



SAN MIGUEL FOODS, INC.,
Opposer,

-versus-

SO MEATY FOOD PRODUCTS, INC.,
Respondent-Applicant.

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IPC No. 14-2013-00111
Opposition to:
Appln No. 4-2012-004028
Date Filed: 30 March 2012
TM: "MEAT EXPRESS"

NOTICE OF DECISION

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

SO MEATY FOOD PRODUCTS, INC.
Respondent-Applicant
747 M. L. Quezon Street, Purok 5
Sucat, Muntinlupa City

GREETINGS:

Please be informed that Decision No. 2016 - 328 dated September 28, 2016 (copy enclosed) was promulgated in the above entitled case.

Taguig City, September 28, 2016.

Atty. GINALYN S. BADIOLA
Adjudication Officer, Bureau of Legal Affairs

SAN MIGUEL FOODS, INC.,
Opposer,

- versus -

SO MEATY PRODUCTS, INC.,
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IPC No. 14-2013-00111
Opposition to:

Appln. No. 4-2012-004028
Date Filed: 30 March 2012
Trademark : "MEAT EXPRESS"

Decision No. 2016 - 328

DECISION

SAN MIGUEL FOODS, INC. ("Opposer"),¹ filed a verified opposition to Trademark Application Serial No. 4-2012-004028. The application, filed by SO MEATY PRODUCTS, INC. ("Respondent-Applicant"),² covers the mark "MEAT EXPRESS" for use on goods under class³ 35 namely: *meat shop*.

The Opposer alleges the following grounds for opposition:

"I. Respondent-Applicant's mark 'MEAT EXPRESS' is confusingly similar to the duly-registered mark 'MONTEREY MEAT EXPRESS AND DEVICE' covered by Philippine Trademark Registration No. 4-2010-001016, owned and used by Opposer. Thus, registration of Respondent-Applicant's mark 'MEAT EXPRESS' will cause prejudice to both Opposer and its hundreds of franchisees.

II. Opposer's disclaimer of the words 'MEAT EXPRESS' in its registered mark did not, under the law, prejudice its right to the same, especially since the words have become distinctive of Opposer's services covered by Registration No. 4-2010-001016.

III. At the very least, Respondent-Applicant should have similarly disclaimed the exclusive right to use the combination of words 'MEAT EXPRESS', thereby decimating the mark covered by the subject opposed application."

The Opposer's evidence consists of the following:

1. Secretary's Certificate;
2. Certificate of Filing of Amended Articles of Incorporation;
3. Relevant page of the e-Gazette relating to trademark MEAT EXPRESS;
4. Copy of Registration No. 4-2010-001016 for MONTEREY Meat Express;
5. Copy of the DAU of MONTEREY Meat Express;
6. Sample pictures of MONTEREY Meat Express freezer installations; and,
7. Copy of Registrability Report.

¹ A domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with business address at The JMT Corporate Condominium, ADB Avenue, Ortigas Center, Pasig City.

² With address at 747 M.L. Quezon St. Purok 5, Sucat, Muntinlupa City.

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.

Just

This Bureau issued and served upon the Respondent-Applicant a Notice to Answer on 30 May 2013. Respondent-Applicant however, did not file an answer. Thus, this instant case is deemed submitted for decision.⁴

Should the Respondent-Applicant be allowed to register the trademark MEAT EXPRESS?

As culled from the records, the Opposer has valid and existing registration for its mark "MONTEREY MEAT EXPRESS"⁵ under Registration No. 1016 dated 16 September 2010. Opposer has also other trademark registrations consisting of the word mark MONTEREY as its house mark.⁶ On the other hand, Respondent-Applicant filed its application only on 30 March 2012. Unquestionably, the Opposer's application and registration of the mentioned marks preceded that of Respondent-Applicant's.

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



Opposer's Trademark

Respondent-Applicant's Trademark

The competing marks appear visually similar because of the identical words "MEAT EXPRESS". While Opposer's registered trademark "MONTEREY MEAT EXPRESS" contains its house mark "MONTEREY", the existence of "MONTEREY" cannot outweigh the evident similarity of the competing marks. Apparently, Respondent-Applicant's subject mark is a plain and simple font-face word mark "MEAT EXPRESS", devoid of any device. It bears no distinctive character and appearance to distinguish it from that of Opposer's. Thus, the over-all presentation of the marks, as presented side-by-side, creates likelihood of confusion.

In addition, the competing marks are used on goods and/or service under the same classification 35, which particularly refers to retailing of fresh meats, pork, beef, marinated fresh meats and cooked meats⁷; and, meat shop⁸, respectively. These goods/service are deemed similar and/or closely related to one another.

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.⁹ Colorable imitation does not

⁴ Order No. 2013-993 dated 11 July 2013.

⁵ Exhibit "D" and "E" of Opposer.

⁶ IPO Philippine Trademark Database, available at <http://www.wipo.int/branddb/ph/en/> (last accessed 26 September 2016).

⁷ Id.

⁸ Filewrapper records.

⁹ Societe Des Produits Nestle, S.A. v. Court of Appeals, G.R. No. 112012, 04 April 200, 356 SCRA 207, 217.

mean such similitude as amount to identify, nor does it require that all details be literally copied. Colorable imitation refers to such similarity in form, context, words, sound, meaning, special arrangement or general appearance of the trademark with that of the other mark or tradename in their over-all presentation or in their essential substantive and distinctive parts as would likely to mislead or confuse persons in the ordinary course of purchasing the genuine article.¹⁰

Also, considering the similarity or relatedness of goods carried by the contending marks, the consumers will have the impression that these products originate from a single source or origin or they are associated with one another. The likelihood of confusion therefore, would subsist not only on the purchaser's perception of goods but on the origin thereof as held by the Supreme Court, to wit:¹¹

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. Hence, 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.

Sec. 123.1 (d) R.A. No. 8293, otherwise known as the Intellectual Property Code ("IP Code") provides:

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;

x x x

The public interest, therefore, requires that the 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 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.¹²

In contrast, the Respondent-Applicant despite the opportunity given, failed to explain how it arrived at using the mark "MEAT EXPRESS" as it failed to file a Verified Answer. The Opposer's mark "MONTEREY MEAT EXPRESS" is unique and highly distinctive with respect to the goods it is attached with.

¹⁰ Converse Rubber Corporation v. Universal Rubber Products, Inc., et al., G.R. No. L-27906, 08 January 1987.

¹¹ Id.

¹² Pribhdas J. Mirpuri v. Court of Appeals, G.R. No. 114508, 19 Nov. 1999.



WHEREFORE, premises considered, the instant Opposition to Trademark Application No. 4-2012-004028 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. 28 SEP 2016



Atty. GINALYN S. BADIOLA
Adjudication Officer, Bureau of Legal Affairs