



CHEF'S SECRET, INC.,
Opposer,

-versus-

SHEILA ONG CHING,
Respondent-Applicant.

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IPC No. 14-2013-00400

Opposition to:

Application No. 4-2013-001841

Date filed: 19 February 2013

TM: **"CHEF'S SECRET GOOD
FOOD COMES WITH GREAT
SAUCE"**

X-----X

NOTICE OF DECISION

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SHEILA ONG CHING

Respondent-Applicant

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GREETINGS:

Please be informed that Decision No. 2015 - 62 dated April 27, 2015 (copy enclosed) was promulgated in the above entitled case.

Taguig City, April 27, 2015.

For the Director:


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

Republic of the Philippines
INTELLECTUAL PROPERTY OFFICE

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CHEF'S SECRET, INC.,

Opposer,

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SHEILA ONG CHING,

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X ----- X

IPC No. 14-2013-00400

Opposition to Trademark

Application No. 4-2013-001841

Date Filed: 19 February 2013

Trademark: **"CHEF'S SECRET
GOOD FOOD COMES WITH
GREAT SAUCE"**

Decision No. 2015- 62

DECISION

Chef's Secret, Inc.¹ ("Opposer") filed an opposition to Trademark Application Serial No. 4-2013-001841. The contested application, filed by Sheila Ong Ching² (Respondent-Applicant), covers the mark "CHEF'S SECRET GOOD FOOD COMES WITH GREAT SAUCE" for use on *"manufacturing and trading of raw and semi-manufactured products of poultry, (chicken meat, marinated chickens) beef and pork, seafood, pizza, industrial sauces (soy sauce, oyster sauce, sweet chili sauce, banana catsup, tomato catsup"* under Class 35 of the International Classification of Goods³.

The Opposer is the registered owner of the mark "CHEF'S SECRET LE CROISSANT" under Class 30 covered by Certificate of Registration No. 4-2009-004009 issued on 01 January 2010. It alleges that "CHEF'S SECRET GOOD FOOD COMES WITH GREAT SAUCE" is visually and aurally similar to its trademark and name. It claims that the registration of the applied mark will diminish the distinctiveness and dilute the goodwill of its own mark.

According to Opposer, its company was incorporated in 1997 to manufacture food and that since then, it became one of the most well-known providers of breads and prepared food products. It manufactures all types breads, cakes and pastries, pastas, sandwiches, salads, pizzas, sauces and the like in ambulant, chilled and frozen form and to trade them in wholesale and retail markets. It deals with individuals and companies in the Philippines as Chef's Secret, including Starbucks Coffee, Pepper Lunch, S&R, Taco Bell and Pizza Hut.

¹ A corporation duly organized and existing under the laws of the Philippines, with business address at No. 58 3rd Street, New Manila, Quezon City.

² With known address at #7 Bingo St., Sta. Mesa Heights, Quezon 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.

In support of its opposition, the Opposer submitted a copy of its Certificate of Registration with the Securities and Exchange Commission (SEC) and a copy of the Certificate of Registration No. 4-2009-004009.⁴

This Bureau issued a Notice to Answer and served a copy thereof upon the Respondent-Applicant on 16 January 2014. The Respondent-Applicant, however, did not file an Answer. Accordingly, the Hearing Officer issued on 22 April 2014 Order No. 2014-509 declaring the Respondent-Applicant in default and the case submitted for decision.

The issue to be resolved in this case is whether the trademark application by Respondent-Applicant should be allowed.

Section 123.1 (d)) of the IP Code provides that:

"123.1. A mark cannot be registered if it:

(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; xxx."

The records reveal that at the time Respondent-Applicant filed for an application of registration of its mark "CHEF'S SECRET GOOD FOOD COMES WITH GREAT SAUCE" on 19 February 2013, the Opposer has an existing and valid registration of its trademark "CHEF'S SECRET LE CROISSANT" under Registration No. 4-2009-004009 issued on 01 January 2010.

The competing marks are shown below for comparison:

Chef's Secret LE CROISSANT

Opposer's Mark



Respondent-Applicant's Mark

⁴ Marked as Exhibits "A" and "B".

From the illustration, it can be gleaned that the competing marks both appropriate the words "CHEF'S SECRET" such that an ordinary consumer will be confused or deceived that one is a mere variation of the other. This unique word combination "CHEF'S SECRET" is prominent in both marks. Regardless of the addition of a picture of a chef's cap in the Respondent-Applicant's mark and the difference in the words that follow "CHEF'S SECRET", the likelihood of confusion still subsists. 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 purchasers as to cause him to purchase the one supposing it to be the other.⁵

The Supreme Court in **Del Monte Corporation vs. Court of Appeals**⁶ held:

"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 unsuspecting 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."

Succinctly, since the Respondent-Applicant will also use or uses the mark on food products, the slight differences in the competing marks will not diminish the likelihood of the occurrence of confusion, mistake and/or deception. After all, the determinative factor in a contest involving registration of trade mark is not whether the challenged mark would *actually* cause confusion or deception of the purchasers but whether the use of such mark would *likely* cause confusion or mistake on the part of the buying public.⁷

Moreover, it is settled that 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

⁵ Societe des Produits Nestle, S.A. vs. Court of Appeals, GR No. 112012, 04 April 2001.

⁶ G.R. No. L-78325, 25 January 1990.

⁷ American Wire & Cable Company vs. Director of Patents, G.R. No. L-26557, 18 February 1970.

⁸ Societe des Produits Nestle, S.A. vs. Dy, G.R. No. 1772276, 08 August 2010.

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 manufacturer against substitution and sale of an inferior and different article as his product.⁹ Based on the above discussion, Respondent-Applicant's trademark fell short in meeting this function. The latter was given ample opportunity to defend its trademark application but Respondent-Applicant did not bother to do so.

Accordingly, this Bureau finds and concludes that the Respondent-Applicant's trademark application is proscribed by Sec. 123.1(d) of the IP Code.

WHEREFORE, premises considered, the instant opposition is hereby **SUSTAINED**. Let the filewrapper of Trademark Application Serial No. 4-2013-001841 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 27 April 2015.


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

⁹ Pribhdas J. Mirpuri vs. Court of Appeals, G.R. No. 114508, 19 November 1999.