



TEARRIFIC CORPORATION,  
Opposer,

-versus-

THE MANGO FARM CORPORATION,  
Respondent-Applicant.

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} IPC No. 14-2013-00038  
} Opposition to:  
} Appln. Serial No. 4-2011-010929  
} Date filed: 13 September 2011  
} TM: "TEA-RRIFIC LOGO"  
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### NOTICE OF DECISION

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#### GREETINGS:

Please be informed that Decision No. 2013 - 127 dated July 12, 2013 ( copy enclosed) was promulgated in the above entitled case.

Taguig City, July 12, 2013.

For the Director:

**Atty. PAUSI U. SAPAK**  
Hearing Officer  
Bureau of Legal Affairs



**TEARRIFIC CORPORATION,**  
*Opposer,*

**IPC No. 14-2013-00038**  
Case Filed: 08 February 2013

-versus-

Opposition to:  
Appln. Serial No. : 4-2011-010929  
Date Filed : 13 September 2011

**THE MANGO FARM CORPORATION,**  
*Respondent-Applicant.*

**TM: "TEA-RRIFIC LOGO"**

x-----x

Decision No. 2013- 127

### DECISION

TEARRIFIC CORPORATION ("Opposer")<sup>1</sup> filed on 08 February 2013 an opposition to Trademark Application Serial No. 4-2011-010929. The application, filed by THE MANGO FARM CORPORATION ("Respondent-Applicant")<sup>2</sup>, covers the mark "TEA-RRIFIC AND LOGO" for use on "milk tea, special-tea mix, fruit smooth-tea, yin & yang (tea & coffee)" under Class 30 of the International Classification of Goods and Services<sup>3</sup>.

The Opposer anchors its opposition on the ground that the Respondent-Applicant's mark "TEA-RRIFIC and LOGO" is confusingly similar to its corporate name "TEARRIFIC CORPORATION" which it has acquired a prior right to its use and the rightful owner thereof. Further, it invokes Section 165 of the Intellectual Property Code ("IP Code") and Rule 103 of the Rules which provides:

"Notwithstanding any laws or regulations providing for any obligation to register trade names, such names shall be protected, even prior to or without registration, against any unlawful act committed by third parties. In particular, any subsequent use of the trade name by a third party, whether as a tradename or a mark or collective mark, or any such use of a similar trade name or mark, likely to mislead the public, shall be deemed unlawful."

The Opposer's evidence consists of the following:

1. Annex "A" – Copy of the Certificate of Incorporation dated 25 February 2011;

<sup>1</sup> A corporation duly organized and existing under the laws of the Philippines with office address at 166 F. Benitez St., Pasadena, City of San Juan.

<sup>2</sup> With address at # 68 Data St., corner Cordillera, Brgy., Don Manuel, Quezon City.

<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.

2. Annex "B" – Copy of the letter dated 08 December 2011 addressed to Atty. Leny B. Raz;
3. Annex "B-1" – Search page of the SEC.;
4. Annex "B-2" – Search page of the DTI-NCR;
5. Annex "C" – Certificate of filing of amended Articles of Incorporation dated 16 September 2011; and
6. Annex "D" – Copy of the Certificate of Incorporation dated 04 September 2012.

This Bureau issued a Notice to Answer dated 18 March 2013 and a copy thereof was duly received by the Respondent-Applicant on 21 March 2013 and the Verified Answer must have to be filed on 21 April 2013, however, the same was filed on 24 April 2013, through registered mail which was beyond the reglementary period, hence, the instant opposition is considered submitted for decision based on the evidence and the opposition filed by the Opposer.

Should the Respondent-Applicant's trademark application be allowed?

Records show that at the time the Respondent-Applicant filed its trademark application on 13 September 2011, the Opposer has already registered its trade name "TEARRIFIC CORPORATION" with the (SEC) Securities and Exchange Commission on the 25<sup>th</sup> of September 2011 under Company Reg. No. CS201103230<sup>4</sup> and the Opposer is engaged in the business of serving quality brewed tea products and currently have two branches/franchises.

In this regard, Sec. 134 of the IP Code provides:

"Sec. 134. *Opposition.* – Any person who believes that he would be damaged by the registration of a mark may, upon the payment of the required fee and within thirty (30) days after the publication referred to in Subsection 133.2, file with the Office an opposition to the application. Such opposition shall be in writing and verified by the oppositor or by any person on his behalf who knows the facts, and shall specify the grounds on which it is based and include a statement of the facts relied upon. Copies of certificates of registrations of marks registered in other countries or other supporting documents mentioned in the opposition shall be filed therewith, together with the translation in English, if not in the English language. For good cause shown and upon payment of the required surcharge, the time for filing an opposition may be extended by the Director of Legal Affairs, who shall notify the applicant of such extension. The Regulations shall fix the maximum period of time within which to file the opposition. (Sec. 8, R.A. No. 165a)

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<sup>4</sup> Annex "A".

The Opposer is a proper party to oppose the Respondent-Applicant's application. The trademark applied by the Respondent-Applicant for registration is the same as the Opposer's tradename, as shown below:

**TEARRIFIC CORP.**



Opposer's Tradename

Respondent-Applicant's Mark

Practically, the Respondent-Applicant's mark is identical and/or confusingly similar to the Opposer's trade name such that confusion or even deception is likely to occur. The trade name TEARRIFIC and the mark TEA-RRIFIC are exactly the same in spelling and sound alike. The only difference between the two is the use of a hyphen in the Respondent-Applicant's mark which is insignificant. The changes did little in conferring upon the Respondent-Applicant's mark a character that would make it clearly distinct from the Opposer's trade name. Confusing similarity exists when there is such a close ingenuous imitation as to be calculated to deceive ordinary persons, or such resemblance to the original as to deceive ordinary purchasers as to cause him to purchase the one supposing it to be the other.<sup>5</sup> In the instant proceedings, what is being sold by both parties is a beverage product brewed tea which is for immediate consumption, so that a buyer may easily be confused or deceived into thinking that the TEA-RRIFIC brewed tea is a product of the Opposer.

It is very difficult to understand how the Respondent-Applicant have come up with the mark "TEA-RRIFIC" which is exactly the same in spelling with the Opposer's trade name without having been inspired or motivated by an intention to imitate the tradename "TEARRIFIC". It is highly improbable for another person to come up with an identical or nearly identical mark for use on the same or related goods purely by coincidence.

It is emphasized that 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 products<sup>6</sup>. In this instance, this function is not served.

Accordingly, this Bureau finds that the Respondent-Applicant's trademark application is an unlawful act under Section 165.2 (b) of the Intellectual Property Code of the Philippines ("IP Code") of R.A. 8293. Hence, because it is unlawful, the application or registration should not be allowed.

<sup>5</sup> Societe Des Produits S.A. v. Court of Appeals G.R. No. 1,000098, 27 Dec. 1995.

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

A handwritten signature in blue ink, consisting of a stylized 'A' followed by a flourish.

**WHEREFORE**, premises considered the instant opposition is hereby **SUSTAINED**. Let the filewrapper of Trademark Application Serial No. 4-2011-010929 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

**SO ORDERED.**

Taguig City, 12 July 2013.



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

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