



JOLLIBEE FOODS CORPORATION,
Opposer,

-versus-

JOLLYBABA CORPORATION,
Respondent-Applicant.

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IPC No. 14-2012-00083
Opposition to:
Appln. Serial No. 4-2011-006433
Date Filed: 02 June 2011
TM: "**JOLLY BABA AND
DEVICE**"

NOTICE OF DECISION

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GREETINGS:

Please be informed that Decision No. 2015 - 223 dated October 22, 2015 (copy enclosed) was promulgated in the above entitled case.

Taguig City, October 22, 2015.

For the Director:


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



JOLLIBEE FOODS CORPORATION,
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x ----- x

IPC No. 14-2012-00083

Opposition to Trademark
Application No. 4-2011-006433
Date Filed: 02 June 2011

Trademark: "**JOLLY BABA AND
DEVICE**"

Decision No. 2015- 223

DECISION

Jollibee Foods Corporation¹ ("Opposer") filed an opposition to Application No. 4-2011-006433. The contested application, filed by Jollybaba Corporation² ("Respondent-Applicant"), covers the mark "JOLLY BABA AND DEVICE" for use on "*restaurant (quick service)*" under Class 43 of the International Classification of Goods³.

The Opposer anchors its opposition on subparagraphs (d), (e) and (f) of Section 123 of the Republic Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code"). It claims, among others, that it is the owner and first user of "JOLLIBEE" and "JOLLY" marks, which are also applied and/or registered for Class 43. It contends that the Respondent-Applicant's mark "JOLLY BABA AND DEVICE" is confusingly similar to its "JOLLIBEE" marks. It also asserts that the Respondent-Applicant's boy device has similarities with its own bee and "YUM" mascots.

In support of its opposition, the Opposer submitted the following:⁴

1. original notarized affidavit of Atty. Gonzalo D.V. Go III, with annexes;
2. copies of its Philippine registrations of the "JOLLIBEE" mark and other related trademarks;
3. sample food container using the "JOLLIBEE & BEE HEAD DEVICE"; and
4. sample photographs of "JOLLIBEE" restaurants.

This Bureau issued a Notice to Answer and furnished a copy thereof upon the Respondent-Applicant on 02 May 2012. The latter, however, did not file an Answer.

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

²With address at Unit 21B-NW Fairways Tower, 5th Avenue cor. McKinley Road, Bonifacio Global City, Taguig.

³The 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.

⁴Marked as Exhibits "B" to "VV", inclusive.

On 12 October 2012, the Hearing Officer issued Order No. 2012-1319 declaring the Respondent-Applicant in default and the case submitted for decision.

The issue to be resolved is whether the trademark "JOLLY BABA AND DEVICE" should be allowed.

Records reveal that the Opposer has a valid and existing registration of its trademark "JOLLIBEE", which certificate was issued as early as 24 September 2005. The Opposer also has several other registrations under its name including but not limited to: "BEE HEAD DEVICE", "BEE DEVICE", "YUM MASCOT DESIGN", "JOLLY SHAKES", "JOLLY KRUNCHY TWIRL", "JOLLY CRISPY FRIES", "JOLLY CHEEZY FRIES", "JOLLY ZERTS", "JOLLY HOTDOG" and "JOLLY HOTDOG". On the other hand, the Respondent-Applicant only filed the contested application on 02 June 2011.

But the marks, as reproduced below, confusingly similar?

Opposer's marks include:



JOLLIBEE



Jolly Hotdog



JOLLY CRISPY FRIES

Respondent-Applicant's mark:



The competing marks commonly appropriate the word "JOLLY" or "JOLLI". Notwithstanding the fact that the Respondent-Applicant added the word "BABA", the likelihood of confusion exists. It is emphasized that 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 purchaser as to cause him to purchase the one supposing it to be the other.⁵ In this case, the Respondent-Applicant uses or intends to use its mark for a quick-service restaurant which service the Opposer likewise deals in. The boy device in the Respondent-Applicant's mark is similar to the Opposer's "YUM" mascot. Thus, the device of a boy with a round a smiling face can easily pass off as the same as or a variation of the Opposer's "YUM MASCOT DESIGN".

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."⁶

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

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

⁶ Societe des Produits Nestle, S.A. vs. Dy, G.R. No. 1772276, 08 August 2010.

manufacturer against substitution and sale of an inferior and different article as his product.⁷ It is found that Respondent-Applicant failed to meet these requirements.

WHEREFORE, premises considered, the instant opposition is hereby **SUSTAINED**. Let the filewrapper of Trademark Application No. 4-2011-006433 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 22 October 2015.


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

⁷ Pribhdas J. Mirpuri vs. Court of Appeals, G.R. No. 114508, 19 November 1999.