

MONDE DENMARK NISSIN BISCUIT CORP., }  
00077 }

Opposer, }

-versus- }

REPUBLIC BISCUIT CORP., }  
Respondent-Applicant. }

INTER PARTES CASE NO. 14-1998-

Opposition to:

Serial No. : 81395

Date Filed : 11-25-91

Trademark : "BINGO"

DECISION NO. 2000-07

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## DECISION

This pertains to the opposition filed by the herein Opposer MONDE DENMARK NISSIN BISCUIT CORP., a corporation organized and existing under the laws of the Philippines with principal address at 23<sup>rd</sup> Floor, 6750 Ayala Avenue, Makati City against the registration of the mark "BINGO" under Serial No. 81395 for the goods "Cream and Jelly sandwich biscuits" in class 30 of the International Classification of goods which trademark application was published for opposition on page 94 of the Official Gazette No. 3 Vol. 1, circulation on November 9, 1998.

The Respondent in the above entitled case is REPUBLIC BISCUIT CORPORATION, a corporation organized under the laws of the Philippines with principal address at 57 Gen. Luis St., Novaliches, Quezon City.

The grounds of the opposition are as follows:

"1. The registration of the trademark "BINGO" in the name of the respondent-applicant will violate the provisions of Section 4(d) of Republic Act No. 166, as amended because the mark is confusingly similar and/or identical to the trademark "BINGO" owned and not abandoned by opposer, as to be likely, when applied to or used in connection with the goods or respondent-applicant, to cause confusion or mistake on the of the purchasing public.

Opposer relied on the following facts to support its opposition, reserving the right to present other evidence to prove these facts with pertinent and material evidence as may appear necessary or expedient in the course of the proceedings, depending upon the evidence to be presented by respondent-applicant.

"1. On October 6, 1993 opposer was issued by this Honorable Office Certificate of Registration No. 56249 for the trademark "BINGO" for biscuits, cookies and crackers which are identical to respondent- applicant's products. A photocopy of said registration certificate is attached and made an integral part hereof as Annex "A";

"2. The mark "BINGO" which respondent-applicant seeks to register is identical to, at the very least, confusingly similar to the trademark "BINGO" of opposer;

"3. The approval of the application in question is proscribed under Section 4(d) of Republic Act No. 166, as amended, which we quote:

"Section 4. Registration of trademarks, tradenames and service-marks on the Principal Register. there is hereby

established a register of trademarks, tradenames and service-marks which shall be known as the Principal Register. the owner of a trademark, tradenames or service mark used to distinguish his goods, business or services from the goods, business or services of other shall have the right to register the same on the principal register unless it:

xxx

- (d) Consists of or comprises a mark or tradename which is so resembles a mark or tradename registered in the Philippines or a mark or tradename 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 services for the applicant to cause confusion or mistake or the deceiver purchasers;

xxx

“4. The use and approval for registration of respondent-applicant’s mark will deceive the consuming public into thinking the respondent-applicant’s goods come from, or are authorized, by the opposer;

“5. The approval of Application Serial No. 81395 for the mark “BINGO” will cause irreparable damage and injury to opposer;

Records show that a Notice to Answer was sent to the Respondent’s Counsel through Registered mail with Return Card on December 8, 1998 requiring the herein Respondent-Applicant to file its Answer within fifteen (15) days from receipt of the said Notice.

It appearing that the Notice to Answer was duly received by Respondent’s Counsel and that eight (8) months have lapsed form said date and the fact that no Answer has been filed due Notice, the herein Respondent-Applicant was declared in Default in accordance with the Regulations in Inter Partes Proceedings and the Rules of Court for its failure to file its Answer within the reglementary period and upon motion of Counsel for the Petition (Order No. 99-424) dated August 20, 1999.

It was recently held by the Supreme Court in DELBROS HOTEL CORPORATION vs. INTERMEDIATE APPELLATE COURT 159 SCRA 533 91988, THAT-

“Fundamentally, default orders are taken on the legal presumption that in falling to file an Answer, the Defendant does not opposer the allegations and relief demanded in the complaint.

Indeed, this office cannot but notice the lack of concern the Respondent-Applicant has shown in protecting the mark which is contrary to the norm that;

“A person takes ordinary care of his concern: Sec. 3 (d) Rule 131 of the Rules of Court

The main issue to be resolved in this case is:

WHETHER or NOT the Respondent-Applicants trademark “BINGO” should be granted Registration under SEC. 23 (d) of R.A. No. 8293.

The ultimate issue to be resolved is the existence or non-existence of "CONFUSINGLY SIMILARITY" between the two trademarks.

The Opposer's trademark "BINGO" was registered with the Bureau of Patent, Trademark and Technology Transfer now the IPO Intellectual Property Office on October 6, 1993 bearing Reg. No. 56249 for BISCUITS, COOKIES and CRACKERS under class 30 of the International Classification of goods (Exhibits "C"). The registered trademark of the herein Opposer is the word "BINGO" whereas the Respondent-Applicant's Trademark likewise consists of the word "BINGO".

From the evidence presented, Respondent-Applicant's trademark is indeed confusingly similar to Opposer's trademark which was registered with this Office.

In connection with the use of confusingly similar or identical mark, it has been ruled, that-

"Those who desire to distinguish their goods from the goods of another have a broad field from which to select a trademark for their wares and there is no such poverty in English Language or paucity of signs, symbols, numerals etc. as to justify one who really wished to distinguish his products from those of all others entering the twilight zone of a filed already appropriate by another." (Weco Products Co. vs. Milton Ray Co., 143 F. 2d, 985, 32 C.C.P.A. Patents 1214)"

Where one applies for the registration of a mark or label which is almost the same or very closely resembles one already used and registered by another, the application should be rejected and dismissed outright, even without any opposition on the part of the owner and user of a previously registered label or trademark, this is not only to avoid confusion on the part of the public but also to protect an already used and registered trademark and an established goodwill (Chuan Chow Soy & Canning Co. vs. Director of Patents and Villapanta, 108 Phil. 833, 836)

"Why of the million of terms and combinations of letter and designs available, the appellee had to choose those closely similar to another's trademark if there was no intent to take advantage of the goodwill generated by the other mark." (American Wire & Cable Co. vs. Director of Patents 31 SCRA 544).

In view of all the foregoing, the opposition is SUSTAINED. Trademark application bearing Serial No. 81395 for the mark "BINGO" filed on July 8, 1992 by Republic Biscuit Corporation for Cream, jelly sandwich biscuits is, hereby REJECTED.

Let the filewrapper subject matter of this case be forwarded to the Administrative, Financial, Human Resource Development Services Bureau for appropriate action in accordance with this Order with a copy to be furnished the Bureau of Trademarks for information and to update its record.

SO ORDERED.

Makati City, July 13, 2000.

ESTRELLITA BELTRAN-ABELARDO  
Director