

SUNSWEET GROWERS, INC.,	}	INTER PARTES CASE No.14-1999-00016
Opposer,	}	Opposition to:
	}	
-versus-	}	Serial No. 104836
	}	Date filed: 12-27-95
	}	Trademark: "SUNSWEET"
ANNAPOLIS INTEGRATED FOODS CORP	}	
Respondent-Applicant.	}	
x-----x		Decision No. 2001-38
		December 21, 2001

DECISION

This pertains to the Opposition filed for the registration of the mark "SUNSWEET" bearing Serial No. 104836 for candies in Class 30 of the International classification of goods, which application was published for opposition on page 85 of the Intellectual Property Official Gazette No. 6 Vol. 1 and officially released for circulation on March 29, 1999.

The herein Opposer "SUNSWEET GROWERS, INC." is a corporation organized and existing under the laws of the United States of America with principal Offices at 901 North Walton, Yuba City, California 95901, U.S.A.

On the other hand, Respondent-Applicant, Annapolis Integrated Foods Corporation, is a corporation organized and existing under the laws of the Philippines of Annapolis Tower, 43 Annapolis St., Greenhills, San Juan, Metro-Manila.

The grounds for opposition are as follows:

- "1. The trademark "SUNSWEET" being applied for by respondent-applicant is confusingly similar to opposer's trademark "SUNSWEET" and "SUNSWEET & SUN DEVICE", as to be likely, when applied to or used in connection with the goods of respondent-applicant, to cause confusion, mistake and deception on the part of the purchasing public.

- "2. The registration of the trademark "SUNSWEET" in the name of the respondent-applicant will violate and contravene the provisions of Section 123 (d) of Republic Act. No. 8293 because said mark is confusingly similar to the trademarks "SUNSWEET" and "SUNSWEET & SUN DEVICE" owned and unabandoned by opposer as to be likely, when applied to or used in connection with the goods of respondent-applicant, to cause confusion or mistake or deceive purchasers thereof:

- "3. The trademarks "SUNSWEET" and "SUNSWEET & SUN DEVICE" are known in numerous countries to be owned by opposer and are covered by worldwide trademark registrations. Hence, the registration of the confusingly similar trademark "SUNSWEET" in the name of respondent-applicant will be a breach of the clear provisions of Article 6 bis of the Paris Convention for the protection of Industrial Property now enforced in the Philippines by virtue of the Memoranda of the Minister of Trade dated November 20, 1980 and October 25, 1983 directing the Director of Patents to cancel and/or

reject/refuse all unauthorized registration that are identical or confusingly similar to world-famous marks; and

- "4. That the registration of respondent-applicant's trademark "SUNSWEET" will cause grave and irreparable injury and damage to the business reputation and goodwill of the opposer within the meaning of Section 134 Republic Act No. 8293.

Opposer relied on the following facts to support its opposition:

- "1. Opposer is the owner of the famous trademarks:
- "a. "SUNSWEET" covered by foreign trademark registration including United States Trademark Registration No. 307,699; and
 - "b. "SUNSWEET & SUN DEVICE" covered by foreign trademark registration including United States Trademark No. 623,657; which were issued prior to the filing of respondent-applicant's application.
- "2. The Opposer had in fact previously applied for and obtained the following Philippine Trademark Registrations for the mark "SUNSWEET";
- "a. "SUNSWEET" under Trademark Registration No. 42111 issued on November 28, 1988; and
 - "b. "SUNSWEET & SUN DEVICE" under Trademark Registration No. 41423 issued on October 17, 1988.

The representations accompanying Trademark Registration No. 41423 is depicted by a sunburst design with the word "SUNSWEET" appearing in the middle of the sunburst design.

(Copies of the Certificate of Philippine Trademark Registration No. 42111 and 41423 are attached and made integral part hereof as Annexes "A" and "B".

- "3. On December 27, 1995, respondent-applicant without the Knowledge nor authority of opposer filed a trademark application for "SUNSWEET" and claims first use of the said mark, without the knowledge nor authority of opposer, as well to the damage of herein opposer considering that opposer's mark "SUNSWEET" and "SUNSWEET & DEVICE" were confusingly similar to the adopted mark of respondent-applicant.
- "4. Opposer has established goodwill, fame and favorable reputation for the marks "SUNSWEET" and "SUNSWEET & SUN DEVICE" as a result of the sales generated by products bearing the said marks and the large sum of money that Opposer has spent worldwide in advertising and promotion the marks.

- "5. The use and registration of the trademark "SUNSWEET" by the respondent-applicant will likely cause confusion, mistake and deception to the buying public on the origin and/or sponsorship of the goods and will definitely dilute the value of the opposer's trademarks because the mark of the respondent-applicant is confusingly similar to that of the opposer.
- "6. Further, the use and registration of the mark "SUNSWEET" by respondent-applicant will cause grave and irreparable damage or injury to the opposer within the meaning of the trademark law;
- "7. The goods sought to be covered by respondent-applicant under Serial No. 104836 are "candies" in Class 30; whereas opposer's registrations cover Class 29 for "dried prunex" and Class 32 for "fruit juices used for food purposes; fruit syrups used in preparation of goods and beverages for food purposes; Crushed fruits used in preparation of foods. These goods are so closely related to each other and respondent-applicant's mark is so identical to opposer's mark as to likely, when used in connection with respondent-applicant's goods, will cause confusion or mistake or deceive the public as to the source of origin of said goods.

On August 12, 1999, a Notice to Answer has been sent to the herein Respondent-Applicant through registered mail No. 99-336 requiring the said party to file the required Answer within fifteen (15) days from receipt of the notice and despite having received the Notice no answer been filed nor any motion or pleading related thereto, hence this Office issued ORDER NO. 99-629 dated December 1, 1999 declaring Respondent-Applicant as IN DEFAULT.

Pursuant to the Order of Default, Opposer presented its evidence consisting of Exhibits "A" to "QQ".

The issue to be resolved in this proceeding is WHETHER OR NOT Respondent-Applicant trademark "SUNSWEET" is confusingly similar to Opposer's trademark "SUNSWEET".

We first consider SUNSWEET GROWERS, INC., claims that it is the owner of the mark "SUNSWEET" so that Respondent-Applicant should be barred from registering the same in its name pursuant to SEC. 123 of R.A. No. 8293 which provides:

"SEC. 123 (d) Registrability-123.1. A mark cannot be registered if it :

"xxx

"(d) Is identical with a registered mark with an earlier filing or priority date in respect of:

"(I) The same goods or services or

"(II) Closely related goods or services

"(III) If it nearly resembles such mark as to be likely to deceive or cause confusion."

In support of its claim of ownership over the mark "SUNSWEET" Opposer presented in evidence certificate of Registration No. 42111 issued by the BPTTT on November 28, 1988 for fruit juices and crushed fruits, etc., and is registered for a term of 20 years (Exhibit "K") as well as the Certificate of Registration No. 307,699 issued on October 31, 1933 by the United States Patent Office (Exhibits "F", "F-I", and "F-3"), Certificate of Registration No. 623, 657 issued on

March 20, 1956 by the United States Patent Office (Exhibit "Q"), Certificate of Registration No. 41423 issued on October 17, 1998 by the BPTTT for the trademark "SUNSWEET & SUN DEVICE" for Dried prunes (Exhibit "V" and "V-1"), Certificate of Registration No. 04.057 1982 issued at Denmark (Exhibits "EE"), Certificate of Registration No. 999315242 issued at Belgium ("Exhibit "FF"), Certificate of Registration No. 1,599,172 issued on June 26, 1990 at France ("Exhibit "GG").

The records further show that Opposer had advertised the mark "SUNSWEET" in other countries of the world including the Philippines.

It should be emphasized that as early as 1933, Opposer has been using its trademark "SUNSWEET" in its Country of Origin and filed its application in the BPTTT for the registration of the said mark bearing Serial No. 55931 on March 12, 1985 while Respondent's claim of use as indicated in the application subject of this proceedings is January 5, 1994, which is very much later than the earliest registration of Opposer which is 1933.

There is, therefore, no doubt as to Opposer's ownership of the trademark "SUNSWEET".

Respondent-Applicant's trademark needs no further scrutiny. It is clearly similar in spelling, sound and appearance with the Opposer's trademark as shown by the evidence on records.

When one applies for the registration of a trademark 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 trademark or label, 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.

In spite of the millions of terms and combinations of letters available to Respondent, it chose to adopt and use a mark similar to that of Opposer. Under the foregoing circumstances, the intention of Respondent to take advantage of the reputation and goodwill generated by Opposer's trademark is likewise evident

Moreover, it must be noted that the herein Respondent-Applicant was declared in DEFAULT in accordance with the Rules of Court for its failure to file its Answer despite Notice which was duly received. (ORDER No. 99-629 dated December 1, 1999),

In this regard it was recently held by the Supreme Court in DELBROS HOTEL CORPORATION vs. Intermediate Appellate Court, 159 SCRA 533,543 (1988), that-

"Fundamentally, default orders are taken on the legal presumption that in failing to file an Answer, the defendant does not oppose the allegations and relief demanded in the complaint."

Indeed this Office cannot but notice the lack of concern the Respondent-Applicant had shown is 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.

WHEREFORE, premises considered, the Opposition is hereby SUSTAINED. Accordingly, Application bearing Serial No. 104836 for the mark "SUNSWEET" filed on December 27, 1995 by ANNAPOLIS INTEGRATED FOODS CORPORATION is hereby REJECTED.

Let the records of this case be forwarded to the Administrative, Financial and Human Resource Development Services Bureau for appropriate action in accordance with this DECISION with a copy furnished the Bureau of Trademarks (BOT) for information and to update its records.

SO ORDERED.

Makati City, December 21, 2001.

ESTRELLITA BELTRAN-ABELARDO
Director, Bureau of Legal Affairs
Intellectual Property Office