



MANG INASAL PHILIPPINES, INC.,  
Opposer,

-versus-

GOLD MEDAL FOOD MANUFACTURING  
CORPORATION,  
Respondent –Applicant.

x-----x

IPC No. 14-2013-00334  
Opposition to:  
Appln. Serial No. 4-2012-13701  
Date Filed: 12 November 2012  
TM: "GOLD MEDAL INASAL  
AND ULAM CRACKERS"

**NOTICE OF DECISION**

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**GREETINGS:**

Please be informed that Decision No. 2014 - 101 dated April 08, 2014 (copy enclosed) was promulgated in the above entitled case.

Taguig City, April 08, 2014.

For the Director:

*Edwin G. Dating*  
**Atty. EDWIN DANILO A. DATING**  
Director III  
Bureau of Legal Affairs



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Opposer,

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MANUFACTURING CORPORATION,**  
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IPC No. 14-2013-00334

Opposition to Trademark  
Application No. 4-2012-13701  
Date Filed: 12 November 2012

Trademark: "**GOLD MEDAL INASAL  
AND ULAM CRACKERS**"

Decision No. 2014- 101

### DECISION

Mang Inasal Philippines, Inc.<sup>1</sup> (Opposer) filed an opposition to Trademark Application Serial No. 4-2012-13701. The contested application, filed by IFP Manufacturing Corporation<sup>2</sup> (Respondent-Applicant), covers the mark "GOLD MEDAL INASAL AND ULAM CRACKERS" for use on "*chicken flavoured crackers*" under Class 30 of the International Classification of Goods<sup>3</sup>.

The Opposer anchors its opposition on Section 123.1 (d) of Republic Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code"). It claims to be the successor-in-interest of Mr. Edgar J. Sia II and the current owner of the marks "MANG INASAL, HOME OF REAL PINOY STYLE BARBEQUE AND DEVICE", "MANG INASAL" and "MANG INASAL LOGO AND DEVICE" which was registered 17 August 2006, 15 March 2012 and 04 October 2012, respectively, for goods and/or services Classes 29 and 43. It asserts that it first used the mark as early as 12 December 2003 and has extensively promoted the mark in the Philippines.

According to the Opposer, "GOLD MEDAL INASAL AND ULAM CRACKERS" incorporates the highly distinctive lettering style, color combination and layout of its own mark. It points out the following alleged similarities between the marks:

1. In both marks, the word "INASAL" is spelled in red font with a black outline;
2. In both marks, the word "INASAL" is has a yellow background.

The Opposer further contends that the goods in connection with which Respondent-Applicant's mark is sought to be registered, i.e. chicken flavoured crackers, is closely related to the food products and restaurant services under which

<sup>1</sup> A company organized under the laws of the Philippines with principal address at Delgado Street corner Fuentes Street, Iloilo City, Philippines.

<sup>2</sup> With address at 491, Gen. Capinpin St., Manggahan, Pasig City, Metro Manila, Philippines.

<sup>3</sup> The Nice Classification is a classification of goods and services for the purpose of registering trademark and services marks, based on the multilateral treaty administered by the World Intellectual Property Organization. The treaty is called the Nice Agreement Concerning the International Classification of Goods and Services for the Purpose of the Registration of Marks concluded in 1957.

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its own mark is registered. It bewails that given the similarities, the consumers may be deceived as it will suggest a connection, association or affiliation between Opposer and Respondent-Applicant, thereby causing substantial damage to the goodwill and reputation of the former. Opposer furthers that the registration of Respondent-Applicant's mark will work to impede its natural expansion of its use of its mark.

In support of its contentions, Opposer submitted the following:

1. original notarized affidavit of Atty. Gonzalo D.V. Go;
2. copy of the Deed of Assignment from the original owner, Mr. Edgar J. Sia II, to INJAP Investments, Inc.;
3. copy of the Deed of Assignment from INJAP Investments, Inc. to Opposer;
4. screen shots of the company website, [www.manginasal.com](http://www.manginasal.com), featuring the various food and food products bearing the mark "MANG INASAL, HOME OF REAL PINOY STYLE BARBEQUE AND DEVICE", as well as restaurant locations in the Philippines;
5. representative samples of promotional materials and advertisements for the mark "MANG INASAL";
6. table showing the details of Opposer's trademark registration and/or applications worldwide;
7. copy of Trademark Registration No. 4-2006-09050 for "MANG INASAL HOME OF REAL PINOY STYLE BARBEQUE AND DEVICE";
8. copy of Trademark Registration No. 4-2011-006655 for "MANG INASAL";
9. copy of Trademark Registration No. 4-2012-004769 for "MANG INASAL LOGO AND DEVICE (BLACK AND WHITE)";
9. food containers using its "MANG INASAL " marks;
10. sample photographs of its restaurants/branches.<sup>4</sup>

For its part, the Respondent-Applicant pleads good faith in applying for trademark registration of its mark. It asserts that its applied mark "GOLD MEDAL INASAL AND ULAM CRACKERS" is visually and aurally different from that of Opposer's "MANG INASAL" marks as only the word "INASAL" is common between the contending marks. It also contends that even the manner of presentations is distinct as its mark spells the word "INASAL" in small letters while that of the Opposer's is in capital and stylized. Further, it maintains that the goods the competing marks cover are neither identical or closely related.

The Respondent-Applicant's evidence consists of the following:

1. copy of Respondent-Applicant's trademark application;
2. copy of the Notice of Allowance bearing the mailing date of June 27, 2013;

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<sup>4</sup> Marked as Exhibit "B" to "G", inclusive.

3. printout of its mark as published in the E-Gazette last 08 July 2013;
4. enlarged copy of its mark as appearing in its application;
5. printout of Opposer's Registration No. 4-2006-009050;
6. copy of its Response dated 03 May 2013 to the Registrability Report; and,
7. duly notarized affidavit of Rodolfo L. See, President and Chief Executive Officer of Gold Medal Food Manufacturing Corporation.

Pursuant to Office Order No. 154, s. 2010, the case was referred to mediation. On 09 December 2013, this Bureau's Alternative Dispute Resolution Services submitted a report that the parties refused to mediate. Accordingly, the Hearing Officer conducted and terminated the preliminary conference on 13 February 2014 wherein the parties were directed to submit their respective position papers. Upon the submission by both parties of their respective position papers on 17 February 2014, the case is deemed submitted for resolution.

The issue to be resolved is whether Respondent-Applicant's mark "GOLD MEDAL INASAL AND ULAM CRACKERS" should be allowed registration.

Records reveal that at the time Respondent-Applicant filed an application for registration of its mark, the Opposer has a valid and existing registration of its mark "MANG INASAL, HOME OF REAL PINOY STYLE BARBEQUE AND DEVICE", "MANG INASAL" and "MANG INASAL LOGO AND DEVICE (BLACK & WHITE) issued under Certificate of Registration Nos. 4-2006-009050, 4-2011-006655 and 4-2012-004769, respectively.

Now, to determine whether the marks of Opposer and Respondent-Applicant are confusingly similar, the competing marks are shown below for comparison:

## MANG INASAL



*Home of Real Pinoy Style Barbeque*



*Opposer's marks*

A handwritten signature in blue ink, possibly reading 'R. See', is located in the bottom right corner of the page.



*Respondent-Applicant's mark*

When one looks at the Opposer's marks, what is impressed in the eyes and mind is the word "inasal". It is the integral component of the Opposer's "MANG INASAL" marks because it is conveyed in bold letters and positioned at the center. Upon scrutiny of Respondent-Applicant's mark, the same conclusion may be derived therefrom. Be that as it may, the similarity is insufficient to reach a conclusion that there may exist a confusion, much more deception. The only similarity between the two competing marks is the appropriation of the word "inasal", which describes a manner of cooking meat and therefore, descriptive. Other than this, the two competing marks are uniquely presented.

In **Societe des Produits Nestle vs. Court of Appeals**<sup>5</sup>, the Supreme Court explained:

*"Generic terms are those which constitute 'the common descriptive name of an article or substance,' or comprise the 'genus of which the particular product is a species'" or are 'commonly used as the name or description of a kind of goods,' or 'imply reference to every member of a genus and the exclusion of individuating characters,' or 'refer to the basic nature of the wares or services provided rather than to the more idiosyncratic characteristics of a particular product,' and are not legally protectable. On the other hand, a term is descriptive and therefore invalid as a trademark if, as understood in its normal and natural sense, it 'forthwith 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 forthwith 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." (Emphasis supplied.)*

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<sup>5</sup> G.R. No. 112012, April 4, 2001.

The so-called descriptive terms, which may be used to describe the product adequately, cannot be monopolized by a single user and are available to all. It is only natural that the trade will prefer those marks which bear some reference to the article itself.<sup>6</sup> Precisely for this reason, Opposer was constrained to disclaim the word "inasal" in its Certificate of Registration. This word cannot be subject of exclusive use in view of its descriptive property. In fact, the Trademark Registry of the Intellectual Property Office Philippines (IPOPIL), the contents of which this Bureau can take cognizance of via judicial notice, would disclose that there are other entities aside from Opposer and Respondent-Applicant that utilizes the word "inasal" as part of their marks presented in similar font and color.

Moreover, the confusion or mistake, much more deception, is unlikely in this instance as bolstered by the fact the goods covered by Opposer's trademark registration are different from that of the Respondent-Applicant's. Opposer's goods and/services are particular for that which are offered in their fastfood and restaurant chains. On the other hand, Respondent-Applicant's goods consist of snacks or curls that are available in ordinary stores. They do not flow in the same channels of trade as to result to any confusion. A consumer could easily discern that there is no connection between the curls or snacks offered by Respondent-Applicant and the meals offered by the Opposer in its restaurants. Therefore, it is doubtful that a purchaser of that would encounter a product bearing "GOLD MEDAL INASAL AND ULAM CRACKERS" would be reminded of Opposer's "MANG INASAL" marks.

Corollarily, the enunciation of the Supreme Court in the case of **Mighty Corporation vs. E. & J. Gallo Winery**<sup>7</sup> aptly states that:

*"A very important circumstance though is whether there exists likelihood that an appreciable number of ordinarily prudent purchasers will be misled, or simply confused, as to the source of the goods in question. The 'purchaser' is not the 'completely unwary consumer' but is the 'ordinarily intelligent buyer' considering the type of product involved. He is 'accustomed to buy, and therefore to some extent familiar with, the goods in question. The test of fraudulent simulation is to be found in the likelihood of the deception of some persons in some measure acquainted with an established design and desirous of purchasing the commodity with which that design has been associated. The test is not found in the deception, or the possibility of deception, of the person who knows nothing about the design which has been counterfeited, and who must be indifferent between that and the other. The simulation, in order to be objectionable, must be such as appears likely*

<sup>6</sup> Ong Ai Gui vs. Director of Philippines Patent Office, G.R. No. L-6235, March 28, 1955.

<sup>7</sup> G.R. No.154342, 14 July 2004.

*to mislead the ordinary intelligent buyer who has a need to supply and is familiar with the article that he seeks to purchase."*

Finally, it is emphasized that 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>8</sup> Based on the above discussion, Respondent-Applicant's trademark meets this function.

**WHEREFORE**, premises considered, the instant opposition is hereby **DISMISSED**. Let the filewrapper of Trademark Application Serial No. 4-2012-013701 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

**SO ORDERED.**

Taguig City, 08 April 2014.



**ATTY. NATHANIEL S. AREVALO**

Director IV

Bureau of Legal Affairs

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<sup>8</sup> Pribhdas J. Mirpuri vs. Court of Appeals, G.R. No. 114508, 19 November 1999.