

## TRADEMARK LAW UPDATE

MAY 2015

The Supreme Court held that Philippine consumers are intelligent enough to distinguish between two similar trademarks if these brands cover electronic equipment and electrical appliances. In the case of *Taiwan Kolin Corporation, Ltd vs. Kolin Electronics Co., Inc.* (G.R. No. 209843, March 25, 2015), the Court ruled that these buyers would take deliberate, comparative, and analytical investigation of these kinds of products before parting with their cash so there is no probability of confusion.

Taiwan Kolin Corporation (TKC) sought to register the KOLIN mark before the Intellectual Property Office of the Philippines for Class 9 covering television sets, cassette recorder, VCD amplifiers, camcorders and other audio/video electronic equipment, flat iron, vacuum cleaners, cordless handsets, videophones, facsimile machines, teleprinters, cellular phones, and

## COURT EXTENDS ORDINARY INTELLIGENT BUYER DOCTRINE TO ELECTRONICS AND ELECTRICAL APPLIANCES, ALLOWS SIMILAR MARK TO BE REGISTERED

automated goods vending machine. Kolin Electronics Co. (KEC), which is the owner of the registered KOLIN mark for the same Class 9 for automatic voltage regulators, converters, rechargers, stereo boosters, AC-DC regulated power supply, step-down transformers, and public address amplified AC-DC, opposed TKC's application in an *inter partes* proceeding before the IPOPHL because the mark being applied for by TKC is identical to the registered mark.

The Director of IPOPHL's Bureau of Legal Affairs granted KEC's opposition and rejected TKC's application. The BLA Director found that TKC's mark

is identical to KEC's KOLIN given that both marks cover goods belonging to the same Nice Classification. KEC presented proof of actual confusion, which the BLA Director cited, in the form emails coming from KEC's customers asking for information, service, and complaints regarding TKC's KOLIN marked goods.

TKC appealed the Decision of the BLA Director to the Director General of the IPOPHL. The Director General set aside the BLA Director's findings and gave due course to TKC's application. The Director General ruled that being grouped into the



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same classification of goods is insufficient to determine whether goods of two marks are related. The emphasis, according to the Director General, should be on the similarity of the products themselves and not how these products had been clustered into classes for registration purposes.

KEC assailed the Director General's Decision to the Court of Appeals and the latter tribunal granted the appeal. The CA held that, aside from the similarity of TKC's KOLIN to KEC's KOLIN, televisions of TKC can be considered as goods within the normal expansion of the amplifiers, boosters, and voltage regulators of KEC.

The Supreme Court, on appeal by TKC, affirmed the Director General's position that identical marks can be registered for goods covered by the same Nice Classification. The arbitrary classifi-

cation of goods, according to the Court, cannot prevent the registration of the same trademark by third parties for unrelated products of a different kind. The Court then singled out the goods of TKC, which were home appliances, from those of KEC's power supply and audio equipment accessories. More importantly, the Court explained that the electronic products being sold by both TKC and KEC are luxury items. The consumers of these products are more discerning than those of common inexpensive household items so there is no possibility of confusion between TKC's KOLIN from KEC's KOLIN.

The Court used the Ordinary Intelligent Buyer doctrine in past cases and held that the Philippine consumer can distinguish similar marks in jeans, underwear, cigarettes, tobacco, and beer but not in catsup. *LF*©May 6, 2015

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