

FRESH N' FAMOUS FOODS INC.,
Opposer,

-versus-

ARMIDA M. LIM, ANDRE LOUIS M. LIM,
ALICIA NICOLE M. LIM and ANNIKA DREW
M. LIM,
Respondent- Applicants.

}
} IPC No. 14-2012-00042
} Opposition to:
} Appln. Serial No. 4-2010-007160
} Date Filed: 02 July 2010
} TM: "MRCHOW"
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NOTICE OF DECISION

QUISUMBING TORRES
Counsel for the Opposer
12th Floor, Net One Center
26th Street corner 3rd Avenue
Crescent Park West, Bonifacio Global City
Taguig City

SALVADOR & PARUNGAO LAW FIRM
Counsel for Respondent-Applicants
2801, 28th Floor, Ayala-FGU Center
6811 Ayala Avenue, Makati City

GREETINGS:

Please be informed that Decision No. 2016 - 122 dated May 03, 2016 (copy enclosed) was promulgated in the above entitled case.

Taguig City, May 03, 2016.

For the Director:

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

FRESH N' FAMOUS FOODS INC.,
Opposer,

- versus -

**ARMIDA M. LIM, ANDRE LOUIS M. LIM,
ALICIA NICOLE M. LIM and ANNIKA DREW
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IPC No. 14-2012-00042
Opposition to:

Appln. No. 4-2010-007160
Date Filed: 02 July 2010
Trademark : "MRCHOW"

Decision No. 2016 - 122

DECISION

FRESH N' FAMOUS FOODS INC. ("Opposer"),¹ filed a verified opposition to Trademark Application Serial No. 4-2010-007160. The application, filed by ANDREW Q. LIM ("Respondent-Applicant"),² covers the mark "MRCHOW" for use on goods under the following: class³ 29: *meat, processed food namely: pork soma; shark's fin dumpling; chicken feet; pork spareribs with tarsi; Japanese soma; as ado soma; as ado soap; quail egg meat, processed food namely: soma; jumbo vegetable spring roll; beef with broccoli oyster sauce; braised beef brisket; spicy pork rib; sweet and sour pork; steamed fish fillet with garlic; fish fillet tarsi sauce; home fried chicken; Chinese pork burger; spicy noodle with as ado; soup noodle with pork chop; soup noodle with beef brisket; soup noodle with fish fillet; soup noodle with as ado and wonton; roasted soya chicken; roasted chicken with rice; shanghai hot and sour soup; chicken sweet corn soup; minced beef soup; watermelon soup; bushy; halo halo; dimsum; dimsum combination, sharksfin siomai, japanese siomai, shrimp dumpling (hakao), sharksfin dumpling, steamed pork spareribs, seafood roll, siao long pao, asado siopao, jumbo siopao, fried shrimp dumpling, chicken feet, fried spring roll, taro puff, spinach dumpling, mango shrimp roll, beancurd roll, machang; soup; chicken soup, minced beef soup, crabmeat corn soup, fish lip soup, hot & sour soup, seafood beancurd soup, seafood spinach soup; noodle; roasted duck noodle soup, soya chicken noodle soup, asado noodle soup, wonton noodle soup, beef brisket noodle soup, beef brisket wonton noodle soup, pancit canton, sotanghon guisado, birthday noodles, crispy noodle with beef brisket, crispy noodle with seafoods, crispy noodle with pork rib taosi, stir-fried beef hofan, stir-fried hofan with seafoods, stir-fried hofan with pork rib taosi; roasting; roast kitchen combination, roasted duck, century egg with jellyfish, soyed beancurd, white chicken, soyed chicken, soya chicken with roasted duck, asado, asado with roasted duck, spicy cuttlefish, shredded duck fruits, peking duck 1 way 1/2 peking duck 1 way whole; shabu shabu; double soup, sate soup, chinese herb with wine soup, sze chuan style soup, century egg with wansuy soup, clear soup; pork mutton; sliced pork shoulder, pork liver, pork heart, pig's kidney, pork intestines/isaw, meat ball mushroom meat ball, pork stomach/tito, pig's chicharon, sliced mutton; beef; sliced beef local, sliced beef, imported, beef ball, beef libro, beef tendon; chicken; wine chicken, black chicken, sliced chicken, hongkong chicken; class 30: yang chow fried rice; garlic fried rice; steamed rice; stir fried shanghai noodle; rice topping with beef brisket; rice topping with minced beef;*

¹ A company organized under the laws of the Philippines with address at the 6th Floor, Jollibee Plaza Building, 10 F. Ortigas Jr. Avenue, Pasig City, Philippines.

² With office address at 2nd floor Cement Center Bldg., 3640 P. Sanchez St., Sta. Mesa, Manila, Philippines.

³ The Nice Classification of goods and services is for registering trademark and service marks, based on a multilateral treaty administered by the WIPO, called the Nice Agreement Concerning the International Classification of Goods and Services for Registration of Marks concluded in 1957.

rice topping with pork rib; rice topping with asado; rice topping with chicken mushroom; congee; gloria maris special congee, fish fillet congee, sliced beef congee, pork liver congee, meat ball congee, pork tito congee, chicken congee, halo halo congee, plain congee, mixed seafood congee; fried rice & rice toppings; asado topped with rice, roasted duck with rice, white chicken with rice, soyed chicken with rice, pork ribs & chix feet with rice, asado and roasted duck with rice, sweet and sour pork with rice, taosi beef ampalaya with rice, shanghai fried rice, salted fish chicken fried rice, pineapple fried rice, fookien fried rice, gloria maris fried rice, garlic rice, plain rice; vegetables; and, class 43: restaurant service.

The Opposer alleges that the registration of the mark MRCHOW (Stylized) is contrary to the provisions of Sections 123.1 (d), (e) and (f) of Republic Act No. 8293 or the Intellectual Property Code (IP Code).

Opposer is the owner and first user of the internationally well-known mark CHOWKING and other marks containing the word CHOWKING (collectively, "CHOWKING Trademarks"), which have been registered with the Philippine Intellectual Property Office (IPO) for food products in Classes 29 and 30 and for related services in Classes 42 and 43. Opposer is also the owner of the trademarks which have been applied for registration with the IPO earlier than Respondent-Applicant's mark for food products in Class 29 and for related services in Classes 35 and 43. Opposer has also applied for registration/registered the CHOWKING Trademarks in numerous countries around the world. Opposer has extensively promoted its CHOWKING Trademarks in the Philippines and in USA, Dubai, Indonesia and Qatar. Opposer has used the CHOWKING Trademarks in the Philippines and elsewhere prior to the filing date of the Respondent-Applicant's application for MRCHOW (Stylized). Opposer continues to use the CHOWKING Trademarks in the Philippines in USA, Dubai, Indonesia and Qatar. It has obtained significant exposure in various media, including television commercials, outdoor advertisements, internet blogs, and other promotional events.

Respondent-Applicants' mark MRCHOW (Stylized) is confusingly similar to Opposer's CHOWKING Trademarks. Furthermore, the use of Respondent-Applicants' mark MRCHOW (Stylized) on goods under Classes 29 and 30 and for services under Class 43, which are in exactly the same classes of goods and services for which the Opposer's CHOWKING Trademarks are used and registered/applied for registration, will deceive consumers by suggesting a connection, association or affiliation with the Opposer, thereby causing substantial damage to the goodwill and reputation associated with the Opposer's CHOWKING Trademarks.

The Opposer's evidence consists of the following:

1. Original notarized Verified Notice of Opposition;
2. Original notarized Affidavit of Atty. Gonzalo D.V. Go III;
3. Representative samples of promotional materials and advertisements on CHOWKING trademarks;
4. Screenshots of company website featuring CHOWKING line of foods products and restaurants;
5. Table showing details of Opposer's applications and registrations for CHOWKING worldwide;
6. Trademark Registration No. 4-19980999821 for CHOWKING in Classes 29, 30 and 42;
7. Trademark Registration No. 4-2010-009793 for CHOWKING CHICKEN SUPREME in Classes 29 and 43;
8. Trademark Registration No. 4-2010-009941 for CHOWKING EMPEROR's BEEF NOODLE SOUP in Class 30;
9. Trademark Registration No. 4-2010-009942 for CHOWKING EMPEROR'S BEEF NOODLE SOUP, BEEF NA BEEF (LOGO) in Classes 30 and 43;
10. Trademark Registration No. 4-2010-010090 for CK CHOWKING LOGO WITH CHINESE CHARACTERS AND DEVICE in Class 43;

11. Trademark Application No. 4-2010-004488 for CHOWKING ORANGE CHICKEN in Classes 29, 35 and 43;
12. Trademark Application No. 4-2010-004487 for CHOWKING ORANGE CHICKEN WITH CHINESE CHARACTERS & DEVICE;
13. Opposer's sample food container using the CHOWKING Trademarks;
14. Sample photographs of CHOWKING restaurants/branches;
15. Original notarized Certificate/Power of Attorney executed by William Tan Untiong; and,
16. Original notarized Secretary's Certificate executed by William Tan Untiong.

On 06 July 2012, Respondent-Applicants filed their Answer disputing the allegations of the Opposer and asserting that the trademark MRCHOW (Stylized) is distinctly, markedly and conspicuously different from Opposer's trademark CHOWKING, that there is no resemblance between the two, and that there is no likelihood of deception, mistake or confusion arising in the ordinary intelligent buyer. According to Respondent-Applicants, the dominant element in their trade mark is not CHOW alone but the entire mark, that is, MRCHOW, as well as the style thereof. The Respondent-Applicants pointed out that they expressly made a disclaimer on the word CHOW, precisely, because it is a generic word that usually indicates "food". The marks also, do not by themselves, sound alike.

The Respondent-Applicants also argued that, as used in their restaurant business, their mark taken as a whole would not in any way suggest a connection, association, or affiliation with the Opposer's mark. The dominant colors and general lay out/presentation of Respondent-Applicants' mark and establishment are far removed from the colors and lay-out/presentation of the mark and establishment of the Opposer.

Finally, the Respondent-Applicants claim that they conceptualized the restaurant business, and thought of an original name to be their mark. Pursuant thereto, they engaged the services of an artist, Ms. Sigrid Buendia, to create the logo/mark/style of the name they thought of and later applied for the mark's registration with the IPO.

The Respondent-Applicants' evidence consists of the following:

1. Application documents for MRCHOW (Stylized), inclusive of Official Receipt No. 0367798;
2. Pictures of the establishment of Respondent-Applicants;
3. Pictures of boxes, containers, menu, menu board bearing the mark MRCHOW;
4. Copy of the menu of the restaurant MRCHOW; and,
5. Affidavit of Ms. Sigrid Buendia.

The preliminary conference was held and terminated on 04 February 2013¹¹ April 2012. Thereafter, the parties submitted their respective position papers.⁴

Should the Respondents-Applicants be allowed to register the trademark MRCHOW (Stylized)?

As culled from the records and evidence, the Opposer has valid and existing registrations for its CHOWKING Trademarks prior to the filing of Respondent-Applicants' MRCHOW (Stylized) trademark, both local and foreign, which are still active and subsisting to date.⁵ These various registrations and applications consist of, or has the word mark CHOWKING on it. On the other hand, Respondent-Applicants' trademark MRCHOW (Stylized) was filed only on 02 July 2010.⁶

⁴ Opposer's Position Paper submitted on 27 June 2013; Respondents-Applicant submitted on 09 July 2013.

⁵ Exhibits "E", "F" to "L" of Opposer.

⁶ Filewrapper records.

But are the competing marks, as shown below, confusingly similar?

CHOWKING

chowking



CHOWKING LAURIAT

CHOWKING CHAOFAN

CHOWKING CHICKEN SUPREME



Opposer's Trademarks

MRCHOW

Respondent-Applicant's Trademark

A practical approach to the problem of similarity or dissimilarity is to go into the whole of the two trademarks pictured in their manner of display. Inspection should be undertaken from the viewpoint of a prospective buyer. The trademark complained of should be compared and contrasted with the purchaser's memory (not in juxtaposition) of the trademark said to be infringed. Some such factors as "sound; appearance; form, style, shape, size or format; color; ideas connoted by marks; the meaning, spelling, and pronunciation, of words used; and the setting in which the words appear" may be considered.⁷ Thus, confusion is likely between marks only if their over-all presentation, as to sound, appearance, or meaning, would make it possible for the consumers to believe that the goods or products, to which the marks are attached, emanate from the same source or are connected or associated with each other.

The eyes can easily see that the marks are different. The similarity between the marks manifests only in the word mark CHOW. Such resemblance, however, is not sufficient to conclude that confusion is likely to occur. Noticeably, the competing marks are presented in distinctive font, and accompanied with independent devices. The marks are also illustrated as one word, CHOWKING as against MRCHOW. Such that, only the word CHOW as component of the entire words CHOWKING and MRCHOW appear similar. However, if taken as a whole the competing marks possess stark differences in visual and aural appearance for which consumers could easily discern negative connection between the two marks.

The word "CHOW" is a common word usually used in relation to food. The word is widely used as a trademark or part thereof. In fact, the Trademark Registry, the contents of which this Bureau can take cognizance of via judicial notice, shows registered marks that consist alone of the word "CHOW"

⁷ Etepha A.G. vs. Director of Patents, G.R. No. L-20635, 31 March 1966.

for goods covering the same or related class, such as: **KWIK CHOW** (Reg. No. 9381 dated 02 June 2011 for class 29); **QUICKCHOW** (Reg. No. 385 dated 17 January 2005 for class 30); **LAKWAT-CHOW** (Reg. No. 502509 dated 15 August 2013 for class 43); **CHOW** (Reg. No. 2451 dated 01 December 1980 for class 31); **HAPPY CHOW** (Reg. No. 13469 dated 07 August 2014 for class 30); and, **JOHNNY CHOW** (Reg. No. 10812 dated 02 June 2011 for class 43). These registered marks are owned by entities or persons other than the Opposer. This show that the registered marks that contain the word "CHOW" as an element or component are used also on goods under classes 29 and 43, which are classification of goods that are similar and/or related to that of the Opposer's. Thus, this only confirms that the word "CHOW" as a mark is not anymore distinctive as far as goods under classes 29 and 43 are concerned.

Corollarily, the enunciation of the Supreme Court in the case of *Mighty Corporation vs. E. & J. Gallo Winery*⁸ aptly states that:


"A very important circumstance though is whether there exists likelihood that an appreciable number of ordinarily prudent purchasers will be misled, or simply confused, as to the source of the goods in question. The 'purchaser' is not the 'completely unwary consumer' but is the 'ordinarily intelligent buyer' considering the type of product involved. he is 'accustomed to buy, and therefore to some extent familiar with, the goods in question. The test of fraudulent simulation is to be found in the likelihood of the deception of some persons in some measure acquainted with an established design and desirous of purchasing the commodity with which that design has been associated. The test is not found in the deception, or the possibility of deception, of the person who knows nothing about the design which has been counterfeited, and who must be indifferent between that and the other. The situation, in order to be objectionable, must be such as appears likely to mislead the ordinary intelligent buyer who has a need to supply and is familiar with the article that he seeks to purchase."

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 This Bureau finds that the Respondent-Applicants' mark meets this function.

WHEREFORE, premises considered, the instant opposition is hereby **DISMISSED**. Let the filewrapper of Trademark Application Serial No. 4-2010-007160 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 03 MAY 2016


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

⁸ G.R. No. 154342, 14 July 2004.

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