

KRAFT FOODS PHILIPPINES, INC.
Opposer,

- versus -

COLUMBIA INTERNATIONAL FOOD
PRODUCTS, INC.,
Respondent-Registrant.

x-----x

IPC No. 14-2008-00247

Petition for Cancellation:
TM Application No. 4-2007-010588
(Filing Date: 10 March 2008)

Trademark: "MYJUIZ"
Decision No. 2011 - 17

DECISION

KRAFT FOODS PHILIPPINES, INC., ("Petitioner"), with business address at 8378 Dr. A. Santos Avenue, Parañaque City, filed on 16 October 2008 a petition for cancellation of Trademark Registration No. 4-2007-010588. The registration issued to COLUMBIA INTERNATIONAL FOOD PRODUCTS, INC., ("Respondent-Registrant"), with registered address at 128 J.L. Escoda Street, Navotas, Metro Manila on 10 March 2008 covers the trademark "MYJUIZ" for use on goods under Classes 30 and 32, particularly, candies; non-alcoholic beverages, powdered drinks and preparation for making beverages, respectively.

The Opposer alleges the following:

1. Petitioner KRAFT FOODS PHILIPPINES, INC. ('Kraft') is a domestic corporation organized under the laws of the Philippines and doing business in the Philippines. It is engaged in the sale of powdered drinks or fruit drink mixes bearing the trademarks TANG and KOOL-AID.
2. Certificates of Trademark Registration from the Intellectual Property Office (IPO) and Certificates of Product Registration (CPRs) from the Bureau of Food and Drugs (BFAD) were issued for these powdered drinks or fruit drink mixes in compliance with the Intellectual Property Code (R.A. 8293) and the regulations of the BFAD on product registration.
3. The respondent's mark MYJUIZ should not have been registered, in the first place, since its registration contravenes Sec. 123.1 (g) of R.A. 8293, for being likely to mislead the public, particularly as to the nature, quality and characteristics of the goods it covers. Section 123.1 (g) of the Intellectual Property Code or R.A. 8293 provides:

x x x

- 3.1 The word JUIZ is not only visually similar but it also aurally similar to the word JUICE. The word JUIZ, when uttered sounds identical to JUICE. The mark MYJUIZ is therefore very suggestive of JUICE, which is likely to create an erroneous impression regarding the nature and characteristics of the product, bearing the mark MYJUIZ.
- 3.2 The respondent's mark MYJUIZ is likely to mislead the public, principally as to the nature and characteristics of the goods covered by the mark, especially in the adoption of the word JUIZ. Although the mark says MYJUIZ or JUIZ, the product, however, does not have the nature or characteristics of JUICE on the bases of the following definitions:
- 3.3 The new International Webster's Pocket Dictionary of the English Language (New Revised Edition) defines the word JUICE as:

Juice n. 1. The watery matter in fruits, plants, and vegetables. x x x
3. The essence of anything.
(Underscoring and emphasis supplied)

3.4 Administrative order No. 90-A series of 1980, (A.O. No. 90-A series of 1980) issued on June 13, 1980 by then Food and Drug Administration (FDA) further provides that:

x x x

Attached as Annex 'A' is a copy of Administrative Order No. 90-A, Series of 1980.

3.5 In the Codex General Standard for Fruit Juices and nectars (CODEX STAN 247-2005), which contains the standard definition of fruit juice, and which is also currently followed by the Bureau of Food and Drugs (BFAD), the following is the definition of a fruit juice:

x x x

Attached as Annex 'B' is a copy of the relevant pages from CODEX STAN 247-2005.

3.6 The above-stated definitions of JUICE and FRUIT Juice clearly state that it is a liquid or watery matter directly derived from the fruit or is the natural extract or essence of the fruit itself, and not a powdered drink. Attached herein are Annexes 'C', 'C-1', 'D' and 'D-1', samples of FRUIT JUICE; Annexes 'E', 'E-1', 'F' and 'F-1', samples of FRUIT JUICE DRINK; and Annex 'G' and 'G-1', sample of a CONCENTRATED FRUIT JUICE.

3.7 The nature and characteristics of juice or fruit juice based on A.O. No. 90-A series of 1980 and the CODEX STAN 247-2005 is that it is a liquid obtained from the edible part of the fruit. A concentrated fruit juice is that which contains only juice from which water has been removed by physical means, and a fruit juice drink is ready beverage prepared by mixing water with fruit juice concentrate into which sugar and citric acid may be added.

3.8 The respondent's adoption and use of the mark JUIZ or MY JUIZ, which is visually and aurally similar to JUICE is, however, inconsistent with the goods 'powdered drinks'. Its adoption and use of JUIZ gives the impression that it is a JUICE product having the nature a characteristics of JUICE, when, in truth, it is not. A review of the appearance and the ingredients of the MYJUIZ product, shows that it is a powdered drink and not JUICE as shown by definitions and by examples. It does not have a natural fruit juice component as shown by the following list of ingredients: x x x

Attached as Annexes 'H', 'H-1' and 'H-2' are sample packaging of the MYJUIZ product.

3.9 A.O. No. 90-A series of 1980 defines and classifies respondent's powdered drinks under the mark MYJUIZ as a Fruit Drink Mix, x x x

3.10 Since MYJUIZ is used for powdered drinks or fruit drink mixes and not for JUICE products, its adoption and use of MYJUIZ as a mark is therefore false, misleading, and is inconsistent with the above-mentioned definitions of JUICE and FRUIT JUICE set by Codex General Standard For Fruit Juices and Nectars (CODEX STAN 247-2005), and A.O. No. 90-A series of 1980. x x x

3.11 To show that there are no entities engaged in the sale of powdered drinks or fruit drink mixes that claim the word JUICE or a coined word derived from it such as JUIZ as a trademark or brand name, and as evidence of their faithful compliance with the standards set for fruit juices, and the precepts of good faith, fair dealing, and sound business practices, attached as Annexes 'I', 'I-1', 'J', 'J-1', 'K', 'K-2', 'L' and 'L-1' hereto are sample packaging of powdered drinks or fruit drink mixes.

3.12 The adoption and use of the mark MYJUIZ for a product that characterizes itself as 'powdered drinks' is not only false and misleading, but is also unfair to other entities engaged in the sale of powdered drinks or fruit drink mixes, who have faithfully complied with the trademark law, the standards set for fruit juices, and the precepts of good faith, fair dealing and sound business practice.

4. Corollary to Section 123.1 (g), respondent's adoption and use of the mark JUIZ or MYJUIZ also contravenes Section 169.1 (b) of the Intellectual Property Code or R.A. 8293, which provides:

x x x

b) In commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities, shall be liable to a civil action for damages and injunction provided in Sections 156 and 157 of this Act by any person who believes that he or she are likely to be damaged by such act.
(underscoring supplied)

x x x

5. Respondent's mark MYJUIZ also contravenes Sec. 123.1 (h) of R.A. 8293 for consisting exclusively of signs that are generic for the goods that it seeks to identify. Sec. 123.1 (h) of the Intellectual Property Code or R.A. 8293 provides:

x x x

5.1 The word JUIZ which is visually and aurally similar to the word JUICE, and which is the dominant word in the mark MYJUIZ, is generic and cannot be appropriated exclusively by anyone. The change in the letters 'C', 'E' to 'Z' does not create a significant difference from the generic word JUICE as shown by the aural similarities. A generic mark is not registrable as a mark because it totally lacks distinctiveness. Generic names are regarded by law as free for all to use.

5.2 In an effort to get around the specific prohibition in the use of a generic word JUICE for 'non-alcoholic beverages and/or preparations for making beverages', respondent resorted to the adoption and use of JUIZ. However, such adoption shows the dominant visual and aural similarities of the word JUIZ to the generic word JUICE, hence, a valid cause for cancellation exists under the trademark law.

5.3 Even if the respondent disclaimed the word JUIZ, which it did not in this case, the disclaimer would still be of no moment. x x x

5.4 MYJUIZ cannot be regarded as a registrable composite mark because both the words MY and JUIZ are unregistrable generic components of the mark. In fact, if one takes away the word JUIZ from the mark MYJUIZ, it is as if the entire mark is

disclaimed since the word MY, by itself, does not have any trademark significance.”

The Petitioner’s evidence consists of the following:

1. Annex “A” – Copy of Adm. Order No. 90-A, s. of 1980;
2. Annex “B” – Copy of CODEX STAN 247-2005;
3. Annex “C”, “C-1”, “D” and “D-1” – samples of FRUIT JUICE;
4. Annex “E”, “E-1”, “F” and “F-1” – samples of FRUIT JUICE DRINK;
5. Annex “G” & “G-1” – sample of CONCENTRATED FRUIT JUICE;
6. Annex “H”, “H-1” and “H-2” – sample packaging of MYJUIZ product; and
7. Annex “I”, “I-1”, “J”, “J-1”, “K”, “K-1”, “L” and “L-1” – sample packaging of powdered drinks or fruit drink mixes.

On 06 January 2009, Respondent-Registrant filed its Verified Answer, alleging the following:

7. Respondent-registrant has been manufacturing food products for over 71 years. Don Go Peng Kuan founded it in 1937 under its old name Columbia Candy Factory as a manufacturer of confectionaries. His heirs organize Columbia International Food Products, Inc. and subsumed the old company in 1977 after acquiring all its assets, rights, and goodwill;
8. From its humble beginnings, respondent-registrant grew by leaps and bounds through the years due in the main to the high quality and affordability of its products and an extensive and no-nonsense marketing strategy. The excellent manufacturing and marketing efforts of respondent-registrant has consistently place the company in the top 1,000 corporations of the Philippines. On the other hand, respondent-registrant’s products and the company itself have time and again been recognized for excellence and market leadership by reputable award giving bodies. Respondent-registrant’s products never did badly against the products made by multinationals like petitioner in the market it has chosen to compete in;
9. In 2007, respondent-registrant introduced to the public a powdered fruit drink mix under the brand name MYJUIZ. The launching to the public was followed by heavy publicity and promotion using all forms of advertising media. The publicity campaign included billboards, newspaper ads, ads on the rear windows of city taxis, television and radio plugs, and offers of free drinks in markets and schools;
10. A couple of month age, respondent-registrant started using the trademark MYJUIZ on candies;
11. To protect its intellectual property rights to the trademark MYJUIZ, respondent-registrant applied for registration of the said trademark and was issued Certificate of Registration No. 4-2007-010588 by the Bureau of Trademarks for the following goods namely, candies, non-alcoholic beverages, powdered drinks and preparations for making beverages. The trademark registration has a term of ten (10) years counted from 10 March 2008;
12. Respondent-registrant was similarly issued by the Bureau of Food and Drugs (BFAD) certificates of product registration for its Columbia’s MyJuiz Orange Instant

Powdered Drink Mix (BFAD Registration No. FR-70012), MyJuiz Mango Flavored Instant Powdered Drink Mix (BFAD Registration No. FR-71785) and, MyJuiz Pineapple Flavored Instant Powdered Drink Mix (BFAD Registration No. 71786);

13. The efforts of respondent-registrant in producing, manufacturing and marketing a superior quality and nutritious product like MYJUIZ did not go unnoticed that it was given a SANGKAP PINOY SEAL by the Department of Health. x x x

14. The Department of Health even urged and encouraged the consuming public to patronize and buy the MYJUIZ products of the respondent-registrant and other products similarly conferred with the Sangkap Pinoy Seal;

x x x

16. Petitioner has no cause of action against the respondent-registrant and has no valid and justifiable legal ground to petition for the cancellation of the trademark registration for MYJUIZ;

17. Section 124.2 of Republic Act. No. 8293 otherwise known as the Intellectual Property Code of the Philippines gives respondent-registrant a period of three (3) years from 24 September 2007 within which to use the trademark MYJUIZ on all the goods listed in its trademark application including non-alcoholic beverages;

18. That period has not expired yet at the time this petition was filed. Respondent-registrant has every right under the provision of law cited above to use its trademark MYJUIZ on the goods it applied for. Limiting the right even before the period has lapsed constitute unjust and unfair restriction/deprivation.

19. Further, respondent-registrant's trademark MYJUIZ is graphically, phonetically and connotatively different from the trademarks TANG and KOOL-AID of the petitioner.

20. The labels of the herein parties are entirely different in size, font, background, colors, contents and pictorial arrangement. More importantly, the source or manufacturer of the product is predominantly printed on the respective labels of the herein parties;

21. The trademark MYJUIZ was specifically coined, invented and developed by respondent-registrant to identify its products and distinguish them from products of competitors like herein petitioner. MYJUIZ is a fanciful trademark which does not have a dictionary definition (in English or other language). It has no standard, accepted or known pronunciation. It is a word created by the respondent-registrant with an innovative and imaginative pronunciation entirely of respondent-registrant's making.

22. Contrary to the assertion of petitioner in paragraphs 3.1 and 5.4 of the instant petition, each of the words MY and JUIZ in respondent-registrant's trademark MYJUIZ are registrable and have trademark significance. The truth is, respondent-registrant has obtained registration for the trademark MY under certificate of Registration No. 4-2006-004212 for tea-based beverages and preparations for making the same.

23. On the other hand, petitioner does not dispute and thus impliedly admits that the word JUIZ is not the synonym of the English word JUICE. But it is not factually correct for petitioner to argue that the words JUIZ and JUICE are visually and aurally similar.

24. The word JUIZ, standing alone and by itself without the prefix MY, is Portuguese in origin and therefore, has a pronunciation far different from the English word JUICE

given the peculiarities of each language namely, the correct intonation and the proper stress applied on a word or letters in it;

25. In Addition, no amount of argument can convince an objective and unbiased mind that JUIZ and JUICE are visually identical. The unequal number of letters each word has and the presence of the letter 'Z' in the word JUIZ makes it a unique word and therefore, distinctive. The letter 'Z' is the most rarely used letter in written English;

26. Of equal if not far greater importance in this discussion is the fact that there is no deception to the consuming public on the nature and characteristics of the MYJUIZ products because it is very clear from the labels of respondent-registrant, as shown below, that MUJUIZ is an INSTANT DRINK MIX.

27. It also helps that MYJUIZ products are packed in soft and flexible aluminum foils that enables the buyer to feel their powdered content. Products in liquid JUICE are packed in cans, bottles, or tetra packs. What is more MYJUIZ products, like those of TANG and KOOL-AID, are found in the instant drink sections of supermarkets quite distant from the sections that displays liquid or ready to drink juices.

28. The fear expressed by petitioner in paragraph 3.8 of the instant petition that the adoption and use of JUIZ gives the impression that it is a JUICE product having the nature and characteristics of JUICE, when in truth, it is not' is more illusory than real because neither the specification of goods in the trademark registration for MYJUIZ nor the BFAD product registrations nor its label show even a semblance of a claim that it is a fruit juice or a concentrated fruit juice or a fruit juice drink within the meaning and contemplation of BFAD Administrative Order No. 90-A series of 1980;

29. To make this slipshod theory sound plausible, petitioner would take away the letters MY from MYJUIZ so it would read as plain JUIZ;

30. Petitioner's theory has, however, one little problem. The trademark appearing on the wrapper of respondent-registrant's products is MYJUIZ not JUIZ. Unlike the word JUICE, the trademark MYJUIZ has no dictionary meaning, either in English or in some other language. The dictionary is the final arbiter of whether or not a group of letters, constituting a word, is commonly used to describe an object or an idea. The world's dictionary have not heard of the word MYJUIZ nor have it ever used it to describe the 'watery matter in fruits.'

31. Since the word MYJUIZ has no dictionary meaning, it cannot be regarded as making any claim, when used, regarding the nature and characteristics of the products it covers;

32. And, if every one-word trademark like MYJUIZ can be cut up and its pieces separately put to the test of registrability as petitioner would have it, a good number of trademarks would not make it to the list of approve marks;

x x x

34. Citing Webster's Pocket Dictionary, petitioner points out in paragraph 3.3 of its petition that the word JUICE also means the 'essence of anything.' Anything! Not of fruits, plants, vegetables, or meat alone;

35. Webster recognizes that the public has been using JUICE to describe the 'essence of anything,' not necessarily yielded to water or liquid. Indeed, the word ESSENCE, which is used as a substitute for the word JUICE, has been defined as 'a substance that keeps, in concentrated form, the flavor, fragrance, other properties of plat, drug, food, etc. from which it is extracted.' (Webster's New World College Dictionary, 3rd Edition, p.464) Respondent-registrant's powdered fruit drink mix is a

substance that keeps, in concentrated form, the flavor of the fruits from which such flavor is extracted;

36. Indeed, respondent-registrant's MYJUIZ product is a Fruit Drink Mix, which under existing rules 'is a mixture of dry or almost dry ingredients (fruit flavors, sugar, citric acid, other additives) that are readily soluble in water. It may contain dehydrated fruit juice.' Thus, par. 6 of BFAD Admin Order 90-A, series of 1980, reads:

6. Fruit Drink Mix- is a mixture of dry or almost dry ingredients (fruit flavors, sugar, citric acid, other additives) that are readily soluble in water. It may contain dehydrated fruit juice.

37. The BFAD rule says that Fruit Drink Mix, like MYJUIZ, 'may contain dehydrated fruit juice.' This statement is official recognition that dehydrated or powdered fruit juice, the substance that keeps the flavor of fruit after eliminating water, is so less JUICE! The dry powder in MYJUIZ fruit drink mix is JUICE after all – in dehydrated form. And this is logical. Add water to the powdered drink mix and it is restored to its former state as liquid juice, ready for drinking;

38. Here, respondent-registrant's fruit drink mix has from the beginning always contained nature identical as well as artificial fruit flavors. The nature identical flavor in the dry powder is dehydrated fruit juice and is, therefore, properly JUICE. Recently, respondent-registrant has upgraded its MYJUIZ orange flavored fruit drink mix with 'one hundred percent natural fruit flavor.' Consequently, the product's dry powder, which keeps the flavor of the fruit from which it was derived, is real FRUIT JUICE in concentrated form. The public is not thereby misled as the nature of MYJUIZ products;

x x x

40. But, as pointed out above, in registering and using the trademark MYJUIZ, a coined word with no dictionary meaning that belongs to the public realm, respondent-registrant does not misled. MYJUIZ has neither the appearance nor the sound of JUICE, much less that of FRUIT JUICE. And, even assuming that MYJUIZ carries some connotative meaning that resembles the word JUICE, it is still not misleading since Columbia's product, powdered fruit drink mix, is regarded with its essence of fruit flavor of BFAD rules as JUICE, dehydrated fruit JUICE;

41. If petitioner suffers damages on account of the entry of respondent-registrant's fruit drink mix products in the market, it is not because of its use of the trademark MYJUIZ. The low price and good quality of respondent-registrant's products have probably eroded on petitioner's sales. Thus, petitioner has brought this petition for the cancellation of the subject trademark's registration without giving particulars as to how such registration has caused its damage;

42. Notwithstanding the evident fact that its petition is absolutely without factual and legal basis, petitioner went on with the filing of this unwarranted and baseless action for no other purpose than to harass, embarrass and oppress the respondent-registrant which has produced a vastly superior, affordable and popular product in MYJUIZ that can compete toe-to-toe with the products of petitioner;

43. The bias and prejudice that petitioner holds toward respondent-registrant are clearly manifested by its failure and refusal to file a similar action against Liwayway Marketing Corporation which is manufacturing a fruit drink mix using the trademark SUNDAYS with the phrase POWDERED JUICE DRINK prominently appearing on the label as shown below.

44. Likewise, RFM Foods Corporation is marketing its Sunkist fruit drink mix as CONCENTRATED POWDER JUICE DRINK x x x

45. The trademark MYJUIZ was registered by the Bureau of Trademarks in accordance with the provisions of the Republic Act. No. 8293 and its implementing rules with respondent-registrant complying and completing all the pertinent requirements for registration and after the closest scrutiny and examination by the Trademark Examiner and the Director of that Bureau;

46. Respondent-registrant adopted and started the use of the trademark MYJUIZ in good faith;

47. Respondent-registrant attaches as Exhibit '1' in support of this verified answer the Affidavit-Direct Testimony of Sheik Pierre S.G. Joson;

48. Petitioner is barred by equitable principles of acquiescence, estoppels and laches from praying for the cancellation of the registration of the trademark MYJUIZ."

The Respondent-Registrant's evidence consists of the following:

1. Exh. "1" – Affidavit-Direct Testimony of Sheik Pierre S.G. Joson;
2. Exh. "2" – Certificate of Product Registration (Orange);
3. Exh. "3" – Certificate of Product Registration (Mango);
4. Exh. "4" – Certificate of Product Registration (Pineapple);
5. Exh. "5" – Certification for Media Advertising;
6. Exh. "6" – Newspaper Publication of DOH;
7. Exh. "7", "8", and "9" – Product Label Samples of MyJuiz;
8. Exh. "10" and "11" – Product Label Samples of My Juiz candy;
9. Exh. "12" to "18" – Pictures of Fruit Drinks in shelves of various supermarkets;
10. Exh. "19" to "24" – Sachets of Oishi Sundays Powdered Juice Drink;
11. Exh. "25" – Sachet of Sunkist Orange Powder Juice Drink; and,
12. Exh. "26" – Certified of Registration of trademark "MY".

On 16 January 2009, the Petitioner filed its Reply to the Respondent-Registrant's Answer, attaching additional evidence, as follows:

1. Exh. "N" – CD of TV commercial of MyJuiz;
2. Exh. "O" – Food Standards Agency Guidance Notes;
3. Exh. "P" – Adm. Order No. 88-B s. 1984;
4. Exh. "Q", "R", and "R-1" – Firmenich Philippines, Inc.'s manufacturing procedure;
5. Exh. "S" – Sunkist label;

6. Exh. "T" – Photocopy of Ad Standards Council Decision;
7. Exh. "U" and "V" – Trademark Reg. Details for MYTEA; and,
8. Exh. "W" – Trademark Application Details for MYJUICE.

The Respondent-Registrant in turn filed his Rejoinder to the Petitioner's Reply on 30 January 2009, attaching Exhibit "27" which is a Supplemental Affidavit-Direct Testimony of Sheik Pierre S.G. Joson.

On 06 May 2009, the Preliminary Conference was terminated after the parties failed to reach an amicable settlement. Subsequently, this Bureau issued Order No. 2009-849 on 15 May 2009, directing the parties to submit their Position Papers, after which, the instant case is submitted for decision. On 01 June 2009, the parties submitted their respective Position Papers.

Should Trademark Reg. No. 4-2007-010588 be cancelled?

Sec. 151 of the Intellectual Property (IP) Code, states in part, to wit:

Sec. 151. Cancellation. – 151.1. A petition to cancel a registration of a mark under this Act may be filed with the Bureau of Legal Affairs by any person who believes that he is or will be damaged by the registration of a mark under this Act x x x

Thus, the law allows any person to file a petition to cancel a trademark registration if that person believes that he would be damaged by the registration. Once filed, the cancellation proceeding becomes, basically, a review of the trademark registration in question to determine if the legal requirements for registration have been satisfied and if the maintenance or continuance of Respondent-Registrant's trademark in the principal registry would damage the Petitioner.

The Petitioner anchored its case on the following provisions of law:

1. Sec. 169.1 (b) of the IP Code, to wit:

Sec. 169. False Designations of Origin; False Description or Representation – 169.1. Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, x x x.

2. Sec. 123.1 of the IP Code, to wit:

Sec. 123. Registrability. – 123.1. A mark cannot be registered if it:

x x x

- (g) Is likely to mislead the public, particularly as to the nature, quality, characteristics or geographical origin of the goods or service;
- (h) Consists exclusively of signs that are generic for the goods or service; Services that they seek to identify;

Sec. 169.1 (b) of the IP Code I not applicable in an Inter Partes case. The provision applies in administrative complaints for violations of law involving intellectual property rights.

Conversely, the grounds contemplated in Sec. 151.1, pars. (a) and (b) of the IP Code on Cancellation, find reference to Sec. 123.1 of the same law which enumerates the grounds for non-registrability of trademarks, trade name and subject mark.

The Petitioner also alleges that the Respondent-Applicant's mark should not be registered on the grounds that it is generic and is misleading as to the nature of the characteristic of the product because unlike juice, it is not in a watery or liquid form but, in a powdered form.

As a rule, generic marks are not registrable. Generic marks comprise the genus of which the particular product is a species and thus, cannot be appropriated because they are commonly used as the name or description of a kind of goods.

In this regard, this Bureau finds that the mark MYJUJIZ is not generic. It is not commonly used as the name or description for the goods or products on which it is used. While it may be argued that "JUJIZ" is a play on the word "juice", the change in the last two letters – "c" and "e" – into "z" and the addition of the prefix "MY" resulted in a coined word that is unique, even fanciful, and therefore distinctive. The generic word "juice" is lost in this juxtaposition of letters. A consumer who chances upon the mark would not be able to readily or immediately recognize the word "juice" nor pronounce the mark as "my juice". It would take some thinking to arrive at a conclusion that the mark may have something to do with the word "juice". The mark MYJUJIZ would not readily convey or give away the kinds of goods or products it covers. It is capable of allowing consumers to trace and recall its originator or manufacturer.

The mark MYJUJIZ falls under the category of a suggestive mark. Suggestive marks, which are registrable, are those which, in the phraseology of one court, require imagination, thought and perception to reach a conclusion as to the nature of the goods. Such terms, which subtly connote something about the product, are eligible for protection in the absence of secondary meaning. It is a distinction developed in the law whereby a mark which merely suggested some quality or ingredient of goods was labeled as "suggestive", distinguishing it from descriptive marks or even though the mark may tell something about the goods or services, it is just as likely to conjure up some other, purely arbitrary connotation. To illustrate, the following marks have been held to be merely suggestive, and therefore, capable of registration: "BAC-A-BELT" for belt backing materials; "RAPID-SHAVE" for a shaving cream; "MATERNALLY YOURS" for maternity clothing store; "SEVENTEEN" for teen-age magazines; "ORANGE CRUSH" for orange drinks; "COMPUGRAPHIC" for typesetting equipment; "FRUIT SUNDAE" for yogurt; "SUGAR & SPICE" for baked goods; and "HANDIWIPE" for dusting cloths. Popular marks in the Philippines for food business, among other marks, also demonstrate how marks are suggestive but not descriptive of the services to which it pertained: "KAMAYAN" restaurant, "BARRIO FIESTA" and "THE SINGING COOKS AND WAITERS IHAW-IHAW KALDE-KALDERO".

This Bureau also finds untenable the Petitioner's argument that MUJUJIZ is misleading to the public, particularly as to the nature, quality, characteristics or geographical origin of the goods or service. The Respondent-Registrant's evidence of the actual sample sachet or pouch container has the details of every information about the goods, including the serving suggestions in glass and in pitcher, nutrition facts and ingredients and the required labels by government agencies (Department of Health and Bureau of Foods and Drugs). More importantly, at the lower front portion are the words, "Instant Drink Mix Mango Flavor". Thus, the logical interpretation is that the powdered formulation is a mixture for preparation of a particular fruit flavored drink.

It has been continuously emphasized that the essence of trademark registration is to give protection to the owners of trademarks. The function of a trademark is to point out distinctly the origin or ownership of the goods to which it is affixed; to secure to him, who has been instrumental in bringing into the market a superior article of merchandise, the fruit of his industry and skill; to assure that they are procuring the genuine article; to prevent fraud and imposition; and to protect the manufacturer against substitution and sale of an inferior and different article or his product. The mark MYJUJIZ serves the function of a trademark.

The Respondent-Registrant's trademark MYJUJIZ is a registered mark. It has *prima facie* evidence of the validity of the registration, the registrant's ownership of the mark, and of the registrant's exclusive right to use the same in connection with the goods or services and those

that are related thereto specified in the certificate. This ownership is further accentuated by the fact of its actual public use since 2007 and continuously to date. Moreover, Respondent-Registrant's ownership of the subject mark "MYJUIZ" is manifested by the reputation and goodwill it generated from carrying the mark and identifying in the public its goods from those of others and thereby, acquiring property rights from its creation of a fanciful and coined word mark which may be properly and legally appropriated as a trademark. Conclusively therefore, Petitioner failed to present substantial evidence that will overcome the presumption of the validity of Trademark Registration No. 4-2007-010588 to warrant its cancellation.

WHEREFORE, premises considered, the instant petition for cancellation is hereby DENIED. Let the file wrapper of Trademark Registration No. 4-2007-010588 be returned, together with a copy of the Decision, to the Bureau of Trademarks (BOT) for information and appropriate action.

SO ORDERED.

Makati City, 22 February 2011.

NATHANIEL S. AREVALO
Director, Bureau of Legal Affairs
Intellectual Property Office