



SOUTHEAST ASIA FOOD, INC.,
Opposer,

-versus-

FRESH FRUITS INGREDIENTS, INC.,
Respondent-Applicant.

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IPC No. 14-2010-00331
Opposition to:
Appln. Serial No. 4-2009-010903
Date Filed: 23 October 2009
TM: "FIESTA AND DEVICE
COLORED"

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NOTICE OF DECISION

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GREETINGS:

Please be informed that Decision No. 2015 - 75 dated May 08, 2015 (copy enclosed) was promulgated in the above entitled case.

Taguig City, May 08, 2015.

For the Director:


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



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Opposer,

-versus-

FRESH FRUITS INGREDIENTS, INC.,

Respondent-Applicant

IPC NO. 14-2010-00331

Opposition to:

App. Ser No. 4-2009-010903

Date Filed: 23 October 2009

**TM: FIESTA AND DEVICE
(COLORED)**

Decision No. 2015- 75

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DECISION

SOUTHEAST ASIA FOOD, INC. (SAFI) ("Complainant")¹ filed an opposition to the Trademark Application Serial No. 4-2009-010903. The application filed by FRESH FRUITS INGREDIENTS, INC.² ("Respondent-Applicant"), covers the mark "FIESTA AND DEVICE (COLORED)" for use on desiccated coconut, coconut milk powder, coconut cream, coconut milk" under Class 29; "preparations made from cereals, bread, biscuits, cakes, pastry and confectionery, sauces" under Class 30 and "coconut water natural plus variants" under Class 32 of the International Classification of Goods.

The Opposer alleges, among others, that SAFI will be damaged by the registration of the trademark "FIESTA AND DEVICE (COLORED)". According to Opposer, a dominant feature of Respondent-Applicant's trademark "FIESTA AND DEVICE (COLORED)", "FIESTA", is identical to dominant features of SAFI's duly registered trademarks "UFC LOGO & Golden Fiesta" and "UFC HAPI FIESTA". Thus, the registration of Respondent-Applicant's trademark is proscribed under Section 123.1 (d) of Republic Act No. 8293, otherwise known as the Intellectual Property Code ("IP Code"). Opposer also contends that Respondent-Applicant's trademark also infringes on SAFI's trademark rights and damages SAFI's goodwill over its marks because Opposer is the owner, by prior registration, of the trademarks "UFC LOGO & Golden Fiesta" and "UFC HAPI FIESTA", the dominant feature of which is "FIESTA"; The registration of Respondent-Applicant's "FIESTA AND DEVICE (COLORED)" trademark will cause confusion among the relevant consuming public and will hamper the normal expansion of SAFI's business; and the registration of Respondent-Applicant's "FIESTA AND DEVICE (COLORED)" trademark will cause damage to the goodwill built by SAFI upon its trademarks.

Opposer's evidence consists of the following:

1. Exhibit "A" - certified copy of the Articles of Incorporation of SAFI issued by the Securities and Exchange Commission;
2. Exhibit "B" - Judicial Affidavit of Cristina G. Magno;
3. Exhibits "C" to "C-4" - photographs of Opposer's products bearing its marks Golden Fiesta and Hapi Fiesta attached to the Judicial Affidavit of Ms. Magno;
4. Exhibits "D" to "D-6" - print-outs of the print advertisements of Opposer attached to the Judicial Affidavit of Ms. Magno;
5. Exhibit "E" - compact disc containing samples of television and radio commercials for SAFI's UFC Golden Fiesta products attached to the Judicial Affidavit of Ms. Magno;

¹ A domestic corporation with principal address at 12th Floor, Centerpoint Condominium, Garnet Rd. cor Julia Vargas Avenue, Ortigas Center, Pasig City.

² A domestic corporation with address at 1052 EDSA, Magallanes Village, Makati City, 1232.

Republic of the Philippines

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6. Exhibit "F" - certified copy of the Certificate of Registration No. 4-2007-008197 for the mark UFC Logo & Golden Fiesta issued on 09 June 2008 attached to the Judicial Affidavit of Lalaine Gonzales-Camiña;

7. Exhibit "G" - Trademark Application No. D00 2008 043453 for the mark "UFC Golden Fiesta" filed with the Trade Mark Office of the Republic of Indonesia attached to the Judicial Affidavit of Lalaine Gonzales-Camiña;

8. Exhibit "H" - Trademark Application No. 8024794 for the mark "UFC Golden Fiesta" filed with the Intellectual Property Registrar of Malaysia, attached to Atty. Gonzalez-Camiña's Judicial Affidavit;

9. Exhibit "I" - certified copy of the Certificate of Registration No. 4-2009-000504 for the mark UFC HAPI FIESTA issued on 16 July 2009 attached to the Judicial Affidavit of Lalaine Gonzales-Camiña;

10. Exhibit "J" - Trademark Application No. D00 2008 043452 for the mark "UFC HAPI FIESTA" filed with the Trade Mark Office of the Republic of Indonesia 2009 attached to the Judicial Affidavit of Lalaine Gonzales-Camiña;

11. Exhibit "K" - Trademark Application No. 8024795 for the mark "UFC HAPI FIESTA" filed with the Intellectual Property Registrar of Malaysia attached to the Judicial Affidavit of Lalaine Gonzales-Camiña; and

12. Exhibit "L" - Judicial Affidavit of Lalaine Gonzales-Camiña.

This Bureau issued on 07 February 2011 a Notice to Answer and personally served a copy thereof upon the Respondent-Applicant's representative on 15 February 2011. After several motion for extension of time, Respondent-Applicant filed its Answer on 29 June 2011, alleging, among others, that its mark will not infringe on Opposer's registered mark on the basis that Opposer is the owner, by prior registration of the trademarks UFC LOGO & GOLDEN FIESTA and UFC HAPI FIESTA because they have been using the mark FIESTA AND DEVICE (COLORED) since July 1991. Respondent also argues that the FIESTA AND DEVICE (COLORED) mark is not confusingly similar to Opposer's UFC LOGO & GOLDEN FIESTA and UFC HAPI FIESTA and that the registration of the mark FIESTA AND DEVICE (COLORED) will not cause damage to the goodwill built by Opposer upon its trademarks.

The evidence of Respondent-Applicant consists of the following:

1. Exhibit "1" - Secretary's Certificate executed by Henry J. Raperoga;
2. Exhibit "2" - Affidavit of Henry J. Raperoga with the following Annexes:

Annex "A" - Articles of Incorporation of Fresh Fruit Ingredients, Inc.
 Annex "B" - Copy of the General Information Sheet of FIESTA Brands, Inc.
 Annex "C" - Copy of Certificate of Registration No. 4-2006-003241 for the mark FIESTA TROPICALE with a Deed of Assignment executed between Fresh Fruits Ingredients, Inc. and Fiesta Brands, Inc., Certificate of Registration of the mark FIESTA TROPICALE in OHIM, Indonesia and Malaysia.

During the preliminary conference, only Opposer appeared. Consequently, Respondent -Applicant's right to file position paper was deemed waived. On 10 February 2012, Opposer filed its Position Paper. Hence, the case is now submitted for resolution.

Should the Respondent-Applicant be allowed to register the mark FIESTA and DEVICE (COLORED)?

The records show that at the time the Respondent-Applicant filed its application for the mark FIESTA and DEVICE (COLORED) on 23 October 2009, the Opposer has already been issued a registration for its trademark UFC LOGO & GOLDEN FIESTA on 09 June 2008 for "cooking oil" under Class 29 and for the mark UFC HAPI FIESTA on 16 July 2009 also for "cooking oil" falling under Class 30.

But, are the competing marks identical or confusingly similar and used on the same or closely related goods as to likely deceive or cause confusion?

The marks are reproduced below for comparison:



"UFC LOGO & Golden Fiesta"



"UFC HAPI FIESTA"

Opposer's Marks



"FIESTA AND DEVICE (COLORED)"

Respondent-Applicant's Mark

Opposer and Respondent-Applicant's marks are similar in so far as the word "FIESTA" in Respondent-Applicant's mark resembles in looks and in sound, the word "FIESTA" in Opposer's mark. However, this Bureau finds that the presence of the word "FIESTA" in both marks is insufficient to establish a finding of confusing similarity between the competing marks to sustain the opposition. The word "FIESTA" which means "feast or celebration" is a word commonly used in the Philippines and usually relates to food. That is why, in this Office's Trademark Registry there are numerous trademark registrations and applications for Class 29 and 30 bearing the word "FIESTA" such as: "FIESTA", "FIESTA GULAMAN", "HAPPY FIESTA", "FIESTA PLATTERS", "FIESTA MIXX", "ROYAL FIESTA", "FIESTA VILLAGE", "EON FIESTA" and "FIESTA FOOD", among others. This underscores the fact that "FIESTA" is widely used as a trademark and taken alone is not very distinctive as to effectively identify the source of goods or services. Hence, what will determine whether the competing trademarks are confusingly similar are the other words or symbols present in the marks. It is clear from the comparison of the two marks that there are no other features that are similar. In Opposer's mark, the "UFC Logo" is placed on top of the words "GOLDEN FIESTA" and "HAPI FIESTA" while in Respondent-Applicant's mark "FIESTA BRANDS" is contained in a vertical rectangular red box with two green flags diagonally positioned with shadows in color blue enclosed in a yellow square with the word "BRANDS" positioned directly below the two flags. These features of the marks only confirms that they are not confusingly similar.

Finally, it must be 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


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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. It is found that Respondent-Applicant's mark sufficiently met the requirement of the law.

WHEREFORE, premises considered, the instant opposition is hereby **DISMISSED**. Let the filewrapper of Trademark Application Serial No. 4-2009-010903, together with a copy of this Decision, be returned to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 08 May 2015.


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