



MARIETTA T. SUBONG,
Opposer,

-versus-

PURE SNACK FOOD HOUSE CORP.,
Respondent-Applicant.

X-----X

IPC No. 14-2010-00045

Opposition to:

Appln. Serial No. 4-2008-014660

Date filed: December 4, 2008

TM: "POKWANG"

NOTICE OF DECISION

VERA LAW

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Ms. ELEONOR R. QUE

For Respondent-Applicant

No. 29 Acacia Drive Bellevue

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GREETINGS:

Please be informed that Decision No. 2013 - 157 dated August 05, 2013 (copy enclosed) was promulgated in the above entitled case.

Taguig City, August 05, 2013.

For the Director:

Edwin A. Dating
Atty. EDWIN DANILO A. DATING

Director III

Bureau of Legal Affairs

Republic of the Philippines

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Opposition to:

Appln. Serial No. 4-2008-014660

Date Filed : 04 December 2008

Trademark: "POKWANG"

Decision No. 2013 - 157

DECISION

MARIETTA T. SUBONG a.k.a "POKWANG" ("Opposer")¹, filed on 16 February, 2010 an opposition to Trademark Application No. 4-2008-014660. The application, filed by PURE SNACK FOOD HOUSE CORP. ("Respondent-Applicant")², covers the mark "POKWANG" for use on goods under class 30³ for corn puff, corn chips and corn snack.⁴

The opposition alleges that the registration of the mark "POKWANG" in the name of Respondent-Applicant will violate and contravene Section 123.1 pars. (a), (c), and (g) of the Intellectual Property Code. According to the Opposer:

"7. The mark 'POKWANG' sought to be registered by Respondent-Applicant is the professional name, stage name and screen name (hereinafter collectively referred to as a stage name) of Opposer, the famous actress, TV host, singer, comedienne and impersonator. In fact, Opposer is better known as 'Pokwang', and not by her real name, Marietta T. Subong.

"8. Opposer has a pending application for trademark registration of her stage name 'POKWANG' under application number 4-2010-001334.

"9. Opposer first adopted and used the stage name, POKWANG, in 2004 when she joined and emerged the grand prize winner in the contest 'Clown in a Million' in ABS-CBN. Since then, Opposer has continuously used said name up to present, appearing in films, TV shows, concerts and other live performances, in the Philippines and abroad.

¹ Filipino citizen with postal address at Block 10, Lot 33, Freesia Street, Gardens of Maia Alta, Antipolo City.

² A corporation organized and existing under the laws of the Philippines with principal office located at #11 LBICA Compound Malinis St., Lawang Bato, Valenzuela City

³ The Nice Classification of goods and services is for registering trademark and service marks, based on a multilateral treaty administered by the WIPO, called the Nice Agreement Concerning the International Classification of Goods and Services for Registration of Marks concluded in 1957.

⁴ The application was published in the Intellectual Property Office Official Gazette, officially released for circulation on 19 October 2009.

"10. Among Opposer's current professional engagements is co-hosting the noontime variety show, WOWOWEE, under ABS-CBN, where she became known for her funny antics, outlandish costumes and witty spiels since 2007. She also stars in a daily gag show Banana Split, Daily serving and weekly gag show, Banana Split and Your Song Presents 'Love Me Love You', along with other tv guestings.

"11. As a member of Star Magic group of entertainers since 2004, Opposer has starred in numerous films and TV shows, x x x.

"12. In 2009, Opposer released her first album, 'Pokwang...Ang Album Na May Puso' under Star Records, featuring the carrier single 'Sana Kunin Ka Na Ni Lord', which became Gold two weeks after its release in the market. The record label bears the name 'POKWANG'.

"13. As Pokwang, Opposer has received several awards and recognitions, including Ang Pinaka Idol na Comedy Actress by A TV 92006), Best Comedy Actress award from the Movie Press Club for her portrayal in the sitcom Aalog-Alog, best Comedy Actress 21st Star Awards for Television (2007), Best Stand-up Comedy act, 21st Aliw Awards (2008) and People's Choice Award (2009).

"14. Because of the commercial recognition of Opposer's stage name, 'Pokwang' and the image attached to it, she has been tapped to make several product endorsements in TV and print advertisements and commercials for well-known and reputable brands, including Nestle, Knorr, Lipton iced Tea, Globe and Ultra Mega Supermarket, for which Opposer gets considerable profession/talent fees.

"15. Opposer signed all contracts for her professional engagements under the name 'Marietta Subong a.k.a. POKWANG.

"16. Internet search results reveal that worldwide web itself recognizes that POKWANG and Marietta Subong are one and the same person. In fact, the Google internet search for POKWANG with 1,780,000 hits and for Marietta Subong with 184,000 hits bear articles/blogs on POKWANG referring to Marietta Subong and to Marietta Subong as better known by her stage name POKWANG, the Filipina actress, TV host, singer, comedian and impersonator.

"17. Opposer has not authorized Pure Snack Food House Corp. to use the name POKWANG in connection with sale of food products or any other goods."

The Opposer's evidence consists of the following:

1. Exhibit "A"- Special Power of Attorney; and,
2. Exhibit "B"- Affidavit-Direct Testimony of Marietta Subong (inclusive of Annex "A" which is a website printout showing Marietta Subong and Pokwang).

This Bureau issued on 05 March 2010 a Notice to Answer, a copy of which was served upon the Respondent-Applicant's representative, Eleanor Q. Que⁵ on 01 June 2010.

⁵ With address at No. 29 Acacia Drive Bellevue, Brgy. Samson Road, Quezon City.

The Respondent-Applicant did not file the required answer. Thus, the instant case is deemed submitted for decision.

Should the Respondent-Applicant be allowed to register the mark POKWANG?

It is emphasized that the essence of trademark registration is to give protection to the owner of the 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.⁶

Trademark registration is conferred on applications made validly in accordance with the provisions of the law.⁷ The law provides that a mark cannot be registered if it consists of deceptive matter which may disparage or falsely suggest a connection with persons, living or dead or bring them into contempt or disrepute; and consists of a name, portrait or signature identifying a particular living individual except by his written consent.⁸

In order for a mark to falsely suggest a connection with persons, it must be shown that the mark is almost the same with the name or identity used by another person; the mark would be known as such and obviously pertains to that person; the person is not connected with the activities performed by the applicant of the mark; and the fame of the person is such that, when the mark is used with the applicant's goods or services, a connection with the person or institution would be presumed.⁹ The prohibition of the law does not have to be a full name but also applies to first names, surnames, shortened names, pseudonyms, stage names, titles, or nicknames, if there is evidence that the name identifies a specific living individual who is so well known that such a connection would be assumed.¹⁰

The competing marks are shown below:

Opposer's Trademark

POKWANG

Respondent-Applicant's Trademark

The word marks are obviously identical. The goods covered are not similar for the Opposer under Class 30, and the Respondent-Applicant under Class 41. However, this appears not significant because records show that the Respondent-Applicant's mark "POKWANG" clearly points to the Opposer's screen and TV name, "POKWANG", which

⁶ Pribhdas J. Mirpuri v. Court of Appeals, G.R. No. 114509, 19 November 1999.

⁷ Sec. 122, IP Code.

⁸ Sec. 123.1 pars. (a) and (c), The Intellectual Property Code.

⁹ 1203.03 (e) of the United States Patent Office, Trademark Manual and Examining Procedure.

¹⁰ 1206.01, *ibid.*

was first adopted and used in 2004 when she joined and entered the entertainment industry, and later developed a reputation as a celebrity and comedy actress. The Opposer has been publicly known and strongly recognized by the name of "POKWANG". It is clearly distinctive in nature, as it signifies no other definition or search results¹¹ except the Opposer Marietta Subong carrying the alias name, "POKWANG".

The mark "POKWANG" consists of a name identifying the Opposer, a particular living individual whose consent is needed for the opposed mark subject of the instant opposition to be registered. That the name "POKWANG" is publicly known in the Philippines as belonging to the Opposer is uncontested by the Respondent-Applicant. There is a strong likelihood of the mark being associated with the Opposer. Thus, the registration of the subject mark will cause confusion as to the origin or ownership of the mark. In fact, the Opposer has already filed her Trademark Application under 4-2010-001334, and the same was registered on November 18, 2010 for Class 41.¹²

It is inconceivable therefore for the Respondent-Applicant to have come up with the mark "POKWANG" without having been inspired by or motivated by an intention to take advantage of the media coverage of the name "POKWANG". Name recall alone saves the Respondent-Applicant costs of advertising and promotion, unfortunately, at the expense of the Opposer. It is highly improbable for another person to come up with an identical mark. The field from which a person may select a trademark is practically unlimited. As in all cases of colorable imitation, the unanswered riddle is why, of the millions of terms and combinations of letters are available, the Respondent-Applicant had come up with a mark identical or so closely similar to another's mark if there was no intent to take advantage of the goodwill generated by the other mark.¹³

Finally, it is emphasized that the Respondent-Applicant was given the chance to contest the Opposer's allegations, and to defend its trademark application. However, it failed or chose not to do so.

WHEREFORE, premises considered, the instant Opposition to Trademark Application No. 4-2008-14660 is hereby **SUSTAINED**. Let the filewrapper of the subject trademark application be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 05 August 2013.


ATTY. NATHANIEL S. AREVALO
Director IV, Bureau of Legal Affairs

¹¹ Exhibit "B" and Annex "A" of the Opposer.

¹² Trademark Search available at <http://onlineservices.ipophil.gov.ph/ipophilsearch/>.

¹³ American Wire and Cable Co. v. Director of Patents, et. Al. (SCRA 544) G.R. No. L-26557, 18 February 1970.