claims that the differences enumerated by petitioner between CHERIFER and CEEGEEFER's logos are minute and negligible, and thus, do not change the fact that the two are similar to each other. Lastly, respondent denies petitioner's claim that CEEGEEFER is descriptive of one of its components, CGF. **45**

### Ruling of the Court

The instant petition must be denied. Petitioner's CEEGEEFER mark and packaging is a colorable imitation of respondent's CHERIFER + Logo.

On the use of the words CHERIFER and CEEGEEFER, this Court subscribes to the CA's view that both names are confusingly similar in sound and spelling. This Court has already found other words less similar to each other to still be confusingly similar in sound. In the case of *Mcdonald's Corp. v. L.C. Big Mak Burger, Inc.*, **46** We said:

The following random list of confusingly *similar sounds* in the matter of trademarks, culled from Nims, Unfair Competition and Trade Marks, 1947, Vol. 1, will reinforce our view that "**SALONPAS**" and "**LIONPAS**" are confusingly similar in sound: "**Gold Dust**" and "**Gold Drop**"; "**Jantzen**" and "**Jass-Sea**"; "**Silver Flash**" and "**Supper Flash**"; "**Cascarete**" and "**Celborite**"; "**Celluloid**" and "**Cellonite**"; "**Chartreuse**" and "**Charreurs**"; "**Cutex**" and "**Cuticlean**"; "**Hebe**" and "**Meje**"; "**Kotex**" and "**Femetex**"; "**Zuso**" and "**Hoo Hoo**." Leon Amdur, in his book "Trade-Mark Law and Practice," pp. 419-421, cities, as coming within the purview of the *idem sonans* rule, "**Yusea**" and "**U-C-A**," "**Steinway Pianos**" and "**Steinberg Pianos**," and "**Seven-Up**" and "**Lemon-Up**." In *Co Tiong vs. Director of Patents*, this Court unequivocally said that "**Celdura**" and "**Cordura**" are confusingly similar in sound; this Court held in *Sapolin Co. vs. Balmaceda*, 67 Phil. 795 that the name "**Lusolin**" is an infringement of the trademark "**Sapolin**," as the sound of the two names is almost the same. **47** (Emphasis supplied)

As regards the logos used by the parties, the same are strikingly similar. A side by side comparison of the pictures in CHERIFER and CEEGEEFER show the right profile/side of a boy wearing a basketball jersey and a baseball cap shooting a basketball

on a hoop with their knees slightly bent and with the words that start with the letters "H" and "M" on top in an arc that both have a different colored line in the middle. Note, too, that both packages use orange and yellow.



Petitioner insists on minor differences (such as how the characters in both products are of different body types or that the baseball caps were worn differently) to prove that there is no trademark infringement.

This Court does not agree.

In the case of *ABS-CBN Publishing, Inc. v. Director of Bureau of Trademarks*, <sup>48</sup> this Court acknowledged how "in committing the infringing act, the infringer merely introduces negligible changes in an already registered mark, and then banks on these slight differences to state that there was no identity or confusing similarity, which would result in no infringement." <sup>49</sup> Given the respective packages of CHERIFER and CEEGEEFER shown above, it is indubitable that the two products are strikingly similar.

Note that petitioner admitted a resemblance between CEEGEEFER and CHERIFER. In its letter-reply, petitioner stated that "[e]ffective April 12, 2007, Prosel will immediately withdraw all promotional materials of CEEGEEFER **that bears any resemblance to the trade box of CHERIFER**. Prosel will stop using the logo in our Physician's Samples by immediately instructing Prosel people in field to remove the boxes before giving them to doctors." <sup>50</sup> Petitioner is thus estopped from taking a different stance.

Petitioner's registration of CEEGEEFER as a drug and not just a vitamin food supplement does not exculpate it from liability. CEEGEEFER's classification as a drug is immaterial. Since the case involves a violation of a trademark, the gravamen of the offense is a likelihood of confusion between the two marks. <sup>51</sup> Both products are over-the-counter multivitamins that do not require a medical prescription. As such, CEEGEEFER and CHERIFER may be easily obtained without the advice of another person. Therefore, the parties' target market may be confused, mistaken, or deceived into thinking that CEEGEEFER is the same as CHERIFER. Note, too, that different drug stores even displayed and sold CEEGEEFER and CHERIFER products beside each other.



Given the phonetic and visual similarities between the two products (*i.e.*, how the product names are spelled, the sound of both product names, and the colors and shapes combination of the products' respective packaging), it is obvious that petitioner attempted to pass CEEGEEFER as a colorable imitation of CHERIFER.

Petitioner alleged that CEEGEEFER was a result of an enhancement of its previous product, Selvon C — particularly that CEEGEEFER is a drug with the vitamins and minerals of Selvon C plus CGF. It adopted the name CEEGEEFER because it describes its CGF component and it used the same packaging as Selvon C.

Again, the determining point in trademark infringement is a likelihood of confusion. The fact that CEEGEEFER is *idem sonans* for CHERIFER is enough to violate respondent's right to protect its trademark, CHERIFER. Surprisingly, petitioner never showed proof of CEEGEEFER's trademark registration. Even a quick search on the Intellectual Property Office's (IPO) website reveals that petitioner's application for CEEGEEFER's registration was abandoned with finality. **52** A subsequent trademark registration for CEEGEEFER was made by a certain Korn C. Philippines, Inc. only on August 28, 2014. Meanwhile, respondent secured a trademark registration on CHERIFER as early as July 8, 2004. At that time, even petitioner's trademark registration for Selvon-C (CEEGEEFER's alleged predecessor product) was not yet obtained — with Selvon-C's trademark only registered on May 21, 2005. The only Certificate of Registration petitioner had over CEEGEEFER was one issued by BFAD. Under Section 3 of [Republic Act No. 9711](#), **53** BFAD (now renamed to the Food and Drug Administration) is tasked to carry out the State's policy of protecting and promoting the Filipino people's right to health by establishing and maintaining an effective health products regulatory system. It has no authority over trademark infringement.

This Court is aware that countless products circulate around the market today which may be viewed as strikingly similar and may bring forth a likelihood of confusion to its target market. With increasing product and service competition, the determination of a likelihood of confusion becomes more complex. While jurisprudence has developed the Dominancy Test and Holistic/Totality Test to determine whether there is a likelihood of confusion between competing marks, the application of such tests is normally left to the subjective judgment of the IPO or the courts. **54** Albeit this Court recognizes the expertise of the IPO on matters involving trademark and copyright infringement, the fact remains that the products are aimed at a particular target market outside of the individual personalities of those in the IPO and the courts. Therefore, there may be underlying factors in a mark that are discernible by a product's target market which the IPO or the courts might not observe. Conversely, there may be factors which the IPO or the courts may deem considerable but are immaterial to the target market. Thus, the *ponencia* adopts the observations of Justice Leonen in [Asia Pacific Resources International Holdings, Ltd. v. Paperone, Inc.](#) **55** that there should be "objective, scientific, and economic standards to determine whether goods or services offered by two parties are so related that there is a likelihood of confusion." **56**

Notwithstanding such standards, CEEGEEFER's use of its brand name and packaging undeniably creates a likelihood of confusion with CHERIFER. The similarities are apparent: (1) CHERIFER and CEEGEEFER are phonetically alike; (2) the pictures on CHERIFER and CEEGEEFER's packages are practically indistinguishable — both depicting the right profile or side of a boy wearing a basketball jersey and a baseball cap shooting a basketball on a hoop with their knees slightly bent; (3) both phrases on top of CHERIFER and CEEGEEFER's picture start with the letters "H" and "M" in an arc that both have a different colored line in the middle; (4) the packages have a drawing of a ribbon; and (5) the packages use the colors orange and yellow. More importantly, CHERIFER and CEEGEEFER are both over-the-counter vitamin supplements promoting growth for children by including the CGF component. The addition of its star ingredient, CGF, is what separates CEEGEEFER and CHERIFER from other children's vitamin

supplements sold in the market. The reason for CHERIFER's and CEEGEEFER's focus on a child's growth is simple: it addresses one of a parent's main concerns for their early childhood and pre-adolescent children. With CHERIFER and CEEGEEFER targeting the same relevant market (*i.e.*, over-the-counter children's growth vitamin supplement) and given their glaring similarities, CHERIFER and CEEGEEFER are reasonably interchangeable and are almost perfect substitutes of each other. Note, too, that since CHERIFER and CEEGEEFER are over-the-counter products (and were, in fact even sold side-by-side in some establishments), the propensity to mistakenly purchase one for the other is high.

Anent the award of nominal damages, the same should be reduced. Following this Court's ruling in the case of *San Miguel Pure Foods Company, Inc. v. Foodsphere, Inc.*, **57** We find the award of nominal damages in the amount of P100,000.00 more reasonable.

We affirm the award of attorney's fees in the amount of P100,000.00 as respondent proved that "it hired lawyers and incurred expenses to protect its right." **58** Although respondent claimed that it incurred P823,603.20 as attorney's fees and P135,926.67 as litigation expenses, We find the CA's reduced award of attorney's fees at P100,000.00 equitable.

The total judgment awards in favor of respondent shall earn a 6% annual legal interest from the time of the finality of this Resolution until the same is fully paid in accordance with this Court's ruling in *Nacar v. Gallery Frames*. **59**

**WHEREFORE**, the instant petition is **DENIED**. The Decision dated January 28, 2019 and the Resolution dated June 21, 2019 of the Court of Appeals in CA-G.R. CV No. 102569 are **AFFIRMED with MODIFICATION** in that the award of nominal damages is **REDUCED** to P100,000.00.

The awards of P100,000.00 nominal damages and P100,000.00 attorney's fees shall earn a six percent (6%) annual interest from the finality of this Decision until fully paid.

**SO ORDERED.**

*Gesmundo, Lazaro-Javier\** and *Gaerlan, JJ.*, concur.

*Leonen, J.*, see dissenting opinion.

**Separate Opinions**

**LEONEN, J., dissenting:**

With due respect to the analysis in the *ponencia*, the Court of Appeals committed a reversible error when it enjoined petitioner from using the brand name "CEEGEEFER" for allegedly infringing upon respondent's registered trademark and awarding respondent damages. **1**

Section 155 of Republic Act No. 8293, otherwise known as the Philippine Intellectual Property Code, states what constitutes trademark infringement:

SECTION 155. *Remedies; Infringement.* — Any person who shall, without the consent of the owner of the registered mark:

155.1. Use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark or the same container or a dominant feature thereof in connection with the sale, offering for sale, distribution, advertising of any goods or services including other preparatory steps necessary to carry out the sale of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; or

155.2. Reproduce, counterfeit, copy or colorably imitate a registered mark or a dominant feature thereof and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive, shall be liable in a civil action for infringement by the registrant for the remedies hereinafter set forth: Provided, That the infringement takes place at the moment any of the acts stated in Subsection 155.1 or this subsection are committed regardless of whether there is actual sale of goods or services using the infringing material.

For there to be a finding of trademark infringement, the following elements must concur: (1) the plaintiff has a valid mark; (2) the plaintiff is the owner of the mark; and (3) the alleged infringer's use of the mark, or its colorable imitation, results in a likelihood of confusion. **2**

A "mark" is defined in the Intellectual Property Code as:

SECTION 121. *Definitions.* — As used in Part III, the following terms have the following meanings:

121.1. "Mark" means any visible sign capable of distinguishing the goods (trademark) or services (service mark) of an enterprise and shall include a stamped or marked container of goods[.]

Subject to the limitations on registrability enumerated in Section 123, **3** the rights to any visible sign capable of distinguishing a particular good or service may be acquired by means of registration **4** with the Philippine Intellectual Property Office. This "visible sign" may be a word, name, symbol, emblem, sign, device, drawing, or figure:

The foregoing unmistakably show that petitioner, through its predecessor-in-interest, had made use of the location of the restaurant where it manufactures and sells its products, but as a trade-mark to indicate the goods it offers for sale to the public. No other conclusion can be drawn. This is the very meaning or essence in which a trade-mark is used. This is not only in accordance with its general acceptance but with our law on the matter.

"'Trade-mark' or 'trade-name,' distinction being highly technical, is sign, device, or mark by which articles produced are dealt in by particular person or organization are distinguished or distinguishable from those produced or dealt in by others." (*Church of God vs. Tomlinson Church of God*, 247 SW 2d. 63, 64)

"A 'trade-mark' is a distinctive mark of authenticity through which the merchandise of a particular producer or manufacturer may be distinguished from that of others, and its sole function is to designate distinctively the origin of the products to which it is attached." (*Reynolds & Reynolds Co. vs. Norick, et al.*, 114 F 2d, 278)

"The term 'trade-mark' includes any word, name, symbol, emblem, sign or device or any combination thereof adopted and used by a manufacturer or merchant to identify his goods and distinguished them from those manufactured,



sold or dealt in by others." (Section 38, Republic Act No. 166)

Verily, the word "SELECTA" has been chosen by petitioner and has been inscribed on all its products to serve not only as a sign or symbol that may indicate that they are manufactured and sold by it but as a mark of authenticity that may distinguish them from the products manufactured and sold by other merchants or businessmen. The Director of Patents, therefore, erred in holding that petitioner made use of that word merely as a trade-name and not as trade-mark within the meaning of the law. **5**

Registrable marks may be two- or three-dimensional, **6** in color, **7** or in a form that could require transliteration or translation. **8** They may be what are described in the Philippine Intellectual Property Office Trademark Regulations of 2017 **9** as "word marks," represented in standard characters:

**RULE 402. *Reproduction of the Mark.*** — One (1) reproduction of the mark shall be submitted upon filing of the application which shall substantially represent the mark as actually used or intended to be used on or in connection with the goods and/or services of the applicant. The reproduction may be added or pasted on the space provided for in the application form or printed on an ordinary bond paper. The reproduction must be clear and legible, printed in black ink or in color, if colors are claimed, and must be capable of being clearly reproduced when published in the IPO eGazette. An electronic copy of the reproduction may likewise be submitted in lieu of the printed reproduction. The electronic reproduction should be in .jpg format and must not exceed one (1) megabyte.

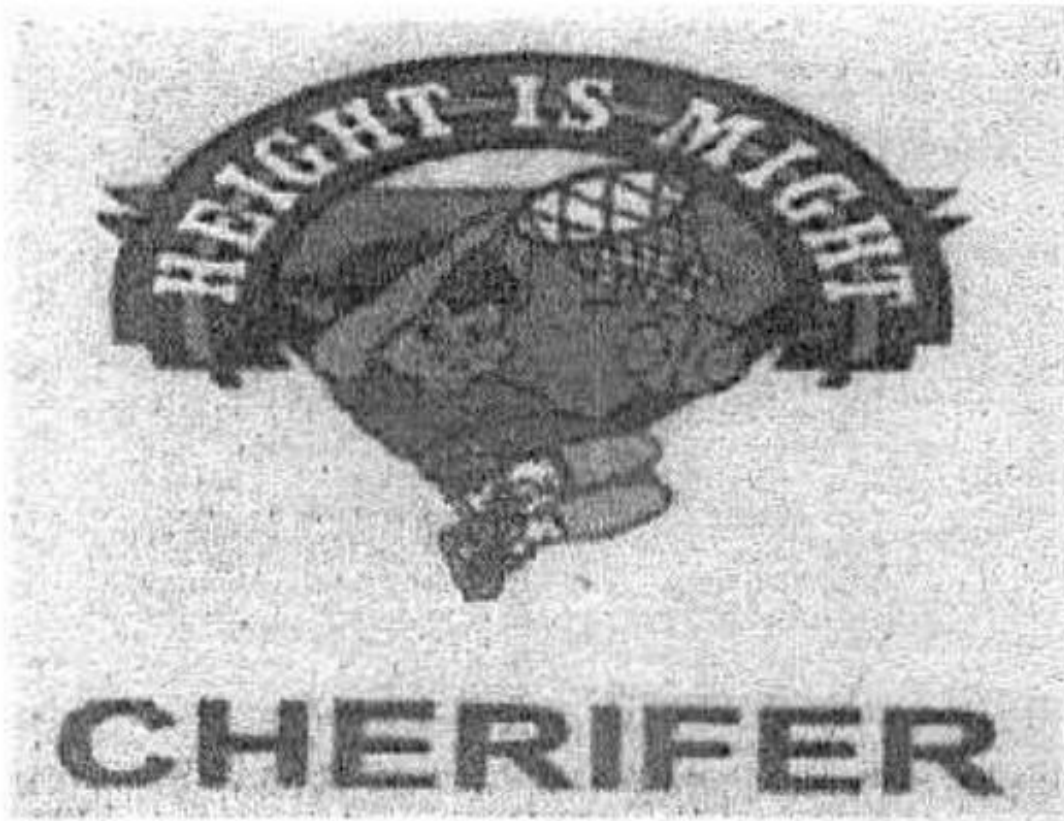
*In the case of word marks or if no special characteristics have to be shown, such as design, style of lettering, color, diacritical marks, or unusual forms of punctuation, the mark must be represented in standard characters. The specification of the mark to be reproduced will be indicated in the application form and/or published on the website.*

The provisions of this Rule shall, however, be construed liberally in determining whether the application shall be considered complete for purposes of granting a filing date. (Emphasis supplied)

There are instances when a person will have registered both a "word mark" and some kind of device or design incorporating this "word mark" as two (2) separate trademarks or service marks. When the "word mark" and the "device mark" are included in one (1) composition — and registered, it may be known as a "composite mark." **10**

Under the Intellectual Property Code, marks applied for registration must undergo examination and publication, **11** and the application may be opposed by any person who believes that they may be damaged by the registration. **12** Examination, publication, and opposition are integral to the registration process. By having all marks undergoing all these steps, the Philippine Intellectual Property Office ensures the integrity of the Philippine Trademark Database along with the validity of all registered marks in it, protecting the rights of existing trade and service mark registrants, as well as other relevant stakeholders.

In this case, respondent's mark, with Registration No. 4-2002-004546, is:



The mark is described as:

CHERIFER + LOGO

(THE MARK CONSISTS OF THE WORD CHERIFER WITH A LOGO OF A YOUNG BOY DUNKING AND TOUCHING THE BASKETBALL GOAL. THE YOUNG BOY IS WEARING A RED BASKETBALL UNIFORM WITH A WHITE STRIPE, AND RUBBER SHOES. THE BASKETBALL SHIRT HAS A "C" PRINT ON IT IN BLUE INK. ABOVE THE HEAD IS A SLOGAN THAT READS "HEIGHT IS MIGHT" PRINTED ON BLUE & PINK ARCH. BEHIND THE BOY IS A GREEN TRIANGULAR BACKGROUND WITH SHADOW) **13**

Clearly, the mark is a composite mark: one which contains both a distinct word — namely "CHERIFER" — and a device comprising several other elements, including the words "HEIGHT IS MIGHT."

The composition of the mark being sought protection from infringement is important because the Intellectual Property Code confers the owner of a registered mark the right to prevent the use in trade by unauthorized parties of a sign identical or similar to the registered mark, where the use would result in a likelihood of confusion:

SECTION 147. *Rights Conferred.* — 147.1. The owner of a registered mark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs or containers for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed.

Not every word, symbol, logo, device, or figure that shares similarities with the allegedly-infringed mark will be barred from use in commerce. Section 155 of the Intellectual Property Code points specifically to a registered mark's "colorable imitation" or "dominant feature."

A "colorable imitation":

[D]enotes such a "close or ingenious imitation as to be calculated to deceive ordinary persons, or such a resemblance to the original as to deceive an ordinary purchaser giving such attention as a purchaser usually gives, and to cause him to purchase the one supposing it to be the other." **14**

What constitutes a mark's "dominant feature" can also be highly subjective. As explained in *Prosource International, Inc. v. Horphag Research Management SA*: **15**

The Dominancy Test focuses on the similarity of the prevalent features of the competing trademarks that might cause confusion and deception, thus constituting infringement. If the competing trademark contains the main, essential and dominant features of another, and confusion or deception is likely to result, infringement takes place. Duplication or imitation is not necessary; nor is it necessary that the infringing label should suggest an effort to imitate. The question is whether the use of the marks involved is likely to cause confusion or mistake in the mind of the public or to deceive purchasers. Courts will consider more the aural and visual impressions created by the marks in the public mind, giving little weight to factors like prices, quality, sales outlets, and market segments. **16** (Citations omitted)

The determination of a mark's dominant feature is independent even of its owner's intent or judgment of the "main, essential and dominant" features of the mark they own or use, as demonstrated in *UFC Philippines, Inc. v. Barrio Fiesta Manufacturing Corp.*: **17**

A scrutiny of petitioner's and respondent's respective marks would show that the IPO-BLA and the IPO Director General correctly found the word "PAPA" as the dominant feature of petitioner's mark "PAPA KETSARAP." Contrary to respondent's contention, "KETSARAP" cannot be the dominant feature of the mark as it is merely descriptive of the product. Furthermore, it is the "PAPA" mark that has been in commercial use for decades and has established awareness and goodwill among consumers.

We likewise agree with the IPO-BLA that the word "PAPA" is also the dominant feature of respondent's "PAPA BOY & DEVICE" mark subject of the application, such that "the word 'PAPA' is written on top of and before the other words such that it is the first word/figure that catches the eyes." Furthermore, as the IPO Director General put it, the part of respondent's mark which appears prominently to the eyes and ears is the phrase "PAPA BOY" and that is what a purchaser of respondent's product would immediately recall, not the smiling hog. **18** (Citation omitted)

Here, the *ponencia* adopts the findings of the Court of Appeals: (1) that "CEEGEEFER" and "CHERIFER" are aurally similar under *idem sonans*; and (2) that the "healthy & mighty" drawing used in petitioner's packaging is visually similar to the "HEIGHT IS MIGHT" device that is a part of respondent's registered mark.

Respectfully, it is highly irregular to divide the elements of a composite mark and separately determine the confusing similarity of these elements with two (2) different allegedly-infringing marks. To emphasize, the registered mark which is the basis for respondent's cause of action is not merely a word mark, but a composite mark. The mark covered by Registration No. 4-2002-004546 is not only the word "CHERIFER," but also the "HEIGHT IS MIGHT" device above it. The absurdity of cherry-picking the elements of

respondent's registered mark for comparison is highlighted, should one try to compare "CEEGERFER" with respondent's "HEIGHT IS MIGHT" device, or petitioner's "healthy & mighty" drawing with the word "CHERIFER" using either a visual or aural test.

To permit the injunction of petitioner's "CEEGERFER" because of the mark covered by Registration No. 4-2002-004546 defeats the purpose of registration of this mark as a composite mark. The protection that has been granted to respondent is beyond the bounds of the mark it has registered. The *ponencia* has, in essence, permitted respondent to claim a monopoly for every component of its composite mark, when the Intellectual Property Office had only granted it exclusivity based on the mark as a whole. This bypasses and undermines the procedures of examination, publication, and opposition required by the Intellectual Property Code.

Notably, a close examination of the specimen of respondent's packaging, provided by respondent, **19** reveals that the word "CHERIFER" has an ® symbol appended to it, separate from the ® symbol appending the depicted "HEIGHT IS MIGHT" device:



Section 158 of the Intellectual Property Code provides that the ® symbol is notice that the mark is registered:

**SECTION 158. Damages; Requirement of Notice.** — In any suit for infringement, the owner of the registered mark shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such imitation is likely to cause confusion, or to cause mistake, or to deceive. Such knowledge is presumed if the registrant gives

notice that his mark is registered by displaying with the mark the words "Registered Mark" or the letter R within a circle or if the defendant had otherwise actual notice of the registration.

Evidently, at the time its cause of action for infringement accrued against petitioner, the word mark "CHERIFER" had not been registered by respondent. Otherwise, it would have invoked its registration of the word mark "CHERIFER" to defeat petitioner's "CEEGERFER." Instead, respondent attempted to prevent petitioner's use in commerce, not only of petitioner's "healthy & mighty" drawing, but also of the word "CEEGERFER," with a registered composite mark. Respondent's use of a composite mark to prematurely invoke exclusivity for a later registered word mark should not be countenanced by this Court.

Moreover, in all instances of trademark infringement, there must be a "likelihood of confusion" between the registered mark and the allegedly-infringing mark:

A crucial issue in any trademark infringement case is the likelihood of confusion, mistake or deceit as to the identity, source or origin of the goods or identity of the business as a consequence of using a certain mark. Likelihood of confusion is admittedly a relative term, to be determined rigidly according to the particular (and sometimes peculiar) circumstances of each case. Thus, in trademark cases, more than in other kinds of litigation, precedents must be studied in the light of each particular case.

There are two types of confusion in trademark infringement. The first is "confusion of goods" when an otherwise prudent purchaser is induced to purchase one product in the belief that he is purchasing another, in which case defendant's goods are then bought as the plaintiff's and its poor quality reflects badly on the plaintiff's reputation. The other is "confusion of business" wherein the goods of the parties are different but the defendant's product can reasonably (though mistakenly) be assumed to originate from the plaintiff, thus deceiving the public into believing that there is some connection between the plaintiff and defendant which, in fact, does not exist.

In determining the likelihood of confusion, the Court must consider: [a] the resemblance between the trademarks; [b] the similarity of the goods to which the trademarks are attached; [c] the likely effect on the purchaser; and [d] the registrant's express or implied consent and other fair and equitable considerations. **20** (Citations omitted)

Evidence-based standards for determining "likelihood of confusion" are imperative, lest courts and administrative agencies succumb to *ad hoc* reasoning and this Court promulgate essentially *pro hac vice* decisions without coherent and consistent precedents to guide the bench and bar:

My discomfort with the prevailing doctrine is that determining whether goods or services are related is left solely to the subjective evaluation of the Philippine Intellectual Property Office or the judgment of the court. It is based on *ad hoc* inferences of similarity in class, physical attributes or descriptive properties, purpose, or points of sale of the goods or services. Here, the Bureau of Legal Affairs of the Intellectual Property Office, as affirmed by the Director-General, found that respondent committed unfair competition based on a simplistic conclusion that "[b]oth Complainant APRIL and Respondent's main business product is paper[;] both offer papers for sale to the public." We should improve on the standard by which likelihood of confusion is measured, considering the advances in the study of competition and economics in general.



There should be objective, scientific, and economic standards to determine whether goods or services offered by two parties are so related that there is a likelihood of confusion. In a market, the relatedness of goods or services may be determined by consumer preferences. When two goods are proved to be perfect substitutes, where the marginal rate of substitution, or the "consumer's willingness to substitute one good for another while maintaining the same level of satisfaction" is constant, then it may be concluded that the goods are related for the purposes of determining likelihood of confusion. Even goods or services, which superficially appear unrelated, may be proved related if evidence is presented showing that these have significant cross-elasticity of demand, such that changes of price in one party's goods or services change the price of the other party's goods and services. Should it be proved that goods or services belong to the same relevant market, they may be found related even if their classes, physical attributes, or purposes are different. **21**

In this case, there is insufficient factual basis to justify the conclusion that a likelihood of confusion had arisen, such that the relevant market for petitioner and respondent's goods have been misled into buying the other's products due to the packaging or marks used.

According to respondent, it had discovered that petitioner's CEEGEEFER products were sold alongside its own CHERIFER products beside or near each other in drugstores in Metro Manila and Valenzuela. **22** However, it does not appear to have proffered evidence in the trial court that the alleged target market for CEEGEEFER — "mothers, fathers and people with small children" **23** — had actually or likely mistaken one product from another.

Thus, respondent had not shown that the introduction of CEEGEEFER products in the brand name and packaging complained of had adversely affected the sales of CHERIFER products. It has not even shown that goodwill had been built up on the CHERIFER brand — which it claims to have been "ahead in the market for more than 10 years" **24** — to such an extent that CEEGEEFER would have consciously emulated the brand name and packaging to benefit from it.

The purpose of trademarks and service marks are: (1) to indicate a good or service's origin and ownership; (2) to ensure that the maker of a superior good or provider of superior service could be identified; and (3) to prevent fraud in commerce. **25** Trademarks and service marks are not intended to unduly restrict free trade, foster monopolistic practices, or remove competitors from the market:

Courts should take care not to interfere in a free and fair market, or to foster monopolistic practices. Instead, they should confine themselves to prevent fraud and misrepresentation on the public. In *Alhambra Cigar, etc., Co. v. Mojica*:

Protection against unfair competition is not intended to create or foster a monopoly and the court should always be careful not to interfere with free and fair competition, but should confine itself, rather, to preventing fraud and imposition resulting from some real resemblance in name or dress of goods. Nothing less than conduct tending to pass off one man's goods or business as that of another will constitute unfair competition. Actual or probable deception and confusion on the part of customers by reason of defendant's practices must always appear. **26** (Citations omitted)

The *ponencia* places great emphasis on the same "star ingredient," relevant market, and over-the-counter point of sale in arriving at its conclusion. **27** With due respect, these are markers of two competitors, especially absent sufficient factual basis of petitioner committing fraud or misrepresentation on the market. The result of this case unduly represses competition in the marketplace, to the detriment of the consuming public.

Accordingly, I vote to **GRANT** the Petition for Review. The Court of Appeals' January 29, 2018 Decision and June 21, 2019 Resolution in CA-G.R. CV No. 102569 are **REVERSED** and **SET ASIDE**. The December 23, 2013 Decision of the Regional Trial Court is **REINSTATED**.

### Footnotes

\* Designated additional Member per Raffle dated June 22, 2020.

1. *Rollo*, pp. 9-39.
2. Penned by Associate Justice Germano Francisco D. Legaspi, with the concurrence of Associate Justices Sesinando E. Villon and Edwin D. Sorongon; *id.* at 43-54.
3. Penned by Associate Justice Germano Francisco D. Legaspi, with the concurrence of Associate Justices Rodil V. Zalameda (now a Member of this Court) and Edwin D. Sorongon; *id.* at 56-57.
4. *Id.* at 61.
5. Misspelled as Chlorela; *see id.* at 12.
6. *Id.* at 60-61.
7. Records, pp. 935-936.
8. *Id.*
9. *Id.* at 937-939.
10. *Id.* at 372.
11. *Id.*
12. Under a Certificate of Copyright Registration and Deposit registered/deposited on July 3, 2002 with Title of Work described as "CHERIFER PLUS LOGO WITH HEIGHT IS MIGHT"; *id.* at 933.
13. *Id.* at 940.
14. *Id.* at 59.
15. Docketed as Civil Case No. 07-086 and raffled to Branch 256 of the Regional Trial Court of Muntinlupa City; *id.* at 263-281.
16. Records, pp. 647-648.
17. *Id.* at 279-281.
18. Penned by Presiding Judge Leandro C. Catalo.
19. *Id.* at 68.
20. *Id.* at 62, citing *Manebo v. SPO1 Acosta*, 619 Phil. 614 (2009).
21. 260 Phil. 435 (1990).

22. 296 Phil. 298 (1993).
23. *Rollo*, p. 64.
24. 27 Phil. 266 (1914). In *Alhambra*, this Court ruled that "the true test of unfair competition is whether the acts of defendant are such as are calculated to deceive the ordinary buyer making his purchases under the ordinary conditions which prevail in the particular trade to which the controversy related."
25. *Id.* at 65-67.
26. *CA rollo*, p. 32.
27. *Supra* note 2.
28. *Rollo*, p. 23.
29. *Id.* at 292-294.
30. *Id.* at 49.
31. *Id.* at 51.
32. Art. 2222. The Court may award nominal damages in every obligation arising from any source enumerated in Article 1157, or in every case where any property right has been invaded.
33. *Rollo*, pp. 52-53.
34. *Id.* at 216-230.
35. *Supra* note 3.
36. *Rollo*, pp. 52-53.
37. *Id.* at 20-21.
38. *Id.* at 25-27.
39. *Id.* at 21.
40. *Id.* at 22-23.
41. *Id.* at 23-24.
42. *Id.* at 237-260.
43. *Id.* at 249-250.
44. *Id.* at 250-251.
45. *Id.* at 254-256.
46. 480 Phil. 402 (2004).
47. *Id.* at 436, citing *Marvex Commercial Co., Inc. v. Petra Hawpia & Co.*, 25 Phil. 295 (1966).
48. G.R. No. 217916, June 20, 2018.
49. *Id.*
50. *Rollo*, p. 13. Emphasis supplied.
51. *Diaz v. People*, 704 Phil. 146, 161 (2013), citing *Societe Des Produits Nestle, S.A. v. Dy, Jr.*, 641 Phil. 345, 358 (2010).

52. Philippine Trademark Database, <<https://www3.wipo.int/branddb/ph/en>>, last visited on September 17, 2020.
53. [Food and Drug Administration Act of 2009](#).
54. See J. Leonen's Separate Concurring Opinion, [Asia Pacific Resources International Holdings, Ltd. v. Paperone, Inc.](#), G.R. Nos. 213365-66, December 10, 2018.
55. G.R. Nos. 213365-66, December 10, 2018.
56. *Supra* note 54.
57. G.R. Nos. 217781 and 217788, June 20, 2018. This is a 2018 case between San Miguel's PUREFOODS FIESTA HAM and Foodsphere's PISTA ham.
58. *Rollo*, p. 53.
59. 716 Phil. 267, 282-283 (2013).

**LEONEN, J., dissenting:**

1. *Rollo*, p. 53, the dispositive portion of the Court of Appeals' Decision stated:

WHEREFORE, premises considered, the Decision dated December 23, 2013 of the Regional Trial Court of Muntinlupa City, Branch 256 in Civil Case No. 07-086 is REVERSED and SET ASIDE. Defendant-appellee Prosel Pharmaceuticals & Distributors, Inc. is found liable for TRADEMARK INFRINGEMENT and is ORDERED to PAY plaintiff-appellant Tynor Drug House, Inc. P500,000.00 as nominal damages and P100,000.00 as attorney's fees. Defendant-appellee Prosel Pharmaceuticals & Distributors, Inc., its agents, representatives, assigns, distributors, dealers and sellers are hereby ENJOINED from using its CEEGEEFER brand name and the CHERIFER + Logo trademark in connection with the sale, offering for sale, distribution, advertising of any goods including other preparatory steps necessary to carry out the sale of any goods bearing such trademarks in the Philippines, or from otherwise infringing plaintiff-appellant Tynor Drug House, Inc.'s CHERIFER + Logo trademark covered under Registration No. 4-2002-004546.

2. [McDonald's Corporation v. L.C. Big Mak Burger, Inc.](#), 480 Phil. 402, 424-425 (2004) [Per J. Carpio].

3. INTELLECTUAL PROP. CODE, sec. 123 states:

SECTION 123. *Registrability*. — 123.1. A mark cannot be registered if it:

(a) Consists of immoral, deceptive or scandalous matter, or matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt or disrepute;

(b) Consists of the flag or coat of arms or other insignia of the Philippines or any of its political subdivisions, or of any foreign nation, or any simulation thereof;

(c) Consists of a name, portrait or signature identifying a particular living individual except by his written consent, or the name, signature, or portrait of a deceased President of the Philippines, during the life of his widow, if any, except by written consent of the widow;

(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.
- (e) Is identical with, or confusingly similar to, or constitutes a translation of a mark 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 knowledge of the relevant sector of the public, rather than 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 or services which are not similar to those with respect to which registration is applied for: Provided, That use of the mark in relation to those 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;
- (g) Is likely to mislead the public, particularly as to the nature, quality, characteristics or geographical origin of the goods or services;
- (h) Consists exclusively of signs that are generic for the goods or services that they seek to identify;
- (i) Consists exclusively of signs or of indications that have become customary or usual to designate the goods or services in everyday language or in *bona fide* and established trade practice;
- (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;
- (k) Consists of shapes that may be necessitated by technical factors or by the nature of the goods themselves or factors that affect their intrinsic value;
- (l) Consists of color alone, unless defined by a given form; or
- (m) Is contrary to public order or morality.

123.2. As regards signs or devices mentioned in paragraphs (j), (k), and (l), nothing shall prevent the registration of any such sign or device which has become distinctive in relation to the goods for which registration is requested as a result of the use that have been made of it in commerce in the Philippines. The Office may accept as *prima facie* evidence that the mark has become distinctive, as used in connection with the applicant's goods or services in commerce, proof of substantially exclusive and continuous use thereof by the applicant in commerce in the Philippines for five (5) years before the date on which the claim of distinctiveness is made.

4. INTELLECTUAL PROP. CODE, sec. 122 states:

SECTION 122. *How Marks are Acquired.* — The rights in a mark shall be acquired through registration made validly in accordance with the provisions of this law.

5. *Arce Sons and Company v. Selecta Biscuit Company, Inc.*, 110 Phil. 858, 867-868 (1961) [Per J. Bautista Angelo, En Banc].



6. See the definition of a "mark" in INTELLECTUAL PROP. CODE, sec. 121.1, which encompasses "a stamped or marked container of goods" and INTELLECTUAL PROP. CODE, sec. 124, the relevant subsection of which states:

SECTION 124. *Requirements of Application.* — 124.1. The application for the registration of the mark shall be in Filipino or in English and shall contain the following:

xxx xxx xxx

(h) Where the mark is a three-dimensional mark, a statement to that effect;

7. See INTELLECTUAL PROP. CODE, sec. 124, the relevant subsection of which states:

SECTION 124. *Requirements of Application.* — 124.1. The application for the registration of the mark shall be in Filipino or in English and shall contain the following:

xxx xxx xxx

(g) Where the applicant claims color as a distinctive feature of the mark, a statement to that effect as well as the name or names of the color or colors claimed and an indication, in respect of each color, of the principal parts of the mark which are in that color;

8. See INTELLECTUAL PROP. CODE, sec. 124, the relevant subsection of which states:

SECTION 124. *Requirements of Application.* — 124.1. The application for the registration of the mark shall be in Filipino or in English and shall contain the following:

xxx xxx xxx

(j) A transliteration or translation of the mark or of some parts of the mark, as prescribed in the Regulations;

9. IPO Memorandum Circular No. 010-17.

10. See *The East Pacific Merchandising Corp. v. Director of Patents*, 110 Phil. 443 (1960) [Per J. Reyes, J.B.L., Second Division], concerning the trademark application for a "composite trademark" which consisted of:

[T]he word "Verbena" and the representation of a Spanish lady, more particularly described as follows:

Against a blue background is the bust figure of a Spanish Señorita dressed in a typically pink dancer's attire with her upper arms partly covered with a Spanish shawl of green and white. The figure appears with black well groomed hair adorned by red roses. The figure also appears to be wearing two green earrings. At the left of this figure is shown a balcony decked with plants and flowers characteristics of Spanish houses. (p. 10, Records)

11. INTELLECTUAL PROP. CODE, sec. 133 states:

SECTION 133. *Examination and Publication.* — 133.1. Once the application meets the filing requirements of Section 127, the Office shall examine whether the application meets the requirements of Section 124 and the mark as defined in Section 121 is registrable under Section 123.

133.2. Where the Office finds that the conditions referred to in Subsection 133.1 are fulfilled, it shall, upon payment of the prescribed fee, forthwith cause the application, as filed, to be published in the prescribed manner.

133.3. If after the examination, the applicant is not entitled to registration for any reason, the Office shall advise the applicant thereof and the reasons therefor. The applicant shall have a period of four (4) months in which to reply or amend his application, which shall then be re-examined. The Regulations shall determine the procedure for the re-examination or revival of an application as well as the appeal to the Director of Trademarks from any final action by the Examiner.

133.4. An abandoned application may be revived as a pending application within three (3) months from the date of abandonment, upon good cause shown and the payment of the required fee.

133.5. The final decision of refusal of the Director of Trademarks shall be appealable to the Director-General in accordance with the procedure fixed by the Regulations.

12. INTELLECTUAL PROP. CODE, sec. 134 states:

SECTION 134. *Opposition.* — Any person who believes that he would be damaged by the registration of a mark may, upon payment of the required fee and within thirty (30) days after the publication referred to in Subsection 133.2, file with the Office an opposition to the application. Such opposition shall be in writing and verified by the oppositor or by any person on his behalf who knows the facts, and shall specify the grounds on which it is based and include a statement of the facts relied upon. Copies of certificates of registration of marks registered in other countries or other supporting documents mentioned in the opposition shall be filed therewith, together with the translation in English, if not in the English language. For good cause shown and upon payment of the required surcharge, the time for filing an opposition may be extended by the Director of Legal Affairs, who shall notify the applicant of such extension. The Regulations shall fix the maximum period of time within which to file the opposition.

13. *Ponencia*, p. 3.

14. *Etepha v. Director of Patents*, 123 Phil. 329, 333 (1966) [Per J. Sanchez, En Banc].

15. 620 Phil. 539 (2009) [Per J. Nachura, Third Division].

16. *Id.* at 550.

17. 778 Phil. 763 (2016) [Per J. Leonardo-de Castro, First Division].

18. *Id.* at 803.

19. *Rollo*, p. 239.

20. *Mighty Corporation v. E. & J. Gallo Winery*, 478 Phil. 615, 655-656 (2004) [Per J. Corona, Third Division].

21. Separate Opinion of Justice Leonen, *Asia Pacific Resources International Holdings, Ltd. v. Paperone, Inc.*, G.R. Nos. 213365-66, December 10, 2018, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64829>> [Per J. Gesmundo, Third Division].

22. *Rollo*, p. 241.

23. *Id.*

24. *Id.*

25. See *Etepha v. Director of Patents*, 123 Phil. 329-338 (1966) [Per J. Sanchez, En Banc].

26. Separate Opinion of Justice Leonen, *Asia Pacific Resources International Holdings, Ltd. v. Paperone, Inc.*, G.R. Nos. 213365-66, December 10, 2018, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64829>> [Per J. Gesmundo, Third Division].

27. *Ponencia*, pp. 14-15.