

BEN FOOD (S) PTE. LTD.,	}	IPC No. 14-2005-00101
Opposer,	}	Opposition to:
	}	
-versus-	}	Serial No. 4-1996-109783D
	}	Date Filed: 16 July 1996
FARMLAND INDUSTRIES, INC.,	}	Trademark: "FARMLAND & LOGO"
Respondent-Applicant.	}	
x-----x		Decision No. 2007 – 23

DECISION

This pertains to an Opposition Case filed on 08 September 2005 by herein Opposer, BEN FOOD (S) PTE. LTD., a corporation duly organized and existing under and by virtue of the laws of Singapore, with principal office address at 150 South Bridge Road, #09-04 Fook Hai Building, Singapore 058727 to the application for registration of the trademark "FARMLAND & LOGO" bearing Application Serial No. 4-1996-109783D filed on 16 July 1996 for goods falling under Class 29 of the Nice Classification of Goods, for meat products, namely beef, beef products, fresh pork and processed pork products including ham, sausages, bacon, hotdogs and luncheon meat by FARMLAND INDUSTRIES, INC., Respondent-Applicant, with address on record at 3315 North Oak Trafficway, Kansas City, Missouri 64116-0005, U.S.A.

The subject trademark application was published for opposition in the Intellectual Property Office Official Gazette which was officially released for circulation on 11 April 2005.

The relevant facts and grounds for the instant opposition are culled from the records, as follows:

1. The registration of the mark "FARMLAND & LOGO" in the name of Respondent-Applicant will cause grave and irreparable injury and damage to the Opposer within the meaning of Sec. 134 of RA 8293. The Opposer is the owner of the mark FARMLAND since the early 1970's covering the goods "meat and meat products" under Class 29, with Trademark Registration (TM) in Singapore No. 63379 in 1975 and still currently effective. The Opposer has extensively used and promoted its trademark FARMLAND on quality products and has further expanded its product lines under said class such that it has secured subsequent currently effective trademark registrations in Singapore which are TM Registration No. 2911/88 covering the goods "canned sardines and canned fruits" under Class 29 and TM Registration No. T97/07120D covering the goods "frozen french fries, frozen chips, frozen potato products, frozen vegetables, hashed brown potatoes; fish, foods prepared from fish; margarine; meat, poultry, not live."

At the same time, the Opposer's trademark "FARMLAND" was also used in Malaysia wherein Opposer used and promoted its trademark "FARMLAND" such that it has secured currently effective Malaysia TM Registration No. M/67729 on February 17, 1975 covering the goods "meat and meat products" under Class 29. Opposer has expanded its product lines in Malaysia and secured additional registrations, which are: TM Registration No. M/076323 on September 10, 1977 for "frozen vegetables" under Class 31; TM Registration No. 87/01951 on May 13, 1987 for "canned vegetables" under Class 29; TM Registration No. 87/01952 on May 13, 1987 for "mineral water, aerated water and syrups" under Class 32; TM Registration No. 87/01953 on May 13, 1987 for "honey, sauces, condiments and bread" under Class 30; TM Registration No. 88/03022 on June 21, 1988 for "canned sardines and canned fruits" under Class 29; TM REGISTRATION No. 88/03021 on June 21, 1988 for "cornflakes" under Class 30;

and TM Registration No. 97009129 on July 5, 1997 for “frozen french fries, frozen chips, frozen potato products, frozen vegetables, hashed brown potatoes; fish, foods prepared from fish; margarine; meat, poultry, not live” under Class 29.

The Opposer has likewise used and promoted its trademark “FARMLAND” in Brunei Darussalam almost at the same time as in Singapore and Malaysia. It has secured TM Registration No. 8176 on September 5, 1977 for “frozen vegetables” under Class 31; TM Registration No. 14, 739 on May 6, 1987 for “canned vegetables, canned sardines and canned fruits” under Class 29; TM Registration No. 14,740 on May 6, 1987 for “honey, sauces, condiments, breads and cornflakes” under Class 30; and TM Registration No. 14,738 on May 6, 1987 for “mineral water, aerated water and syrups” under Class 32.

As early as July 1991, Opposer has already introduced and used its trademark “FARMLAND” in the Philippines, having marketed, promoted, advertised its goods under its “FARMLAND” trademark falling under Classes 29 and 30, evidenced by a copy of a Sales Invoice of Opposer to DutyFree Philippines Fiesta Shopping Center dated July 27, 1991 of Farmland products. There has been continuous use of this trademark by the Opposer since 1991 up to the present such that the trademark “FARMLAND” is synonymous to Opposer’s name “BEN FOOD (S) PTE LTD”. This immense goodwill and popularity of Opposer’s “FARMLAND” trademark in the Philippines was painstakingly built through diligent marketing efforts and strategy and effective advertising program. Opposer’s goods bearing the “FARMLAND” trademark continues to successfully market in the DutyFree Shops in the country which are very popular among the Overseas Filipino Workers and their families, in the big supermarkets of the popular malls all over the country, catering to the need of the Filipinos from all walks of life. Thus the relevant buying public here in the Philippines always relates or connects the trademark “FARMLAND” with herein Opposer which owns it.

The Opposer has likewise filed trademark application here in the Philippines for the trademark “FARMLAND & DEVICE” covering goods under Class 29 and 30 with Serial Nos. 4-1997-124299 and 113534, respectively.

The foregoing shows that the grant of registration to Respondent-Applicant’s “FARMLAND & LOGO” mark will result in misleading the general public, particularly the buying public into believing that Respondent-Applicant’s goods are that of the Opposer, or they originated from the Opposer to the damage and injury to the interest of the Opposer and the buying public at large, and, to the undeserved or even fraudulent gain of herein Respondent-Applicant.

2. The Opposer is a member country of the Association of South East Asian Nations (ASEAN) of which the Philippines is a founding member. Opposer has originally created the subject mark and made it one of the few very successful trademarks which emanated from the ASEAN, which is not only popular among the ASEAN but also in various countries in the world, thus gaining worldwide acceptance and popularity. The grant of registration of the mark “FARMLAND & LOGO” to Respondent-Applicant, would in effect severely damage or even demise a very successful trademark here in the Philippines, to the undeserved credit of Respondent-Applicant which is trying to enter the Philippine market and doing its best to stamp out a competitor which has long established itself and to the obvious injustice to the Opposer which will in effect be dispossessed of its “FARMLAND” trademark.

3. Opposer's trademark "FARMLAND" is very well known in the Philippines having been in extensive use since 1991 and at the same time is also well-known internationally.

Opposer attached and made part of this instant Opposition the following documentary evidence, to wit:

Exhibit	Description
"A"	Singapore Trademark Certificate of Registration No. 63379
"B"	Singapore Trademark Certificate of Registration No. 2911/98
"C"	Singapore Trademark Certificate of Registration No. T97/07120D
"E"	Malaysian Trademark Certificate of Registration No. M/67729
"F"	Malaysian Trademark Certificate of Registration No. M/076323
"G"	Malaysian Trademark Certificate of Registration No. 87/01951
"H"	Malaysian Trademark Certificate of Registration No. 87/01952
"I"	Malaysian Trademark Certificate of Registration No. 87/01953
"J"	Malaysian Trademark Certificate of Registration No. 88/03022
"K"	Malaysian Trademark Certificate of Registration No. 88/03021
"L"	Malaysian Trademark Certificate of Registration No. 97009129
"M"	Brunei Darussalam Trademark Certificate of Registration No. 8176
"N"	Brunei Darussalam Trademark Certificate of Registration No. 14,739
"O"	Brunei Darussalam Trademark Certificate of Registration No. 17,740
"P"	Brunei Darussalam Trademark Certificate of Registration No.14,738
"Q"	Sales Invoice of BFPL to DutyFree Philippines Fiesta Shopping Center

Subsequently, a Notice to Answer was issued on 11 April 2006 by this Office requiring the Respondent-Applicant to file its Answer to the Verified Opposition within thirty (30) days from receipt thereof. Respondent-Applicant then filed two (2) consecutive Motions for Extension of Time to File Verified Answer dated 17 May 2006 and 16 June 2006, which were both granted by this Office.

Verily, Respondent-Applicant failed to file Answer within the extended period, such that this Office under Order No. 2007-05 dated 03 January 2007 waived Respondent-Applicant's right to file Verified Answer. Opposer was then directed to file its position paper.

Thereupon, the issue posed for this Office to resolve is:

WHETHER OR NOT RESPONDENT-APPLICANT'S MARK "FARMLAND & LOGO" BE ALLOWED REGISTRATION".

Prefatorily, this Office has to stress that the law invoked by Oppose is inapplicable in the instant Opposition. It should be vehemently noted that the subject application for registration was filed under the effectivity of the old Trademark Law (R.A. 166, as amended). Therefore, this Office shall resolve the case under said law, and *not* under Republic Act (RA) 8293 or the new Intellectual Property Code, so as not to adversely affect rights acquired prior to the effectivity of RA 8293.

The applicable provision of the Trademark Law is quoted, to wit:

"Sec. 4. Registration of trademarks, trade names and service marks on the principal register. – x x x The owner of a trademark, trade name or service mark used to distinguish his goods, business or services from the goods, business or service of others shall have the right to register the same on the Principal Register, unless it:

" x x x

"(d) Consists of or comprises a mark or trade name which so resembles a mark or trade name registered in the Philippines or a mark or trade name previously used in the Philippines by another and not abandoned, as to be likely, when applied to or used in connection with the goods, business or service of the applicant to cause confusion or mistake or to deceive purchasers".

It is patently obvious that the contending marks in this instant case is not only similar but clearly identical, except that Respondent-Applicant has a logo of a stylized design of clouds within a rectangular design. On the point of identical word marks alone, the issue of confusing similarity is a given fact. Further, the goods of the contending marks are similar and related since the Opposer's mark "FARMLAND" deals with the goods under Class 29 and 30, while Respondent-Applicant's mark, "FARMLAND & LOGO" is classified under Class 29 for meat products, namely beef, beef products, fresh pork and processed pork products including ham, sausages, bacon, hotdogs and luncheon meat.

Having found that there is confusing similarity between the Opposer and the Respondent-Applicant's marks being used on similar and related goods, it is necessary to determine whether the Opposer has the better legal right to effect the disallowance of Respondent-Applicant's "FARMLAND" registration.

Opposer argues that its right over the mark is anchored on the following grounds: (1) that its mark "FARMLAND" has registrations in three countries, namely Singapore, Malaysia and Brunei Darussalam way back 1991, evidenced by Exhibits "A" to "P"; (2) that it filed two (2) applications for registration in this country; (3) that it has prior use in the Philippines since 1991,

evidenced by Exhibit "Q"; and, (4) that its mark is well-known in the Philippines and internationally.

Firstly, Opposer's insinuation that its mark is accorded protection over Respondent-Applicant's subject mark by reason of its registrations in three countries abroad is untenable and devoid of any merit.

In the case of STERLING PRODUCTS INTERNATIONAL INCORPORATED vs FARBENFABRIKEN BAYER AKTIENGESSELLSCHAFT and ALLIED MANUFACTURING AND TRADING SO., INC., GE No. L-19906, April 30, 1969, the Honorable Supreme Court has this to rule, to wit:

"Neither will the 1927 registration in the United States of the BAYER trademark for insecticides serve plaintiff any. The United States is not the Philippines. Registration in the United States is not registration in the Philippines. At the time of the United States registration in 1927, we had our own Trademark Law, Act No. 666 aforesaid of the Philippines Commission, which provided for registration here of trademarks owned by persons domiciled in the United States.

x x x

There is nothing new in what we now say. Plaintiff itself concedes that the principle of territoriality of the Trademark Law has been recognized in the Philippines, citing *Ingenohl vs Walter E. Olsen*, 71 L. ed. 762. As Callman puts it, the law of trademarks "rests upon the doctrine of nationality or territoriality." (Emphasis Supplied)

Secondly, Opposer alleged that it filed an application for registration in this country for its mark "Farmland", citing Application Serial Nos. 4-1997-124299 and 4-1996-113534. This likewise deserves no legal consideration. This Bureau has conducted an ocular inspection in Intellectual Property Philippines website through ipophil.gov.ph, particularly in the Trademark Online Search System, to determine the status of said applications. It shows that Application Serial No. 4-1997-124299 covering Class 29 goods for applicant Ben Food(s) Pte Ltd. was declared abandoned. Inspection conducted found no details for Application Serial No. 4-1997-113534. Instead, there appears Application Serial No. 4-1996-113534 covering Class 30 goods for applicant Ben Brothers Manufacturing Co. which was declared refused.

Thus, the aforementioned applications of the Opposer are deemed to create no weight in Respondent-Applicant's claim of right over its "FARMLAND" mark

Thirdly, Opposer bolsters its right by stating that it was a prior user of the mark "FARMLAND" since 1991. As proof to its claim, Opposer submitted a photocopy of a Sales Invoice, marked as Exhibit "Q". It purports of a sale by herein Opposer to Duty Free Philippines Fiesta Center, Invoice No. EP000959, dated 27 July 1991. This evidence however, cannot be admitted by this Bureau pursuant to Section 7.1 of Office Order No. 79, Series of 2005 or the Amendments to the Regulations on Inter Partes Proceedings which provides, that:

The petition or opposition, together with the affidavits of witnesses and originals of the documents and other requirements, x x x

Moreover, Section 3, Rule 130 of the Revised Rules of Court, provides that the original document must be produced, to wit:

"When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases: x x x" (Emphasis Supplied) Section 3, Rule 130

Finally, Opposer alleged that its mark is well-known in the Philippines and internationally, trying to seek refuge under the protective mantle of a well-known mark. The then Minister of Trade and Industry, Hon. Roberto V. Ongpin, issued Memorandum dated 25 October 1983 to the Director of Patents, setting guidelines in the implementation of Article 6 bis of the Treaty of Paris on Well-Known Marks. The conditions are hereupon enumerated, to wit:

- a) the mark must be internationally known;
- b) the subject of the right must be a trademark, not a patent or copyright or anything else;
- c) the mark must be for use in the same or similar kinds of goods;
and
- d) the person claiming must be the owner of the mark

From the evidentiary facts of this instant case, Opposer failed to establish and prove that its mark is well-known internationally. Its registration in three Asian countries, namely Singapore, Malaysia and Brunei Darussalam is not sufficient to establish a well-known reputation internationally. Opposer even failed to establish that its mark is known in the Philippines or that it created any influence on the Filipino buying public. Thus, the mark is not considered internationally known.

Following the cited laws and jurisprudence, this Bureau hereby resolves that the Opposer failed to prove and establish its right on the mark "FARMLAND" and therefore has no sufficient ground to cause the disallowance of a registration.

However, this Bureau cannot take for granted the inaction of Respondent-Applicant in defending its claim for the registration of the trademark "FARMLAND & DEVICE" which is indicative of Respondent-Applicant's lack of concern in protecting its mark, contrary to the provision of Section 3(d) Rule 131 of the Rules of Court that "a person takes ordinary care of his concern". Such inaction of Respondent-Applicant is evidenced by its failure to file its Answer despite two (2) Motions for Extension to file the same which were both granted by this Office. Further, it is noted that despite the Order of Default issued by this Office. Further, it is noted that despite the Order of Default issued by this Office, Respondent-Applicant neither filed any motion nor find any effort to lift said Order for a chance to defend its case, contrary to the declared policy of the Supreme Court to the effect that "it is precisely the intention of the law to protect only the vigilant, not those guilty of laches" (Pagasa Industrial Corp. v. Court of Appeals, 118 SCRA 526). Finally, as provided for under Sec. 230 of R.A. 8293, otherwise known as the Intellectual Property Code of the Philippines:

"Sec. 230. *Equitable Principles to Govern Proceedings.* – In all inter partes proceedings in the Office under this Act, the equitable principles of laches, estoppel, and acquiescence where applicable, may be considered and applied."

As defined in the dictionary, laches means "slackness or carelessness toward duty or opportunity or neglect to do a thing at the proper time" (Webster Third International Dictionary, p. 1261).

WHEREFORE, premises considered, the Notice of Opposition is hereby DENIED. Consequently, application bearing Serial No. 4-1996-109783D filed by Respondent-Applicant Farmland Industries, Inc. on 16 July 1996 for the registration of the mark "FARMLAND & LOGO", under Class 29 used for meat products, namely beef, beef products, fresh pork and processed pork products including ham, sausages, bacon, hotdogs and luncheon meat, is hereby considered VOLUNTARILY ABANDONED by Respondent-applicant due to laches.

Let the filewrapper of the trademark "FARMLAND & LOGO" subject matter of this case together with a copy of this Decision be forwarded to the Bureau of Trademarks (BOT) for appropriate action.

SO ORDERED.

Makati City, 19 February 2007.

ESTRELLITA BELTRAN-ABELARDO
Director, Bureau of Legal Affairs