



OFFICE OF THE DIRECTOR GENERAL

SOUTHEAST ASIA FOOD, INC.,  
Appellant,

Appeal No. 04-2011-0012

-versus-

Application No. 4-2010-500127

Date Filed: 29 January 2010

Trademark: DATU PUTI PINOY

DIRECTOR OF THE BUREAU OF  
TRADEMARKS,

KURAT SPICED TUBA VINEGAR  
AND DEVICE

Appellee.

X-----X

DECISION

Southeast Asia Food, Inc. (“Appellant”) appeals the decision of the Director of the Bureau of Trademarks (“Director”) sustaining the final rejection of the Appellant’s Trademark Application No. 4-2010-500127 for “DATU PUTI PINOY KURAT SPICED TUBA VINEGAR AND DEVICE” (“Datu Puti Pinoy Kurat”).

Records show that the Appellant filed on 29 January 2010 the trademark application to register Datu Puti Pinoy Kurat for use on vinegar. The Examiner-in-Charge (“Examiner”) issued a “REGISTRABILITY REPORT”<sup>1</sup> stating that the mark may not be registered because it nearly resembles a registered mark belonging to a different proprietor and the resemblance is likely to deceive or cause confusion. The Examiner cited the mark “SUKA PINAKURAT AND DEVICE” (“Suka Pinakurat”) that was issued a certificate of registration on 10 March 2006 in the name of Reinard Donn C. Stuart Del Rosario. The Examiner also stated in her official action that the Appellant must disclaim the descriptive components of the mark namely: “PINOY”, “SPICED TUNA VINEGAR”, and the “REPRESENTATION OF SPICES”.

On 08 July 2010, the Appellant filed a “RESPONSIVE ACTION WITH RECORDAL OF NEW TRADEMARK AGENT” contending that “PINAKURAT” is a descriptive and generic term and is not entitled to trademark protection. According to the Appellant, the term “KURAT” or “PINAKURAT” conveys an immediate idea of the ingredients, qualities or characteristics of the product vinegar and that through time and usage PINAKURAT has become a generic term for spicy tuba vinegar. The Appellant argued that the dominant term in its mark is “DATU PUTI” and that based on the “Dominancy Test”, there is no likelihood of confusion between Datu Puti Pinoy Kurat and Suka Pinakurat.

The Examiner issued Paper No. 05<sup>2</sup> acknowledging the response of the Appellant and stated that PINAKURAT and “PINOY KURAT” are confusingly similar in sound and overall commercial impression and that the Appellant’s attack on

<sup>1</sup> Paper No. 2 mailed on 12 May 2010.

<sup>2</sup> Mailed 19 August 2010.

the validity of the Suka Pinakurat is misplaced. According to her, the Director has already issued a certificate of registration for this mark.

Subsequently, on 15 October 2010, the Appellant appealed to the Director and treated Paper No. 05 as a final rejection of its mark. On 10 March 2011, the Director issued the decision denying the appeal and sustaining the final rejection of Datu Puti Pinoy Kurat. The Appellant filed on 04 April 2011 a "MOTION FOR RECONSIDERATION" which the Director denied in an Order dated 26 April 2011.

On 23 May 2011, the Appellant filed its "APPEAL MEMORANDUM" contending that Datu Puti Pinoy Kurat and Suka Pinakurat are not confusingly similar. The Appellant claims that its mark does not incorporate any dominant feature of Suka Pinakurat and that consumers are not likely to be deceived that the products bearing these marks come from one and the same source or manufacturer. The Appellant maintains that "Pinakurat/Kurat" is descriptive or generic which cannot be given trademark protection and that it is not attacking the validity of the registration of Suka Pinakurat.

The Director filed on 01 July 2011 her "COMMENT" stating that the dominant features of Datu Puti Pinoy Kurat and Suka Pinakurat are confusingly similar. According to her, these marks share a similar dominant term and that "Pinoy Kurat" and "Pinakurat" and the variances in their respective presentations are insufficient to avoid confusion to the public. The Director maintains that "kurat" or "pinakurat" is not a descriptive term when used in relation to vinegar.

The issue in this appeal is whether the Director was correct in sustaining the rejection of the Appellant's application to register Datu Puti Pinoy Kurat.

Sec. 138 of the Intellectual Property Code of the Philippines ("IP Code") provides that:

SEC. 138. Certificate of Registration.- A certificate of registration of a mark shall be prima facie evidence of the validity of the registration, the registrant's ownership of the mark, and of the registrant's exclusive right to use the same in connection with the goods or services and those that are related thereto specified in the certificate.

In this regard, there is an existing trademark registration for the mark Suka Pinakurat for use on vinegar products. The certificate of registration for Suka Pinakurat gives the presumption of the validity of the registration of this mark. Moreover, the registrant of this mark has the exclusive right to use it for vinegar products and those related thereto. The Appellant cannot, therefore, use "Kurat" on its vinegar products for it would violate the exclusive right of the registrant to use the mark Suka Pinakurat.

The essence of trademark registration is to give protection to the owners of trademarks. The function of a trademark is to point out distinctly the origin or ownership of the goods to which it is affixed; to secure to him, who has been



instrumental in bringing into the market a superior article of merchandise, the fruit of his industry and skill; to assure the public that they are procuring the genuine article; to prevent fraud and imposition; and to protect the manufacturer against substitution and sale of an inferior and different article as his product.<sup>3</sup>

In this case, to allow the registration of the Appellant's mark would defeat the benefits given to the holder of the registered mark Suka Pinakurat. The Appellant's use of the term "Kurat" on similar vinegar products goes against the rationale of trademark registration and is not in accord to the rights given to the holder of a certificate of trademark registration to exclude others from the use of the registered mark.


Significantly, the proceeding before the examiner of the Bureau of Trademarks is *ex-parte*. It is prosecuted *ex parte* by the applicant, that is, the proceedings are like a lawsuit in which there is a plaintiff (the applicant) but no defendant, the court itself (the Examiner) acting as the adverse party.<sup>4</sup> The Intellectual Property Office of the Philippines represented by the Examiner is not supposed to look after the interest of an applicant. The law imposes that duty upon the applicant himself. The Examiner is charged with the protection of the interests of the public and, hence, must be vigilant to see that no registration issues for a mark contrary to law and the Trademark Regulations.<sup>5</sup> The Examiner will look if the trademark can be registered or not.

Moreover, the Examiner correctly pointed out that the attack on the validity of the registration for Suka Pinakurat is not appropriate in this proceeding in view of the *prima facie* validity given to the registration of Suka Pinakurat. Accordingly, the Examiner and the Director were correct in rejecting the Appellant's application to register Datu Puti Pinoy Kurat in view of the failure of the Appellant to delete in its trademark application the term "Kurat".

WHEREFORE, premises considered, the instant appeal is hereby dismissed. Let a copy of this Decision be furnished the Director of the Bureau of Trademarks, and the library of the Documentation, Information and Technology Transfer Bureau for information, guidance, and records purposes.

SO ORDERED.

20 DEC 2013 Taguig City.

  
RICARDO R. BLANCAFLOR  
Director General

<sup>3</sup> Pribhdas J. Mirpuri v. Court of Appeals, G.R. No. 114508, 19 November 1999.

<sup>4</sup> Trademark Regulations, Rule 600.

<sup>5</sup> Trademark Regulations, Rule 602.