



ZYNGA INC.,
Opposer,

-versus-

UNI AGRO NATIVE PRODUCTS, INC.,
Respondent –Applicant.

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IPC No. 14-2012-00429
Opposition to:
Appln. Serial No. 4-2011-010802
(Filing Date: 09 September 2011)
TM: "FARMVIL AND LABEL DESIGN"

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NOTICE OF DECISION

BARANDA & ASSOCIATES

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Taguig City

UNI AGRO NATIVE PRODUCTS, INC.

Respondent-Applicant
No. 272 M.H. Del Pilar St.,
Brgy. Maysilo, Malabon City

GREETINGS:

Please be informed that Decision No. 2014 - 50 dated February 20, 2014 (copy enclosed) was promulgated in the above entitled case.

Taguig City, February 20, 2014.

For the Director:


Atty. EDWIN DANILO A. DATING
Director III
Bureau of Legal Affairs



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Opposer,

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Decision No. 2014- 50

DECISION

ZYNGA INC. ("Opposer")¹ filed an opposition to Trademark Application Serial No. 4-2011-010802. The application, filed by UNI AGRO NATIVE PRODUCTS INC. ("Respondent-Applicant")², covers the mark "FARMVIL AND LABEL DESIGN" for "*processed rice/grain and unprocessed rice/grain*" under Classes 30 and 31 of the International Classification of Goods and Services³.

The Opposer alleges, among other things, that it will be damaged by the registration of the mark FARMVIL AND LABEL DESIGN in favor of the Respondent-Applicant, and which will violate Sec. 123.1, pars. (a), (d), (e) and (f) of Rep. Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code"). To support its opposition, the Opposer submitted as evidence the following:

1. Exhibit "A" – Verified Notice of Opposition;
2. Exhibit "B" – certified and legalized copy of the Amended and Restated Certificate of Incorporation of Zynga Game Network Inc. (Annex "A" of the Verified Notice of Opposition);
3. Exhibit "C" – Power of Attorney confirming the appointment of Baranda & Associates as counsel of Opposer (Annex "B" of the Verified Notice of Opposition);
4. Exhibit "D" – Affidavit of Opposer's authorized representative, Jay Monahan (the "Monahan Affidavit") (Annex "C" of the Verified Notice of Opposition);

¹ Formerly Zynga Game Network, Inc. is a corporation duly existing and registered under the laws of Delaware, U.S.A. with address at 699 8th Street, San Francisco California 94103 U.S.A.

² Corporation incorporated under the laws of the Philippines with address at No. 272 M.H. Del Pilar Street, Maysilo, Malabon City.

³ 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.

5. Exhibit "E" – website printout from <http://company.zynga.com/about/press/fact-sheet> showing Opposer's Fact Sheet (Annex "C" of the Monahan Affidavit);
6. Exhibit "F" – website printouts from <http://company.zynga.com/games/featured-games> and <http://company.zynga.com/games/facebook-games> showing Opposer's various games (Annex "C-1" of the Monahan Affidavit);
7. Exhibit "G" – website printout from <http://company.zynga.com/games/mobile-games> showing Opposer's various games (Annex "c-2" of the Monahan Affidavit);
8. Exhibit "H" – website printout from <http://company.zynga.com/games/other-platforms> enumerating Opposer's various games in different platforms (Annex "C-3" of the Monahan Affidavit);
9. Exhibit "I" – website printout from <http://company.zynga.com/about/press/company-blog/bringing-home-bacon-zynga-mobile-wins-2012-mobile-gaming-award> showing the Mobile Gaming award given to the Opposer by Mobile Trax (Annex "D" of the Monahan Affidavit);
10. Exhibit "J" – website printout from <http://www.appdata.com/leaderboard/developers> showing that the Opposer is the consistent top developer of Facebook Applications (Annex "E" of the Monahan Affidavit);
11. Exhibit "K" – website printout from <http://www.zynga.org/> showing Opposer's international non-profit work (Annex "F" of the Monahan Affidavit);
12. Exhibit "L" – website printout from <http://www.sfgate.com/homeandgarden/article/Farmville-becomes-social-media-powerhouse-3213773.php> detailing the number of the FARMVILLE users (Annex "G" of the Monahan Affidavit);
13. Exhibit "M"- website printout from <http://www.independent.co.uk/life-style/gadgets-and-tech/features/welcome-to-farmville-population-80-million-1906260.html> showing the number of FARMVILLE players and their remarkable usage of the game (Annex "H" of the Monahan Affidavit);
14. Exhibit "N" – website printout from <http://company.zynga.com/games/farmville> showing the partnership forged by the Opposer with 7-Eleven and Lady Gaga (Annex "I" of the Monahan Affidavit);
15. Exhibit "O" – website printout from <http://company.zynga.com/news/press-releases/farmville-arrives-app-store> showing the launch of the FARMVILLE game on Apple products (Annex "J" of the Monahan Affidavit);
16. Exhibit "P" – website printout from <http://company.zynga.com/news/press-releases/zynga-reimagines-social-games-launch-farmville-2> detailing the global releases of the FARMVILLE 2 (Annex "K" of the Monahan Affidavit);
17. Exhibit "Q" – website printout from <http://www.appdata.com/#> showing the high ranks of FARMVILLE 2 as Top Game Gainer and the Opposer as Developer (Annex "L" of the Monahan Affidavit);
18. Exhibit "R" – list of "FARMVILLE" trademark registrations owned by the Opposer worldwide (Annex "M" of the Monahan Affidavit);
19. Exhibit "S" – copy of FARMVILLE trademark registration certificate issued in New Zealand on 12 August 2012 (Annex "N" of the Monahan Affidavit);
20. Exhibit "T" – copy of the trademark registration in the United States ("U.S.") printed from the United States Intellectual Property Office ("USPTO") website (Annex "O" of the Monahan Affidavit);
21. Exhibit "U" – copy of the trademark registration in the U.S. printed from the USPTO website (Annex "O-1" of the Monahan Affidavit);

22. Exhibit "V" – copy of the trademark registration in the U.S. printed from the USPTO website (Annex "O-2" of the Monahan Affidavit);
23. Exhibit "W" – copy of the trademark registration in the U.S. printed from the USPTO website (Annex "O-3" of the Monahan Affidavit);
24. Exhibit "X" – copy of the trademark registration in the U.S. printed from the USPTO website (Annex "O-4" of the Monahan Affidavit);
25. Exhibit "Y" – copy of the trademark registration in Europe printed from the European Union ("E.U.") Intellectual Property Office website (Annex "P" of the Monahan Affidavit);
26. Exhibit "Z" – copy of the trademark registration in Europe printed from the E.U. Intellectual Property Office website (Annex "P-1" of the Monahan Affidavit);
27. Exhibit "AA" – copy of the trademark registration in Europe printed from the E.U. Intellectual Property Office website (Annex "P-2" of the Monahan Affidavit);
28. Exhibit "BB" – copy of the trademark registration in Europe printed from the E.U. Intellectual Property Office website (Annex "P-3" of the Monahan Affidavit);
29. Exhibit "CC" – copy of the trademark registration in Europe printed from the E.U. Intellectual Property Office website (Annex "P-4" of the Monahan Affidavit);
30. Exhibit "DD" – Philippine Reg. No. 4-2009-012062 fro FARMVILLE issued on 04 August 2011 (Annex "Q" of the Monahan Affidavit); and
31. Exhibit "EE" – website print out of the Philippine Reg. No. 4-2009-012062 for FARMVILLE (Annex "D" of the Notice of Opposition).

This Bureau issued a Notice to Answer and served a copy thereof upon the Respondent-Applicant on 31 January 2013. However, the Respondent-Applicant did not file an answer. Thus the Hearing Officer issued Order No. 2013-1122 on 12 August 2013 declaring the Respondent-Applicant in default.

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

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 products.⁴

Thus, Sec. 123.1 (d) of R.A. No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code"), provides that a mark cannot be registered if it is identical with a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date in respect of the same goods or services or closely related goods or services, or if it nearly resembles such a mark as to be likely to deceive or cause confusion.

⁴ Pribhdas J. Mirpuri v. Court of Appeals, G.R. No. 114509, 19 November 1999

Records show that at the time the Respondent-Applicant filed its trademark application, the Opposer already has an existing trademark registration for the mark FARMVILLE in the Philippines. The Opposer filed a trademark application way back on 25 November 2009 and was issued Reg. No. 4-2009-012062 on 04 August 2011. The Opposer's registration covers "downloadable computer software for use on wireless devices and computer" under Class 09 and "entertainment services, namely, providing on-line computer games" under Class 41.

The question is: Is the Respondent-Applicant's mark, identical to or closely resembling the Opposer's mark (shown below) such that mistake or even deception is likely to occur?

FARMVILLE

Opposer's Mark



Respondent-Applicant's Mark

The determinative factor in a contest involving trademark registration is not whether the use of such mark would likely cause confusion or mistake on the part of the buying public. In short, to constitute an infringement of an existing trademark patent and warrant a denial of an application for registration, the law does not require that the computing trademarks must be so identical as to produce actual error or mistake; it would be sufficient, for purposes of the law, that the similarity between the two labels is such that there is a possibility or likelihood of the purchaser of the older brand mistaking the newer brand for it⁵.

In this regard, the mark applied for registration by the Respondent-Applicant is a composite mark, consisting of the word "FARMVIL" and a background depicting images of a "barn, cow, sheep, rice field, house & fence"⁶. The word "FARMVIL", however, to the eyes and the ears, is practically identical to the Opposer's mark. The difference in the spelling between the marks is of no moment, as the syllable "VIL" in the Respondent-Applicant's mark also reads and sounds like "VILLE" in the Opposer's mark. Confusion cannot be avoided by merely adding, removing or changing some letters of a registered mark. Confusing similarity exists when there is such a close or ingenuous imitation as to be calculated to deceive ordinary persons, or such resemblance to the originals as to deceive ordinary purchaser as to cause him to purchase the one supposing it to be the other⁷.

Succinctly, the market is plentiful of merchandise that carry, and even capitalize, on factual or fictional characters, images, figures, and messages in cartoons, movies, books, television programs or shows, and games. Succinctly, the Opposer's mark functions more than a brandname in respect of said party's goods and services. Merchandise that carries cartoons, games, movies, book characters or figures appeal to the public's attachment to them. It is because of these attachment that sway them in buying such merchandize.

⁵ American Wire and Cable Co. v. Director of Patents et. al., 31 SCRA 544 G.R. No. L-26557, 18 Feb. 1970.

⁶ Description of the mark culled from the filewrapper of Trademark Application Serial No. 4-2011-010802.

⁷ Societe des Produits Nestle S.A. v. Court of Appeals, G.R. No. 11202, 04 April 2001, 356 SCRA 207, 217.

Corollarily, the Opposer presented evidence that it has registered its FARMVILLE mark in various jurisdictions around the world, including the Philippines⁸, and that it has forged a partnership with the convenience store "7-Eleven" to offer FARMVILLE – branded game cards and items on "7-Eleven" products, including "slurpee" and "big gulp" drinks, sandwiches, yoghurt, cheese, fruits and vegetables in nearly seven thousand stores⁹.

Because the Opposer's mark is highly distinctive, just by looking at the Respondent-Applicant's goods bearing the word "FARMVIL" on a background that is similar to the artwork pertaining to FARMVILLE would likely create an impression that these are owned by the Opposer. The consumers may assume that the Respondent-Applicant's goods originate from or sponsored by the Opposer or believe that there is a connection between them, as in a trademark licensing agreement. The likelihood of confusion would subsist not only on the purchaser's perception of goods but on the origins thereof as held by the Supreme Court:¹⁰

Callman notes two types of confusion. The first is the confusion of goods in which event the ordinarily prudent purchaser would be induced to purchase one product in the belief that he was purchasing the other. In which case, defendant's goods are then bought as the plaintiff's and the poorer quality of the former reflects adversely on the plaintiff's reputation. The other is the confusion of business. Here, though the goods of the parties are different, the defendant's product is such as might reasonably be assumed to originate with the plaintiff and the public would then be deceived either into that belief or into belief that there is some connection between the plaintiff and defendant which, in fact does not exist.

It is incredible or improbable that the Respondent-Applicant came up with the mark FARMVIL & LABEL DESIGN by pure chance or coincidence or without having been inspired by or motivated by an intention to imitate the Opposer's 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 combination of letters are available, the Respondent-Applicant had come up with a mark identical or so clearly similar to another's mark if there was no intent to take advantage of the goodwill generated by the other mark¹¹. In this instance, the Respondent-Applicant is even likely to get "free" advertisement of its goods.

As the rightful owner of the mark FARMVILLE, the Opposer should be given protection against entities that merely wish to take advantage of the goodwill its marks have generated. Accordingly, the Respondent-Applicant should not have been allowed to register a mark, which in this instance is highly distinctive and unique, that has already been appropriated, used and owned by another.

The intellectual property system was established to recognize creativity and give incentives to innovations. Similarly, the trademark registration system seeks to reward entrepreneurs and individuals who through their own innovations were able to distinguish their goods or services by a visible sign that distinctly points out the origin and ownership of such goods or services.

⁸ Annex "M" of the Monahan Affidavit.

⁹ Annex "I" of the Monahan Affidavit.


¹⁰ See *Converse Rubber Corporation v. Universal Rubber Products, Inc., et al.*, G.R. No. L-27906, 08 Jan. 1987.

¹¹ *American Wire and Cable Co. v. Director of Patents et.al.* SCRA 544 G.R. No. L-26557, 18 Feb. 1970.

WHEREFORE, premises considered the instant opposition is hereby **SUSTAINED**. Let the filewrapper of Trademark Application Serial No. 4-2011-010802 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 20 February 2014.


Atty. NATHANIEL S. AREVALO
Director IV
Bureau of Legal Affairs