



**RICH PRODUCTS CORPORATION,**  
Opposer,

**-versus-**

**KRISDIANTO LESMANA**  
Respondent- Applicant.

X-----X

} **IPC No. 14-2010-00285**  
} Opposition to:  
} Appln. Serial No. 4-2010-001367  
} Date Filed: 08 February 2010  
} **TM: "RICHIPS AND DESIGN"**

### NOTICE OF DECISION

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#### **GREETINGS:**

Please be informed that Decision No. 2013 - 179 dated July 10, 2014 (copy enclosed) was promulgated in the above entitled case.

Taguig City, July 10, 2014.

For the Director:

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





**RICH PRODUCTS CORPORATION,**  
*Opposer,*

- versus -

**KRISDIANTO LESMANA,**  
*Respondent-Applicant.*

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**IPC No. 14-2010-00285**  
Opposition to:

Application No. 4-2010-001367

Date Filed : 08 February 2010

Trademark: **"RICHIPS AND DESIGN"**

Decision No. 2014 - 179

### DECISION

**RICH PRODUCTS CORPORATION**,<sup>1</sup> (Opposer") filed an opposition to Trademark Application Serial No. 4-2010-001367. The application, filed by **KRISDIANTO LESMANA** (Respondent-Applicant")<sup>2</sup>, covers the mark **"RICHIPS AND DESIGN"** for use on fruit chips; fruit flavoured chips; seafood flavoured chips; potato chips; cassava chips; tapioca chips; brinjal chips under class 29; and chips (cereal products); corn chips; rice chips; chocolate chips under class 30<sup>3</sup>.

The Opposers alleged:

"4. Opposer Rich Products Corporation is 'known around the world as the founder of the non-dairy segment of the frozen food industry and a leading supplier and solutions provider to the foodservice, in-store bakery, and retail marketplaces. It was founded in 1945 with a startling development by Robert E. Rich, Sr., whose research team was able to discover a vegetable-based replacement for whipped cream derived from a new source – the soya bean. This discovery revolutionized food processing and opened up a new world of non-dairy products to the growing frozen food industry. The 'miracle cream' was called 'RICH'S WHIP TOPPING NON-DAIRY TOPPING' and later served as the springboard for a series of ground breaking non-dairy products, including: (a) "COFFEE RICH", U.S.A.'s first frozen non-dairy creamer (1960); (b) 'BETTERCREME ICING AND FILLING (1978); (c) 'FREEZ FLO' (1980), an all natural process that allows foods to remain soft while frozen or be served right from the freezer; and (d) 'ON TOP NON-DAIRY DESSERT TOPPING' (1986), the first topping to be packaged in a pastry bag with its own tip. Opposer's product lines have grown and expanded through the years, and now include frozen éclairs and crème puffs, frozen baked products, desserts, seafood specialties, Italian foods and beverages. In the 1990s, Opposer began to expand into international markets by opening more than twenty sales offices in major cities throughout Asia, Europe and Latin America. Opposer's international business now includes eleven manufacturing facilities and sells products in more than eighty countries around the world.

"5. Opposer is the registered owner of the following trademarks in the Philippines:

Mark	Registration No.	Date of Registration	Class
RICH'S WHIP TOPPING	054099	1 February 1993	30

<sup>1</sup> A foreign corporation duly organized and existing under the laws of Delaware, United States of America, with principal Office at One Robert Rich Way, Buffalo, New York 14213, U.S.A.

<sup>2</sup> An Indonesian, with address at JLN Sirnagalih No. 2, Bandung 40162, West Java, Indonesia.

<sup>3</sup> The Nice Classification of goods and services is for registering trademark and service marks, based on a 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.



RICH'S WHIP TOPPING	4-2009-003784	26 November 2009	29
RICH'S AND DEVICE	4-2009-004347	11 February 2010	29, 30
RICH'S	4-2007-005852	5 May 2008	30
RICH'S LOGO IN COLOR	4-2009-0037883	19 November 2009	29, 30
RICH'S	4-2005-006758	5 May 2009	29
RICH'S GOLD LABEL	4-2005-006759	6 May 2009	29, 30

"6. Respondent-applicant's 'RICHIPS AND DESIGN' mark is confusingly similar to Opposer's . RICH'S Marks and is thus not registrable under the IP Code, x x x

x x x

"13. Here, the goods with respect to which Opposer's RICH'S Marks are registered, include the following goods, among other, in Class 30, i.e., crackers, biscuits, breads, doughs, preparations made from cereals, cakes, pies, pastries, confectionary desserts, etc. These goods are definitely similar and closely-related to Respondent-Applicant's 'chips products, some of which also fall under Class 30.

x x x

"15. It bears emphasis that the 'RICH'S Marks' are 'well-known' based on 'the duration, extent and geographical area of the use' of these marks. Opposer has been in business since 1945, and in the 1990s, it began to expand into international markets by opening more than twenty sales offices in major cities throughout Asia, Europe and Latin America. Thus, under Section 123.1 (f) of the IP Code, even if it is conceded that the goods involves are completely unrelated, Respondent-Applicant's 'RICHIPS AND DESIGN' mark still cannot be registered, because Opposer's 'RICH'S' marks are considered 'well-known' under Section 123.1 (e) of the IP Code, and are registered in the Philippines.

"16. Opposer stands to be damaged by the registration of the 'RICHIPS and DESIGN' mark. Aside from the loss of distinctiveness of the registered RICH'S Marks, and the restriction in Opposer's reasonable zone of expansion, the registration of the 'RICHIPS AND DESIGN' mark will likewise injure Opposer's goodwill. Thus, under Section 168.1 of the IP Code, '(a) person who has identified in the mind of the public the goods he manufactures or deals in, his business or services from those of others, whether or not a registered mark is employed, has a property right in the goodwill of the said goods, business or services, so identified, which will be protected in the same manner as other property rights. Opposer has certainly identified in the mind of the public its goods bearing the 'RICH'S Marks. This is evident from its continuous and prevalent use of the said marks since 1945, on goods that were pioneered, sold and marketed by it worldwide. Not to mention that the RICH'S Marks were coined from the name of Opposer's founder, Mr. Robert E. Rich, Sr. Hence, irrespective of the trademark registrations it has been able to successfully secure from the IPO, Opposer's goodwill in the RICH'S goods and marks is entitled to protection like any other property right. Respondent-Applicant's use of a confusingly similar mark on goods that are closely related to, and within Opposer's zone of reasonable expansion will undoubtedly cause damage and injury to such goodwill."



The Opposer's evidence consists of the following:

1. Exhibit "A"-Series - Rich Products Corporation downloaded company history and products;
2. Exhibit "B" - Certificate of Registration No. 45099 for the trademark RICH'S WHIP TOPPING;
3. Exhibit "C" - Certificate of Registration No. 4-2009-003784 for the trademark RICH'S WHIP TOPPING;
4. Exhibit "D" - Certificate of Registration No. 4-2009-004347 for the trademark RICH'S and DEVICE;
5. Exhibit "E" - Certificate of Registration No. 4-2007-005852 for the trademark RICH'S;
6. Exhibit "F" - Certificate of Registration No. 4-2009-003783 for the trademark RICH'S LOGO IN COLOR;
7. Exhibit "G" - Certificate of Registration No. 4-2005-006758 for the trademark RICH'S; and,
8. Exhibit "H" - Certificate of Registration No. 4-2005-006759 for the trademark RICH'S GOLD LABEL.

This Bureau issued and served upon the Respondent-Applicant a Notice to Answer on 19 April 2011. Respondent-Applicant however, did not file an answer. Thus, this case is deemed submitted for decision.

Should the Respondent-Applicant be allowed to register the trademark RICHIPS AND DESIGN?

The Opposer anchored its opposition on Section 123.1(d) of Republic Act No. 8293, otherwise known as The Intellectual Property Code of the Philippines, which provides that:

A mark cannot be registered if it:

x x x

(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;

As culled from the records and the evidence presented by the parties, at the time the Respondent-Applicant filed its trademark application on 08 February 2010<sup>4</sup>, the Opposer has prior applications and registrations issued for the following trademarks: "**RICH'S WHIP TOPPING**" (filing date: 05 March 1991; registration date: 01 February 1993)<sup>5</sup>; "**RICH'S WHIP TOPPING**" (filing date: 17 April 2009; registration date: 26 November 2009)<sup>6</sup>; "**RICH'S AND DEVICE**" (filing date: 05 May 2009;

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<sup>4</sup> File wrapper records.  
<sup>5</sup> Exhibit "B" of Opposer.  
<sup>6</sup> Exhibit "C" of Opposer.



registration date: 11 February 2010)<sup>7</sup>; "RICH'S" (filing date: (08 June 2007); registration date: 05 May 2008)<sup>8</sup>; "RICH'S LOGO IN COLOR" (filing date: 17 April 2009; registration date: 19 November 2009)<sup>9</sup>; "RICH'S" (filing date: 19 July 2005; registration date: 05 May 2007)<sup>10</sup>; and, "RICH'S GOLD LABEL" (filing date: 19 July 2005; registration date: 06 May 2009)<sup>11</sup>. The Opposer's trademark registrations cover a wide-array of food products under classes 29 and 30.

In this regard, the competing marks are reproduced below for purposes of comparison, to wit:



RICH'S GOLD LABEL

**RICH'S**

RICH'S WHIP TOPPING

Opposers' Trademarks



Respondents-Applicants' Trademark

<sup>7</sup> Exhibit "D" of Opposer.  
<sup>8</sup> Exhibit "E" of Opposer.  
<sup>9</sup> Exhibit "F" of Opposer.  
<sup>10</sup> Exhibit "G" of Opposer.  
<sup>11</sup> Exhibit "H" of Opposer.



The defining feature in each of the marks is the word "RICH". Respondent-applicant's "RICHIPS and DESIGN", which appears inspired by Opposer's various trademarks containing the word "RICH", confers upon the marks their distinctive visual and aural properties. Considering therefore, that the Respondents-Applicant's mark is used on goods that are closely related to the Opposer's goods, there is the likelihood of the consumers to have the impression that the parties and their respective goods are connected to each other. The confusion or mistake would subsist not only on the purchaser's perception of goods but on the origin thereof as held by the Supreme Court, to wit:

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, the 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.

The public interest, therefore, requires that the two marks, identical to or closely resembling each other and used on the same and closely related goods, but utilized by different proprietors should not be allowed to co-exist. Confusion, mistake, deception, and even fraud, should be prevented. It is emphasized that the function of 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.<sup>12</sup>

Thus, this Bureau finds the likelihood to mislead the public, particularly as to the nature, quality and characteristics or geographical origin of the goods or services;<sup>13</sup> and the likelihood of confusion, or even deception to occur. The competing marks need not be identical or similar in all details. 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 purchaser as to cause him to purchase the one supposing it to be the other.

The field from which a person may select a trademark is practically unlimited. As in all cases of colourable imitation, the unanswered riddle is why, of the millions of terms and combination of letters and designs 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 mark.<sup>14</sup> This Bureau finds merit in the Opposers' contention that, Opposer stands to be damaged by the registration of the "RICHIPS AND DESIGN" mark. Aside from the loss of distinctiveness of the registered RICH'S Marks, and the restriction in Opposer's reasonable zone of expansion, the registration will likewise injure Opposer's goodwill.<sup>15</sup>

<sup>12</sup> Pribhdas J. Mirpuri v. Court of Appeals, G.R. No. 114508, 19 Nov. 1999.

<sup>13</sup> Section 123(g), IP Code.

<sup>14</sup> American Wire and Cable Co. v. Director of Patents et. al. (SCRA 544), G.R. No. L-26557, 18 Feb. 1970.

<sup>15</sup> Verified Opposition, p. 16.



The Respondent-Applicant in the instant opposition was given the opportunity to explain its side and to defend its trademark application. However, it failed to do so. Accordingly, the Respondent-Applicant's trademark application is proscribed by Sec. 123.1 (d) of the IP Code.

**WHEREFORE**, the instant Opposition is hereby **SUSTAINED** on the grounds stated above. Let the file wrapper of Trademark Application Serial No. 4-2010-001367 be returned together with a copy of this Decision to the Bureau of Trademarks for information and appropriate action.

**SO ORDERED.**

Taguig City, 10 July 2014.

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