FRESH N' FAMOUS FOODS, INC., Opposer, **-versus-** **HUAN SIEK SY,** Respondent- Applicant.	}	**IPC No. 14-2013-00371** Opposition to: Appln. Serial No. 4-2013-004239 Date Filed: 15 April 2013 **TM: "CHEW KING"**

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NOTICE OF DECISION

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GREETINGS:

Please be informed that Decision No. 2014 - 244 dated October 09, 2014 (copy enclosed) was promulgated in the above entitled case.

Taguig City, October 09, 2014.

For the Director:

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

FRESH N' FAMOUS FOODS, INC.,
Opposer,

-versus-

HUAN SIEK SY,
Respondent-Applicant.
x ---------- x

IPC No. 14-2013-00371
Opposition to Trademark
Application No. 4-2013-004239
Date Filed: 15 April 2013
Trademark: **"CHEW KING"**

Decision No. 2014- 244

DECISION

Fresh N' Famous, Inc.[1] ("Opposer") filed an opposition to Trademark Application Serial No. 4-2013-004239. The contested application, filed by Huan Siek Sy[2] ("Respondent-Applicant"), covers the mark "CHEW KING" for use on *"chewing gum, chewing candy, fruit candy, candies and confectionery"* under Class 30 of the International Classification of Goods[3].

The Opposer maintains that it is the owner and first user of the mark "CHOWKING" and other marks containing the word "Chowking" ("CHOWKING Trademarks"), which it allegedly started using as early as 25 February 1985. It claims to have been registered in the Philippines for food products in Classes 29 and 30 and for related service in Classes 35, 42 and 43 and to have also applied and/or registered its marks in numerous countries around the world totaling eighty-one (81) registrations and pending applications. It avers that it has promoted the said mark extensively in the Philippines and abroad and has obtained significant exposure for the products and services upon which its mark is used.

The Opposer contends that the Respondent-Applicant's mark is confusingly similar to its own as to be likely to deceive or cause confusion in the minds of the consuming public especially that the latter seeks to register "CHEWKING" in Class 30, which is similar and related to the goods "CHOWKING" covers. It asserts that seven out of eight letters in the Respondent-Applicant's mark are identical and similarly positioned to its own registered mark. It furthers that since the applied mark is a word mark, there is a risk that the same will be used in the same color, manner and style as "CHOWKING".

In support of its allegations, the Opposer submitted the following:

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[1] A corporation duly organized and existing under the laws of the Philippines with office address at Jollibee Plaza, Emerald Avenue, Ortigas, Pasig City.
[2] With address at 5029 Carreon Street, Ugong, Valenzuela City, Metro Manila.
[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.

1. original notarized affidavit of Atty. Gonzalo D.V. Go III and its attachments;
2. food containers using the "CHOWKING Trademarks"; and
3. sample photographs of Chowking restaurants/branches.[4]

For his part, the Respondent-Applicant vehemently denies that the marks are identical or confusingly similar reasoning that the likelihood of confusion is a relative concept and that the Opposer's mark has not yet been considered to be well-known internationally and in the Philippines. He insists that there can be no such confusing similarity whether applying the Dominancy Test or the Holistic Test. He likewise asserts that the products involved are unrelated as the Opposer's goods do not include chewing gum, candies and confectionery. The Opposer further states that his products are inexpensive snack items sold in groceries and sari-sari stores as that of the Opposer's which are available in fast food chains, kiosks and online stores. He believes that a purchaser of a "CHEW KING" gum will not even think that the same originated or has any relation to the Opposer's fast food chain.

The Respondent-Applicant's evidence consists of the printed pictures of its products and the judicial affidavit of Huan Siek Sy.[5]

Pursuant to Office Order No. 154, s. 2010, the Hearing Officer referred the case to mediation. The parties, however, refused to mediate. Accordingly, the Hearing Officer conducted a preliminary conference and terminated the same 20 May 2014. The parties were directed to file their respective position papers and after which, the case is deemed submitted for resolution.

Essentially, the issue to be resolved is whether or not the Respondent-Applicant's mark "CHEW KING" should be allowed registration.

Records reveal that at the time the Respondent-Applicant filed his trademark application, the Opposer already owns several registrations for its "CHOWKING" trademarks. Its "CHOWKING" mark was registered as early as 08 July 2004 under Trademark Registration No. 4-1998-009792.

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

[4] Marked as Exhibits "B" to "D", inclusive.
[5] Marked as Exhibits "1" to "2", inclusive.

CHOWKING

Opposer's marks

CHEW KING

Respondent-Applicant's mark

The only differences between the two marks are their third letters; "i" and "e", and the fact that the Opposer's mark consists of a single word while there are two separate words comprising the Respondent-Applicant's trademark. Other than these minute discrepancies, however, the mark "CHOWKING" and "CHEW KING" resemble each other in spelling and even in pronunciation. 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 original as to deceive ordinary purchased as to cause him to purchase the one supposing it to be the other.[6] As pronounced by the Supreme Court in the case of **Del Monte Corporation vs. Court of Appeals**[7]:

> ***"The question is not whether the two articles are distinguishable by their label when set side by side but whether the general confusion made by the article upon the eye of the casual purchaser who is unsuspicious and off his guard, is such as to likely result in his confounding it with the original. As observed in several cases, the general impression of the ordinary purchaser, buying under the normally prevalent conditions in trade and giving the attention such purchasers usually give in buying that class of goods is the touchstone."***

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[6] Societe des Produits Nestle,S.A. vs. Court of Appeals, GR No. 112012, 04 April 2001.
[7] G.R. No. L-78325, 25 January 1990.

Succinctly, the likelihood of confusion would not extend not only as to the purchaser's perception of the goods but likewise on its origin. 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 the belief that there is some connection between the plaintiff and defendant which, in fact, does not exist."[8] As in this case where the marks closely resemble each other, it is likely that the purchasers of Respondent-Applicant's products will be confused, mistaken or be led to believe that these are in any way connected with the Opposer. It is highly probable that the buyers of the "CHEW KING" chewing gums and candies will be reminded of the Opposer's fastfood "CHOWKING".

Verily, when one applies for the registration of a trademark or label which is almost the same or very closely resembles one already used and registered by another, the application should be rejected and dismissed outright, even without any opposition on the part of the owner and user of a previously registered label or trademark, this not only to avoid confusion on the part of the public, but also to protect an already used and registered trademark and an established goodwill.[9] While it may not be surprising for the Respondent-Applicant to use the term "CHEW" for its gum and candy products, it is questionable why it insists on choosing to place the word "KING" thereafter if it was not, at the very least, inspired by the Opposer's mark "CHOWKING" in coming up with its mark. In the case of **American Wire & Cable Company vs. Director of Patents**[10], it was held that:

> ***"Of course, as in all other cases of colorable imitations, the unanswered riddle is why, of the millions of terms and combinations of letters and designs available, the appellee had to choose those so closely similar to another's trademark if there was no intent to take advantage of the goodwill generated by the other mark."***

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

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[8] Societe des Produits Nestle, S.A. vs. Dy, G.R. No. 172276, 08 August 2010.
[9] McDonald's Corporation vs. MacJoy Fastfood Corporation, G.R. No. 166115, 02 February 2007.
[10] G.R. No. L-26557, 18 February 1970.

manufacturer against substitution and sale of an inferior and different article as his product.[11]

WHEREFORE, premises considered, the instant opposition is hereby **SUSTAINED**. Let the filewrapper of Trademark Application Serial No. 4-2013-004239 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 09 October 2014.

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

[11] Pribhdas J. Mirpuri vs. Court of Appeals, G.R. No. 114508, 19 November 1999.