



OFFICE OF THE DIRECTOR GENERAL

PHILIPPINE SEVEN CORPORATION, Appeal No. 04-2010-0003  
Appellant,

-versus-

Application No. 4-2006-005910  
Filing Date: 05 June 2006

DIRECTOR OF THE BUREAU OF  
TRADEMARKS,

Trademark: RICE MEAL EXPRESS

Appellee.

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DECISION

PHILIPPINE SEVEN CORPORATION (“Appellant”) appeals the decision<sup>1</sup> of the Director of the Bureau of Trademarks (“Director”) sustaining the final rejection of the Appellant’s application to register the mark “RICE MEAL EXPRESS” for ready to eat rice meals with variants namely, *tapsilog*, *tocilog*, *boneless daing na bangus* and *chunkee corned beef*.

Records show that the Appellant filed on 05 June 2006 Trademark Application No. 4-2006-005910. The Examiner-in-Charge (“Examiner”) issued a “REGISTRABILITY REPORT”<sup>2</sup> stating, among other things, that the mark may not be registered because it consists exclusively of signs that are descriptive of the goods that it seeks to identify. Consequently, the Appellant filed a letter dated 13 February 2007 claiming that the words of its mark are not themselves indicative or descriptive of its goods and that the use of such words will not limit other persons in the use of language appropriate to the description of their own products.

The Examiner issued another official action stating that the arguments presented by the Appellant to traverse the proscription on descriptiveness are untenable.<sup>3</sup> The Appellant submitted a letter dated 27 April 2007 contending that a descriptive word when used as part of a composite mark may be monopolized and registered as a trademark. According to the Appellant, the component elements are not to be considered separate and apart from each other and must be looked into as a whole. The Appellant argues that when a term on a mark is merely descriptive, it should be determined not in the abstract context of it but in its entirety as forming part of the entire mark.

<sup>1</sup> DECISION dated 16 November 2009.

<sup>2</sup> Paper No. 3 with mailing date of 13 December 2006.

<sup>3</sup> Paper No. 05, with mailing date of 02 March 2007.

The Examiner issued a "FINAL REJECTION"<sup>4</sup> stating that the mark cannot be registered because as a whole, the mark is descriptive of the goods covered by the application. The Appellant appealed to the Director seeking the withdrawal of the final rejection. The Director denied the appeal and sustained the final rejection. The Appellant filed on 18 December 2009 a "MOTION FOR RECONSIDERATION" which was denied by the Director in her Order dated, 22 February 2010.

The Appellant filed on 18 March 2010 an "APPEAL MEMORANDUM" contending that RICE MEAL EXPRESS is not descriptive of the goods "ready to eat rice meals with variants namely tapsilog, tocilog, boneless daing na bangus, chunkee corned beef and other variants." The Appellant claims that an ordinary consumer would not normally buy *tapsilog, tocilog, boneless daing na bangus with rice, or chunkee corned beef with rice* and describe them or refer to them as RICE MEAL EXPRESS. The Appellant asserts that RICE MEAL EXPRESS even becomes more distinctive when its distinctive font style, colors and background are considered. According to the Appellant, the use of the distinctive colors, font style and background makes the mark fanciful, arbitrary and a suggestive mark that is distinctive enough for registration. The Appellant further argues that even if RICE MEAL EXPRESS is descriptive, it has exclusively used this mark in more than 400 stores nationwide for more than four (4) years and that such extent and degree of use has bestowed upon the mark a unique distinctiveness exclusive to it and to the goods it covers as well as a secondary meaning recognized by law as a basis for registrability.

The Director filed on 28 April 2010 her "COMMENT" stating that the Appellant's mark is descriptive as it immediately conveys the kind of product being sold. The Director asserts that the subject mark immediately shows that the product being sold is a "rice meal" that is a rice to be served with a viand and intended to be served "quickly" or "fast" as denoted by the use of the word "express". The Director maintains that in determining whether a mark is descriptive, it is not necessary that the mark describes with exact specificity the ingredients, quality, or other characteristics of the goods for which it is intended, but that it is sufficient that the mark is reasonably indicative of the thing intended. The Director claims that no one may appropriate generic or descriptive words which belong to the public domain.

The main issue in this appeal is whether the Director was correct in sustaining the final rejection of RICE MEAL EXPRESS.

In this regard, Sec. 123.1 (j) of the Intellectual Property Code of the Philippines ("IP Code") provides that a mark cannot be registered if it:

(j) Consists exclusively of signs or of indications that may serve in trade to designate the kind, quality, quantity, intended purpose, value, geographical origin, time, or

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<sup>4</sup> Paper No. 07 with mailing date of 29 May 2007.

production of the goods or rendering of the services, or other characteristics of the goods or services;

The reason for this is that inasmuch as all persons have an equal right to produce and vend similar articles, they also have the right to describe them properly and to use any appropriate language or words for that purpose, and no person can appropriate exclusively any word or expression, properly descriptive of the article, its qualities, ingredients, or characteristics, and thus limit other persons in the use of language appropriate to the description of their manufactures, the right to the use of such language being common to all. As to whether words employed are within this prohibition, it is said that the true test is not whether they are exhaustively descriptive of the article designated, but whether in themselves, and as they are commonly used by those who understand their meaning, they are reasonably indicative and descriptive of the thing intended. If they are, thus descriptive, and not arbitrary, they cannot be appropriated from general use and become the exclusive property of anyone.<sup>5</sup> It cannot be registered for to do so would exclude others who are also engaged in producing similar products and using the same words in their similar trade or services. Descriptive terms, which may be used to describe the product adequately, cannot be monopolized by a single user and are available to all.<sup>6</sup>

In this case, RICE MEAL EXPRESS is a descriptive mark which indicates the characteristics of the goods/services of the Appellant. RICE MEAL EXPRESS is used on ready to eat rice meals, thus describing the kind of goods/services offered by the Appellant. As correctly pointed out by the Director:

The mark immediately conveys the kind of product being sold, without the need to exercise the power of imagination or additional thought. The consumers are readily informed that the product is a meal with rice that is ready to eat. That the rice meal may be served in several variants does not remove the fact that the mark clearly indicates the kind and other characteristics of the goods. As the mark is descriptive, it is unregistrable under the law.<sup>7</sup>

In the case of *Societe des Produits Nestle S.A. and Nestle Philippines Inc. vs. Court of Appeals and CFC Corporation*<sup>8</sup>, the Supreme Court of the Philippines held that a term is descriptive and therefore invalid as a trademark if, as understood in its normal and natural sense, it conveys the characteristics, functions, qualities or ingredients of a product to one who has never seen it and does not know what it is or if it conveys an immediate idea of the ingredients, qualities or characteristics of the goods, or if it clearly denotes what goods or services are provided in such a way that the consumer does not have to exercise powers of perception or imagination.

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<sup>5</sup> See *Ong Ai Gui Alias Tan Ai Gui vs. Director of the Philippines Patent Office*, G. R. No. L-6235, 28 March 1955 citing 52 Am. Jur. 542-543.

<sup>6</sup> See *Vicente B. Amador*, Trademarks Under The Intellectual Property Code, 1999, page 22.

<sup>7</sup> COMMENT, dated 23 April 2010, page 5.

<sup>8</sup> G. R. No. 112012, 04 April 2001.

In this instance, the RICE MEAL EXPRESS is a descriptive mark because it immediately conveys the characteristics and qualities of the Appellant's goods or services as referring to rice meals. There is no need for the purchasing public to imagine the products or services of the Appellant for the mark itself illustrates and gives the idea of the Appellant's rice meals.

The Appellant argues that even assuming that RICE MEAL EXPRESS is descriptive its mark can still be registered under the doctrine of secondary meaning in Sec. 123.2 of the IP Code. The Appellant's contention is not meritorious. Sec. 123.2 of the IP Code provides that:

123.2. As regards signs or devices mentioned in paragraphs (j), (k), and (l), nothing shall prevent the registration of any such sign or device which has become distinctive in relation to the goods for which registration is requested as a result of the use that have been made of it in commerce in the Philippines. The Office may accept as prima facie evidence that the mark has become distinctive, as used in connection with the applicant's goods or services in commerce, proof of substantially exclusive and continuous use thereof by the applicant in commerce in the Philippines for five (5) years before the date on which the claim of distinctiveness is made.


In this regard, the Appellant did not submit any evidence to prove that its mark has become distinctive as a result of its use in commerce in the Philippines. Neither did the Appellant adduce any evidence showing it has exclusive and continuous use of the mark in the Philippines for five (5) years before the filing date of its trademark application. The Appellant even stated in its APPEAL MEMORANDUM that it has continuously and exclusively used the mark "for more than 4 years" only, which indicates that at the time that the Appellant filed its application to register RICE MEAL EXPRESS this mark has not acquired a distinction to merit the application of the doctrine of secondary meaning.

WHEREFORE, premises considered, the appeal is hereby DISMISSED. The Trademark Application No. 4-2006-005910 for ready to eat rice meals with variants namely *tapsilog*, *tocilog*, *boneless daing na bangus*, and *chunkee corned beef* is hereby rejected.

Let a copy of this Decision as well as the trademark application and records be furnished and returned to the Director of the Bureau of Trademarks. Let a copy of this Decision be furnished also the library of the Documentation, Information and Technology Transfer Bureau for its information and records purposes.

SO ORDERED.

SEP 03 2012 Taguig City

  
RICARDO R. BLANCAFLOR  
Director General 