



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

KENSONIC, INC.,
Petitioner,

G.R. Nos. 211820-21

- versus -

**UNI-LINE MULTI-RESOURCES,
INC., (PHIL.),**
Respondent.

X-----X
**UNI-LINE MULTI-RESOURCES,
INC.,**

G.R. Nos. 211834-35

Petitioner,

Present:

VELASCO, JR., J., *Chairperson*,
BERSAMIN,
LEONEN,
MARTIRES, and
GESMUNDO, JJ.

- versus -

Promulgated:

KENSONIC, INC.,
Respondent.

June 6, 2018

Wilfredo E. Reyes

X-----X

DECISION

BERSAMIN, J.:

The case concerns the cancellation of the registration of the trademark SAKURA for the goods of Uni-Line Multi Resources, Inc. (Phils.) (Uni-Line) being sought by Kensonic, Inc. (Kensonic) on the ground that the latter had prior use and registration of the SAKURA mark.

The Case

Under consideration are the consolidated appeals urging the review and reversal of the decision promulgated on July 30, 2013¹ and the amended decision promulgated on March 19, 2014,² whereby the Court of Appeals (CA) affirmed the decision rendered on June 11, 2012 by the Director General of the Intellectual Property Office (IPO) upholding the cancellation of the application of Uni-Line for the registration of the SAKURA mark for goods falling under Class 09 of the Nice International Classification of Goods (Nice Classification), and allowing the registration of Uni-Line's SAKURA mark registration for goods falling under Class 07 and Class 11 of the Nice Classification.³

Antecedents

The CA summarized the following factual and procedural antecedents, *viz.*:

On June 15, 1999, Uni-Line filed an application for the registration of the mark "SAKURA" for amplifier, speaker, cassette, cassette disk, video cassette disk, car stereo, television, digital video disk, mini component, tape deck, compact disk charger, VHS, and tape rewinder falling under Class 9 of the Nice International Classification of Goods. Kensonic opposed Uni-Line's application which was docketed as IPC No. 14-2004-00160 (**IPC 1**). The Director of the Bureau of Legal Affairs (**BLA**) rendered Decision No. 2005-01 dated November 29, 2005 finding that Kensonic was the first to adopt and use the mark SAKURA since 1994 and thus rejecting Uni-Line's application. On January 19, 2006, said Decision became final and executory.

While IPC Case 1 was pending, Uni-Line filed an application and was issued a certificate of registration for the mark "SAKURA & FLOWER DESIGN" for use on recordable compact disk (CD-R) computer, computer parts and accessories falling under Class 9. On September 7, 2006, Kensonic filed a petition for cancellation docketed as IPC No. 14-2006-00183 (**IPC 2**) of Uni-Line's registration. In Decision No. 08-113 dated August 7, 2008, the BLA Director held that Uni-Line's goods are related to Kensonic's goods and that the latter was the first user of the mark SAKURA used on products under Class 9. The BLA Director thus cancelled Uni-Line's certificate of registration. Uni-Line moved for reconsideration of the BLA Director's Decision which is pending resolution to date.

On June 6, 2002, Uni-Line filed an application for the registration of the trademark SAKURA for use on the following:

¹ *Rollo* (G.R. Nos. 211820-21), Vol. I, pp. 10-27; penned by Associate Justice Francisco P. Acosta, and concurred in by Associate Justice Fernanda Lampas Peralta and Associate Justice Nina G. Antonio-Valenzuela

² *Id.* at 30-35.

³ *Id.* at 156- 163; per IPO Director General Ricardo R. Blancaflor.

Goods	Nice Classification
Washing machines, high pressure washers, vacuum cleaners, floor polishers, blender, electric mixer, electrical juicer	Class 07
Television sets, stereo components, DVD/VCD players, voltage regulators, portable generators, switch breakers, fuse	Class 09
Refrigerators, air conditioners, oven toaster, turbo broiler, rice cooker, microwave oven, coffee maker, sandwich/waffle maker, electric stove, electric fan, hot & cold water dispenser, airpot, electric griller and electric hot pot	Class 11

Uni-Line's application was thereafter published, and there being no opposition thereto, Certificate of Registration No. 4-2002-004572 for the mark SAKURA effective March 18, 2006 was issued.

On September 7, 2006, Kensonic filed with the BLA a Petition for Cancellation of Uni-Line's Certificate of Registration alleging that in October 1994, it introduced the marketing of SAKURA products in the Philippines and that it owned said SAKURA products and was the first to use, introduce and distribute said products. Kensonic also alleged that in IPC 1, it opposed Uni-Line's application to register SAKURA and was already sustained by the Director General, which Decision is now final and executory. Kensonic further alleged that it is the owner of a copyright for SAKURA and that since 1994, has maintained and established a good name and goodwill over the SAKURA products.

Kensonic filed its Supplemental Petition for Cancellation and its Reply to Uni-Line's Answer. Uni-Line filed its Rejoinder thereto.⁴

Decision of the Bureau of Legal Affairs (BLA), IPO

After due proceedings, the BLA issued Decision No. 2008-149 dated August 11, 2008,⁵ whereby it ruled in favor of Kensonic and against Uni-Line, and directed the cancellation of Registration No. 4-2002-004572 of the latter's SAKURA mark. It observed that an examination of the SAKURA

⁴ Id. at 11-12.

⁵ Id. at 167-190.

mark of Kensonic and that of Uni-Line revealed that the marks were confusingly similar with each other; that the goods sought to be covered by the SAKURA registration of Uni-Line were related to the goods of Kensonic, thereby necessitating the cancellation of the registration of Uni-Line's mark; and that considering that Kensonic had used the SAKURA mark as early as 1994 in Class 09 goods (namely: amplifiers, speakers, cassette disks, video cassette disks, car stereos, televisions, digital video disks, mini components, tape decks, compact disk chargers, VHS and tape rewinders), Kensonic had acquired ownership of the SAKURA mark, and should be legally protected thereon. The dispositive portion reads:

WHEREFORE, premises considered, the Verified Petition for Cancellation is hereby **GRANTED**. Accordingly, Certificate of Registration No. 4-2002-004572 issued on 18 March 2006 for the trademark "SAKURA" in the name of Uni-Line Multi Resources, Inc. Phils., is hereby ordered **CANCELLED**.

Let the file wrapper of this case be forwarded to the Bureau of Trademark (BOT) for appropriate action in accordance with this Decision.

SO ORDERED.⁶

Decision of the Director General, IPO

On appeal,⁷ the Director General of the IPO modified the decision of the BLR by upholding Uni-Line's registration of the SAKURA mark as to goods classified as Class 07 and Class 11, thereby effectively reversing the BLR, but affirmed the BLR as regards the treatment of the SAKURA mark that covered the goods falling under Class 09. The Director General clarified that the marks of Uni-Line and Kensonic were similar if not identical; that considering that Inter Partes Case No. 14-2004-00160 (IPC 1) already effectively ruled that the products registered by Uni-Line were goods related to those covered by the registration of Kensonic, the registration of Uni-Line insofar as those products sought to be registered under Class 09 were concerned (*i.e.*, television sets, stereo components, DVD/VCD players, voltage regulators, portable generators, switch breakers, fuse) was correctly cancelled; that the registration of products of Uni-Line falling under Class 07 and Class 11 should not be cancelled because the products were different from the goods registered under Class 09 in the name of Kensonic; that there should be evidence showing how the continued registration of the SAKURA mark of Uni-Line would cause damage to Kensonic; and that the goods covered by the SAKURA registration of Uni-Line and the SAKURA registration of Kensonic should be distinguished because:

⁶ Id. at 189-190.

⁷ Id. at 156-163.

In addition, the ordinary purchaser must be thought of, as having, and credited with, at least a modicum of intelligence. It does not defy common sense to assert that a purchaser would be cognizant of the product he is buying. As a general rule, an ordinary buyer does not exercise as much prudence in buying an article for which he pays a few centavos as he does in purchasing a more valuable thing. Expensive and valuable items are normally bought only after deliberate, comparative and analytical investigation.

In this instance, the products of the Appellants under Classes 7 and 11 are home appliances which are not the ordinary everyday goods the public buys and consumes. These products are not inexpensive items and a purchaser would ordinarily examine carefully the features and characteristics of the same. It is, therefore, farfetched that the purchasing public would be misled or be deceived as to the source or origin of the products. Furthermore, there is nothing in the records that indicate any plans by the Appellee to enter into business transactions or to the manufacture and distribution of goods similar to the products of the Appellants under Classes 7 and 11.”⁸

The Director General of the IPO decreed as follows:

Wherefore, premises considered, the appeal is hereby dismissed in so far as the cancellation of the Appellant’s Cert. of Reg. No. 4-2002-004572 for goods enumerated and falling under Class 9 is concerned. However, the appeal is hereby granted in so far as the cancellation of Cert. of Reg. No. 4-2002-004572 for goods enumerated and falling under Classes 7 and 11 is concerned.

Accordingly, Cert. of Reg. No. 4-2002-004572 issued in favor of the Appellant for the mark SAKURA is hereby amended. The registration of goods enumerated under Class 9, namely television sets, stereo components, DVD/VCD players, voltage regulators, portable generators, switch breakers, fuse is hereby cancelled.

Let a copy of this Decision as well as the records of this case be furnished and returned to the Director of the Bureau of Legal Affairs for appropriate action. Further, let also the Director of the Bureau of Trademarks and the library of Documentation, Information and Technology Transfer Bureau be furnished a copy of this Decision for information, guidance, and records purposes.

SO ORDERED.⁹

Judgment of the CA

Both parties appealed to the CA, which promulgated its decision on July 30, 2013 dismissing the appeal of Kensonic (C.A.-G.R. SP No. 125420) and granting Uni-Line’s appeals (C.A.-G.R. SP No. 125424). The CA

⁸ *Rollo* (G.R. Nos. 211820-21), Vol. I, p. 162.

⁹ *Rollo* (G.R. Nos. 211820-21), Vol. I, p. 163.

upheld Kensonic's ownership of the SAKURA mark based on its showing of its use of the mark since 1994, but ruled that despite the identical marks of Kensonic and Uni-Line, Kensonic's goods under Class 09 were different from or unrelated to Uni-Line's goods under Class 07 and Class 11. It observed that the protection of the law regarding the SAKURA mark could only extend to television sets, stereo components, DVD and VCD players but not to Uni-Line's voltage regulators, portable generators, switch breakers and fuses due to such goods being unrelated to Kensonic's goods; that Kensonic's registration only covered electronic audio-video products, not electrical home appliances; and that the similarity of the marks would not confuse the public because the products were different and unrelated. It ruled:

WHEREFORE, the Petition filed by Kensonic, Inc., in C.A.-G.R. SP No. 125420 is **DENIED** and the Petition filed by Uni-Line Multi Resources, Inc. (Phils.) is **GRANTED**.

Accordingly, the Decision dated June 11, 2012 of Director General Ricardo R. Blancaflor of the Intellectual Property Office is **MODIFIED** such that Uni-Line's Appeal insofar as the cancellation of its Certificate of Registration No. 4-2002-004572 for goods enumerated and falling under Class 9 is **GRANTED** but **DELETING** therefrom the goods television sets, stereo components, DVD players and VCD players. The Decision dated June 11, 2012 of the Director General is hereby **UPHELD** insofar as it granted Uni-Line's Appeal on the cancellation of its Certificate of Registration No. 4-2002-004572 for goods enumerated and falling under Class 7 and Class 11.

SO ORDERED.¹⁰

Kensonic sought partial reconsideration, submitting that voltage regulators, portable generators, switch breakers and fuse were closely related to its products; that maintaining the two SAKURA marks would cause confusion as to the source of the goods; and that Uni-Line's goods falling under Class 07 and Class 11 were closely related to its goods falling under Class 09.

In the assailed amended decision promulgated on March 19, 2014,¹¹ the CA sided with Kensonic, and reverted to the ruling by the Director General of IPO cancelling the registration of the SAKURA mark covering all the goods of Uni-Line falling under Class 09 on the basis that all the goods belonged to the general class of goods. The CA decreed:

WHEREFORE, the Motion for Partial Reconsideration filed by Kensonic Inc. is **PARTIALLY GRANTED**. Uni-Line is prohibited from using the mark SAKURA for goods falling under Class 9, but is allowed

¹⁰ Id. at 108.

¹¹ Supra note 2.

to use the mark SAKURA for goods falling under Classes 7 and 11. Thus, the DENIAL of Uni-Line's Appeal insofar as the cancellation of its Certificate of Registration No. 4-2002-004572 for goods enumerated and falling under Class 9 is **UPHELD**. The Decision dated June 11, 2012 of the Director General is **AFFIRMED in toto**.

SO ORDERED.¹²

Issues

Hence, this appeal by both parties.

Kensonic (G.R. Nos. 211820 – 21) insists that the CA erred in not considering that Uni-Line's goods under Class 07 and Class 11 were related to its goods falling under Class 09; and that all the agencies below were unanimous in declaring that the marks were identical, and, as such, the use of the SAKURA marks would lead to confusion about the source of the goods.

Uni-Line (G.R. Nos. 211834 – 35) contends that the SAKURA mark could not be appropriated because it simply referred to cherry blossom in Japanese and was thus a generic name that was not copyrightable; that it was grave error for the IPO and the CA to rule that Kensonic owned the mark; and that voltage regulators, portable generators, switch breakers and fuse were unrelated to Kensonic's products because Uni-Line's products were not electronic.

The following issues are, therefore, to be resolved:

- (1) Is the SAKURA mark capable of appropriation?
- (2) Are Kensonic's goods falling under Class 09 related to Uni-Line's goods falling under Class 07 and Class 11?; and
- (3) Are Uni-Line's goods falling under Class 9, namely: voltage regulators, portable generators, switch breakers and fuses, related to Kensonic's goods falling under Class 9?

Ruling of the Court

The appeal of Kensonic in G.R. Nos. 211820-21 is dismissed but the petition in G.R. Nos. 211834-35 is partially granted.

¹² *Rollo* (G.R. Nos. 211820-21), Vol. I, pp. 116-117.

I.
The SAKURA mark can be appropriated

Uni-Line's opposition to Kensonic's ownership of the SAKURA mark insists that the SAKURA mark is not copyrightable for being generic. Such insistence is unacceptable.

To be noted is that the controversy revolves around the SAKURA mark which is not a copyright. The distinction is significant. A mark is any visible sign capable of distinguishing the goods (trademark) or services (service mark) of an enterprise, and includes a stamped or marked container of goods.¹³ In contrast, a copyright is the right to literary property as recognized and sanctioned by positive law; it is an intangible, incorporeal right granted by statute to the author or originator of certain literary or artistic productions, whereby he or she is invested, for a specific period, with the sole and exclusive privilege of multiplying copies of the same and publishing and selling them.¹⁴ Obviously, the SAKURA mark is not an artistic or literary work but a sign used to distinguish the goods or services of one enterprise from those of another.

An examination of the pertinent laws also reveals that Uni-Line mistakenly argues that the SAKURA mark was not capable of registration for being generic.

Section 123(h) of the *Intellectual Property Code* prohibits the registration of a trademark that consists exclusively of signs that are generic for the goods or services that they seek to identify. It is clear from the law itself, therefore, that what is prohibited is not having a generic mark but having such generic mark being identifiable to the good or service. In *Asia Brewery, Inc., v. Court of Appeals*,¹⁵ the Court ruled that there was no infringement of San Miguel Brewery's Pale Pilsen trademark because Pale Pilsen could not be appropriated. The Court explained:

The fact that the words *pale pilsen* are part of ABI's trademark does not constitute an infringement of SMC's trademark: SAN MIGUEL PALE PILSEN, for "pale pilsen" are generic words descriptive of the color ("pale"), of a type of beer ("pilsen"), which is a light bohemian beer with a strong hops flavor that originated in the City of Pilsen in Czechoslovakia and became famous in the Middle Ages. (Webster's Third New International Dictionary of the English Language, Unabridged. Edited by Philip Babcock Gove. Springfield, Mass.: G & C Merriam Co.,

¹³ Section 121.1, *Intellectual Property Code*.

¹⁴ *Black's Law Dictionary*, Centennial Edition. 6th ed. West Group, St. Paul Minnesota, USA, 1990, p. 336.

¹⁵ G.R. No. 103543, July 5, 1993, 224 SCRA 437, 448-449.

^{o)} 1976, page 1716.) "Pilsen" is a "primarily geographically descriptive word," (Sec. 4, subpar. [e] Republic Act No. 166, as inserted by Sec. 2 of R.A. No. 638) hence, non-registerable and not appropriable by any beer manufacturer. The Trademark Law provides:

"Sec. 4. . . . The owner of trade-mark, trade-name or service-mark used to distinguish his goods, business or services from the goods, business or services of others shall have the right to register the same [on the principal register], unless it:

xxx xxx xxx

"(e) Consists of a mark or trade-name which, when applied to or used in connection with the goods, business or services of the applicant is *merely descriptive or deceptively misdescriptive of them*, or when applied to or used in connection with the goods, business or services of the applicant is *primarily geographically descriptive* or deceptively misdescriptive of them, or is primarily merely a surname." (Emphasis supplied.)

The words "pale pilsen" may not be appropriated by SMC for its exclusive use even if they are part of its registered trademark: SAN MIGUEL PALE PILSEN, any more than such descriptive words as "evaporated milk," "tomato ketchup," "cheddar cheese," "corn flakes" and "cooking oil" may be appropriated by any single manufacturer of these food products, for no other reason than that he was the first to use them in his registered trademark. In *Masso Hermanos, S.A. vs. Director of Patents*, 94 Phil. 136, 139 (1953), it was held that a dealer in shoes cannot register "Leather Shoes" as his trademark because that would be merely descriptive and it would be unjust to deprive other dealers in leather shoes of the right to use the same words with reference to their merchandise. No one may appropriate generic or descriptive words. They belong to the public domain (*Ong Ai Gui vs. Director of Patents*, 96 Phil. 673, 676 [1955]):

"A word or a combination of words which is merely descriptive of an article of trade, or of its composition, characteristics, or qualities, cannot be appropriated and protected as a trademark to the exclusion of its use by others . . . inasmuch as all persons have an equal right to produce and vend similar articles, they also have the right to describe them properly and to use any appropriate language or words for that purpose, and *no person can appropriate to himself exclusively any word or expression, properly descriptive of the article, its qualities, ingredients or characteristics*, and thus limit other persons in the use of language appropriate to the description of their manufactures, *the right to the use of such language being common to all*. This rule excluding descriptive terms has also been held to apply to trade-names. As to whether words employed fall within this prohibition, it is said that the true test is not whether they are exhaustively descriptive of the article designated, but whether in themselves, and as they are commonly used by those who understand their meaning, they are reasonably indicative and descriptive of the thing intended. If they are thus descriptive, and not arbitrary, they cannot be appropriated from general use and become the exclusive property of anyone. (52 Am. Jur. 542-543.)

“. . . Others may use the same or similar descriptive word in connection with their own wares, provided they take proper steps to prevent the public being deceived. (Richmond Remedies Co. vs. Dr. Miles Medical Co., 16 E. [2d] 598.)

“. . . A descriptive word may be admittedly distinctive, especially if the user is the first creator of the article. It will, however, be denied protection, not because it lacks distinctiveness, but rather because others are equally entitled to its use. (2 Callman, Unfair Competition and Trademarks, pp. 869-870.)”

This, however, is not the situation herein. Although SAKURA refers to the Japanese flowering cherry¹⁶ and is, therefore, of a generic nature, such mark did not identify Kensonic’s goods unlike the mark in *Asia Brewery, Inc., v. Court of Appeals*. Kensonic’s DVD or VCD players and other products could not be identified with cherry blossoms. Hence, the mark can be appropriated.

Kensonic’s prior use of the mark since 1994 made it the owner of the mark, and its ownership cannot anymore be challenged at this stage of the proceedings. Seeking the review of Kensonic’s ownership would entail the examination of facts already settled by the lower tribunals. Uni-Line’s challenge to the ownership of the SAKURA mark should stop here because the Court cannot act on a factual matter in this appeal by petition for review on *certiorari*, which is limited to the consideration of questions of law. Section 1, Rule 45 of the *Rules of Court* specifically so provides:

Section 1. *Filing of petition with Supreme Court.* — A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the *Sandiganbayan*, the Court of Tax Appeals, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law which must be distinctly set forth. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.

The distinction between a question of law and a question of fact is well defined. According to *Tongonan Holdings and Development Corporation v. Escaño, Jr.*:¹⁷

A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one

¹⁶ Merriam-Webster, Inc. 2018. Accessed at <https://www.merriam-webster.com/dictionary/sakura> last April 2, 2018.

¹⁷ G.R. No. 190994, September 7, 2011, 657 SCRA 306, 314, citing *Republic of the Philippines v. Malabanan*, G.R. No. 169067, October 6, 2010, 632 SCRA 338, 345.

of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.

It is timely to remind, too, that the Court is not a trier of facts. Hence, the factual findings of the quasi-judicial body like the IPO, especially when affirmed by the CA, are binding on the Court.¹⁸ Jurisprudence has laid down certain exceptions to the rule of bindingness,¹⁹ but, alas, Uni-Line did not discharge its burden to show how its urging for a review of the factual findings came within any of the exceptions.

II.

Uni-Line's goods classified under Class 07 and Class 11 were not related to Kensonic's goods registered under Class 09

The CA did not err in allowing the registration of Uni-Line's products falling under Class 07 and Class 11, for, indeed, those products – as found by the lower tribunals – were unrelated to the goods of Kensonic registered under Class 09.

Still, Kensonic contends that the goods of Uni-Line classified under Class 07 and Class 11 were covered by the prohibition from registration for being within the normal potential expansion of Kensonic.

¹⁸ Section 4, Rule 3 of the *Internal Rules of the Supreme Court*, which states that the Court “shall respect the factual findings of lower courts” subject to the exceptions enumerated therein.

¹⁹ *Tan v. Andrade*, G.R. No. 171904, August 7, 2013, 703 SCRA 198, 205; and *Salcedo v. People*, G.R. No. 137143, December 8, 2000, 347 SCRA 499, 505, where the Court enumerated the following exceptions, namely:

- (1) When the factual findings of the CA and the trial court are contradictory;
- (2) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures;
- (3) When the inference made by the CA from its findings of fact is manifestly mistaken, absurd or impossible;
- (4) When there is grave abuse of discretion in the appreciation of facts;
- (5) When the CA, in making its findings, went beyond the issues of the case, and such findings are contrary to the admissions of both appellant and appellee;
- (6) When the judgment of the CA is premised on misapprehension of facts;
- (7) When the CA failed to notice certain relevant facts which, if properly considered, would justify a different conclusion;
- (8) When the findings of fact are themselves conflicting;
- (9) When the findings of fact are conclusions without citation of the specific evidence on which they are based; and
- (10) When the findings of fact of the CA are premised on the absence of evidence but such findings are contradicted by the evidence on record.

The contention is unwarranted.

The prohibition under Section 123 of the *Intellectual Property Code* extends to goods that are related to the registered goods, not to goods that the registrant may produce *in the future*. To allow the expansion of coverage is to prevent future registrants of goods from securing a trademark on the basis of mere possibilities and conjectures that may or may not occur at all. Surely, the right to a trademark should not be made to depend on mere possibilities and conjectures.

In *Mighty Corporation v. E. & J. Gallo Winery*,²⁰ the Court has identified the different factors by which to determine whether or not goods are related to each other for purposes of registration:

Non-competing goods may be those which, though they are not in actual competition, are so related to each other that it can reasonably be assumed that they originate from one manufacturer, in which case, confusion of business can arise out of the use of similar marks. They may also be those which, being entirely unrelated, cannot be assumed to have a common source; hence, there is no confusion of business, even though similar marks are used. Thus, there is no trademark infringement if the public does not expect the plaintiff to make or sell the same class of goods as those made or sold by the defendant.

In resolving whether goods are related, several factors come into play:

- (a) the business (and its location) to which the goods belong
- (b) the class of product to which the goods belong
- (c) the product's quality, quantity, or size, including the nature of the package, wrapper or container
- (d) the nature and cost of the articles
- (e) the descriptive properties, physical attributes or essential characteristics with reference to their form, composition, texture or quality
- (f) the purpose of the goods
- (g) whether the article is bought for immediate consumption, that is, day-to-day household items
- (h) the fields of manufacture
- (i) the conditions under which the article is usually purchased and

²⁰ G.R. No. 154342, July 14, 2004, 434 SCRA 473, 509-511.

- (j) the channels of trade through which the goods flow, how they are distributed, marketed, displayed and sold. (Citations omitted)

An examination of the foregoing factors reveals that the goods of Uni-Line were not related to the goods of Kensonic by virtue of their differences in class, the descriptive attributes, the purposes and the conditions of the goods.

III.

**The goods of Kensonic were also
unrelated to the goods of Uni-Line
although both belonged to Class 9**

Uni-Line posits that its goods under Class 09 were unrelated to the goods of Kensonic; and that the CA's holding of the goods being related by virtue of their belonging to the same class was unacceptable.

In *Taiwan Kolin Corporation, Ltd. v. Kolin Electronics, Co., Inc.*,²¹ the Court has opined that the mere fact that goods belonged to the same class does not necessarily mean that they are related; and that the factors listed in *Mighty Corporation v. E. & J. Gallo Winery* should be taken into consideration, to wit:

As mentioned, the classification of the products under the NCL is merely part and parcel of the factors to be considered in ascertaining whether the goods are related. It is not sufficient to state that the goods involved herein are electronic products under Class 9 in order to establish relatedness between the goods, for this only accounts for one of many considerations enumerated in *Mighty Corporation*. xxx

Clearly then, it was erroneous for respondent to assume over the CA to conclude that all electronic products are related and that the coverage of one electronic product necessarily precludes the registration of a similar mark over another. In this digital age wherein electronic products have not only diversified by leaps and bounds, and are geared towards interoperability, it is difficult to assert readily, as respondent simplistically did, that all devices that require plugging into sockets are necessarily related goods.

It bears to stress at this point that the list of products included in Class 9 can be sub-categorized into five (5) classifications, namely: (1) apparatus and instruments for scientific or research purposes, (2) information technology and audiovisual equipment, (3) apparatus and devices for controlling the distribution and use of electricity, (4) optical apparatus and instruments, and (5) safety equipment. From this sub-classification, it becomes apparent that petitioner's products, *i.e.*, televisions and DVD players, belong to audiovisual equipment, while that of respondent, consisting of automatic voltage regulator, converter,

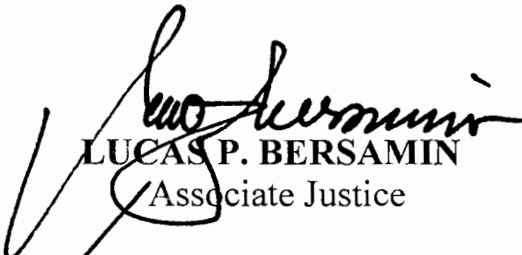
²¹ G.R. No. 209843, March 25, 2015, 754 SCRA 556, 571-572.

recharger, stereo booster, AC-DC regulated power supply, step-down transformer, and PA amplified AC-DC, generally fall under devices for controlling the distribution and use of electricity.

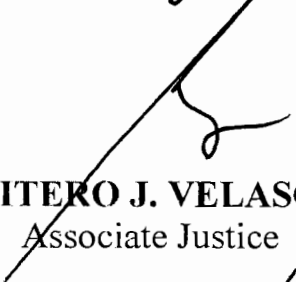
Based on the foregoing pronouncement in *Taiwan Kolin Corporation, Ltd. v. Kolin Electronics, Co., Inc.*, there are other sub-classifications present even if the goods are classified under Class 09. For one, Kensonic's goods belonged to the information technology and audiovisual equipment sub-class, but Uni-Line's goods pertained to the apparatus and devices for controlling the distribution of electricity sub-class. Also, the Class 09 goods of Kensonic were final products but Uni-Line's Class 09 products were spare parts. In view of these distinctions, the Court agrees with Uni-Line that its Class 09 goods were unrelated to the Class 09 goods of Kensonic.

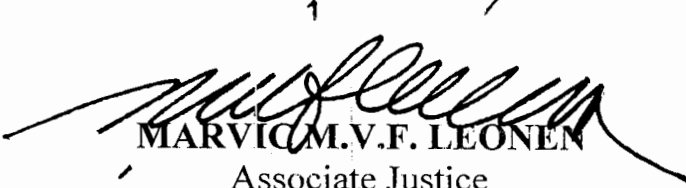
WHEREFORE, the Court **DENIES** the petition for review on *certiorari* in G.R. No. 211820-21; **PARTIALLY GRANTS** the petition for review on *certiorari* in G.R. No. 211834-35; **REVERSES** and **SETS ASIDE** the amended decision promulgated on March 19, 2014; **PARTIALLY REINSTATES** the decision promulgated on July 30, 2013 insofar as it allowed the registration by Uni-Line Multi-Resources, Inc. under the SAKURA mark of its voltage regulators, portable generators, switch breakers and fuses; and **ORDERS** Kensonic, Inc. to pay the costs of suit.


SO ORDERED.

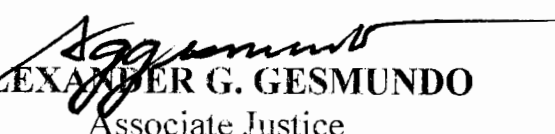

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice

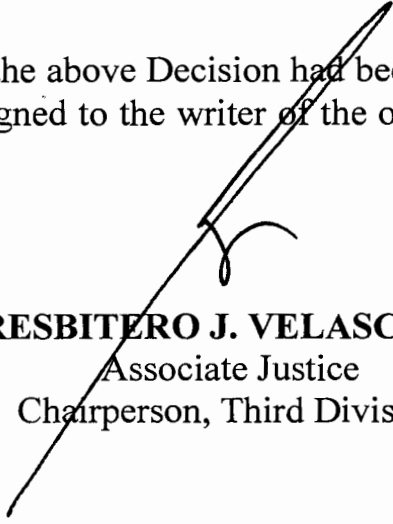

MARVIC M.V.F. LEONEN
Associate Justice


SAMUEL R. MARTIRES
Associate Justice


ALEXANDER G. GESMUNDO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Acting Chief Justice