

VICTOR V. VILLAVICENCIO  
Opposer,  
  
-versus-

Inter Partes Case No. 14-1998-00061  
Opposition to:  
Application Serial No. 87284  
Trademark: "KAMAYAN"

GOLDEN HANDS  
MANUFACTURING CORP.,  
Respondent-applicant.  
x-----x

Decision No. 2006-80

## DECISION

This is an Opposition filed by Victor V. Villavicencio, Filipino, of legal age, with business address at Triple V Corporate Center, 251-253 Shaw Boulevard, Mandaluyong City against the application for registration of the trademark "KAMAYAN" for goods, "sautéed shrimp paste" under Application Serial No. 87284 filed by Golden Hands Manufacturing Corporation, a domestic corporation duly organized and existing under the Philippine laws.

The instant opposition is predicated on the following grounds:

1. xxx He is the owner of the service mark "Kamayan Restaurant, Inc. and Logo." A copy of Opposer's Certificate of Registration No. 35865 issued by the then Philippine Patent Office, showing such trademark registration.
2. Apart from registering and appropriating the aforesaid mark, opposer likewise registered and used the same as a corporate name in his company 'Kamayan Restaurant, Inc.' of which he is an incorporator, director and stockholder.
3. Additionally, Opposer and his company secured a business name registration for "Kamayan Restaurant" to pursue their line of business. Opposer's business name was registered with then Ministry of Trade and Industry. In connection therewith, Opposer likewise obtained the appropriate business permits and licenses, using the name and mark "Kamayan Restaurant", from various government agencies.
4. Opposer is in the business of owning or operating and managing, among others, restaurants, cafes and other similar establishments. Since December 1977, he has conducted his business under the name and style of "Kamayan Restaurant" to distinguish his goods and services from those of others. The said name and mark has been used by Opposer in the business and services aforesated for more than twenty (20) years. Said use has not been abandoned, and in fact, has gained goodwill and high repute.
5. In the course of Opposer's use and appropriation of the name and the mark "Kamayan" to identify his goods and services, he and his company has developed substantial goodwill with the consuming public such that the latter has closely identified "Kamayan" to refer only to such goods made or sourced from, and services rendered by Opposer.xxx
7. Opposer would be greatly damaged by respondent's registration of the mark "Kamayan", which is identical in sound and spelling to Opposer's name and service mark, which Opposer has appropriated, used and has become distinctive of its goods and services. xxx
8. It is readily apparent that respondent's mark is calculated to ride on or cash in on the popularity of Opposer's name and mark "Kamayan", which name and mark has earned goodwill and reputation through the latter's extensive and continuous use of the same.

9. As the owner of the name and mark "Kamayan", Opposer has a vested right to the exclusive use of such name and mark for its goods and services to the exclusion of others.

10. Opposer and his company will stand to suffer grave and irreparable injury to their goodwill, reputation and business as a whole with the registration of the mark "Kamayan" in favor of respondent. xxx"

The Notice to Answer was received by the respondent-applicant non 10 October 1998. Respondent in his Answer admitted the allegation in the opposition relating to the existence of the Certificate of Registration No. 35865 but specifically denied the rest of the allegations. Respondent-applicant likewise raised the following special and affirmative defenses:

"5. Opposer has no legal cause of action against the respondent;

6. Respondent's ownership of the mark "Kamayan" for sautéed shrimp paste is vested as it has been using the same extensively, openly and continuously since May 1993;

7. Due to the extensive, open, continuous and long use by the Respondent of the said mark, Opposer is now barred by estoppels and laches from assailing Respondent's right to use and register the mark "KAMAYAN" for sautéed shrimp paste;

8. Opposer has registered and been using the name KAMAYAN Restaurant for restaurant services which is classified under Class 42 of the International Classification of Goods and Services while Respondent has been using KAMAYAN as a trademark under Class 29 of the same classification of goods and services. Hence, the possibility that the public will be confused with respect to Opposer's and Respondent's business or goods would unlikely happen;

9. Further, no less than the Bureau of Patents, Trademarks and Technology Transfer affirmed the registrability of the mark KAMAYAN in favor of the Respondent when the subject application was allowed after it had undergone merit examination. As a matter of fact Opposer's registration of the mark KAMAYAN restaurant, under Registration No. 35865 was cited in the course of examination. Notwithstanding the citation the herein application of the Respondent was allowed."

The pre-trial conference was set on 8 January 1999 and reset further to 17 February 1999. For failure of the parties to reach an amicable settlement, the case proceeded to trial.

Admitted as evidence for the opposer are Exhibits "A" to "O" as follows:

Exhibit	Description
"A"	Certificate of Registration for the service mark "Kamayan Restaurant, Inc. and Logo"
"B"	Articles of Incorporation of Kamayan Restaurant, Inc.
"C"	Business registrations, permits and licenses granted to various branches of Kamayan Restaurant
"D"	Various print advertisement and material so f "Kamayan Restaurant and Logo"
"E"	Sanitary Inspection Certificate issued by Makati City Health and Sanitation Service in favor of Kamayan Restaurant

“F”	Sample product of “Kamayan Bagoong” or shrimp paste
“G”	Various Triple V Food Services, Inc.’s delivery receipts
“H”	Affidavit-testimony of Victor V. Villavicencio and his signature
“I”	Affidavit-Testimony of Leilani A. Mendoza and her signature
“J”	Various Triple V Food Services Inc.’s delivery receipts
“K”	Various print advertisements of “Kamayan Restaurant and Logo”
“L”	Various print advertisements of “Kamayan restaurant and Logo”
“M”	Various print advertisements of “Kamayan restaurant and Logo”
“N”	Various print advertisements of “Kamayan restaurant and Logo”
“O”	Duplicate official receipts issued by Triple V Food Services, Inc. covering sales of “Kamayan Bagoong”.

Admitted as evidence for respondent-applicant are Exhibits “1” to “23” as follows:

Exhibits	Description
“1”	Affidavit of Eliza L. Paylago consisting of 5 pages.
“2”	Certificate of Articles of Incorporation of Golden Hands Manufacturing Corporation
“3”	By-laws of Golden Hands Manufacturing Corporation consisting of 14 pages
“4”	Certificate of Amended Articles of Incorporation of Golden Hands Manufacturing Corporation
“5”	Amended Articles of Incorporation of Golden Hands Manufacturing Corporation consisting of 11 pages
“6”	Mayor’s Permit of Golden Hands manufacturing Corporation by the Municipality of Malabon for the year 2002
“7”	Certificate of Registration of Business Name Golden Hands Manufacturing Corporation from April 1, 1998 to April 1, 2003 issued by the DTI
“8”	License to Operate as a Food Manufacturer issued by BFAD on August 13, 2001
“9”	Actual labels of KAMAYAN mark
“10”	Trademark Application (No. 87284) of KAMAYAN trademark filed bearing the trademark “KAMAYAN” on August 5, 1993
“11”	Samples of the goods (actual samples are under the custody of the Bureau of Legal Affairs)

- “12” Certification of Product of Registration No. FR-18359 issued by BFAD dated January 6, 1999 for KAMAYAN Salted Anchovies
- “13” Order of Payment No. 24301 dated August 13, 2001 for the renewal of KAMAYAN BFAD Registration
- “14” Samples of delivery receipt of Golden Hands Manufacturing Corporation for KAMAYAN Bagoong products for the year 1993. Delivery Receipt Nos. 0276, 0353, 0354, 0385, 0386, 0406, 0413, 0421, 0429, 0439, 006, 013, 019, 029, 052, 069, 080, 087, & 098
- “15” Sample delivery receipts/invoices of Golden Hands Manufacturing Corporation for the delivery of KAMAYAN Bagoong products for the year 1994. Delivery Receipt Nos. 154, 168, 191, 1194, 1504, 1048, 1011
- “16” Sample of sales invoices of Golden Hands Manufacturing Corporation for the year 1995. Sales Invoice Nos. 2918, 2920, 3014, 3063, 3064, 3158, 3176, 3185, 3187, 3188, 3189, 3190, 3191, 3194, 3202, 3214, 3226, 3229, 3230, 3231, 3233, 3234, 3235, 3239, 3246, 3252, 3256, 3276, 3280, 3280, 3290, 3295, 3300, 3301, 3302, 3303, 3308, 3316, 3321, 3325, 3327, 3329, 3330, 3335, 3336, 3337, 3347, 3349, 3434 and 3477
- “17” Sample sales invoices of Golden Hands Manufacturing Corporation for the year 1996. Sales Invoice Nos. 3502, 3704, 3705, 3810, 3828, 3868, 3871, 4009, 4021, 4056, 4057, 4062, 4203, 4283, 4284, 4291, 4315, 4220, 4221, 4431, 4434, 4488, 4491, 4598, 4611, 4631, 4632, 4678, 4817, 4819, 4820, 4952, 5010, 5011, 5031, 5033, 5034, 5106, 5156, 5158, 5164, 5172, 5340, 5341, 5343, 5344, 5347, 5492, 5493, 5528, 5534, 5528, 5658, 5660, 5662, 5663 and 5677
- “18” Sample of sales invoices of Holden Hands Manufacturing Corporation for the year 1997. Sales Invoices nos. 5792, 5794, 5796, 5802, 5833, 5842, 5943, 5973, 5984, 5993, 6071, 6189, 6191, 6200, 6206, 6211, 6352, 6349, 6367, 6392, 6396, 6400, 6557, 6568, 6569, 6598, 6609, 6828, 6834, 6841, 6851, 6862, 7064, 7075, 7106, 7116, 7127, 7179, 7200, 7218, 7219, 7279, 7415, 7439, 7531, 7447, 7707, 7708, 7733, 7737, 7865, 7866, 7869, 7873, 7881, 8015, 8023, 8024, 8049 and 8074
- “19” Sample of sales invoices of Golden Hands Manufacturing Corporation for the year 1998. Sales Invoice Nos. 8281, 8305, 8306, 8307, 8310, 8523, 8528, 8530, 8531, 8534, 8716, 8728, 8729, 8737, 8745, 8928, 8930, 8934, 8937, 8938, 9183, 9184, 9187, 9197, 9201, 9419, 9421, 9426, 9436, 9438, 9644, 9646, 9662, 9672, 9675, 9819, 9832, 9835, 9837, 9841, 10043, 10059, 10060, 10065, 10069, 10273, 10274, 10276, 10277, 10283, 10567, 10577, 10579, 10581, 10582, 10786, 10793, 10798, 10813 and 10801
- “20” Sample of sales invoices of Golden Hands Manufacturing Corporation for the year 1999. Sales Invoice Nos. 12750, 12754, 12761, 12771, 12778, 13170, 13175, 13180, 13185, 13206, 13276, 13281, 13296, 13304, 13308, 13750, 13850, 13892, 13916, 13957, 14015, 14039, 14144, 14188, 14189, 14278,

14570, 14581, 14585, 14586, 14494, 14966, 14976, 14982, 14990 and 14991

“21” Sample of sales invoices of Golden Hands Manufacturing Corporation for the year 2000. Sales Invoice Nos. 15279, 15290, 15304, 15339, 15357, 15428, 15526, 15532, 15564, 15577, 16104, 16125, 16130, 16138, 16161, 16410, 16430, 16438, 16441, 16443, 16640, 16699, 16701, 16709, 16714, 17194, 17217, 17218, 17220, 17288, 17544, 17554, 17557, 17592, 17602, 17972, 18029, 18054, 18057, 18317, 18164, 18167, 18205, 18208, 18209, 15516, 15317, 15530, 15356, 15360, 18585, 18586, 18661, 18691, 18593, 18804, 18816, 18856, 18860 and 18868

“22” Sample sales invoices of Golden Hands Manufacturing Corporation for the year 2001. Sales Invoice Nos. 19015, 19016, 19017, 19030, 19109, 19581, 19583, 19599, 19607, 19608, 19758, 19808, 19810, 19813, 20142, 20134, 20135, 20192, 20209, 20211, 20614, 20627, 20649, 20664, 20666, 21105, 21106, 21145, 21151, 21154, 21419, 21488, 21492, 21493, 21497, 21753, 21827, 21830, 21882, 21899, 22236, 22237, 22238, 22239, 22246, 22588, 22604, 22605, 22618, 22634, 22828, 22839, 22845, 22870, 22876, 23165, 23167, 23167, 23172 and 23173

“23” Golden Shell Award for manufacturing excellence

The issue for determination is whether the mark “KAMAYAN” being applied for registration and used on sautéed shrimp paste is confusingly similar to the “KAMAYAN” mark registered for restaurant services.

The challenged application having been filed under the provisions of the old Trademark law or Republic Act No. 166, the instant case shall be decided based on the provisions thereof. Republic Act 166 provides that-

“Sec. 4. *Registrations of trademarks, trade-names and service marks in the principal register* – xxx The owner of a trademark, trade-name or service mark, to distinguish his goods, business or services from the goods, business or services of others shall have the right to register the same on the principal register, unless it: xxx  
(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 services of the applicant, to cause confusion or mistakes or to deceive purchasers.”

Evidence show that Opposer has registration for service mark “Kamayan Restaurant, Inc. & Logo” under Certificate of Registration No. 35865 issued in 20 August 1986 for restaurant services. (Exhibit “A”). The respondent seeks to register the mark “KAMAYAN” for the goods sautéed shrimp paste. The mark is applied to labels attached to the goods.

While one party has been using the identical subject mark for restaurant service, the other endeavor to use the same on goods. In *Philippine Refining Co., Inc. vs. Ng Sam and the Director of Patents* (No. L-26676, July 30, 1982) the Supreme Court held:

“A rudimentary precept in trademark protection is that “the right to a trademark is a limited one, in the sense that others may use the same mark on unrelated goods.”

However, confusion is not entirely avoided even if a mark is used on goods which are not identical. There is still a likelihood of confusion if both goods are classified as related goods even if the goods are not in actual competition with each other and are not the same.

The Supreme Court in *Esso Standard Eastern, Inc. v. Court of Appeals* 116 SCRA 337 citing 2 Callman, Unfair Competition and Trademarks defined related goods in the following manner:

“Goods are related when they belong to the same class or have the same descriptive properties; when they possess the same physical attributes or essential characteristics with reference to their form, composition, texture or quality. They may also be related because they serve the same purpose or are sold in grocery stores.”

The Court further elaborates:

“But as to whether trademark infringement exists depends for the most part upon whether or not the goods are so related that the public may be, or is actually, deceived and misled that they came from the same maker or manufacturer. For non-competing goods may be those which though they are not in actual competition, are so related to each other that it might be reasonably be assumed that they are originate from one manufacturer. Non-competing goods may also be those which, being entirely unrelated, could not reasonably be assumed to have a common source. In the former case of related goods, confusion of business could arise out of the use of similar marks, in the latter case of unrelated goods, it could not. (Emphasis supplied)

Turning to the evidence, it appears that Opposer has long used the mark “Kamayan” in the restaurant business that specializes in a variety of local cuisine. Opposer offered in evidence the Articles of Incorporation issued in 11 August 1978 of the Kamayan Restaurant of which he is an incorporator and treasurer. (Exhibit “B”). A Business Permit and Business Permit application dated 18 January 1997 and a Mayor’s Permit for the year 1997 (Exhibit “C”) was offer that proves its legitimate exercise of its restaurant business in the City of Makati. From the various print advertisements and materials (Exhibit “D” and submarkings, “K” and “L”), it appears that the “KAMAYAN” mark with the “Kamayan” word or word with logo consisting of a pair of hands appears to be distinct. The advertising brochures (“D-3”) conveys how the restaurant adopts its name. The brochure reads “xxx *The dulang was laden with the freshest, the choicest, and the best dishes for the guests to feast on. Eating with a passion, and like all of its pleasures. It must be enjoyed to the fullest. Eating with the bare hands was the ultimate pleasure. Kamayan. A heritage handed down from generation to generation. A spirit of gaiety rekindled. The greatest of Filipino cuisine reborn. The first. The original Kamayan. There’s only one.*” Exhibit “D”-4 is a “KAMAYAN GIFT CERTIFICATE” issued in 8 November 1987. The advertising materials also shows three locations of the Kamayan restaurant namely: “Kamayan Pasay Road, Kamayan Edsa and Kamayan Padre Faura. Exhibit “D”-7 is a Manila Bulletin newspaper clipping dated 10 May 1987 of a promotional advertising of Kamayan. Exhibit “D”-8 is a newspaper clipping of a write-up by Crispina Belen of Bulletin Today dated 24 April 1979. Exhibit “D”-10 is a short article written by one Ben Lara in Bulletin Today dated 7 February 1979.

We note that in the brochures showing the menu served at Kamayan Restaurants, at least two delicacies are served or cooked with sautéed shrimp paste, one is kare-kare and the other is binagoongang baboy (Exhibit “D”-1 and 13). It has been shown that the restaurant uses sautéed shrimp paste heavily in its food preparation. This is indicated by receipts from 1997 to 2000 showing requests by Kamayan to Triple V Food Services, Inc. for “bagoong cooked and prepared” (Exhibit “G”). The “Kamayan” mark appears to have earned a reputation in the business of food and dining and the goodwill associated with the mark is instantly recognizable. Not to mention that the use of sautéed shrimp paste as a condiment is not uncommon in Filipino dishes.

Having noted these, we conclude that there is a likelihood of confusion by the use of a similar mark for sautéed shrimp paste, a condiment commonly used and associated with dishes served at a restaurant, which restaurant bears the contested mark.

The Bureau's position further finds support in the US Trademark Manual on Examining Procedure (TMEP) that explains when goods are considered related to services. Under 1207.01(a)(ii), I(i)t is well recognized that the confusion is likely to occur from the use of the same or similar marks for the goods, on the other hand, and for services involving those goods, on the other. See e.g. xxx In re: *Golden Griddle Pancake House Ltd.*, 17 USPQ2d 1074 (TTAB1990) (GOLDEN RIDDLE PANCAKE HOUSE (with 'PANCAKE HOUSE' disclaimed) for restaurant services held likely to be confused with GOLDEN RIDDLE for table syrup): In re Mucky Duck Mustard Co. Inc. 6 USPQ2d 1467 (TTAB 1988) (MUCKY DUCK and duck design for mustard held likely to be confused with THE MUCKY DUCK and duck design (with 'DUCK' disclaimed).

Under 1207.01 (a) (iii). I (i) f the cited registration has a broad identification f goods and services, an applicant does not avoid likelihood of confusion merely by more narrowly identifying its related goods. See, e.g., In re Diet Center Inc., 4 USPQ2d 1975 (TTAB 1987z0 (VEGETABLE SVELTES (with 'VEGETABLE' disclaimed) for wheat crackers sold through franchised outlets offering weight reduction services held likely to be confused with SVELTE for low calorie frozen dessert).

Respondent for its part, presented delivery receipts and invoices to show it has been using the mark in commerce since 1993 up to 2001. (Exhibit "14" to "22"). It has proven to be legitimately engaged in business through its incorporation papers, mayor's permit and BFAD license. (Exhibits "2" "8"). In spite of this, Opposer's use of the mark antedate the use of respondent of the Kamayan mark. Likewise, opposer's registration of his Kamayan mark antedate respondent's continuous commercial use of the mark. Having discussed earlier that the goods and services are related, registration is proscribed under Section 4 (d), Republic Act 166, on account of the possibility of confusion and mistake on the buying public by the contemporaneous use of the similar mar.

Respondent also submitted actual labels of the mark to highlight the difference of presentation between the two marks. (Exhibit "9"). Worthy of note is that respondent's application ifs for the word "Kamayan" only. The two marks are reproduced below for reference.



Opposer's mark

Respondent's mark

A comparison of the marks shows differences in the background, opposer's mark has a representation of a hand, while the respondent's mark has an arrangement of food in a pot and assorted fruits and vegetables. Be that as it may, the dominant portion of the marks is still the word "KAMAYAN". The pictorial arrangement below the word 'kamayan' is subordinate and will less likely be remembered by consumers than the word. Obviously, both marks are clearly dominated by the word "KAMAYAN".

In this regard, the Supreme Court in *American Wire & Cable Co. v. Director of Patents* (31 SCRA 544) held:

“Earlier rulings of the court seem to indicate its reliance on the dominancy test or the assessment of the essential or dominant features of competing labels to determine whether they are confusingly similar. On this matter the Court said:

“It has been consistently held that the question of infringement of a trademark is to be determined by the test of dominancy. Similarity in size, form and color, while relevant is not conclusive. If the competing trademark contains the main, essential or dominant features of another, and confusion and deception is likely to result, infringement takes place. Duplication or imitation is not necessary, nor is it necessary that the infringing label should suggest an effort to imitate. (*C. Neilman Brewing Co. vs. Pflugh* [CC] 180 Fed. 579)”

The US Trademark Manual on Examining Procedure (TMEP) provides under 1207.01 that it is merely a general rule that likelihood of confusion is not avoided between otherwise confusingly similar marks merely by adding or deleting a house mark or matter that is descriptive or suggestive of the named good or services. Sometimes the rule is expressed in the terms of the dominance of the common terms. Thus, if the dominant portion of the both marks is the same, then confusion may be likely notwithstanding peripheral differences. See, e.g. *In re El Torito Restaurants Inc.*, 9 USPQ2d 2002 (TTAB 1988) (*MACHO COMBOS* (with ‘*COMBOS*’ disclaimed) held likely to be confused with *MACHO* (stylized), both for food items as part of restaurant services).

Finally, respondent asserts that its “kamayan” mark was derived from the Filipino word which means “handshake”. It witness, Ms. Eliza R. Paylago testified being familiar with the Kamayan Restaurant but insisted that the respondent’s kamayan mark signified peace. She testified:

“Atty. Alburo : But you are aware that it is a restaurant?”

Witness : Yes.

Atty. Alburo : All the incorporators. As you notice the KAMAYAN brand has a logo of the Golden Hands, which means handshake. If you will notice handshake is friendship. And this logo is ours, which appears to be a dove means peace. So we translate the KAMAYAN into peace. Xxx You can see visible that it is a dove. Our KAMAYAN is not KAMAYAN, it is a handshake. Xxx”  
(Transcript of Stenographic Notes, 20 May 2004, page 7)

This Bureau noted the etymology of the word or the context in which it is used. Be as it may, the fact remains that respondent adopted “Kamayan” mark which is spelled exactly the same as opposer’s mark. A variation in the pronunciation of this Pilipino word is insignificant.

Similarity in the sound is one consideration in determining whether there is a likelihood of confusion between marks. There is no ‘correct’ pronunciation of trademark because it is impossible to predict how the public will pronounce a particular mark. Thus, ‘correct’ pronunciation cannot be relied upon to avoid a likelihood of confusion. (*Kabushiki Kaisha Hattori Tokeiten v. Scuotto*, 228 USPQ 461 [TTAB 1985]).

WHEREFORE, premises considered the OPPOSITION filed by Victor V. Villavicencio is as it is hereby SUSTAINED. Accordingly, Application Serial No. 87284 filed by Respondent-Applicant, Golden Hands Manufacturing Corp. on 5 May 1993 for the mark “KAMAYAN” used on sautéed shrimp paste is hereby REJECTED.



Let the filewrapper of "KAMAYAN", subject matter of this case be forwarded to the Bureau of Trademarks (BOT) for appropriate action in accordance with this Decision.

SO ORDERED.

Makati City, 10 August 2006.

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