



**SAN MIGUEL FOODS, INC. and
SAN MIGUEL MILLS, INC.,**
Opposer,

-versus-

CORNELIO P. REYNOSO,
Respondent- Applicant.

IPC No. 14-2013-00018
Opposition to:
Appln. Serial No. 4-2008-006173
Date Filed: 27 May 2008
TM: "QUEEN & DEVICE"

X-----X

NOTICE OF DECISION

**OFFICE OF THE GENERAL COUNSEL
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GREETINGS:

Please be informed that Decision No. 2014 - 257 dated October 21, 2014 (copy enclosed) was promulgated in the above entitled case.

Taguig City, October 21, 2014.

For the Director:

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



**SAN MIGUEL FOODS, INC. and
SAN MIGUEL MILLS, INC.,**

Opposer,

-versus-

IPC No. 14-2013-00018
Opposition to Trademark
Application No. 4-2008-006173
Date Filed: 27 May 2008

CORNELIO P. REYNOSO,
Respondent-Applicant.

Trademark: **"QUEEN & DEVICE"**

x ----- x Decision No. 2014- 257

DECISION

San Miguel Foods, Inc. ("SMFI") and San Miguel Mills, Inc. ("SMMI")¹ ("Opposers") filed an opposition to Trademark Application Serial No. 4-2008-006173. The contested application, filed by Cornelio P. Reynoso² ("Respondent-Applicant"), covers the mark "QUEEN & DEVICE" for use on "*multi-purpose flour, cake flour, bibingka mix, champorado mix*" under Class 30 of the International Classification of Goods³.

According to the Opposers, they are both subsidiaries of San Miguel Pure Foods Company, Inc. ("SMPFCI"), one of the largest conglomerates in the Philippines and engaged in the business of manufacturing, selling and distributing various food products. The Opposer SMFI filed with the Intellectual Property Office Philippines (IPOPHL) an application of the mark "QUEEN & DEVICE" on 20 June 2003 for "*soft flour*" in Class 30, during which time the San Miguel Corporation ("SMC") was in the process of consolidating all its food-related business, including its flour production business, from Purefoods Corporation. They claim to have first used the mark, however, as early as 30 April 1991 and have continued using the same until the time of SMC's acquisition ten years later. By virtue of a license from the Opposer SMFI, the Opposer SMMI allegedly continues to use the mark up to the present and has developed the brand to become one of the most popular brands of soft flour in the country.

The registration for the mark "QUEEN & DEVICE" was issued to the Opposer SMFI on 19 December 2005. Thus, the Opposers maintain that the registration of the Respondent-Applicant's mark is in violation of Section 123.1 (d) of Republic Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code"). They assert that a comparison of the marks will reveal a pivotal and crucial

¹Both domestic corporations organized and existing under the laws of the Republic of the Philippines with business address at the JMT Corporate Condominium, ADB Avenue, Ortigas Center, Pasig City.

² With address at Halina A & B Compound, Haliwoods Industries, Ilog Pugad, Taytay, Rizal..

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.

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similarity as the dominant feature thereof is the word "QUEEN". They contend that the goods the Respondent-Applicant is applying for registration for its mark are closely related, if not essentially identical, with that of their own.

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

1. Exhibits "B" and "C" - copies of their Certificates of Filing of Amended Articles of Incorporation;
2. Exhibit "D" - copy of the Respondent-Applicant's trademark application as published in the E-Gazette;
3. Exhibit "E" to "E-1" - copy of the 5th year Declaration of Actual Use (DAU) filed by SMFI on 19 January 2011 and picture of the trademark as actually used;
4. Exhibit "F" to "F-2" - true print-out of <http://www.sanmiguelexports.com/flour.php#queen> and references to the "QUEEN & DEVICE" soft flour;
5. Exhibit "G" to "G-1" - true print-out from <http://ncmf.gov.ph/halal-updates.html> last visited on 25 January 2014 and the particular reference to the mark;
6. Exhibit "H" - copy of Certificate of Registration No. 4-2003-005473;
7. Exhibit "I" - print-out of a list of the Opposer's SMMI food products offered on the website of the San Miguel Foods Group's food service division; and
8. Exhibit "J" - copy of the envelope returned to sender.

For its part, the Respondent-Applicant manifests that he assigned the "QUEEN & DEVICE" mark in favor of Karlu Tan Say for a period of twenty (20) years. He asserts that the Opposer has no valid cause of action against him as the latter disclaimed exclusive ownership and/or use of the word "QUEEN" in its Certificate of Trademark Registration No. 4-2003-005473. He adds that he has legal basis to claim the said word as he is allegedly the registered owner of the "QUEE" trademarks under Certificates of Registration Nos. 4-2002-008300 and 4-2003-002394 issued on 30 July 2005 and 21 May 2005, respectively. He claims to have used the mark "QUEEN" as early as 23 August 1993 as indicated in his first application for pure cornstarch filed on 11 November 1993 with the then Bureau of Patents, Trademarks and Technology Transfer (BPTTT).

The Respondent-Applicant's evidence consists of the following:

1. Exhibit "1" - affidavit of Cornelio P. Reynoso;
2. Exhibits "2" and "3" - Articles of Incorporation and By-Laws of Don Reyno Corporation;
3. Exhibit "4" - Certificate of Registration No. 4-2002-008300 "QUEEN & DEVICE" for baking powder;

4. Exhibit "5" – Certificate of Registration No. 4-2003-002394 "QUEEN & DEVICE" for cornstarch, hot cake mix, gulaman, tapioca starch;
5. Exhibit "6" – Certificate of Registration No. 4-2003-002395 "MARCO POLO & DEVICE" for condiments;
6. Exhibit "7" – Certificate of Registration No. 4-2003-002395 "CRISPY MIX & DEVICE" for chicken breading;
7. Exhibit "8" – Certificate of Registration No. 4-2003-002392 "CROWN & DEVICE" for all-purpose flour, cake flour;
8. Exhibit "9" – Deed of Assignment of Trademarks between Respondent-Applicant and assignee Karlu Tan Say;
9. Exhibit "10" and "10-a" – 11 November 1993 trademark application for "QUEEN" and the official acknowledgement by the Bureau of Patents, Trademarks and Technology Transfer;
10. Exhibit "11" to "11-j" – representative samples of sales invoices showing sales of Respondent-Applicant's products bearing the "QUEEN & DEVICE" trademark;
11. Exhibit "12" – sample business plan for marketing and promotion of Respondent-Applicant's products bearing the "QUEEN & DEVICE" mark;
12. Exhibit "13" and "13-a" – National Consumers Quality Award from the National Consumer Affairs Foundation awarded last 19 July 2003 at the University of the Philippines with the Respondent-Applicant as the recipient thereof and a picture taken during the event;
13. Exhibit "14" – Memorandum of Agreement dated 29 March 2001 between Himmel Marketing, Inc. for the repacking of Queen baking soda products; and
14. Exhibit "15" – Memorandum of Agreement between Queen Mix Food Products and CPR Promotion and Marketing, Inc. for the repacking of Queen hotcake mix products.

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 22 January 2014. The parties were directed to submit their respective position papers after which, the case is deemed submitted for decision.

The issue to be resolved in this case is whether the Respondent-Applicant's trademark application for "QUEEN & DEVICE" should be allowed.

Prefatorily, 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.⁴

To determine whether the marks of Opposer and Respondent-Applicant are confusingly similar, the two are shown hereafter for comparison:



Opposer's Mark



Respondent-Applicant's Mark

The Opposer's mark consists of the word "QUEEN" and the swan figure with a crown. With respect to that of the Respondent-Applicant's, the word "QUEEN" is the prevalent feature thereof. Therefore, they are similar with respect to the fact that the consumers will refer to both their products simply as "QUEEN".

Records reveal that the Opposer SMFI filed its application for the disputed mark on 20 June 2003. The same was eventually allowed on 19 December 2005.⁵ The Opposers assert, however, that the mark was first used on 30 April 1991 by Purefoods Corporation as shown in the DAU filed within one year from the fifth anniversary of the registration of the mark.⁶ On the other hand, the Respondent-Applicant maintains that he adopted the mark "QUEEN & DEVICE" as early as 23 August 1993. He filed an application for the said mark on 27 September 2002 for "*baking powder*" and the Certificate of Registration No. 4-2002-008300 was issued on 30 July 2005. In addition, he filed an application for registration of the same mark on 14 March 2003 for "*cornstarch, hot cake mix, gulaman, tapioca starch*" and was granted Certificate of Registration No. 4-2003-002394.

Clearly, based on the records and evidence submitted, it is the Respondent-Applicant who has the earlier application and registration for the mark "QUEEN & DEVICE". While the Opposer asserts that it has used the mark as early as 30 April 1991, aside from its statement in its Declaration of Actual Use, no other evidence was presented to corroborate the claim. The Opposer, as revealed by the Certificate of Registration No. 4-2003-005473, even disclaimed the queen and swan device in its mark. Corollarily, in Section 126 of Republic Act No. 8293, also known as the Intellectual Property Code ("IP Code"), it is provided that:

⁴ Pribhdas J. Mirpuri vs. Court of Appeals, G.R. No. 114508, 19 November 1999.

⁵ Exhibit "H" of the Opposer.

⁶ Exhibit "E" of the Opposer.

"Section 126. Disclaimers. - The Office may allow or require the applicant to disclaim an unregistrable component of an otherwise registrable mark but such disclaimer shall not prejudice or affect the applicant's or owner's rights then existing or thereafter arising in the disclaimed matter, nor such shall disclaimer prejudice or affect the applicant's or owner's right on another application of later date if the disclaimed matter became distinctive of the applicant's or owner's goods, business or services."

Thus, on the basis of the disclaimer, the Opposers now cannot claim exclusive use over the word "QUEEN" or the swan device. Even assuming that they were the first to adopt the "QUEEN & DEVICE" mark, they cannot prevent the Respondent-Applicant from registering its own "QUEEN & DEVICE" solely on the basis that the latter mark appropriates the word "QUEEN". There is no sufficient evidence presented and proven by the Opposers to support that the said word has become distinctive to its soft flour products. As in this case where the Opposers disclaimed the word "queen" and the swan device in its registration, the protection extends only when both features are appropriated in one mark by another user. The disclaimer reveals the Opposer's intention not to claim exclusive use of the word "QUEEN" and hence, it cannot preclude others like the Respondent-Applicant to use either the term "QUEEN" or the swan figure alone in their trademarks.

Furthermore, a search on the Trademark Registry of this Office, which this Bureau takes judicial notice, would reveal that many other entities have registered marks that include the word "QUEEN" likewise for Class 30 such as "QUEEN COOK & DEVICE", "SILVER QUEEN" and "DAIRY QUEEN", among others. In fact some of these "QUEEN" marks have an earlier filing and/or registration date than that of the Opposer and/or the Respondent-Applicant. Therefore, the mark which adopts "QUEEN" is already a weak mark with respect to goods under Class 30. What will determine its registrability are the words, logo and/or style that accompany the same.

WHEREFORE, premises considered, the instant opposition is hereby **DISMISSED**. Let the filer wrapper of Trademark Application Serial No. 4-2008-006173 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 21 October 2014.


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