



BINALOT FIESTA FOODS, INC.,
Opposer,

-versus-

JENNIFER A. ROBLES,
Respondent - Applicant.

X-----X

} **IPC No. 14-2010-00175**
} Opposition to:
} Appln. Serial No. 4-2009-009017
} Date filed: September 8, 2009
} **TM: "BALOT-BALOT**
} **REPUBLIC MEALS IN**
} **BANANA LEAVES"**

NOTICE OF DECISION

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MS. JENNIFER A. ROBLES
Respondent-Applicant
85-A P. Tuazon Street
Cubao, Quezon City

GREETINGS:

Please be informed that Decision No. 2014 - 256 dated October 16, 2014 (copy enclosed) was promulgated in the above entitled case.

Taguig City, October 16, 2014.

For the Director:

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



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JENNIFER A. ROBLES, } **Trademark: BALOT-BALOT**
Respondent-Applicant. } **REPUBLIC MEALS IN**
 } **BANANA LEAVES**
 }
x-----x } Decision No. 2014- 256

DECISION

BINALOT FIESTA FOODS, INC., (Opposer)¹ filed an opposition to Trademark Application Serial No. 4-2009-009017. The application, filed by **JENNIFER A. ROBLES,** (Respondent-Applicant)², covers the mark “BALOT BALOT REPUBLIC MEALS IN BANANA LEAVES”, for use on “restaurant” under Class 43 of the International Classification of Goods³.

The Opposer anchors its opposition on the following grounds:

- “1. Respondent’s trade name ‘BALOT-BALOT REPUBLIC MEALS IN BANANA LEAVES’ was held by the Bureau of Legal Affairs in Inter Partes case No. 14-2006-0007, to be confusingly similar to opposer’s registered marks ‘BINALOT’ and accordingly, rejected.
- “2. Approval of respondent’s Application SN 4-2009-009017 for the registration of trade name ‘BALOT-BALOT REPUBLIC MEALS IN BANANA LEAVES’ is proscribed by Section 123.1(d) of the IP Code.
- “3. Respondent filed Application SN 4-2009-009017 fraudulently and in bad faith. Accordingly, the registration of the trade name ‘BALOT-BALOT REPUBLIC MEALS IN BANANA LEAVES’ in favor of respondent will cause great and irreparable damage and injury to oppose within the meaning of Section 134 of the IP Code.

The Opposer alleges the following facts:

- “1. On January 7, 2004, respondent filed Application SN 4-2004-000100 for the registration of the trade name ‘BALOT-BALOT REPUBLIC MEALS IN BANANA LEAVES’ for use on restaurant

¹ A domestic corporation with business address at 3841 Daffodil Street, Sun Valley Subdivision, Paranaque City

² Filipino with address at 85-A P Tuazon St. Cubao, Quezon City

³ The Nice Classification of Goods and Services is for registering trademarks and service marks based on 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.

falling under Class 43. On October 28, 2005, said application was published for opposition;

“2. Opposer opposed respondent’s Application SN 4-2004-000100, which opposition was docketed as Inter Partes Case No. 14- 2006-00007;

On September 27, 2006, the Director of the Bureau of Legal Affairs promulgated Decision No. 2006-94 holding that respondent’s trade name ‘BALOT-BALOT REPUBLIC MEALS IN BANANA LEAVES’ is confusingly similar to opposer’s registered trade names and mark the dominant word of which is the word ‘BINALOT’.

The dispositive portion of Decision No. 2006-94, a duplicate original copy of which is hereto attached as Exhibit ‘B’, states:

‘WHEREFORE, premises considered the Opposition filed by BINALOT FIESTA FOODS, INC. is hereby SUSTAINED. Accordingly, Application Serial No. 4-2004-000100 filed by Respondent-Applicant, Jennifer A. Robles on 7 January 2004 for the mark ‘BALOT-BALOT REPUBLIC MEALS IN BANANA LEAVES’ used on restaurant under Class 43 is, as it is hereby, REJECTED.’

“3. After the Director General reversed and set aside the Decision of the BLA Director, opposer filed a Petition for Review with the Court of Appeals, which petition was docketed as C.A.-G.R. SP No. 107995.

Last June 29, 2010, the Honorable Court of Appeals (Ninth Division) reversed and set aside the Decision of the Director General and affirmed Decision No. 2006-94 of the Director of the Bureau of Legal Affairs. The dispositive portion of the Decision of the Court of Appeals, a copy of which is attached as Exhibit ‘C’, states:

‘WHEREFORE, in light of the foregoing, the Decision appealed from is hereby REVERSED and SET ASIDE, and a new one entered AFFIRMING in *toto* the decision of the Bureau of Legal Affairs.

IT IS SO ORDERED.’

“4. The instant Application SN 4-2009-009017 of respondent for registration of the trade name ‘BALOT-BALOT REPUBLIC MEALS IN BANANA LEAVES’, a print-out of its publication for opposition released last July 19, 2010 is attached as Exhibit ‘D’, is identical in all respects with respondent’s Application SN 4-2004-000100 which was earlier rejected by this Office in IPC No. 14-2006-00007.

“5. Long before September 8, 2009 when respondent filed her instant application, opposer had been issued by this Office the following certificates of registration, namely: xxx

All the foregoing registrations of opposer continue to be in force and effect.

“6. Respondent’s instant Application SN 4-2009-009017 being confusingly similar to opposers prior registration and existing registrations, is proscribed by Section 123.1 (d) of the IP Code.

“7. Respondent filed her instant Application SN 4-2009-009017 fraudulent and in bad faith.

7.1. Respondent knew and/or ought to know that long before she filed her Application Serial No. 4-2004-009017 last September 8, 2009, opposer has already been using the trade names ‘BINALOT & REPRESENTATION OF PINOY MEAL’ and ‘BINALOT AND DEVICE’ on food services falling under Class 43, and the trademark ‘BINALOT IN STYLIZED PRINT AGAINST A BANANA LEAF AND REPRESENTATION OF BINALOT MASCOT’ on various food products.

7.2. Respondent’s Application SN 4-2009-009017 is identical to her application SN 4-2004-000100 which was rejected by this Office in IPC No. 14-2006-00007.

7.3. Respondent has a boundless choice of words, phrases, and symbols sufficient to distinguish her food business from opposer and yet, why does she insist on registering the trade name ‘BALOT-BALOT REPUBLIC MEALS IN BANANA LEAVES’, which was earlier rejected by this Office.

“8. The registration of the trade name ‘BALOT-BALOT REPUBLIC MEALS IN BANANA LEAVES’ in favor of respondent will cause great and irreparable damage and injury to opposer within the meaning of Section 134 of the IP Code.”

To support its opposition, the Opposer submitted as evidence the following:

1. Print-out of Respondent-Applicant’s Application Serial No. 4-2004-000100 as published in the e-Gazette;
2. Duplicate Original of Decision No. 2006-94 promulgated on 27 September 2006 in IPC No. 14-2006-00007;
3. Copy of the Court of Appeal’s decision in CA-G.R. SP No. 107995 promulgated on 29 June 2010;
4. Print-out of Respondent-Applicant’s Application Serial No. 4-2009-009017 as published in the e-Gazette;

5. Certified copy of Certificate of Registration No. 4-1996-108867 dated 30 May 2003 for the mark "BINALOT & REPRESENTATION OF PINOY MEAL";
6. Certified copy of Certificate of Registration No. 4-2003-009928 dated 24 October 2005 for the mark "BINALOT IN STYLIZED PRINT AGAINST A BANANA LEAF AND REPRESENTATION OF BINALOT MASCOT";
7. Certified copy of Certificate of Registration No. 4-2005-001022 dated 11 January 2007 for the tradename/service mark "BINALOT AND DEVICE";
and
8. Notarized affidavit of Rommel T. Juan dated 17 August 2010.⁴

This Bureau served upon the Respondent-Applicant a "Notice to Answer" on 8 September 2010. The Respondent-Applicant, however, did not file an Answer. Thus, the Hearing Officer issued on 3 February 2011 Order No. 2011-189 declaring the Respondent-Applicant to have waived its right to file an answer.

Should the Respondent-Applicant be allowed to register the trademark BALOT-BALOT REPUBLIC MEALS IN BANANA LEAVES?

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.⁵ 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.

Records show that at the time Respondent-Applicant applied for registration of the mark BALOT-BALOT REPUBLIC MEALS IN BANANA MEALS the Opposer already registered the marks: BINALOT & REPRESENTATION OF PINOY MEAL under Registration No. 4-1996-108867 issued on 30 May 2003 for use on catering services under class 42⁶; BINALOT IN STYLIZED PRINT AGAINST A BANANA LEAF AND REPRESENTATION OF BINALOT MASCOT under Registration No. 4-2003-009928 issued on 24 October 2005 for use on food products under class 30⁷; and BINALOT AND DEVICE under Registration No. 4-2005-001022 issued on 11 January 2007 for use on fast food chains under class 43. The services/goods covered by the Opposer's trademark registrations are similar and/or related, to "restaurant" as indicated in the Respondent-Applicant's trademark application.

⁴ Exhibits "A" to "G"

⁵ *Pribhdas J. Mirpuri v. Court of Appeals*, G. R. No. 114508, 19 November 1999.

⁶ Exhibit "E"

⁷ Exhibit "F"

This Bureau noticed that the trademark subject of the opposed trademark application is identical to the marks covered by the Respondent-Applicant's Application Serial No. 4-2004-000100. The earlier application was the subject of IP Case No. 14-2006-00007, as shown below:

Opposer's mark



Respondent-Applicant's mark
Application Serial No. 4-2004-000100.



The competing marks in the instant case are reproduced below:

Opposer's mark



Respondent-Applicant's mark
Application Serial No. 4-2009-009017



The issue of whether BALOT BALOT REPUBLIC MEALS IN BANANA LEAVES is confusingly similar to the Opposer's marks had already been passed upon in the Bureau of Legal Affairs Decision No. 2006-94 dated 27 September 2006 in IPC No. 14-2006-00007 and by the Court of Appeals in CA-GR SP No. 107995 dated 29 June 2010. In its discussion, the Court of Appeals held:

"xxx applying the dominancy test alone, the ostensible differences especially as regards the trade name, ample evidence of infringement exists to warrant a denial of application, especially if we employ the idem sonans tool for assessment of both names' relative strengths and the possibility of recall of by a casual customer intending to avail of native delicacies wrapped in eco-friendly fonds. We note with favor the BLA's observation that the phonetic sound generated by the words balot and binalot are almost identical."⁸

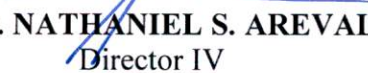
⁸ Exhibit "C"

Furthermore, the Opposer submitted a copy of the Entry of Judgment dated 18 December 2010, issued by the Court of Appeals in CA- G.R. SP No. 107995 entitled Binalot Fiesta Foods, Inc. v. Jennifer Robles. With that, there is no need to belabor the issues dealt with and passed upon in regard to the contending marks.

WHEREFORE, premises considered, the instant Opposition to Trademark Application No. 4-2009-009017 is hereby **SUSTAINED**. Let the filewrapper of the subject trademark be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 16 October 2014.


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