



**SAN MIGUEL PURE FOODS  
COMPANY, INC.,**  
Opposer,

**-versus-**

**FAMILY CHOICE GRAINS  
PROCESSING CENTER, INC.,**  
Respondent-Applicant.

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**IPC No. 14-2012-00194**  
Opposition to:  
Application No. 4-2011-007973  
Date filed: 08 July 2011  
TM: "MAGNOLIA"

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### NOTICE OF DECISION

**OFFICE OF THE GENERAL COUNSEL  
SAN MIGUEL FOOD GROUP**  
Counsel for the Opposer  
22<sup>nd</sup> Floor, JMT Corporate Condominium  
ADB Avenue, Ortigas Center  
Pasig City

**FAMILY CHOICE GRAINS  
PROCESSING CENTER, INC.**  
Respondent-Applicant  
56 Diamantina  
Cabatuan, Isabela

#### GREETINGS:

Please be informed that Decision No. 2015 - 226 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



**SAN MIGUEL PURE FOODS  
COMPANY, INC.,**

Opposer,

-versus-

**FAMILY CHOICE GRAINS  
PROCESSING CENTER, INC.,**

Respondent-Applicant.

x ----- x

IPC No. 14-2012-00194  
Opposition to Trademark  
Application No. 4-2011-007973  
Date Filed: 08 July 2011

Trademark: "**MAGNOLIA**"

Decision No. 2015- 226

**DECISION**

San Miguel Pure Foods Company, Inc.<sup>1</sup> ("Opposer") filed an opposition to Trademark Application Serial No. 4-2011-007973. The contested application, filed by Family Choice Grains Processing Center<sup>2</sup> ("Respondent-Applicant"), covers the mark "MAGNOLIA" for use on "rice" under Class 30 of the International Classification of Goods<sup>3</sup>.

The Opposer alleges, among others, that the mark "MAGNOLIA" is considered a heritage brand by its company and parent company, San Miguel Corporation ("SMC"). According to the Opposer, "MAGNOLIA ICE CREAM" became an official business unit of SMC's Magnolia Ice Cream Division in 1981 and SMC used "MAGNOLIA" on its poultry products since 1973. SMC is the owner of Certificate of Registration No. 024994 for the mark "MAGNOLIA" issued as early as 07 October 1997. The Opposer, on the other hand, was issued Certificate of Registration No. 4-2004-005904 for "MAGNOLIA & DEVICE" on 11 June 2007. Aside from this, the Opposer has several registrations for the mark "MAGNOLIA" in Classes 29 and 30.

The Opposer claims to have invested huge amount of money to ensure that its "MAGNOLIA" marks are protected as well as on product development and innovation and advertising. It asserts that the Respondent-Applicant's mark "MAGNOLIA" is confusingly similar to its own registered marks and that the goods covered are similar and/or closely related. It avers that with constant use, its "MAGNOLIA" marks acquired goodwill and positive reputation in the country. In support of its allegations, the Opposer the affidavit of Alexandra B. Trillana, with attachments.<sup>4</sup>

<sup>1</sup> A corporation duly organized and existing under the laws of the Philippines with office address at 23F The JMT Corporate Condominium, ADB Avenue, Ortigas Center, Pasig City.

<sup>2</sup> With address at 56 Diamantina, Cabatuan, Isabela.

<sup>3</sup> 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.

<sup>4</sup> Marked as Exhibits "B" to "H", inclusive.

On 12 July 2012, this Bureau issued a Notice to Answer and served a copy upon the Respondent-Applicant. The latter, however, did not file an Answer. Thus, on 17 December 2013, the Hearing Officer issued Order No. 2013-1665 declaring the Respondent-Applicant in default and the case submitted for decision.

Essentially, the issue to be resolved is whether the Respondent-Applicant's mark "MAGNOLIA" should be allowed registration.

Records reveal that at the time the Respondent-Applicant filed his trademark application on 08 June 2011, the Opposer already owns several registrations for its "MAGNOLIA" trademarks, among which is Certificate of Registration No. 4-2004-005904 issued as early as 11 June 2007 .

Now, to determine whether the marks of Opposer and Respondent-Applicant are confusingly similar, the competing marks are shown hereafter for comparison:



*Opposer's mark*



*Respondent-Applicant's mark*

Clearly, the marks are practically identical. As both appropriate the word "MAGNOLIA", the marks look and sound similar despite any difference in design, if any. 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 purchased as to cause him to purchase the one supposing it to be the other.<sup>5</sup>

Succinctly, since the Respondent-Applicant will use or uses the mark "MAGNOLIA" on rice which is a similar and/or closely related product to that covered by the Opposer's registered mark, it is highly probable that the purchasers will be led to believe that Respondent-Applicant's mark is a mere variation of Opposer's mark. Withal, the protection of trademarks as intellectual property is intended not only to preserve the goodwill and reputation of the business established on the goods bearing the mark through actual use over a period of time, but also to safeguard the public as consumers against confusion on these goods.<sup>6</sup> Verily, when one applies for the registration of a trademark or label which is almost the same or very closely resembles one already used and registered by another, the application should be

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

<sup>6</sup> Skechers, USA, Inc. vs. Inter Pacific Industrial Trading Corp., G.R. No. 164321, 23 March 2011.

rejected and dismissed outright, even without any opposition on the part of the owner and user of a previously registered label or trademark, this not only to avoid confusion on the part of the public, but also to protect an already used and registered trademark and an established goodwill.<sup>7</sup>

Moreover, 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."<sup>8</sup> As in this case where the marks are identical, it is likely that the purchasers of Respondent-Applicant's products will be confused, mistaken or be led to believe that these are in any way connected with the Opposer.

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.<sup>9</sup>

**WHEREFORE**, premises considered, the instant opposition is hereby **SUSTAINED**. Let the filewrapper of Trademark Application Serial No. 4-2012-007973 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

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<sup>7</sup> McDonald's Corporation vs. MacJoy Fastfood Corporation, G.R. No. 166115, 02 February 2007.

<sup>8</sup> Societe des Produits Nestle, S.A. vs. Dy, G.R. No. 172276, 08 August 2010.

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