

SHARON T. FUENTEBELLA, BENJAMIN F. }
 SANVICTORES, WILLIAM E. RODGERS & }
 ROBERT F. TROTA, }
Opposers, }

- versus - }

MARIANO TY CUA, }
Respondent-Applicant. }

x-----x

IPC No. 14-2015-00576
 Opposition to
 Appln. No. 4-2015-504291
 Date Filed: 30 July 2015

TM – **MAK’S NOODLE**

NOTICE OF DECISION

BENGZON NEGRE UNTALAN

Counsel for Opposers
 2nd Floor, SEDCCO Building
 Rada corner Legaspi Street
 Legaspi Village, Makati City

HECHANOVA AND CO., INC.

Counsel for Respondent-Applicant
 Ground Floor, Chemphil Building
 851 Antonio Arnaiz Avenue
 'Makati City

GREETINGS:

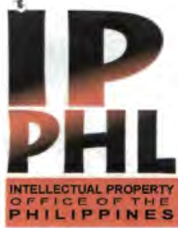
Please be informed that Decision No. 2016 - 349 dated October 06, 2016 (copy enclosed) was promulgated in the above entitled case.

Taguig City, October 06, 2016.

MARILYN F. RETUTAL
 IPRS IV
 Bureau of Legal Affairs

**Republic of the Philippines
 INTELLECTUAL PROPERTY OFFICE**

Intellectual Property Center # 28 Upper McKinley Road, McKinley Hill Town Center, Fort Bonifacio, Tâguig City
 1634 Philippines • www.ipophil.gov.ph
 T: +632-2386300 • F: +632-5539480 • mail@ipophil.gov.ph



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 Trademark: "MAK'S NOODLE"
 Decision No. 2016- 349

DECISION

SHARON T. FUENTEBELLA, BENJAMIN F. SANVICTORES, ROBERT F. TROTA¹ ("Opposers") filed an opposition to Trademark Application Serial No. 4-2015-504291. The application, filed by Mariano Ty Cua² ("Respondent-Applicant"), covers the service mark "MAK'S NOODLE" for use on "noodle restaurant; as far as included in Class 43 and not in other classes" under Class 43 of the International Classification of Goods and Services.³

The Opposers allege:

x x x
"DISCUSSION

"7. As recounted in the Affidavit of Mr. Robert F. Trota, the original of which is attached hereto and made an integral part hereof as Exhibit 'C,' Max's Restaurant's beginnings started in 1945, after World War II. Maximo Gimenez, a Stanford-educated teacher, befriended the American occupation troops stationed at Quezon City. Because of this friendship, the soldiers regularly visited Maximo's nearby home for a drink or two. Later on, the troops insisted that they pay for their drinks. This prompted Maximo to open a café, where the troops could enjoy food and drinks. The café initially served chicken, steak and drinks. Maximo's niece, Ruby, who managed the kitchen, created a special recipe for chicken that became an instant favorite for the GIs. Soon, the Filipino public heard about the delicious chicken-tender, juicy and crispy- and they came too! Max's Restaurant was born. x x x

"8. Over the years, the simple gesture of welcoming American GIs in 1945 with fried chicken gave birth to a proud global Filipino institution. Max's Restaurant's popularity grew and it became known as 'the house that fried chicken built.' From its flagship store along Scout Tuazon in Quezon City, Max's Restaurant initially expanded to Ermita, Manila in 1969, then to Baclaran in 1981. From there, Max's Restaurants

¹With address at 11th Floor, Ecoplaza Building, 2305 Chino Roces Avenue Extension, Makati City, Philippines.

² With address at Unit I, 500 Sunset Drive, Horseshoe Village, Quezon City 1112, Metro Manila, Philippines.

³The Nice Classification is a classification of goods and services for the purpose of registering trademark and service marks, based on a 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 Purposes of the Registration of Marks concluded in 1957.

further expanded in the 1980's to the 1990's to other locations in Metro Manila and the United States of America. Branch after branch of Max's Restaurants opened all over the Philippines, serving top-notch casual dining food, and of course, the fried chicken that everyone loved.

"9. In 1998, Max's Restaurant was opened to franchising, further increasing its extent of operations. Now, Max's Restaurant has one hundred fifty-nine (159) branches nationwide. Aside from the United States of America, Max's Restaurants has likewise ventured to other foreign countries, such as Canada and the United Arab Emirates. One can easily check the extent of operations of Max's Restaurant through its online store locator accessible at http://www.maxschicken.com/index.php?/store_locator.

"10. Thus, Max's Restaurant has established itself as a household name in the Philippines, an institution, and a proud Filipino tradition. The second and third generations of the family continue to zealously uphold the standards and traditions set by Maximo and Ruby for all Max's Restaurants. At present, the famous Max's Restaurant remains the flagship brand of Max's Group Inc., the largest casual dining restaurant company in the Philippines.

"11. From 1945 until the present, the famous trade name 'Max's Restaurant' has been consistently used and aggressively promoted. The goodwill garnered by the excellent food and restaurant services had tacked on to the trade name 'Max's Restaurant'. Attached to the Affidavit and made an integral part of the Opposition as Exhibit 'G' is a compact disk containing representative samples of advertising and promotional materials for Max's Restaurant all over the Philippines, such as but not limited to television commercials from 1993 to 2015, radio advertisements and jingles, billboards, promotions, and other marketing materials.

"12. Max's Restaurant also has the following websites and social media accounts: x x x

"13. Through many years of providing top quality food and restaurant services, Max's Restaurant has gained excellent image and reputation. The following are just a few of the awards it has received over the past 7 or 8 years:

x x x

"14. Meanwhile, Opposers applied for registration of the service mark 'MAX'S RESTAURANT & LOGO' as early as 15 March 1989. The said mark was eventually registered and Opposer's have diligently maintained the mark ever since. Attached to the Affidavit and made an integral part of the Opposition as Exhibit 'H' is a copy of the Certificate of Renewal of Registration No. 048593 covering the mark 'MAX'S RESTAURANT & LOGO.'

"15. On the other hand, derivatives of the 'MAX'S RESTAURANT & LOGO' mark have also been registered in other countries under Opposer's companies, as follows:

x x x

"16. As evident in the foregoing, the registered owners of the mark 'MAX'S RESTAURANT & LOGO' are the first to adopt and use in commerce the highly regarded and well-known trade name 'MAX'S'/'MAX'S RESTAURANT' to identify and

distinguish their enterprise engaged in restaurant services. In this regard, Section 165.1 paragraphs (a) and (b) of the IP Code, provides:

"17. Article 8 of the Paris Convention for the Protection of Industrial Property also states that:

x x x

"18. It is clear from the above that any subsequent use of the trade name by a third party, whether as a trade name or a mark or collective mark, or any such use of a similar trade name or mark, likely to mislead the public, shall be deemed unlawful. x x x

"19. The same can be said in the instant case. The trade name 'MAX'S'/ 'MAX'S RESTAURANT' has been used in commerce continuously since 1945 until the present. Given its long history, extent of use and promotion, commercial value, and reputation, it is even among the most well-known and well-loved brands in the Philippines. Thus, the same must be protected, even prior to or without registration, against any unlawful act committed by third parties. In this case, Respondent-Applicant is seeking to register 'MAK'S NOODLE' as a mark, when it is clearly similar to the trade name 'MAX'S'/ 'MAX'S RESTAURANT'. Pursuant to Section 165.2 of the IP Code, Respondent-Applicant's subsequent use of a mark similar to another proprietor's trade name is unlawful and Respondent-Applicant should be found guilty of trade name infringement. It follows then that Respondent-Applicant should not be allowed to register its proposed mark.

"20. In addition, Opposers are the first to adopt, use, and register the service mark 'MAX'S RESTAURANT & LOGO' under Class 43 for 'restaurant services.' Thus, Opposers are the true owners of the registered mark, 'MAX'S RESTAURANT & LOGO,' with right to use the same to the exclusion of others, such as herein Respondent-Applicant.

"21. Section 123.1 of the IP Code provides in part:

x x x

"22. Withal, Respondent-Applicant's mark 'MAK'S NOODLE' mark cannot be registered because it is virtually identical, or at the very least, strongly resembles the well-known trade name 'MAX'S'/ 'MAX'S RESTAURANT' and the registered service mark 'MAX'S RESTAURANT & LOGO' as to be likely to deceive or cause confusion. Confusion is even more likely considering the services identified by Respondent-Applicant's proposed mark are the same, or at the very least, closely-related to the services covered by the trade name 'MAX'S'/ 'MAX'S RESTAURANT' and the registered service mark 'MAX'S RESTAURANT & LOGO.'

"23. As earlier pointed out, the registration of Respondent-Applicant's 'MAK'S NOODLE' mark is contrary to the provisions of Section 165.2 and Section 123.1 (d) of the IP Code, which proscribe the registration of a prospective mark if it is confusingly similar to a trade name or a registered mark in respect of the same or closely related goods or services.

"24. In determining confusing similarity, the Supreme Court, in McDonald's Corporation vs. L.C. Big Mak Burger, Inc., gave premium to the Dominancy Test as the test to be applied in determining confusing similarity between marks, stating that the test has been explicitly incorporated in Section 155.1 of the IP Code which defines

infringement as the 'colorable imitation of a registered mark xxx or a dominant feature thereof.' This test focuses on the similarity of the main, prevalent, or essential features of the competing trademarks that might cause confusion.

"25. In the instant case, the words that comprise the marks/trade name involved are the dominant feature of each especially the word 'MAK'S' and 'MAX'S' as these words are the distinctive elements of the marks/trade name. Undoubtedly, there is stark similarity, nay, virtual identity, in the words that comprise the competing marks which renders Respondent-Applicant's 'MAK'S NOODLE' mark confusingly similar to the trade name 'MAX'S'/'MAX'S RESTAURANT' and the registered service mark 'MAX'S RESTAURANT & LOGO'.

"26. As early as 1966, the aural effect of the letters contained in the marks has been taken into account by the courts in determining confusing similarity. Thus, in *Marvex Commercial Company, Inc. v. Petra Hawpia & Company*, the Court held:

x x x

"27. In subsequent cases where the Supreme Court applied the Dominancy Test, the aural similarity of the competing marks was also found sufficient to support a finding of confusing similarity.

"28. In *Prosource International, Inc. v. Horphag Research Management SA*, the Supreme Court applied the dominancy test in holding that 'PCO-GENOLS' is confusingly similar to 'PYCNOGENOL' and ruled:

x x x

"29. Also in *McDonald's Corporation v. MacJoy Fastfood Corporation*, the Supreme Court applied the dominancy test in holding that 'MACJOY' is confusingly similar to 'MCDONALD'S.' The Court held:

x x x

"30. Also in *McDonald's Corporation v. L.C. Big Mak Burger, Inc.*, the Court applied the dominancy test in holding that 'BIG MAK' is confusingly similar to 'BIG MAC' and held:

x x x

"31. In *Societe Produits Nestle, S.A. v. Dy, Jr.*, the Court held:

x x x

"32. In *Dermaline, Inc. v. Myra Pharmaceuticals, Inc.*, the Court held:

x x x

"33. It is clear from the foregoing that, following the *idem sonans* rule cited in *Marvex*, aural similarity is sufficient to uphold a finding of confusing similarity. In this present case, there is even more reason to uphold a finding of confusing similarity, because the marks are not just aurally similar, but are aurally identical.

"34. Applying the wisdom and ratiocinations of the Supreme Court in the foregoing jurisprudence, it is patent that Respondent-Applicant's 'MAK'S NOODLE' mark is confusingly similar to the trade name 'MAX'S'/'MAX'S RESTAURANT' and the registered service mark 'MAX'S RESTAURANT & LOGO,' due to their stark similarity in letters, spelling, and pronunciation. Effectively, the marks leave the same visual, aural

and commercial impression in the minds of the public. The word 'MAK'S' is virtually identical in sound with 'MAX'S.' Given the long, continuous, and extensive use of the very popular trade name 'MAX'S'/'MAX'S RESTAURANT' and the registered service mark 'MAX'S RESTAURANT & LOGO', the term 'MAX'S' has become so distinctive in the minds of the public. Thus, it is all the more likely for consumers to be confused in terms of goods and origin when confronted with another restaurant using a service that sounds just like 'MAX'S',

"35. While Respondent-Applicant's 'MAK'S NOODLE' mark is not completely identical to the trade name 'MAX'S'/'MAX'S RESTAURANT' and the registered service mark 'MAX'S RESTAURANT & LOGO,' this should not prevent a finding of likelihood of confusion. Exact duplication or imitation is not required. The question is whether the use of the marks involved is likely to cause confusion or mistake in the mind of the public or to deceive consumers. When there are small differences between the marks, the differences may be de minimis when compared to the similarities, such as in this case.

"36. The addition of the word 'NOODLE' in Respondent's mark, and 'RESTAURANT' in the trade name and service mark are not sufficient to distinguish one from the other, since these words are not distinctive to the services involved. The addition of the word 'NOODLE' in Respondent's mark, and 'RESTAURANT' in the trade name and service mark is but a minor difference in the mark that is outweighed by the similarities between the two marks. x x x

"37. Confusion is all the more likely considering the services involved are practically identical. In this regard, Section 147 of the IP Code provides:

x x x

"38. For this Honorable Office's appreciation, below are the goods covered by the parties' respective service name:

x x x

"39. It is patent that there is an overlap in the services covered by Opposer's service mark registration and Respondent-Applicant's application. The services involved are virtually identical and therefore, proscribed under Section 123.1 (d) (i). Otherwise, it is, at the very least proposed to be used for services that are closely related to that covered by Opposer's registration for 'MAX'S RESTAURANT & LOGO,' and therefore, proscribed under Section 123.1 (d) (ii).

"40. Since Respondent-Applicant's services are the same or at the very least closely related to Opposer's services, consumers may mistake one Respondent-Applicant's services for Opposer's goods, or would reasonably assume that they originate from one supplier. In such case, both confusion of source and confusion of business can arise out of the use of similar marks on the same service and on closely-related service.

"41. There are two types of confusion: confusion of goods and confusion of business. In confusion of goods, the ordinarily prudent purchaser would be induced to purchase one product in the belief that he was purchasing the other. In confusion of business, 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. In this case, the use of identical or virtually identical marks on the same goods would engender confusion of source, while the use of identical or virtually identical marks on closely-related goods will surely engender confusion of business.

"42. Furthermore, it is well-settled that the registered trademark owner enjoys protection in product and market areas that are the normal potential expansion of his business. Indeed, the scope of protection afforded to registered trademark owners is not limited to protection from infringers with identical goods but also to protection from infringers with related goods, and to market areas that are the normal expansion of business of the registered trademark owners. The registered trademark owner may use its mark on the same or similar products, in different segments of the market, and at different price levels depending on variations of the products for specific segments of the market.

"43. In the instant case, if Respondent-Applicant's 'MAK'S NOODBLE' mark is allowed registration, Opposers would be prevented from using their service mark and trade name for 'noodle restaurant,' even though such services are within the normal potential expansion of Opposer's business. This is all the more likely since Max's Restaurant already offers food items like pancit canton, pancit luglug, and pancit bihon, as can be seen in this link: <http://delivery.maxchicken.com/>. It also regularly introduces new items in its menu. Thus, it is not at all remote for Max's Restaurant to expand its noodle menu, or to pen new noodle concepts. As a registered owner of a service mark for 'restaurant business' under Class 43, Opposer should be protected from such curtailment of its intellectual property rights.

"44. In sum, Respondent-Applicant's 'MAK'S NOODLE' mark should be denied registration because it is confusingly similar to the trade name 'MAX'S/'MAX'S RESTAURANT' and the registered service mark 'MAX'S RESTAURANT & LOGO', and used on the same or, at the very least, closely related services, as to likely deceive or confuse the public as to the identity, source, and affiliation of the service represented by the proposed mark.

"45. Lastly, it is well-worth to remember that the second comer has a duty to so name and dress his product as to avoid all likelihood of consumers confusing it with the product of the first comer. One who adopts a mark similar to the mark of another for closely related goods acts at his peril and any doubt there might be must be resolved against him. In this case, Respondent-Applicant is clearly the new comer, and its adoption of a mark confusingly similar to a previously used trade name and previously registered service mark is clearly violative of trademark laws. Furthermore, the trade name 'MAX'S/'MAX'S RESTAURANT' and the registered service mark 'MAX'S RESTAURANT & LOGO' are very much well-known in the Philippines, and even in other countries. Considering its long history, the duration, extent and scope of its use, promotion and marketing, the commercial value and reputation it has garnered, the awards and accolades it has received, it has become one of the most beloved brands in the Philippine food industry. Such a well-known brand all the more deserves protection from those attempting to ride upon the immense goodwill that the brand has garnered all these years. Consequently, the application for trademark registration filed by Respondent-Applicant's should be denied.

The Opposers' evidence consists of the Notice of Opposition; print-out of the E-Gazette Publication concerning Respondent-Applicant's mark; the Affidavit of Robert F. Trota; print-out of the webpage http://www.maxschicken.com/index.php?/about_us; a compact disk showing historical use of the trade name "Max's" or "Max's Restaurant", locally and abroad, and print, and original print-outs of the CD; compact disk containing representative samples of advertising and promotional materials for Max's Restaurant all over the Philippines and digital copies of photos of Max's Restaurant; and a copy of the Certificate of Renewal of Registration No. 048593 covering the mark "MAX'S RESTAURANT & LOGO".⁴

This Bureau issued a Notice to Answer and served a copy thereof upon Respondent-Applicant on 12 February 2016. Said Respondent-Applicant, however, did not file an Answer.

Should the Respondent-Applicant be allowed to register the trademark MAK'S NOODLE?

The Opposers anchor its opposition on the following provisions of Republic Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code"):

Sec. 123. Registrability. - 123.1. A mark cannot be registered if it:

x x x

- (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;"

Sec. 134. *Opposition.* - Any person who believes that he would be damaged by the registration of a mark may, upon payment of the required fee and within thirty (30) days after the publication referred to in Subsection 133.1, file with the Office an opposition to the application. Such opposition shall be in writing and verified by the oppositor or by any person on his behalf who knows the facts, and shall specify the grounds on which it is based and include a statement of the facts relied upon. Copies of certificates of registration of marks registered in other countries or other supporting documents mentioned in the opposition shall be filed therewith, together with the translation in English, if not in the English language. For good cause shown and upon payment of the required surcharge, the time for filing an opposition may be extended by the Director of Legal Affairs, who shall notify the applicant of such extension. The Regulations shall fix the maximum period of time within which to file the opposition.

Sec. 165. *Trade Names or Business Names.* - 165.1. A name or designation may not be used as a trade name if by its nature or the use to which such name or designation may be put, it is

⁴Marked as Exhibits "A" to "H", inclusive.

contrary to public order or morals and if, in particular, it is liable to deceive trade circles or the public as to the nature of the enterprise identified by that name.

165.2. (a) Notwithstanding any laws or regulations providing for any obligation to register trade names, such names shall be protected, even prior to or without registration, against any unlawful act committed by third parties.

(b) In particular, any subsequent use of the trade name by a third party, whether as a trade name or a mark or collective mark, or any such use of a similar trade name or mark, likely to mislead the public, shall be deemed unlawful.

Records show that at the time the Respondent-Applicant filed its trademark application on 30 July 2015, the Opposers have an existing trademark registration for the mark MAX'S RESTAURANT & LOGO under Reg. No. 048593 issued on 18 July 1990. The registration covers "restaurant business" under Class 43. This Bureau noticed that the services covered by Respondent-Applicant's trademark application are similar or closely-related to the Opposers'.

The marks are shown below:



Opposer's trademark

Mak's Noodle

Respondent-Applicant's mark

As can be readily observed with a side-by-side comparison of the competing marks, Respondent-Applicant's mark MAK'S NOODLE is substantially or confusingly similar with Opposers' MAX'S RESTAURANT & LOGO trademark. Except with the use of the chicken device, the two marks are substantially similar, if not identical. MAK'S NOODLE appears and sounds almost the same as Opposers' MAX'S RESTAURANT & LOGO. It could result to mistake with respect to perception because the marks sound so similar. Under the idem sonans rule, the following trademarks were held confusingly similar in sound: "BIG MAC" and "BIG MAK"⁵, "SAPOLIN" and "LUSOLIN"⁶, "CELDURA" and "CORDURA"⁷, "GOLD DUST" and "GOLD DROP".

⁵ *MacDonalds Corp, et. al v. L. C. Big Mak Burger*, G.R. No. L-143993, 18 August 2004.

⁶ *Sapolin Co. v. Balmaceda and Germann & Co*, m 67 Phil, 705.

⁷ *Co Tiong SA v. Director of Patents*, G.R. No. L- 5378, 24 May 1954; *Celanes Corporation of America vs. E. I. Du Pont de Nemours & Co.* (1946), 154 F. 2d 146 148.)

The Supreme Court ruled that similarity of sound is sufficient ground to rule that two marks are confusingly similar, to wit:

Two letters of "SALONPAS" are missing in "LIONPAS": the first letter a and the letter s. Be that as it may, when the two words are pronounced, the sound effects are confusingly similar. And where goods are advertised over the radio, similarity in sound is of especial significance...."SALONPAS" and "LIONPAS", when spoken, sound very much alike. Similarity of sound is sufficient ground for this Court to rule that the two marks are confusingly similar when applied to merchandise of the same descriptive properties.⁸

Also, the Respondent-Applicant uses or will use the mark on services that are exactly the same as the services the Opposers deal in, i.e., on restaurant business. Thus, it is likely that the consumers will have the impression that these goods originate from a single source or origin. The confusion or mistake would subsist not only on the purchaser's perception of goods but on the origin thereof as held by the Supreme Court, to wit:

Callman notes two types of confusion. The first is the confusion of goods in which event the ordinary 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 belief that there is some connection between the plaintiff and defendant which, in fact does not exist.⁹

Public interest therefore requires, that two marks, identical to or closely resembling each other and used on the same and closely related goods, but utilized by different proprietors should not be allowed to co-exist. Confusion, mistake, deception, and even fraud, should be prevented. It is emphasized that 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.¹⁰

Also, Opposers have been using MAX'S/MAX'S RESTAURANT as trade name or business name since 1945. As a trade name, MAX'S/MAX'S RESTAURANT is protected under Section 165 of the IP Code, to wit:

⁸ *Marvex Commercial Co., Inc. v. Petra Hawpia & Co., et. al.*, G.R. No. L-19297, 22 Dec. 1966.

⁹ *Converse Rubber Corp. v. Universal Rubber Products, Inc. et. al.*, G.R. No. L-27906, 08 Jan. 1987.

¹⁰ *Pribhdas J. Mirpuri v. Court of Appeals*, G.R. No. 114508, 19 November 1999, citing *Ethepe v. Director of Patents, supra, Gabriel v. Perez*, 55 SCRA 406 (1974). See also Article 15, par. (1), Art. 16, par. (1), of the Trade Related Aspects of Intellectual Property (TRIPS Agreement).

Sec. 165. *Trade Names or Business Names.* - 165.1. A name or designation may not be used as a trade name if by its nature or the use to which such name or designation may be put, it is contrary to public order or morals and if, in particular, it is liable to deceive trade circles or the public as to the nature of the enterprise identified by that name.

165.2.(a) Notwithstanding any laws or regulations providing for any obligation to register trade names, such names shall be protected, even prior to or without registration, against any unlawful act committed by third parties.

(b) In particular, any subsequent use of the trade name by a third party, whether as a trade name or a mark or collective mark, or any such use of a similar trade name or mark, likely to mislead the public, shall be deemed unlawful.

165.3. The remedies provided for in Sections 153 to 156 and Sections 166 and 167 shall apply *mutatis mutandis*.

165.4. Any change in the ownership of a trade name shall be made with the transfer of the enterprise or part thereof identified by that name. The provisions of Subsections 149.2 to 149.4 shall apply *mutatis mutandis*.

Succinctly, the field from which a person may select a trademark is practically unlimited. As in all other cases of colorable imitations, the unanswered riddle is why of the millions of terms and combinations of letters and designs available, the Respondent-Applicant had to come up with a mark identical or so closely similar to another's mark if there was no intent to take advantage of the goodwill generated by the other mark.¹¹

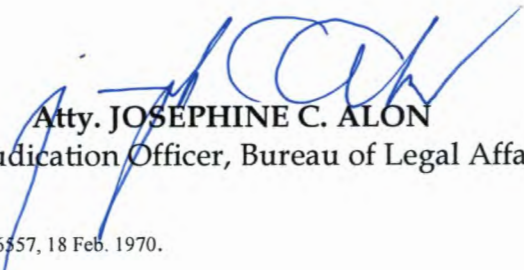
The intellectual property system was established to recognize creativity and give incentives to innovations. Similarly, the trademark registration system seeks to reward entrepreneurs and individuals who through their own innovations were able to distinguish their goods or services by a visible sign that distinctly points out the origin and ownership of such goods or services.

In conclusion, the subject trademark application is covered by the proscription under Sec. 123.1(d) (iii) of the IP Code.

WHEREFORE, premises considered, the instant Opposition to Trademark Application No. 4-2015-504291 is hereby SUSTAINED. Let the filewrapper of the subject trademark application be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 06 OCT 2016.


Atty. JOSEPHINE C. ALON
Adjudication Officer, Bureau of Legal Affairs

¹¹ *American Wire & Cable Company v. Director of Patents*, G.R. No. L-26557, 18 Feb. 1970.