

INNOLAB INDUSTRIES, INC., PETITIONER, VS. UNITED LABORATORIES, INC., RESPONDENT.

G.R. No. 257075, August 05, 2025

Ponente: KHO, JR., J.

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KHO, JR., J.:

Before the Court is a Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court filed by petitioner Innolab Industries, Inc. (Innolab), which assails the Decision[2] dated December 4, 2020 and the Resolution[3] dated June 23, 2021 of the Court of Appeals (CA) in CA-G.R. SP No. 164332. The CA affirmed the Decision[4] dated December 20, 2019 of the Office of the Director General (ODG) of the Intellectual Property Office of the Philippines (IPOPHL), which in turn, upheld the Decision[5] dated April 19, 2017 of the IPOPHL's Bureau of Legal Affairs (BLA). The BLA sustained the opposition filed by respondent United Laboratories, Inc. (Unilab) and denied Innolab's application for the registration of the trademark "INNOLAB."

The Facts

On July 29, 2015, Innolab filed Trademark Application No. 4-2015--008549 with IPOPHL for the registration of the trademark "INNOLAB," covering the following goods under the Nice Classification (NCL): (a) NCL Class 3 – soaps, perfumery, oils, cosmetics and cosmetic preparations, personal care, skin care and hair products; and (b) NCL Class 5 – pharmaceutical and sanitary preparations, food supplements, cosmetics and household hazardous substance products.[6] The trademark appeared as follows:[7]

(Image supposed to be here)

Subsequently, the IPOPHL issued a notice of allowance in favor of the trademark, which was published in the Electronic Gazette. Thereafter, Unilab filed a Verified Notice of Opposition[8] to the trademark application. Unilab claimed that the use of petitioner's mark will cause damage to its existing registered marks by their confusing similarity. Unilab attached the following registered marks, which covers Unilab's goods also under NCL Class 5:[9]

(Image supposed to be here)

To prove that it would be damaged by "INNOLAB's" registration, Unilab presented the following pieces of evidence:

- Certification from the Philippine Patent Office on the registration of the mark "UNILAB" on May 25, 1983;[10]
- Certificates of renewal of registration, including, relevantly, for NCL Classes 03, 05, 30, and 32.[11]
- Affidavits and Declarations from Unilab as to the use of the registered mark "UNILAB;"[12] and
- Scanned images of some of Unilab's products, which bear the "UNILAB and LOGO" mark.[13]

The IPOPHL then sent Innolab a Notice to Answer.[14] Innolab, however, failed to file an answer to Unilab's opposition. Nonetheless, the Notice was recorded with the IPOPHL as being received by Innolab. In an Order

dated February 28, 2017, the BLA declared Innolab in default.[15]

Innolab claimed that the Notice to Answer was never "recorded, logged, and/or transmitted to [Innolab's] appropriate officers for their immediate action as in the case of previous Notices to Answer in other Oppositions filed by [Unilab]."[16] Upon receipt of the Order, Innolab coordinated with its counsel.[17]

The BLA Ruling

In a Decision[18] dated April 19, 2017, the BLA sustained Unilab's opposition. Accordingly, it denied Innolab's trademark application and ordered the return of the filewrapper of the application to the Bureau of Trademarks for action. Innolab then filed its Appeal Memorandum[19] with the BLA.

In an Order[20] dated June 13, 2017, the director of the BLA denied the appeal, citing IPO Memorandum Circular No. 16-007,[21] which states that an appeal shall be immediately denied if it is "filed out of time and/or is not accompanied by the payment of the applicable fee." [22] The director found that the appeal was not accompanied by the filing fee.

Consequently, Innolab filed its Appeal Memorandum[23] with the ODG on July 3, 2017, praying that the case be heard on the merits and explaining that the failure to pay the appeal fee was due to its counsel's failure to verify if the fee had indeed been paid, caused by the "sheer number and volume of intellectual property cases and transactions handled by the [their] counsel and through mere inadvertence[.]"[24]

The ODG Ruling

In a Decision[25] dated December 20, 2019, the ODG affirmed the BLA and dismissed the appeal outright. Taking into consideration Innolab's proffered reason for the procedural lapse, the director general ruled that the liberal interpretation and application of the rules may be allowed only in case of demonstrable merit and under justifiable causes and circumstances.[26] In this case, the counsel's negligence was held to be inexcusable. Consequently, it did not rule on the substantive aspect of the appeal.

Aggrieved, Innolab filed a Petition for Review[27] under Rule 43 of the Rules of Court before the CA, arguing that the IPOPHL erred in dismissing the appeal outright.

The CA Ruling

In a Decision[28] dated December 4, 2020, the CA denied the petition for review. The appellate court ruled that the right to appeal is neither a natural right nor part of due process but merely a statutory privilege. Thus, when Innolab failed to pay the appeal fee as required by the rules of the IPOPHL, the BLA ruling became final and executory. The failure of the counsel to ensure that the appeal fee was paid in this case bound its client.[29]

At any rate, the CA held that even if the rules were relaxed, the petition must still be denied. Mainly upholding the BLA ruling, it found that there is confusing similarity between Innolab's mark, "INNOLAB," and Unilab's trademark, "UNILAB," due to the following: (1) the marks sound the same; (2) the second letter, "N," as well as the last three letters "LAB" are identical in both marks; (3) both marks have three syllables; and (4) both marks are pronounced with the same intonation. Thus, following Section 123.1(d) of Republic Act No. 8293,[30] or the Intellectual Property Code of the Philippines (IPC), the CA held that the mark may not be registered.[31]

Innolab sought reconsideration, which the CA denied in a Resolution[32] dated June 23, 2021. Hence this Petition.

The Issue Before the Court

The Court resolves whether the CA erred in affirming the denial of petitioner's appeal and the rejection of its application for trademark registration.

Petitioner argues that the IPOPHL erred in strictly applying its rules of procedure and that its mark is not confusingly similar to respondent's mark. Further, it claims that its mark will not ride on the goodwill of respondent's mark.

In its Comment,[33] respondent points out that the arguments raised in the Petition merely repeated the arguments raised before the IPOPHL and the CA. Thus, the petition is pro forma in nature. It also echoes the CA in finding that, at any rate, the marks are indeed confusingly similar due to the phonetic and visual similarities between them.

The Court's Ruling

The Petition is granted.

The Court finds that the CA erred in affirming the IPOPHL's denial of the application to register petitioner's trademark.

I

The general rule in proceedings before administrative agencies is liberality.[34] As tools for the administration and attainment of justice, rules of procedure must not be strictly and rigidly applied when doing so would frustrate the ends of justice and lead to the deprivation of substantive rights.[35] In *Birkenstock Orthopaedie GmbH and Co. KG v. Philippine Shoe Expo Marketing Corp.*,[36] the Court emphasized the liberal application of rules in these proceedings, noting that quasi-judicial and administrative bodies such as the IPOPHL are not bound by technical rules of procedure. This liberality is subject only to limitations imposed by the requirements of due process.[37] The Court emphasized in *Besaga v. Spouses Acosta*[38] that unlike in proceedings where the Rules of Court are applied, liberal construction of administrative rules of procedure is generally allowed. Strict application of these rules is called for only when the gravity of the violation is such that due process is breached.

Here, petitioner filed its Appeal from the BLA ruling but failed to pay the filing fee as required by Rule 9, Section 2(a) of IPO Memorandum Circular No. 16-007. True, the lodging of an Appeal that is unaccompanied by the payment of the filing fee is a ground to dismiss the appeal outright. However, considering that nonpayment of the appeal fee did not breach the due process rights of any party to the case, the ODG erred in dismissing the appeal outright. In doing so, the ODG rigidly applied administrative rules of procedure and sacrificed the purpose of these rules in the first place, which is to "assist the parties in obtaining a just, speedy, and inexpensive determination of their respective claims and defenses." [39] By dismissing the Appeal outright, the IPOPHL denied the parties the genuine opportunity to be heard by a tribunal that possesses the unique and technical expertise to resolve their issues.

Consequently, the Court finds that the IPOPHL should have allowed petitioner to rectify its error and belatedly pay the appeal fee and heard the parties on appeal. The nonpayment of the appeal fee at the time of the filing of Appeal should not, in this case, result in the BLA ruling becoming final. Likewise, the CA erred in affirming the IPOPHL's dismissal of petitioner's Appeal.

II

Despite affirming the dismissal of petitioner's appeal on procedural grounds, the CA saw fit to discuss the merit of the application for registration and respondent's opposition. As stated earlier, the CA affirmed the BLA's finding that petitioner's mark is confusingly similar to respondent's mark, highlighting the aural and visual similarities between the marks "INNOLAB" and "UNILAB," reproduced here:

Petitioner's Mark

Respondent's Mark

(Image supposed to be here)

(Image supposed to be here)

The Court agrees that there is a degree of similarity between the marks. However, as the party opposing the registration of a trademark, respondent has the burden to prove that the mark sought to be registered is not only similar to its own existing mark, but also that the similarity between the marks is to such an extent as to likely confuse the ordinary purchaser. Respondent failed to discharge this burden.

It is important to emphasize, however, that similarity between marks and the likelihood of such similarity to confuse, are questions of fact.[40] They entail the appreciation and calibration of evidence of similarity or colorable imitation. Indeed, the Court's own 2020 Revised Rules of Procedure for Intellectual Property Rights Cases[41] identifies several factors for trial courts handling these cases to determine whether a mark is likely to deceive or cause confusion by its similarity to another mark.[42]

As such, ordinarily, these questions lie beyond the Court's review. Instead, they are resolved by the tribunals below, to whom evidence is presented. In turn, only questions of law must be brought before the Court concerning these tribunals' decisions. Stated otherwise, because the Court is not a trier of facts and does not receive evidence, it is generally not empowered to answer whether a mark is likely too confusingly similar to another mark.

In *CMTC International Marketing Corporation v. Bhagis International Trading Corporation*,[43] the Court remanded an improperly dismissed appeal from a ruling in an unfair competition case. It recognized that certain issues raised, such as whether certain trademarks are similar to or different from each other, require the examination of "factual and legal issues that still need to be threshed out," which the Court may not do since it is not a trier of facts.[44]

However, in several cases, the Court allowed questions of fact, given the presence of certain exceptions. For instance, in *Lim v. See*[45] and *E.Y. Industrial Sales, Inc. v. Shen Dar Electricity and Machinery Co., Ltd.*,[46] the Court held that it is empowered to make its own factual findings because of the conflicting findings made by the CA and the administrative tribunal. In *Philip Morris, Inc. v. Fortune Tobacco Corporation*,[47] the Court invoked the rule that the factual findings of the appellate court are to be respected unless they are "mistaken, absurd, speculative, conflicting, tainted with grave abuse of discretion, or contrary to the findings culled by the court of origin." [48]

Finally, in *Mighty Corporation v. E. & J. Gallo Winery*,[49] the Court held that the issues concerning the similarity of goods, identity, relation, channels of trade, and acts of trademark infringement were intertwined with questions of law. Ruling that it may resolve questions of fact, the Court identified the following exceptional circumstances that warranted factual review:

- (1) the conclusion is grounded entirely on speculation, surmises, and conjectures;
- (2) the inference of the Court of Appeals from its findings of fact is manifestly mistaken, absurd and impossible;
- (3) there is grave abuse of discretion;
- (4) the judgment is based on a misapprehension of facts;
- (5) the appellate court, in making its findings, went beyond the issues of the case, and the same are contrary to the admissions of both the appellant and the appellee;
- (6) the findings are without citation of specific evidence on which they are based;
- (7) the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and
- (8) the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted [by the evidence] on record.[50]

The Court finds that both the CA and the IPOPHL failed to cite specific evidence for their finding that there is a likelihood of confusion brought on by the similarity of petitioner's mark to respondent's mark. This failure is brought on by the fact that respondent, in its opposition to the registration, did not present evidence showing that whatever similarity between the competing marks, if any, is likely to cause confusion.

III

A mark cannot be registered if it nearly resembles a registered mark belonging to a different proprietor as to be likely to deceive or cause confusion.[51] A close reading of this provision yields that it is not enough that the marks nearly resemble each other; instead, the assailed mark must nearly resemble the mark sought to be protected as to likely deceive or cause confusion. Apart from the element of similarity, therefore, there is also the element of likelihood of confusion.

Any person who believes they would be damaged by such a mark is allowed by law to file their verified opposition to the registration of the mark, stating the grounds and surrounding facts on which they rely.[52] Being an administrative case, such verified opposition is required by the rules on evidence[53] to be supported by substantial evidence, or the kind of evidence that a reasonable person would consider adequate to support a conclusion.[54] Respondent as oppositor bears this burden of evidence. To be clear, and as stated earlier, apart from proving that the competing marks are similar, it is also incumbent on respondent to present evidence that the similarity between them is likely to cause confusion to the ordinary purchaser.

The CA, in affirming the IPOPHL, ruled that respondent discharged that burden. In so ruling, it also affirmed that, using the dominance test, petitioner's mark, "INNOLAB," nearly resembles respondent's mark, "UNILAB," to such a degree as to be likely to deceive or cause confusion. The CA held:

In the case of *Mighty Corp. v. E & J Gallo Winery*, the Supreme Court held that 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; [d] the registrant's express and implied consent and other fair and equitable considerations. Furthermore, in the case of *McDonald's Corp. v. L.C. Big Mak Burger, Inc.*, the Supreme Court held that our jurisdiction has relied on the dominance test rather than the holistic test. The dominance test considers the dominant features in the competing marks in determining whether they are confusingly similar. Under the dominance test, courts give greater weight to the similarity of the appearance of the product arising from the dominant features of the registered mark, disregarding minor differences. 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.[55] (Emphasis in the original)

Echoing the IPOPHL and citing the Court's ruling in *Marvex Commercial Co., Inc. v. Petra Hawpia, Co.*,[56] the CA decided the issue of similarity of marks as follows:

Following [*Marvex Commercial Co., Inc.*], the BLA's Adjudication Officer correctly held that there is a confusing similarity between petitioner's mark "INNOLAB" [and] [r]espondent's trademark "UNILAB" due to the following factors: 1) petitioner's mark "INNOLAB" appears and sounds almost the same as respondent's "UNILAB" trademark; 2) the second and last three (3) letters, "N" and "L-A-B" in petitioner's mark "INNOLAB" and respondent's "UNILAB" trademark are identical; 3) [b]oth marks are composed of three (3) syllables – IN/NO/LAB and U/NI/LAB; 4) [b]oth marks are pronounced with the same intonation. Given the foregoing aural similarities between petitioner's mark "INNOLAB" and respondent's "UNILAB" trademark after applying the test of "idem sonans" there is indeed a likelihood that confusion or deception might exist in the mind of the public. The likelihood of confusion between petitioner's mark and respondent's registered trademark having been established, petitioner's trademark application must perforce be disallowed because it is proscribed by Section 123.1 (d) of the Intellectual Property Code.[57] (Emphasis supplied)

Both tribunals correctly used the dominance test, as this test is not only preferred over the holistic test but also bears the imprimatur of the Legislature. In *Kolin Electronics Co., Inc. v. Kolin Philippines International, Inc.*,^[58] the Court, reading the provisions of the IPC and the legislative deliberations behind the law, clarified that the use of the holistic test has been abandoned in favor of the dominance test.^[59] The CA and the IPOPHL's correctness, however, ends there.

The Court observes that there is a degree of similarity between the marks "INNOLAB" and "UNILAB." As both tribunals likewise observed, both marks end with the syllable "-LAB" and have the letter "N" in their first two syllables. The vowels, however, are different, which lead to differences in how the marks are spoken, except for "-LAB." As pointed out by Senior Associate Justice Marvic M.V.F. Leonen (Senior Associate Justice Leonen)^[60] and Associate Justice Amy C. Lazaro-Javier (Associate Justice Lazaro-Javier) during the deliberations of this case, there are, as well, visual and aural differences between the two marks, as evident in the visual appearance of and when the syllables "INNO" and "UNI" are pronounced.

Senior Associate Justice Leonen, noting the applicability and similarity of the facts of the present case to the case of *Seri Somboonsakdikul v. Orlane*,^[61] also pointed out that considering Unilab's presence in the market for almost 60 years, it is also not impossible that some would also be aware of the proper pronunciation of "UNILAB."^[62]

It must be stressed that while the dominance test enables the examining tribunal to identify the dominant features of the competing marks to determine whether they are similar, the likelihood of confusion, that is, whether the marks nearly resemble each other as to be likely to deceive or cause confusion, is another matter. To prove that the similarities are likely to confuse or deceive, simply alleging or pointing out the similarities between the marks is insufficient. Otherwise, resolving this issue would simply revolve around the parties' and the examining tribunal's own subjective perceptions on the degree of similarity between the marks, as well as assumptions unsupported by evidence about whether the ordinary purchaser of the goods bearing such marks would likely be confused by those similarities.

For this reason, Our jurisdiction already allows tribunals to consider several factors in determining likelihood of confusion. For instance, in the 2020 Revised Rules of Procedure in Intellectual Property Rights Cases, several factors aside from the perceived similarities between the competing marks may be considered in finding a likelihood of confusion, which was called the "multifactor test" in *Kolin*:^[63]

Rule 18

....

SEC. 5. Likelihood of confusion in other cases. — In determining whether one trademark is confusingly similar to or is a colorable imitation of another, the court must consider the general impression of the ordinary purchaser, buying under the normally prevalent conditions in trade, and giving the attention such purchasers usually give in buying that class of goods. Visual, aural, connotative comparisons and overall impressions engendered by the marks in controversy as they are encountered in the realities of the marketplace must be taken into account. Where there are both similarities and differences in the marks, these must be weighed against one another to determine which predominates.

In determining likelihood of confusion between marks used on non-identical goods or services, several factors may be taken into account, such as, but not limited to:

- a) the strength of plaintiff's mark;
- b) the degree of similarity between the plaintiffs and the defendant's marks;

- c) the proximity of the products or services;
- d) the likelihood that the plaintiff will bridge the gap;
- e) evidence of actual confusion;
- f) the defendant's good faith in adopting the mark;
- g) the quality of defendant's product or service; and/or
- h) the sophistication of the buyers.

"Colorable imitation" denotes 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, as to cause him or her to purchase the one supposing it to be the other.

Absolute certainty of confusion or even actual confusion is not required to accord protection to trademarks already registered with the IPO.

In other jurisdictions, these and other factors are used to determine likelihood of confusion. For instance, the Ninth Circuit of the United States Court of Appeals have laid out the so-called "Sleekcraft factors" in its decision in *AMF, Inc. v. Sleekcraft Boats*.^[64] These factors are:

1. Strength of the trademark (fanciful, arbitrary, suggestive, or merely descriptive);
2. Proximity of the goods and services, both in geographic location and use;
3. Similarity of the trademarks when considering sight, sound, and meaning;
4. Evidence of actual confusion;
5. Marketing channels used;
6. Type of goods or services and the degree of care likely to be exercised by the purchaser;
7. Defendant's intent in selecting the trademark; and
8. Likelihood of expansion of the product lines.

Meanwhile, in the European Union (EU), the appreciation of likelihood of confusion between competing marks "depends on numerous elements, and, in particular, on the recognition of the trade mark on the market, the association which can be made with the used or registered sign, the degree of similarity between the trade mark and the sign and between the goods or services identified."^[65] It has also been observed that "the EU Courts have interpreted these provisions as requiring that the likelihood of confusion must be appreciated globally, taking into account all factors relevant to the circumstances of the case."^[66] In fact, courts in the European Union require that, before a global assessment of likelihood of confusion is undertaken, the party alleging infringement must first meet the so-called double-identity test, which requires that the "goods or services covered by the trade mark applied for are identical or similar to those for which the earlier trade mark was registered and that the trade mark applied for, or the allegedly infringing sign, and the earlier trade mark are identical or similar."^[67] In that jurisdiction, the similarity between the marks must first be determined before the tribunal resolves the issue of likelihood of confusion.

The Court makes it clear that the foregoing discussion should not be taken as an outright application of foreign statutory and case law. Instead, it shows that this jurisdiction, similar to other jurisdictions, recognizes that likelihood of confusion is not and cannot be reasonably determined simply by pointing out the similarities between how the marks sound or how they appear. In fact, the law only presumes a likelihood of confusion in case of identical marks.^[68] In similar marks, there is no such presumption, which can only mean that an assertion of likelihood of confusion in similar marks must be supported by evidence and is not proven simply by pointing out the similarities.

All told, the degree of similarity is but one of several factors that ought to be considered in determining whether the similarities between the marks are likely to confuse. The Court also makes it clear that a finding of similarity is different from, and is not equal to, a finding of similarity that is likely to confuse the ordinary purchaser.

In the present case, aside from alleging that the marks "INNOLAB" and "UNILAB" sound confusingly similar, respondent offered no evidence that would support that it is likely that the former would be confused with the latter by an ordinary purchaser. Even its assertion that confusion is likely because both marks pertain to goods classified under the same NCL, which is Class 5, is untenable. In *Kolin*, the Court held that Our jurisdiction has laid down its own test to determine the relatedness of goods that are represented by competing marks and has abandoned the use of product or service classification as a factor in determining relatedness or nonrelatedness. To rely solely on product classification to determine the relatedness of goods, the Court held, may create problems in jurisprudential precedents on legal relatedness due to the principle of *stare decisis*.^[69]

It also appears from the record that respondent's claim of relatedness in goods is defeated by its own evidence showing that its goods^[70] do not bear solely the "UNILAB" mark. Instead, they also bear the "UNILAB and LOGO" mark, which appears as:

(Image supposed to be here)

UNILAB AND LOGO

Indeed, the difference between the "INNOLAB" mark and the "UNILAB and LOGO" mark is even more striking than the difference between the text marks "INNOLAB" and "UNILAB." If respondent wanted to impress upon the IPOPHL, the CA, and this Court that petitioner's goods bearing the "INNOLAB" mark might be confused with its own products, then the submission of the packaging here, bearing a strikingly different mark, militates against that claim.

Additionally, and as pertinently pointed out by Associate Justice Lazaro-Javier,^[71] petitioner also filed its own trademark for its logo. In Trademark Application No. 04-2015-008547^[72] filed at the same time as the "INNOLAB" mark, petitioner sought to register the following mark:

(Image supposed to be here)

While the records do not show whether the logo above was successfully registered, the application for its registration at least shows an intent on petitioner's part to use this logo to identify its products. In this case, the difference between this logo and the "UNILAB and LOGO" mark is also too striking to ignore. As pointed out by Associate Justice Alfredo Benjamin S. Caguioa, the intent to use this mark shows good faith on petitioner's part in intending to differentiate its own mark from respondent's.^[73]

Given the foregoing, the Court finds that respondent failed to present substantial evidence that the similarities between the "INNOLAB" mark and the "UNILAB" mark is of such a degree as to likely cause confusion among consumers. In ruling that a likelihood of confusion exists, the IPOPHL and the CA failed to specify which evidence supports this legal finding because there is none. Thus, their denial of petitioner's registration for the "INNOLAB" mark must be reversed.

IV

As it underscores the necessity of presenting substantial evidence to prove likelihood of confusion, the Court recognizes through this Decision what it has previously observed about cases involving intellectual property, particularly on the issue of likelihood of confusion: that no rigid set of rules can be deduced because each case must be decided on its merits.^[74] Indeed, the Court has held that in trademark cases, "even more than in any other litigation, precedent must be studied in the light of the facts of the particular case."^[75]

Perhaps owing to the highly fact-specific^[76] nature of the issue of likelihood of confusion, in past cases, the Court has had to resort to "unsubstantiated assumptions and generalizations about consumers and their behavior, arbitrary categorizations of goods and services, and even outright derogatory classist stereotypes."^[77] This was observed by Senior Associate Justice Leonen in his Separate Concurring Opinion in *Kolin* and during the deliberations of this case. Thus, in the same Opinion, he declared that "[e]valuations of likelihood of confusion cannot be left to the subjective determination by the Intellectual Property Office or the courts, which may often rely on ad hoc inferences of similarity in class, physical attributes or descriptive properties, purpose, or points of sale of the goods and services."^[78]

Senior Associate Justice Leonen maintained that there should be evidence-based standards to determine likelihood of confusion. Citing the "multifactor test" for likelihood of confusion as laid down in the 2020 Revised Rules of Procedure in Intellectual Property Rights Cases, he underscored the need for these factors to be proven by evidence, which may be through testimonies of "stringently qualified" witnesses, or market surveys "conducted with the appropriate methodology, proper sampling and scope, and the relevant market conditions."^[79]

The Court agrees.

In particular, in the case of *Ginebra San Miguel Corp. v. Director of the Bureau of Trademarks*,^[80] the Court affirmed both the reliability and admissibility of survey evidence in establishing the likelihood of confusing between two competing marks, subject to several factors that ensure the objectivity of the survey process. In doing so, the Court held that "[t]he empirical results of the consumer surveys provide an objective analysis whether there is a likelihood of confusion between the two products."^[81]

Finally, as stated earlier, the quantum of evidence in administrative cases is substantial evidence. Just as the party opposing a mark sought to be registered may not solely rely on the similarities between the marks to argue likelihood of confusion, if and when such party invokes the factors in the multifactor test, it must present substantial evidence for the factors it invokes. In the same manner, when the hearing tribunal takes these factors into account, it must be careful to ensure that its conclusions regarding each factor are supported by the evidence on record and avoid making inferences on the presence of these factors where no evidence has been put forth to prove it.

ACCORDINGLY, the Petition is GRANTED. The Decision dated December 4, 2020 and the Resolution dated June 23, 2021 of the Court of Appeals in CA-G.R. No. 164332 are REVERSED and SET ASIDE.

The Decision dated December 20, 2019 of the Office of the Director General of the Intellectual Property Office of the Philippines and the Decision dated April 19, 2017 of the latter's Bureau of Legal Affairs are also REVERSED and SET ASIDE. Consequently, the Verified Opposition filed by United Laboratories, Inc. against Innolab Industries, Inc. in Trademark Application No. 4-2015-008549 is DENIED.

In case no other verified opposition is pending against the trademark "INNOLAB" in Trademark Application No. 4-2015-008549, the same is hereby REGISTERED.

Let the Intellectual Property Office of the Philippines be furnished a copy of this Decision for implementation and appropriate action.

SO ORDERED.

Gesmundo, C.J., Hernando, Lazaro-Javier, Inting, Gaerlan, Rosario, and J. Lopez, JJ., concur.
Leonen, SAJ. and Dimaampao, J., see separate concurring opinion.
Caguioa, J., see concurring.

Zalameda,[**] Marquez,[***] and Villanueva,[*****] JJ., on official business.
Singh,[*****] J., on leave.

[*] Also referred to as "Unilab" in some pages of the rollo.

[**] On official business.

[***] On official business.

[*****] On leave.

[*****] On official business.

[1] Rollo, pp. 11-33.

[2] Id. at 37-44. Penned by Associate Justice Edwin D. Sorongon and concurred in by Associate Justices Gabriel T. Robeniol and Bonifacio S. Pascua, of the Special Fourteenth Division, Court of Appeals, Manila.

[3] Id. at 46-47.

[4] Id. at 163-166. Penned by Director General Josephine R. Santiago, LL.M. of the Office of the Director General, Intellectual Property Office of the Philippines, Taguig City.

[5] Id. at 52-56. Penned by Adjudication Officer Marlita V. Dagsa of the Bureau of Legal Affairs of the Intellectual Property Office of the Philippines.

[6] Id. at 13-14. See also id. at 163.

The Nice Classification is a classification of goods and services for the purpose of registering trademarks and service marks, based on a multilateral treaty administered by the World Intellectual Property Organization. This treaty is called the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks concluded in 1957.

[7] Id. at 55.

[8] Id. at 303-320.

[9] Id. at 332-333.

[10] Id. at 324.

[11] Id. at 328.

[12] Id. at 334-355.

[13] Id. at 356-363.

[14] Id. at 14.

[15] Id.

[16] Id.

[17] Id.

[18] Id. at 51-56.

[19] *Id.* at 57-75.

[20] *Id.* at 91-92. Signed by Atty. Nathaniel S. Arevalo, Director IV of the Bureau of Legal Affairs, Intellectual Property Office of the Philippines, Taguig City.

[21] Revised Rules and Regulations on Inter Partes Proceedings (2016).

[22] *Id.*, Rule 2, sec. 9(a).

[23] Rollo, pp. 93-118.

[24] *Id.* at 97.

[25] *Id.* at 163-166.

[26] *Id.* at 165-166.

[27] *Id.* at 167-195.

[28] *Id.* at 37-44.

[29] *Id.* at 40-41.

[30] An Act Prescribing the Intellectual Property Code and Establishing the Intellectual Property Office, Providing for Its Powers and Functions, and for Other Purposes (1997).

[31] Rollo, pp. 41-43.

[32] *Id.* at 46-47.

[33] *Id.* at 236-278.

[34] See *Besaga v. Spouses Acosta*, 758 Phil. 339, 350 (2015) [Per J. Brion, Second Division].

[35] *Id.* at 351.

[36] 721 Phil. 867, 875-876 (2013) [Per J. Perlas-Bernabe, Second Division].

[37] *Besaga v. Spouses Acosta*, 758 Phil. 339, 351 (2015) [Per J. Brion, Second Division].

[38] *Id.* at 351-352, citing *Spouses Aya-ay v. Arpaphil Corporation*, 516 Phil. 628 (2006) [Per J. Carpio Morales, Third Division].

[39] *Id.* at 350, citing *Barcelona v. Lim*, 734 Phil. 766, 785 (2014) [Per C.J. Sereno, En Banc].

[40] *Philippine Nut Industry, Inc. v. Standard Brands Incorporated and Evalle*, 160 Phil. 581 (1975) [Per J. Muñoz Palma, First Division].

[41] A.M. No. 10-3-10-SC (2020).

[42] *Id.*, rule 18, sec. 5.

[43] 700 Phil. 575, 583 (2012) [Per J. Peralta, Third Division].

[44] *Id.* at 583.

[45] 934 Phil. 527 (2023) [Per J. J. Lopez, Second Division].

[46] 648 Phil. 572 (2010) [Per J. Velasco, Jr., First Division].

[47] 526 Phil. 300 (2006) [Per J. Garcia, Second Division].

[48] Id. at 309.

[49] 478 Phil. 615 (2004) [Per J. Corona, Third Division].

[50] Id. at 639-640, citing *Asia Brewery, Inc. v. Court of Appeals*, 296 Phil. 298 (1993) [Per J. Griño-Aquino, En Banc]; *Philippine Nut Industry Inc. v. Standard Brands, Inc.*, 160 Phil. 581 (1975) [Per J. Muñoz Palma, First Division]; *Reynolds Philippine Corporation v. Court of Appeals*, 251 Phil. 196 (1989) [Per J. Griño-Aquino, First Division] citing *Mendoza v. Court of Appeals*, 240 Phil. 561 (1987) [Per J. Bidin, Third Division]; *Manlapaz v. Court of Appeals*, 231 Phil. 235 (1987) [Per J. Narvasa, First Division]; *Sacay v. Sandiganbayan*, 226 Phil. 496 (1986) [Per J. Feria, En Banc]; *Guita v. Court of Appeals*, 224 Phil. 123 (1985) [Per J. Plana, First Division]; *Casanayan v. Court of Appeals*, 275 Phil. 369 (1991) [Per J. Cruz, First Division]; also *Apex Investment and Financing Corp. v. IAC*, 248 Phil. 691 (1988) [Per J. Narvasa, First Division] citing *Tolentino v. De Jesus*, 155 Phil. 144 (1974) [Per J. Makasiar, First Division]; *Carolina Industries, Inc. v. CMS Stock Brokerage, Inc.*, 186 Phil. 492 (1980) [Per J. Antonio, Second Division]; *Manero v. Court of Appeals*, 190 Phil. 691 (1981) [Per J. Concepcion, Jr., Second Division]; and *Moran, Jr. v. Court of Appeals*, 218 Phil. 105 (1984) [Per J. Gutierrez, Jr., First Division].

[51] INTELLECTUAL PROPERTY CODE, sec. 123(d)(iii).

[52] Id., sec. 134.

[53] 2019 Amendments to the Revised Rules on Evidence, Rule 133, sec. 6.

[54] Id.

[55] Rollo, p. 42; citations omitted.

[56] 125 Phil. 295 (1966) [Per J. Castro, En Banc].

[57] Rollo, p. 43.

[58] 896 Phil. 190 (2021) [Per J. Caguioa, En Banc].

[59] Id. at 220.

[60] S.A.J. Leonen, *Reflections*, p. 6.

[61] 805 Phil. 37 (2017) [Per J. Jardeleza, Third Division].

[62] S.A.J. Leonen, *Reflections*, p. 5.

[63] *Kolin Electronics Co., Inc. v. Kolin Philippines International, Inc.*, 896 Phil. 190, 215 (2021) [Per J. Caguioa, En Banc].

[64] 599 F.2d 341 (9th Cir. 1979).

[65] The European Parliament and the Council of the European Union, Regulation (EU) 2017/1001 of the European Parliament and of the Court of 14 June 2017 on the European trade mark (Codification), Recital 11, available at <http://data.europa.eu/eli/reg/2017/1001/oj> (last accessed on June 30, 2025).

[66] JEROEN MUYLDERMANS & PAUL MAEYAERT, *LIKELIHOOD OF CONFUSION IN TRADE MARK LAW: A PRACTICAL GUIDE TO THE CASE LAW OF EU COURTS* (2019), §2.04, part 43.

[67] Id. at §2.02, part 39.

[68] INTELL. PROP. CODE, sec. 147.1.

[69] 896 Phil. 190, 224-227 (2021) [Per J. Caguioa, En Banc].

[70] Rollo, pp. 356-363.

[71] J. Lazaro-Javier, Reflections, pp. 5-6.

[72] Rollo, pp. 157, 159.

[73] J. Caguioa, Reflections, pp. 5-6.

[74] Taiwan Kolin Corporation, Ltd. v. Kolin Electronics Co., Inc., 757 Phil. 326, 341 (2015) [Per J. Velasco, Jr., Third Division].

[75] Société des Produits Nestlé, S.A. v. Dy, Jr., 641 Phil. 345, 359 (2010) [Per J. Carpio, Second Division].

[76] S.A.J. Leonen, Separate Concurring Opinion in Kolin Electronics Co., Inc. v. Kolin Philippines International, Inc., 896 Phil. 190, 292 (2021) [Per J. Caguioa, En Banc].

[77] Id. at 293.

[78] Id.

[79] S.A.J. Leonen, Reflections, pp. 3-4.

[80] 927 Phil. 355 (2022) [Per C.J. Gesmundo, En Banc].

[81] Id. at 451.

SEPARATE CONCURRING OPINION

LEONEN, S.A.J.:

I concur with the ponencia and vote to grant the Petition.

The standard for determining likelihood of confusion should be evaluated from the perspective of the consumer, employing scientific methodologies derived from advancements in the fields of competition and economics, rather than merely through the lense of the adjudicator. This case presents an opportune time to articulate and clarify these standards.

Petitioner Innolab Industries Inc.'s application for trademark registration was denied primarily due to procedural errors. However, a review of the case records shows that there appears to be merit in petitioner's position. The alleged confusing similarity between petitioner's and respondent Unilab Laboratories, Inc.'s marks—whether aural or visual—was not sufficiently proven. I therefore propose that, in this particular case, this Court allow the registration of petitioner's mark.

The Decision of the Intellectual Property Office of the Philippines' (IPOPHL) Bureau of Legal Affairs dated April 19, 2017^[1] denied petitioner's application on both procedural and substantive grounds. The Adjudication Officer noted that petitioner was declared in default for its failure to file an Answer. The Officer further stated that even assuming a liberal application of the rules, the application should nonetheless be denied due to the confusing similarity between the sound of the marks "Unilab" and "Innolab":

A perusal of the composition of the competing trademarks involved in this case show that both marks contain three syllables "U-NI-LAB" for the Opposer's marks and "IN-NO-LAB" for Respondent-Applicant's. Both

marks also contain the suffix "LAB" which is an abbreviation of the word "laboratory". A "laboratory" is "a room or building equipped for scientific experiments, research, or teaching, or for the manufacture of drugs or chemicals." As such, the suffix "LAB" cannot be appropriated by anyone, therefore, the distinctive features of the parties' marks are not in the suffix "lab" but in the other syllables or letters attached or affixed to it.

In the Opposer's mark, the letters attached to the suffix "LAB" are "U-N-I" while in Respondent-Applicant's, it is "I-N-N-O". While some letters affixed to the suffix "LAB" in the competing marks are different, their similarity is more noticeable because of how the respective marks are pronounced as a whole. In pronouncing the Respondent-Applicant's mark, the sound of the syllables "INNO" practically sounds similar to Opposer "UNI". Trademarks are designed not only for the consumption of the eyes, but also to appeal to other senses, particularly, the faculty of hearing. Thus, when one talks about the Opposer's trademark or conveys information thereon, what reverberates is the sound made in pronouncing it. The same sound is practically replicated when one pronounces the Respondent-Applicant's mark.[2]

The IPOPHL Bureau of Legal Affairs' Decision (IPOPHL Decision) made the general assertion that "INNO" sounds almost the same as "UNI," without citing any evidence to show how or why an ordinary purchaser could be misled into believing that "Innolab" is "Unilab." It would thus appear that the conclusion made was drawn from subjective impressions or evaluation of the court rather than from any empirical or scientific experiments or studies on consumer perception.[3]

In any trademark infringement case, the crucial issue is the likelihood of confusion between the registered mark and the allegedly infringing mark. The determination of likelihood of confusion in trade and service marks has been a recurring issue in Philippine jurisprudence. Even after the holistic test was abandoned in the 2021 case of *Kolin Electronics Co. v. Kolin Philippines International, Inc.*,[4] questions persist regarding the standards by which courts should assess the likelihood of confusion between goods and businesses.

I maintain that while the likelihood of confusion is indeed dependent on the factual circumstances of each case, its determination should rest on evidence-based standards. Courts and administrative agencies should incorporate advances in the fields of competition and economics to develop more refined metrics for assessing the likelihood of confusion.[5] As with any legal conclusion, there must be a sound evidentiary basis to support it. Accordingly, the adoption of different "objective, scientific, and economic standards to determine whether goods or services offered by two parties are so related that there is likelihood of confusion" is imperative.[6]

An Opinion in *Kolin* stated that:

Evaluations of likelihood of confusion cannot be left to the subjective determination by the Intellectual Property Office or the courts, which may often rely on ad hoc inferences of similarity in class, physical attributes or descriptive properties, purpose, or points of sale of the goods or services. Often, this Court has resorted to unsubstantiated assumptions and generalizations about consumers and their behavior, arbitrary categorizations of goods and services, and even outright derogatory classist stereotypes. In this case, the ponencia describes a distinction between "sophisticated" and "ordinary" buyers without any real basis for the respective consumption and commercial habits assigned to each sector, resulting in broad caricatures about both the goods covered by the marks and their markets.

Relativity in likelihood of confusion must give way to objective, scientific, and economic standards:

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.[7] (Emphasis supplied, citations omitted)

The factors relevant to determining the likelihood of confusion in trademark and unfair competition cases are codified in Rule 18, Section 5 of the 2020 Revised Rules of Procedure for Intellectual Property Rights Cases, which provides:[8]

SECTION 5. Likelihood of confusion in other cases. — In determining whether one trademark is confusingly similar to or is a colorable imitation of another, the court must consider the general impression of the ordinary purchaser, buying under the normally prevalent conditions in trade, and giving the attention such purchasers usually give in buying that class of goods. Visual, aural, connotative comparisons and overall impressions engendered by the marks in controversy as they are encountered in the realities of the marketplace must be taken into account. Where there are both similarities and differences in the marks, these must be weighed against one another to determine which predominates.

In determining likelihood of confusion between marks used on nonidentical goods or services, several factors may be taken into account, such as, but not limited to:

a)

the strength of plaintiffs mark;

b)

the degree of similarity between the plaintiffs and the defendant's marks;

c)

the proximity of the products or services;

d)

the likelihood that the plaintiff will bridge the gap;

e)

evidence of actual confusion;

f)

the defendant's good faith in adopting the mark;

g)

the quality of defendant's product or service; and/or

h)

the sophistication of the buyer.

"Colorable imitation" denotes 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 as to cause him or her to purchase the one supposing it to be the other.

Absolute certainty of confusion or even actual confusion is not required to accord protection to trademarks already registered with the [IPOPHL]. (Emphasis supplied)

Thus, in addition to the listed factors, courts should also examine "the general impression of the ordinary [consumer] [who purchases] under the normally prevalent conditions in trade." [9] This rule underscores the importance of evaluating how consumers actually encounter and interpret marks in real-world market conditions.

These factors may be substantiated through various forms of evidence, including "testimonies of witnesses stringently qualified to show their knowledge, skill, experience, or training on the subject matter of their testimony." [10] Moreover, the same Rules emphasize the value of market or scientific surveys, provided these are conducted with proper methodology, appropriate sampling and scope, and under relevant market conditions.

Rule 18, Section 9 of the 2020 Revised Rules of Procedure for Intellectual Property Rights Cases provides:

SECTION 9. Market Survey. — A market survey is a scientific market or consumer survey which a party may offer in evidence to prove (a) the primary significance of a mark to the relevant public, including its distinctiveness, its descriptive or generic status, its strength or well-known status and/or (b) likelihood of confusion. (Emphasis supplied)

Even the Court of Appeals, in this case, recognized the importance of considering public perception of the mark. In affirming the IPOPHL Bureau of Legal Affairs, the Court of Appeals held:

The dominance test considers the dominant features in the competing marks in determining whether they are confusingly similar. Under the dominance test, courts give greater weight to the similarity of the appearance of the product arising from the dominant features of the registered mark, disregarding minor differences. 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. [11] (Emphasis in the original)

Hence, this Court should take this opportunity to refine the standards and evidentiary requirements for accurately assessing consumer and public perception of similar marks.

Moreover, Rule 18, Section 5 also requires that visual, auditory, and overall impressions created by the marks be considered. On the issue of aural similarities between competing marks, *Seri Somboonsakdikul v. Orlane* [12] is instructive:

Similar to *Etepha*, appeals to the ear in pronouncing ORLANE and LOLANE are dissimilar. The first syllables of each mark, i.e., OR and LO do not sound alike, while the proper pronunciation of the last syllable LANE — "LEYN" for LOLANE and "LAN" for ORLANE, being of French origin, also differ. We take exception to the generalizing statement of the Director General, which was affirmed by the [Court of Appeals], that Filipinos would invariably pronounce ORLANE as "ORLEYN." This is another finding of fact which has no basis, and thus, justifies our reversal of the decisions of the [IPOPHL] Director General and the [Court of Appeals],

While there is possible aural similarity when certain sectors of the market would pronounce ORLANE as "ORLEYN, " it is not also impossible that some would also be aware of the proper pronunciation — especially since, as respondent claims, its trademark ORLANE has been sold in the market for more than 60 years and in the Philippines, for more than 40 years.[13] (Emphasis supplied, citation omitted)

In this case, respondent claims that it "has been using the trademark 'UNILAB' as early as 29 July 1954." [14] Hence, consistent with the Court's conclusion in *Seri Somboonsakdikul*, "it is also not impossible that some would also be aware of the proper pronunciation" [15] of Unilab, considering that the mark has been in the market for almost 60 years.

Even a visual comparison of petitioner's and respondent's marks, as cited in the IPOPHL Decision, readily shows that there is no confusing similarity between them at first glance:

(Image supposed to be here)

(Image supposed to be here)

Petitioner's Mark

Respondent's Mark

Petitioner's mark is shorter in height and features wider letters, while respondent's mark is taller and composed of narrower letters. In addition, the Adjudication Officer observed that "the distinctive feature of the parties' marks are not in the suffix 'lab' but in the other syllables or letters attached or affixed to it." [16] A comparison of the two marks shows that the visual representation of the word "INNO" is not the same as the visual representation of the word "UNI."

It must be emphasized that, in trademark analysis, the visual aspect should carry greater weight than the aural, for a trademark's primary purpose is to distinguish one product from another. The Intellectual Property Code of the Philippines defines a "trademark" as "any visible sign capable of distinguishing the goods." [17]

In the absence of concrete evidence—particularly empirical or scientific data—demonstrating that consumers perceive a confusing similarity between the two marks, it would be more prudent for this Court to adopt a liberal approach and grant the Petition.

ACCORDINGLY, I vote to GRANT the Petition of Innolab Industries, Inc.

[1] Rollo, p. 51-56. The IPOPHL Bureau of Legal Affairs Decision dated April 19, 2017 (Decision No. 2017-131) was penned by Adjudication Officer Marlita V. Dagsa.

[2] *Id.* at 55.

[3] J. Leonen, Separate Concurring Opinion in *Asia Pacific Resources International Holdings, Ltd. v. Paperone, Inc.*, 845 Phil. 85, 103-104 (2018) [Per J. Gesmundo, Third Division].

[4] 896 Phil. 190 (2021) [Per J. Caguioa, En Banc].

[5] J. Leonen, Separate Concurring Opinion in *Asia Pacific Resources International Holdings, Ltd. v. Paperone, Inc.*, 845 Phil. 85, 104 (2018) [Per J. Gesmundo, Third Division].

[6] J. Leonen, Separate Concurring Opinion in *Kolin Electronics Co., Inc. v. Kolin Philippines International, Inc.*, 896 Phil. 190, 294 (2021) [Per J. Caguioa, En Banc], citing J. Leonen, Separate Concurring Opinion in *Asia Pacific Resources International Holdings, Ltd. v. Paperone, Inc.*, 845 Phil. 85, 104 (2018) [Per J. Gesmundo,

Third Division].

[7] Id. at 293-294.

[8] INTELL. PROP. RTS. CASES PROC. RULE, Rule 18, sec. 5.

[9] INTELL. PROP. RTS. CASES PROC. RULE, Rule 18, sec. 5.

[10] J. Leonen, Separate Concurring Opinion in Kolin Electronics Co., Inc. v. Kolin Philippines International, Inc., 896 Phil. 190, 298 (2021) [Per J. Caguioa, En Banc], citing Tortona v. Gregorio, 823 Phil. 980, 993, 1000 (2018) [Per J. Leonen, Third Division]

[11] Rollo, p. 42.

[12] 805 Phil. 37 (2017) [Per J. Jardeleza, Third Division].

[13] Id. at 56.

[14] Rollo, pp. 239-240.

[15] 805 Phil. 37, 56 (2017), [Per J. Jardeleza, Third Division].

[16] Rollo, pp. 51-56.

[17] Republic Act No. 8293 (1998), sec. 121.1.

CONCURRING OPINION

CAGUIOA, J.:

I concur in the result.

At issue in the instant case is whether the petitioner Innolab Industries, Inc.'s mark (Innolab) "INNOLAB" is confusingly similar to respondent United Laboratories, Inc.'s (Unilab) mark "UNILAB," as shown below (the Subject Marks):

(Image supposed to be here)

In a Decision[1] dated April 19, 2017, the Intellectual Property Office of the Philippines (IPOPHL) Bureau of Legal Affairs (BLA) Adjudication Officer held that the Subject Marks resemble each other such that confusion, mistake, or deception is likely to occur. Citing as basis the 1966 case of Marvex Commercial Co., Inc. v. Petra Hawpia & Co.[2] (Marvex)—which in turn used as basis a list of confusingly similar trademarks from a 1947 book—the BLA justified its finding that the marks are confusingly similar because "UNI" and "INNO" are supposedly pronounced similarly, such that "[t]he same sound is practically replicated when one pronounces the [other] mark." [3]

Innolab, however, filed its appeal without paying the requisite filing fee. The ultimate result of this procedural lapse was the dismissal of Innolab's appeal when its case was elevated to the Director of the BLA and then the Office of the Director General (ODG) of the IPOPHL. Notably, both the Director of the BLA and the ODG did not rule on the substantive aspect of Innolab's appeal. Hence, the BLA Adjudication Officer's finding that the Subject Marks were confusingly similar was not affirmed.

On appeal to the Court of Appeals (CA), the CA held that the dismissal of the appeal was proper and, at any rate, Innolab's petition should still be denied because the Subject Marks were indeed confusingly similar as ruled by the BLA Adjudication Officer. The ponencia summarized the CA's reasons for the ruling as follows: "(1) the

marks sound the same; (2) the second letter, 'N', as well as the last three letters 'LAB' are identical in both marks; (3) both marks have three syllables; and (4) both marks are pronounced with the same intonation." [4]

I fully concur with the ponencia in granting the petition and ruling that the Subject Marks are not confusingly similar. That said, and procedural issues aside, I agree with the ponencia that the BLA and CA did not apply the dominancy test properly. In ruling that the Subject Marks were confusingly similar, the BLA and CA's application of the dominancy test centered on aural similarities only. However, this is not how the dominancy test should be applied. In addition to aural qualities, the dominancy test requires a visual and connotative comparison of the marks, when available, to determine whether the same are confusingly similar. The dominancy test was, therefore, imperfectly applied by the BLA and CA by limiting their analysis to aural similarities. [5]

Determining trademark resemblance entails visual, aural, and connotative comparisons of dominant features of the marks, when applicable

A.M. No. 10-3-10-SC or the Court's 2020 Revised Rules of Procedure for Intellectual Rights Cases (Revised Rules) reads:

SEC. 5. Likelihood of confusion in other cases. — In determining whether one trademark is confusingly similar to or is a colorable imitation of another, the court must consider the general impression of the ordinary purchaser, buying under the normally prevalent conditions in trade, and giving the attention such purchasers usually give in buying that class of goods. Visual, aural, connotative comparisons and overall impressions engendered by the marks in controversy as they are encountered in the realities of the marketplace must be taken into account. Where there are both similarities and differences in the marks, these must be weighed against one another to determine which predominates.

In determining likelihood of confusion between marks used on non-identical goods or services, several factors may be taken into account, such as, but not limited to:

a)

the strength of plaintiff's mark;

b)

the degree of similarity between the plaintiff's and the defendant's marks;

c)

the proximity of the products or services;

d)

the likelihood that the plaintiff will bridge the gap;

e)

evidence of actual confusion;

f)

the defendant's good faith in adopting the mark;

g)

the quality of defendant's product or service; and/or

h)

the sophistication of the buyers.[6]

Letter (b) of the foregoing "multifactor test"[7] refers to "the degree of similarity between the plaintiff's and the defendant's marks." [8] In assessing the degree of similarity or resemblance of the marks in question, the Court has held that the dominance test must be used, which requires the assessment of the "visual, aural, or connotative aspects"[9] of the dominant features of the two marks to determine the "degree of similarity" between them. Precisely, applying the dominance test requires an analysis of several aspects of the dominant features of the two marks. No aspect should be examined in isolation, especially if other aspects are readily available for comparison.

Jurisprudence tells us that one way to determine the dominant feature is to determine "the first word/figure that catches the eyes." [10] Generally, an average consumer views single-word marks as a whole, even more so if the words are not too long. [11] Thus, the dominant features of the Subject Marks—or the first words that catch the eyes of the consumers—are the entirety of words themselves. Since word marks are involved, a visual and aural comparison can be easily made.

This is where the BLA and CA erred. The ponencia quotes the CA's ruling in relevant part:

Echoing the IPOPHL and citing the Court's ruling in *Marvex Commercial Co., Inc. v. Petra Hawpia, Co.*, the CA decided the issue of similarity of marks as follows:

Following [*Marvex Commercial Co., Inc.*], the BLA's Adjudication Officer correctly held that there is a confusing similarity between petitioner's mark "INNOLAB" [and] [respondent's trademark "UNILAB" due to the following factors: 1) petitioner's mark "INNOLAB" appears and sounds almost the same as respondent's "UNILAB" trademark; 2) the second and last three (3) letters, "N" and "L-A-B" in petitioner's mark "INNOLAB" and respondent's "UNILAB" trademark are identical; 3) [b]oth marks are composed of three (3) syllables – IN/NO/LAB and U/NI/LAB; 4) [b]oth marks are pronounced with the same intonation. Given the

foregoing aural similarities between petitioner's mark "INNOLAB" and respondent's "UNILAB" trademark after applying the test of "idem sonans" there is indeed a likelihood that confusion or deception might exist in the mind of the public. The likelihood of confusion between petitioner's mark and respondent's registered trademark having been established, petitioner's trademark application must perforce be disallowed because it is proscribed by Section 123.1 (d) of the Intellectual Property Code.[12] (Emphasis in the original, citations omitted)

The BLA and CA thus limited their review of the Subject Marks to their "aural similarities" to conclude that the two are confusingly similar. Accordingly, the BLA and CA's application of the dominance test falls short of the standards established in the Revised Rules and in *Kolin Electronics Co., Inc. v. Kolin Philippines International, Inc.*, [13] among other cases.

As the ponencia correctly pointed out, even this strained analysis of aural similarities of the dominant features between the Subject Marks is wrong because "[t]he vowels . . . are different, which lead to differences in how the marks are spoken." [14] While the difference may only be said to be a vowel, this change affects the words' entire appearance. Thus, if the BLA and CA applied the dominance test correctly and considered not only the aural characteristics, but also the visual aspect of the Subject Marks, then I believe they would have arrived at the ponencia's conclusion, i.e., that the Subject Marks are not confusingly similar.

In addition to this, it may be well to underscore that the jurisprudential examples of aurally similar marks used as basis by the BLA and the CA, which were discussed the Court in *Marvex* [15] almost 60 years ago may no longer be applicable in the current times mainly due to the internet that allows consumers to compare various brands instantaneously. For ease of reference, the relevant list provides:

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 "Charseurs"; "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, cites, 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. [16]

This is not to say that the availability of internet already eliminates the possibility of confusion between non-identical marks. However, it is important to acknowledge that the buying population is in a vastly different world today compared to back in 1947 when such list of "aurally confusing" marks was prepared.

I submit that the practice of mechanically applying the list in *Marvex* as basis for justifying that two non-identical marks are aurally similar—despite their glaring aural differences and without any context on why these marks were originally found to be aurally similar in the first place—goes against jurisprudence and the text of the Revised Rules which expressly state that:

[T]he court must consider the general impression of the ordinary purchaser, buying under the normally prevalent conditions in trade, and giving the attention such purchasers usually give in buying that class of goods. Visual, aural, connotative comparisons and overall impressions engendered by the marks in controversy as they are encountered in the realities of the marketplace must be taken into account. [17] (Emphasis supplied)

To be sure, it is highly improper to mechanically use this list as sole basis for justifying a finding of aural similarity between two marks simply because it loses sight of the normally prevalent conditions in trade and the

current realities of the marketplace.

Innolab's good faith in applying for the "INNOLAB" mark

One other factor that militates against a finding of likelihood of confusion is Innolab's apparent good faith in applying for the "INNOLAB" mark. As discussed in the ponencia,[18] when Innolab applied for the word mark "INNOLAB," it also applied for the registration of the following mark:

(Image supposed to be here)

Indeed, this shows Innolab's intent to differentiate the marks that will be used on its goods from those of Unilab's which bear the following mark based on its own evidence:

(Image supposed to be here)

ACCORDINGLY, I vote to GRANT the Petition.

[1] Rollo, pp. 52-56. Penned by BLA Adjudication Officer Marlita V. Dagsa.

[2] 125 Phil. 295 (1966) [Per J. Ruiz Castro, En Banc].

[3] Rollo, p. 55, IPOPHL BLA Decision dated April 19, 2017. (Emphasis supplied)

[4] Ponencia, p. 5.

[5] See *id.* at 13-14.

[6] Rule 18, sec. 5.

[7] Ponencia, p. 11, citing *Kolin Electronics Co., Inc. v. Kolin Philippines International, Inc.*, 896 Phil. 190, 215 (2021) [Per J. Caguioa, En Banc].

[8] SC A.M. No. 10-3-10-SC (2020), *supra* note 6.

[9] *Kolin Electronics Co., Inc. v. Kolin Philippines International, Inc.*, *supra* note 7, at 221.

[10] *UFC Philippines, Inc. v. Barrio Fiesta Mfg. Corp.*, 778 Phil 763, 803 (2016) [Per J. Leonardo-De Castro, First Division]. (Citation omitted)

[11] ASEAN, Common Guidelines for the Substantive Examination of Trademarks Second Edition, 191-192, available at <https://asean.org/wp-content/uploads/2021/08/ASEAN-Common-Guidelines-for-the-Substantive-Examination-of-Trademarks-Second-Edition-2020.pdf> (last accessed on August 5, 2025), which reads as follows:

Word signs

....

The average consumer will see a mark as a whole and will not notice a small difference in the number of letters or their position. However, the letters at the beginning of a word will tend to be noticed more than the other letters in the word. In this respect, a difference in the initial letter may make the marks visually more dissimilar than a variation in one of the middle letters.

....

The length of the word and the splitting of a word are also factors that can affect the visual perception of word signs. (Emphasis supplied)

[12] Ponencia, p. 10.

[13] 907 Phil. 124 (2021) [Per J. Caguioa, First Division].

[14] Ponencia, p. 10.

[15] Supra note 2.

[16] Id. at 302-303.

[17] SC A.M. No. 10-3-10-SC (2020), supra note 6.

[18] Ponencia, p. 14.

SEPARATE CONCURRING OPINION

DIMAAMPAO, J.:

I concur in the ponencia.

I humbly opine that this case presents an opportunity to examine the application of the dominancy test vis-à-vis the sophistication of buyers,^[1] which is one of the several factors in determining the likelihood of confusion between marks under the Revised Rules of Procedure in Intellectual Property Rights Cases.

In my opinion, consumers of the subject goods in this case, i.e., pharmaceuticals, represent an amply sophisticated demographic. Aided by legislative tools specifically designed for their protection, these buyers are uniquely positioned to decipher between the dominant features of trademarks used by pharmaceutical brands, notwithstanding a degree of similarity between said marks.

As the ponencia correctly adjudged, the lower tribunals properly applied the dominancy test in this case. The dominancy test focuses on the similarity of the prevalent features of the competing trademarks which might cause confusion or deception, and thus infringement.^[2] Similarity between competing trademarks is determined by the predominant or essential features of the marks, which capture the attention of the ordinary purchaser. If the competing trademark contains the main, essential or dominant features of another, and confusion or deception is likely to result, infringement takes place.^[3]

This Court, in *Kolin Electronics Co., Inc. v. Kolin Philippines International, Inc. (Kolin)*,^[4] unequivocally abandoned the holistic test in favor of the dominancy test after thoroughly sifting through the provisions of the Intellectual Property Code and its legislative deliberations.^[5]

Corollary thereto, the level of care, attention, and knowledge expected from the average purchaser of a good or service inherently varies depending on who makes the purchase. Here, the "buyers" of pharmaceuticals constitute a diverse yet distinct sector, encompassing those who prescribe, dispense, and consume medicines: physicians, pharmacists, and patients.

Upon this point, it is humbly submitted that the sophistication of these purchasers plays a particularly relevant role in determining likeness of confusion in the present case:

For one, the nature of the goods themselves, i.e., drugs, renders them highly regulated and arguably imbued with public interest, given their direct implications on consumer health. Indeed, as stipulated in Section 3 of Republic Act No. 9502,^[6] the protection of public health stands as a primary concern in case of doubt in the implementation and interpretation of the provisions thereof. In a nutshell, Republic Act No. 9502 amended the Intellectual Property Code of the Philippines^[7] by expanding exceptions to patent rights, thereby facilitating

access to affordable medicines.

For another, the Philippine context is unique due to the interplay between trademarks, specifically in the form of brand names, and relevant statutes such as Republic Act No. 6675, or the Generics Act of 1988, as amended by Republic Act No. 9502.

Considering these two points, the sophistication of buyers functions as the lens through which the dominance test is applied. Otherwise stated, buyer sophistication, as a factor, assists in determining whose perception of the dominant features is considered and how such perception would truly lead to a likelihood of confusion.

In *Kolin*, this Court cited *Philip Morris v. Fortune Tobacco Corporation*,^[8] in explicating that buyer sophistication considers "the general impression of the ordinary purchaser, buying under the normally prevalent conditions in trade and giving the attention such purchasers usually give in buying that class of goods [. . .]."^[9] The Court considered the interplay between the degree of similarity between the contending marks in said case and buyer sophistication as a factor. Thus, while the Court acknowledged that buyers of electronic goods might pay more attention due to cost, it countered that infrequent purchases limited their intimate brand familiarity. Consequently, it was decreed that the dominant "KOLIN" word mark, coupled with actual proof of consumer confusion, outweighed any theoretical buyer sophistication in preventing trademark infringement.

Applying the foregoing to the instant case, it is respectfully submitted that, due to the marked lack of dominant similar features between the "INNOLAB" and "UNILAB" marks, there is a low likelihood of confusion, a conclusion further reinforced by the high sophistication of pharmaceutical buyers.

As aptly discussed by S.A.J. Leonen, even a visual comparison of competing marks, as presented in the IPOPHL-BLA's April 19, 2017 Decision, would readily show that there is no confusing similarity. The ponencia also fittingly considered the use of the "UNILAB and LOGO" mark on respondent's goods, which it noted to be strikingly dissimilar from petitioner's device mark.

In addition to the above discussion, the prefix "UNI-" clearly denotes "one," and the contraction of the corporate name, "United Laboratories Inc.", while "INNO-" may be interpreted as a play on the word "innovation," thereby conveying completely distinct meanings.

Even their aural representations are vastly different, with the word "Unilab" starting with a gliding 'y' sound as in "you", indicating a smooth and sliding transition, while "Innolab" begins with a quick vowel 'i' sound as in "ink", with no preceding glide unlike in the former word. It is thus apparent that the dominant features in the competing marks are sufficiently different.

The foregoing dominance test analysis is further accentuated by the realities of the pharmaceutical industry in the Philippines. It is a well-established fact that branded generics hold a substantial share of the market, particularly among over-the-counter (OTC) medicines.^[10] Branded generics are drugs containing the same active ingredient as an off-patent originator drug, but marketed by a generic manufacturer under a new, distinct proprietary brand name.^[11] Prominent examples include Biogesic for paracetamol, or Alaxan for ibuprofen + paracetamol, under the Unilab brand.

The robust promotion of and consumer familiarity with these proprietary brand names ensure that, despite the underlying generic ingredient, the brand itself remains a vital source identifier. Stated differently, should two branded generics for the same active ingredient bear confusingly similar brand names, the dominance test retains strong applicability. Admittedly, the shared generic name may serve as a mitigating factor, but the distinct brand name undeniably functions as the primary indicator for consumers and healthcare professionals alike.

It is apt to state at this juncture that buyers of medicines ordinarily interact with intermediaries, like physicians and pharmacists. In this regard, it is safe to postulate that doctors, being well-educated and trained professionals who dedicate years to studying pharmacology, drug interactions, patient conditions, and therapeutic alternatives, are expected to exercise a high degree of care and diligence in issuing their prescriptions. Consequently, they are less likely to be confused by similarities, minor or major, between drug brand names. They primarily rely on active ingredients (generic names), dosage forms, indications, and clinical data, not solely on the brand name. The same level of discernment can be reasonably extended to pharmacists.

As regards patients as consumers, it cannot be denied that healthcare and medicines in Philippines are often expensive for ordinary consumers.[12] For many Filipinos, especially those in lower-income brackets, the cost of medications, even common ones, can consume a significant portion of their disposable income.[13] Arguably, this would compel a more careful and discerning choice. Hence, this financial implication translates to a more discriminating consumer—one who is able to distinguish between the significant differences in the dominant features of "UNILAB" and "INNOLAB," especially since the former, as noted by S.A.J. Leonen, has been a household name for almost 60 years already.

Strengthening these observations is Republic Act No. 6675, as amended by Republic Act No. 9502, the effects of which may be argued to further augment buyer sophistication. Relevantly, this law mandates physicians to prescribe drugs by their generic names and requires companies to prominently display generic names on all labels and promotional materials. With a declared as state policy "to ensure the adequate supply of drugs with generic names at the lowest possible cost and endeavor to make them available free for indigent patients,"[14] the law:

- Requires government agencies to use generic names in all transactions related to purchasing, prescribing, dispensing, and administering drugs.
- Mandates all medical, dental, and veterinary practitioners (including private practitioners) to use generic names in their prescriptions, although brand names may be included if desired.
- Compels all manufacturers and traders to use generic names on all product labels and in advertising and other promotional materials, stipulating that the brand name must not be disproportionately larger or of a different font vis-à-vis the generic name.
- Compels all drug outlets to inform buyers about other drug products having the same generic name, along with their corresponding prices, to empower buyers to exercise their option effectively.[15]

In the implementation of these measures, the law aids in shifting consumer focus from potentially confusing brand names to the standardized generic names.

Verily, taking all these factors together, the result is an increasingly informed consumer-patient base.

Considering the foregoing, it is humbly opined that there is a significant degree of sophistication among the consumers of pharmaceuticals in the Philippines, which translates to a reduced likelihood of confusion between the subject trademarks, especially when their dominant features are notably dissimilar.

ACCORDINGLY, I vote to GRANT the Petition in G.R. No. 257075.

[1] REV. RULES ON INTELL. PROP. RTS. CASES, A.M. No. 10-3-10-SC, rule 18, sec. 5, par. 2 (h), November 16, 2020.

[2] *Mang Inasal Philippines, Inc. v. IFP Manufacturing Corporation*, G.R. No. 221717, June 19, 2017 [Per J. Velasco, Third Division].

[3] Id.

[4] G.R. No. 228165, February 9, 2021 [Per J. Caguioa, En Banc].

[5] Id.

[6] Republic Act No. 9502 (2008), sec. 3, Universally Accessible Cheaper and Quality Medicines Act of 2008.

[7] Republic Act No. 8293 (1997), Intellectual Property Code of the Philippines.

[8] Philip Morris, Inc. v. Fortune Tobacco Corp., 526 Phil. 300 (2006) [Per J. Garcia, Second Division].

[9] Id.

[10] CIELO MAGNO, PHD, PHARMACEUTICAL COMPETITION IN THE PHILIPPINES 2 (2022), available at https://www.phcc.gov.ph/storage/pdf-resources/1673487756_DP-2022-01-Pharmaceutical-Competition-in-the-Philippines.pdf (last accessed July 16, 2025).

[11] DrugPatentWatch, "Branded Generics: What They Are and Why They're Profitable", available at https://www.drugpatentwatch.com/blog/branded-generics-what-they-are-and-why-theyre-profitable/?srsltid=AfmBOOpqJEFjbwp3KpVrTOxkQ8FnpHz9cD_L4gN1wB0WrzmhefHv_1cR (last accessed July 16, 2025).

[12] MAGNO at 1, supra note 9.

[13] Id.

[14] Republic Act No. 6675, sec. 3.

[15] Republic Act No. 9502, sec. 38.

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