



JOLLIBEE FOODS CORPORATION,
Opposer,

-versus-

CHARLENE C. ENRIQUEZ,
Respondent- Applicant.

X-----X

}
} IPC No. 14-2010-00105
} Opposition to:
} Appln. Serial No. 4-2009-006660
} Date Filed: 07 July 2009
} TM: "BEESTOP KAIN MUNA
} GARLIC FRIED CHICKEN
} AND DEVICE"
}
}
}
}

NOTICE OF DECISION

QUISUMBING TORRES
Counsel for Opposer
12th Floor, Net One Centre
26th Street corner 3rd Avenue, Crescent Park West
Bonifacio Global City, Taguig City

CHARLENE C. ENRIQUEZ
Respondent-Applicant
RD Building, Santiago Boulevard
General Santos City

GREETINGS:

Please be informed that Decision No. 2014 - 241 dated October 07, 2014 (copy enclosed) was promulgated in the above entitled case.

Taguig City, October 07, 2014.

For the Director:

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



JOLLIBEE FOODS CORPORATION,

Opposer,

-versus-

CHARLENE C. ENRIQUEZ,

Respondent-Applicant.

X ----- X

IPC No. 14-2010-00105

Opposition to Trademark

Application No. 4-2009-006660

Date Filed: 07 July 2009

Trademark: "BEESTOP KAIN

**MUNA GARLIC FRIED CHICKEN
AND DEVICE"**

Decision No. 2014- 241

DECISION

Jollibee Foods Corporation¹ ("Opposer") filed an opposition to Trademark Application Serial No. 4-2009-006660. The contested application, filed by Charlene C. Enriquez² ("Respondent-Applicant"), covers the mark "BEESTOP KAIN MUNA GARLIC FRIED CHICKEN AND DEVICE" for use on "*Fried chicken and garlic chicken*" under Class 29 of the International Classification of Goods³.

The Opposer maintains that the registration of the mark "BEESTOP" is contrary to the provisions of Section 123.1 paragraphs (d), (e) and (f) of Republic Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code")⁴. It maintains to be the owner and first user of its allegedly well-known "JOLLIBEE" marks registered and/or applied for food and food products under Class 29 and other related classes. It also avers that it has used and extensively promoted its "JOLLIBEE" marks in the Philippines and around the world. It contends that the

¹ A corporation organized under the laws of the Philippines, with address at 7th Floor, Jollibee Plaza Bulding, #10 Emerald Avenue, Ortigas Center, Pasig City.

² An individual with address at RD Building, Santiago Blvd., General Santos 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.

⁴ Section 123.1.A mark cannot be registered if it:

xxx

(d) Is identical with a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date, in respect of:

(i) The same goods or services, or

(ii) Closely related goods or services, or

(iii) If it nearly resembles such a mark as to be likely to deceive or cause confusion;

(e) Is identical with, or confusingly similar to, or constitutes a translation of a mark which is considered by the competent authority of the Philippines to be well-known internationally and in the Philippines, whether or not it is registered here, as being already the mark of a person other than the applicant for registration, and used for identical or similar goods or services: *Provided*, That in determining whether a mark is well-known, account shall be taken of the knowledge of the relevant sector of the public, rather than of the public at large, including knowledge in the Philippines which has been obtained as a result of the promotion of the mark;

(f) Is identical with, or confusingly similar to, or constitutes a translation of a mark considered well-known in accordance with the preceding paragraph, which is registered in the Philippines with respect to goods or services which are not similar to those with respect to which registration is applied for: *Provided*, That use of the mark in relation to those goods or services would indicate a connection between those goods or services, and the owner of the registered mark: *Provided further*, That the interests of the owner of the registered mark are likely to be damaged by such use; xxx"

Respondent-Applicant's use of the mark "BEESTOP" will mislead consumers into believing that the latter's products are produced by, originate from or are under its sponsorship. It fears of the potential damage that will be caused as a result of its inability to control the quality of the goods put on the market by the Respondent-Applicant under the latter's applied marks. It further asserts that the use of the Respondent-Applicant of the "BEESTOP" mark will take undue advantage of, dilute and diminish the distinctive character or reputation of its own "JOLLIBEE" marks.

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

1. original affidavit of Atty. Gonzalo D.V. Go III with attachments;
2. certified true copies of Trademark Registration Nos. 4-2000-004772, 4-2003-008178 and 4-2009-006900;
3. certified true copies of Trademark Application Nos. 4-2009-6901 and 4-2010-002055;
4. screenshot from its company website www.jollibee.com.ph;
5. photograph of Jollibee Chickenjoy Promotional Ad;
6. photograph of Jollibee Chickenjoy product packaging with the words "The Best Fried Chicken";
7. label of Jollibee Chickenjoy;
8. bucket container of Jollibee Chickenjoy;
9. styrofoam box for Jollibee Chickenjoy; and
10. carton box of Jollibee Chicken Barbecue.⁵

For her part, the Respondent-Applicant denies that "BEESTOP" is identical or confusingly similar to "JOLLIBEE" contending that the latter is associated with the insect, bee. She explains that the word "BEE" in its own mark is a term of endearment between her and her husband by which instead of using "By", which is a shortcut of "Baby", they call each other "Bee". She insists that while "JOLLIBEE" speaks of a happy or smiling bee, "BEESTOP" speaks of a place to be visited or stopped at. She asserts that while the two marks may have similarities, the differences are more substantial such that the public will not confuse the marks with each other.

The Respondent-Applicant's evidence consists of sample label of "BEESTOP KAIN MUNA THE BEST GARLIC FRIED CHICKEN AND DEVICE" and email exchanges between her and her husband.⁶

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 the same was terminated on 21 June 2011 wherein only the Opposer appeared. For the Respondent-Applicant's

⁵ Marked as Exhibit "B" to "O", inclusive.

⁶ Marked as Exhibit "1" to "3", inclusive.

failure to attend the preliminary conference, she is considered to have waived her right to file position paper. Upon the Opposer's filing of its position paper on 01 July 2011, the case is deemed submitted for resolution.

The issue to be resolved in this case is whether the Respondent-Applicant's trademark "BEESTOP KAIN MUNA THE BEST GARLIC FRIED CHICKEN AND DEVICE" should be allowed.

Records reveal that the Opposer has valid and existing registrations for the mark "JOLLIBEE", one of which was issued as early as 10 March 2006.⁷ On the other hand, the Respondent-Applicant filed its application for the registration of the mark "BEESTOP KAIN MUNA THE BEST GARLIC FRIED CHICKEN AND DEVICE" only on 07 July 2009.

But, are the competing marks, as shown below, confusingly similar?

JOLLIBEE

beestop Kain Muna
The best Garlic Fried Chicken

Opposer's Mark

Respondent-Applicant's mark

The only similarity between the competing marks is the use of the letters or the word "BEE". The word "BEE" in the Opposer's mark is preceded by the word "JOLLI", while that of the Respondent-Applicant's is followed by the word "STOP". Even without considering the paragraph "The best Garlic Fried Chicken" in Respondent-Applicant's mark, the differences between the marks are clear and apparent. Overall, they are different in presentation, pronunciation and even impression such that despite of their similar appropriation of "BEE", there is no likelihood of confusion and/or deception that may be caused to the consumers.

Moreover, the use of the word "BEE" as a trademark or as a part of a mark has not been exclusive to the Opposer's. The Trademark Registry of this Office, which this Bureau may take judicial notice, has registered various marks appropriating the word "bee" for goods under Class 29 including "SWEET BEE & DEVICE", "SUN BEE 7 DEVICE", "QUEEN BEE", "BEE LING", "KWONG BEE", among others, belonging to different proprietors other than the Opposer.

⁷ See Opposer's Exhibit "C".

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 manufacturer against substitution and sale of an inferior and different article as his product.⁸ The Bureau finds the Respondent-Applicant's trademark to have substantially met this requirement.

WHEREFORE, premises considered, the instant opposition is hereby **DISMISSED**. Let the filewrapper of Trademark Application Serial No. 4-2009-000660 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 07 October 2014.


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

⁸ Pribhdas J. Mirpuri vs. Court of Appeals, G.R. No. 114508, 19 November 1999.