

JOLLIBEE FOODS CORPORATION  
Opposer,

INTER PARTES CASE NO. 33168

OPPOSITION TO:

- versus -

Application Serial No. 57687  
Filed : November 4, 1985  
Trademark : CHOCO CHAMP  
Applicant : Philippine Cocoa Corp.  
Used on : Liquid chocolate  
concentrate

PHILIPPINE COCOA CORPORATION  
Respondent-Applicant.

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DECISION NO. 89-55 (TM)  
July 24, 1989

### DECISION

This is an opposition lodged by Jollibee Foods Corporation (herein Opposer) to Application Serial No. 57687 filed on November 4, 1985 by Philippine Cocoa Corporation (herein Respondent-Applicant) for the registration of the trademark "CHOCO CHAMP" for use on liquid chocolate concentrate.

Opposer is a domestic corporation with principal office at 5<sup>th</sup> Floor, Culamt Building, E. Rodriguez Sr. Avenue, Quezon City, while Respondent-Applicant, likewise a domestic corporation, has its place of business at Parang, Marikina, Metro Manila.

The sole issue advanced by the Opposer is "whether or not the trademark 'CHOCO CHAMP' of Respondent-Applicant is confusingly similar, if not identical, with the registered trademark 'CHAMP' of Opposer, as to likely, when applied to or used in connection with goods of the Respondent-Applicant, to cause confusion, mistake or to deceive purchasers or consumers".

To substantiate its claim, Opposer presented as evidence two certificates of registration (Nos. 38607 and 38656) for the trademarks "CHAMP" and "JR. CHAMP", both for hamburgers; various advertisements and notices for the trademark "CHAMP" and sales receipts.

On the other hand, Respondent-Applicant failed to appear at the pre-trial conference and was declared in default, such that this case proceeded ex-parte.

We decide in the affirmative.

There is no question that the mark in contest consists of two words as compared with the Opposer's mark of one word. However, "(w)hether or not a trade- mark causes confusion is likely to deceive the public is a question of fact which is to be resolved by applying the 'test of dominancy', meaning, if the competing trademark contains the main, essential or dominant features of another by reason of which confusion and deception are likely to result, the infringement takes place; the duplication or imitation is not necessary as similarity in the dominant feature of the trademarks would be sufficient" (Phil. Nut Industry Inc. vs. Standard Brands, Inc., 65 SCR: 575). Here, in the mark "CHOCO CHAMP", the first word "CHOCO", in its ordinary parlance, connotes or refers to "chocolate". Thus, the first word works merely as a modifier to the second word "CHAMP", the latter being distinctive as in the Opposer's mark. Therefore, the word "CHAMP" is the dominant feature of the marks in contest, that which is

retained in the purchasers' memory. This point has been squarely taken by the Supreme Court in the case of Operators, Inc. vs. Director of Patents, 15 SCRA 147, 150, saying:

“x x x (t)he average parson usually will not and often not, take a casual glance all, or even a large part of the details of what he looks at. What part or parts of the trademarks which are alleged to be similar does the average ordinary buyer see when he looks at them? What features of them are remembered by the average person? 'We do not really hear all that is spoken in our hearing. Far from all we see or hear casually is retained sufficiently clearly or in sufficient detail for us to get a lasting impression which we can remember when we encounter again.” (G. Heilman Brewing Co. vs. Independent Brewing Co., 191 F 489, 495, citing Eagle White Lead Co., vs. Pflugh /C.C./, 190 F. 579; underscoring supplied)

We come now to the issue of related goods. Opposer's mark covers hamburgers while Respondent-Applicant's mark covers liquid chocolate concentrate. Although both are different from each other, they are both food products. In fact, these two are often, if not always, eaten together. In Ang vs. Teodoro, 74 Phil. 50, 54, the Supreme Court aptly held that:

“x x x (a) though two articles may be classified under two different classes by the Patent Office because they are deemed not to possess the same descriptive properties, they would, nevertheless, be held by the courts to belong to the same class of the simultaneously use on them identical or closely similar trademarks would be likely to cause confusion as to the origin, or personal source, of the second user's goods. They would be considered as not falling under the class only if they are so dissimilar or so foreign to each other as to make it unlikely that the purchaser would think the first user made the second user's goods.” (Emphasis ours.)

These legal aspects of the case must have been foreseen by Respondent-Applicant as it failed to appear at the pre-trial indicating lack of interest to defend and abandon its right to the mark under litigation.

WHEREFORE, the herein Notice of Opposition is SUSTAINED. Accordingly, Respondent-Applicant's Application Serial No. 57687 for the registration of the mark “CHOCO CHAMP” is REJECTED.

Let the records of this case be forwarded to the Trademark Examining Division and the Application, Issuance & Publication Division for appropriate action in accordance with this Decision.

SO ORDERED.

IGNACIO S. SAPALO  
Director