

JOLLIBEE FOODS CORPORATION,
Opposer,

IPC No. 14-2012-00070

-versus-

Opposition to:
Appln. Serial No. 4-2011-005820
Date Filed: 20 May 2011

ALDRTZ CORPORATION,
Respondent-Applicant.

TM: "BEECARD"

x-----x

NOTICE OF DECISION

QUISUMBING TORRES

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26th Street corner 3rd Avenue
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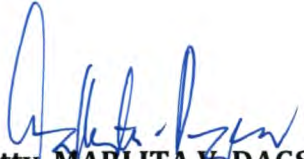
ALDRTZ CORPORATION

Respondent- Applicant
23 Alijis-Murcia Road
Bacolod City, Negros Occidental 6100

GREETINGS:

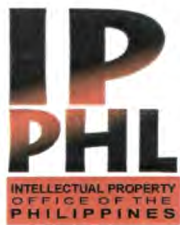
Please be informed that Decision No. 2016 - 318 dated 23 September 2016 (copy enclosed) was promulgated in the above entitled case.

Taguig City, 23 September 2016.


Atty. **MARLITA V. DAGSA**
Adjudication Hearing Officer
Bureau of Legal Affairs

Republic of the Philippines
INTELLECTUAL PROPERTY OFFICE

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Decision No. 2016- 318

DECISION

JOLLIBEE FOODS CORPORATION ("Opposer")¹ filed an Opposition to Trademark Application Serial No. 4-2011-005820. The application filed by ALDRTZ CORPORATION ("Respondent-Applicant")², covers the mark "BEECARD" for used on "print, radio and television advertisements for marketing of goods, business management-direct selling, discount cards" under Class 35 of the International Classification of Goods and Services³.

The Opposer alleges that the registration of the Respondent-Applicant's mark BEECARD is contrary to the provisions of Sections 123.1 (d), (e) and (f) of Republic Act No. 8293, as amended, otherwise known as the Intellectual Property Code of the Philippines ("IP Code"). Opposer claims that it is the owner and first user of the internationally well-known JOLLIBEE mark and other marks containing the word JOLLIBEE or BEE (hereafter collectively referred to as the "JOLLIBEE Trademarks"), which have been registered and/or applied for registration with the Philippine Intellectual Property Office ("IPO") for a wide range of food products and related services in various classes. According to Opposer, Respondent-Applicant's mark BEECARD is confusingly similar to its JOLLIBEE trademarks because the presence of the word BEE in Respondent's mark will likely lead the consuming public to associate the services rendered under the BEECARD discount cards as originating from or being sponsored by it.

The Opposer's evidence consists of the following:

Exhibit "A" - Original notarized Verified Notice of Opposition;
Exhibit "B" - Original notarized Affidavit of Atty. Gonzalo D.V. Go III and its attachments, namely;

¹ A corporation organized under the laws of the Philippines with address at 17th Floor, Jollibee Plaza Building, Emerald Avenue, Ortigas Center, PAsig City, Philippines.

² With address at 23 Alijis Murcia Road, BAcolod City, Negros Occidental 6100.

³ 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.

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Exhibits "C", "C-1" to "C-20" - Screen shots of Opposer's website, www.jollibee.com.ph, featuring the various JOLLIBEE food and food products as well as JOLLIBEE restaurant locations in the Philippines and overseas;

Exhibit "D" - Table showing the details of Opposer's applications and registrations for the JOLLIBEE Trademarks worldwide;

Exhibit "E" - CD-ROM, containing a copy of a television commercial for JOLLIBEE Spaghetti;

Exhibit "E-1" - CD-ROM, containing a copy of a television commercial for JOLLITOWN;

Exhibit "E-2" - Jollibee Flyer for "JOLLITOWN Christmas Bucket Treats";

Exhibit "E-3" - Jollibee Flyer for "Juice Up 'N Win a Mini";

Exhibit "E-4" - Jollibee Flyer for "Chicken Nugget Crunches";

Exhibit "E-5" - Jollibee Flyer for "Grilled Pork Tenders";

Exhibit "E-6" - Jollibee Flyer for "Happy Plus Cards";

Exhibit "F" - Copy of Philippine Trademark Registration No. 4-2002-000185 issued by the Philippine Intellectual Property Office on 18 January 2004 for BEE HAPPY in Class 42;

Exhibit "G" - Copy of Philippine Trademark Registration No. 4-2000-007421 issued by the Philippine Intellectual Property Office on 24 September 2005 for JOLLIBEE in Classes 16 and 28;

Exhibit "H" - Copy of Philippine Trademark Registration No. 4-2000-006900 issued by the Philippine Intellectual Property Office on 10 March 2006 for JOLLIBEE in Classes 29, 30, 32 and 42;

Exhibit "I" - Copy of Philippine Trademark Registration No. 4-2009-006900 issued by the Philippine Intellectual Property Office on 12 November 2009 for JOLLIBEE CHAMP in Classes 29 and 35;

Exhibit "J" - Copy of Philippine Trademark Registration No. 4-2009-006905 issued by the Philippine Intellectual Property Office on 12 November 2009 for JOLLIBEE CHAMP.BIG BURGER GOODNESS LIKE NO OTHER in Class 35;

Exhibit "K" - Copy of Philippine Trademark Registration No. 4-2010-004204 issued by the Philippine Intellectual Property Office on 13 January 2011 for JOLLIBEE CHIICKEN BARBEQUE INSIDE A RECTANGULAR DEVICE in Classes 29 and 35;

Exhibit "L" - Copy of Philippine Trademark Registration No. 4-2010-004233 issued by the Philippine Intellectual Property Office on 13 January 2011 for JOLLIBEE CHICKEN BARBEQUE DELICIOUS INSIDE AND OUT INSIDE A RECTANGULAR DEVICE (IN COLOR) in Classes 29 and 35;

Exhibit "M" - Copy of Philippine Trademark Registration No. 4-2010-004234 issued by the Philippine Intellectual Property Office on 28 January 2011 for JOLLIBEE CHICKEN BARBEQUE INSIDE A RECTANGULAR DEVICE (IN COLOR) in Classes 29 and 35;

Exhibit "N" - Copy of Philippine Trademark Registration No. 4-2009-006901 issued by the Philippine Intellectual Property Office on 24 December 2009 for JOLLIBEE BREAKFAST JOYS in Classes 29 and 35;

Exhibit "O" - Copy of Philippine Trademark Registration No. 4-2003-008178 issued by the Philippine Intellectual Property Office on 18 December 2006 for JOLLIBEE YUMBURGER AND DEVICE in Classes 29 and 43;



Exhibit "P" - Copy of Philippine Trademark Registration No. 4-2010-002055 issued by the Philippine Intellectual Property Office on 22 July 2010 for JOLLIBEE LOGO & DEVICE in Classes 29, 30 and 43;

Exhibit "Q" - Copy of Philippine Trademark Registration No. 4-2005-002450 issued by the Philippine Intellectual Property Office on 18 December 2006 for JOLLIBEE SUPER MEALS in Class 43;

Exhibit "R" - Copy of Philippine Trademark Registration No. 4-2011-003543 issued by the Philippine Intellectual Property Office on 27 October 2011 for JOLLIBEE IN TRAPEZOID DEVICE (IN COLOR) in Class 43;

Exhibit "S" - Copy of Philippine Trademark Registration No. 4-2011-003560 issued by the Philippine Intellectual Property Office on 15 September 2011 for JOLLIBEE IN TRAPEZOID AND BEE HEAD DEVICE in Class 43;

Exhibit "T" - Copy of Philippine Trademark Registration No. 4-2011-003561 issued by the Philippine Intellectual Property Office on 04 August 2011 for JOLLIBEE IN TRAPEZOID DEVICE in Class 43;

Exhibit "U" - copy of Philippine Trademark Registration No. 4-2011-003613 issued by the Philippine Intellectual Property Office on 27 October 2011 for JOLLIBEE IN TRAPEZOID AND BEE HEAD DEVICE (IN COLOR) in Class 43;

Exhibit "V" - Copy of Philippine Trademark Registration No. 4-2010-005306 issued by the Philippine Intellectual Property Office on 16 December 2010 for JOLLIBEE KIDS TV INSIDE A SQUARE DEVICE (IN COLOUR) in Class 16, 35 and 41;

Exhibit "W" - copy of Philippine Trademark Registration No. 4-2010-005305 issued by the Philippines Property Office on 16 December 2010 for JOLLIBEE KIDS TV AND DEVICE WITH JOLLIBEE CHARACTER ON THE LEFT SIDE (IN COLOUR) in Classes 16, 35 and 41;

Exhibit "X" - Copy of Philippine Trademark Registration No. 4-2010-005307 issued by the Philippine Intellectual Property Office on 31 December 2010 for JOLLIBEE KIDS MEAL INSIDE A CIRCLE DEICE WITH A GRAPHIC DESIGN OF A FORK ON THE LEFT SIDE AND A SPOON ON THE RIGHT SIDE (IN COLOUR) in Classes 16 and 35;

Exhibit "Y" - Copy of Philippine Trademark Registration No. 4-2010-005302 issued by the Philippine Intellectual Property Office on 31 December 2010 for JOLLIBEE KIDS CLUB INSIDE A CIRCLE DEVICE WITH A GRAPHIC DESIGN OF FACES OF KIDS AND A JOLLIBEE CHARACTER ON THE UPPER LEFT SIDE (IN COLOUR) in Classes 16 and 35;

Exhibit "Z" - Copy of Philippine Trademark Registration No. 4-2010-005303 issued by the Philippine Intellectual Property Office on 23 December 2010 for JOLLIBEE KIDS CLUB INSIDE A CIRCLE DEVICE WITH A GRAPHIC DESIGN OF FACES OF KIDS (IN COLOUR) in Classes 16 and 35;

Exhibit "AA" - Copy of Philippine Trademark Registration No. 4-2010-005152 issued by the Philippine Intellectual Property Office on 31 December 2010 for JOLLIBEE KIDS TV INSIDE A SQUARE DEVICE in Classes 16, 35 and 41;

Exhibit "BB" - Copy of Philippine Trademark Registration No. 4-2010-005151 issued by the Philippine Intellectual Property Office on 31 December 2010 for JOLLIBEE KIDS TV AND DEVICE WITH JOLLIBEE CHARACTER ON THE LEFT SIDE in Classes 16, 35 and 41;



Exhibit "CC" - Copy of Philippine Trademark Registration No. 4-2010-005153 issued by the Philippine Intellectual Property Office on 31 December 2010 for JOLLIBEE KIDS MEAL INSIDE A CIRCLE DEVICE WITH A GRAPHIC DESIGN OF A FORK ON THE LEFT SIDE AND A SPOON ON THE RIGHT SIDE in Classes 16 and 35;

Exhibit "DD" - Copy of Philippine Trademark Registration No. 4-2010-005154 issued by the Philippine Intellectual Property Office on 31 December 2010 for JOLLIBEE KIDS MEALS INSIDE A CIRCLE DEVICE WITH A GRAPHIC DESIGN OF A FORK ON THE LEFT SIDE AND A SPOON ON THE RIGHT SIDE AND A JOLLIBEE CHARACTER ON THE UPPER LEFT SIDE in Classes 16 and 35;

Exhibit "EE" - Copy of Philippine Trademark Registration No. 4-2010-005155 issued by the Philippine Intellectual Property Office on 31 December 2010 for JOLLIBEE KIDS CLUB INSIDE A CIRCLE DEVICE WITH A GRAPHIC DESIGN OF FACES OF KIDS in Classes 16 and 35;

Exhibit "FF" - Copy of Philippine Trademark Registration No. 4-2010-005156 issued by the Philippine Intellectual Property Office on 31 December 2010 for JOLLIBEE KIDS CLUB INSIDE A CIRCLE DEVICE WITH A GRAPHIC DESIGN OF FACES OF KIDS AND JOLLIBEE CHARACTER ON THE UPPER LEFT SIDE in Classes 16 and 35;

Exhibit "GG" - Copy of Philippine Trademark Registration No. 4-2005-007558 issued by the Philippine Intellectual Property Office on 19 February 2007 for JOLLIBEE in Classes 9, 18, 20, 21, 24 and 25;

Exhibit "HH" - Opposer's sample food container using the JOLLIBEE & BEE HEAD DEVICE;

Exhibit "II" - Sample promotional materials and advertisements of Jollibee and its products;

Exhibit "JJ" - Sample photographs of Jollibee's HAPPYPLUS incentive/discount cards;

Exhibit "KK" - Sample photographs of JOLLIBEE restaurants/branches and printouts from the website www.jollibee.com.ph of JOLLIBEE store locations in the Philippines and worldwide;

Exhibit "LL" - Original notarized Certificate/Power of Attorney executed by William Tan Untiong conforming the authority of Atty. Gonzalo D.V. Go III to verify the Notice of Opposition and execute the certificate of non-forum shopping and the authority of undersigned counsel to represent Opposer in these proceedings; and

Exhibit "MM" - Original notarized Secretary's Certificate executed by William Tan Untiong regarding the execution of the Certificate/Power of Attorney.

This Bureau issued a Notice to Answer and served a copy thereof upon the Respondent-Applicant on 29 March 2012. However, no answer was filed. Accordingly, the Hearing Officer issued an Order on 16 October 2012 declaring the Respondent-Applicant in default and the case was submitted for decision based on the opposition and the evidence submitted by the Opposer.

Should the Respondent-Applicant's **BEECARD** mark be allowed registration?



Sec. 123.1 (d) of R.A. No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code"), provides that a mark cannot be registered if it is identical with a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date in respect of the same goods or services or closely related goods or services, or if it nearly resembles such a mark as to be likely to deceive or cause confusion.

Records show that at the time the Respondent-Applicant filed its trademark application on 20 May 2011, the Opposer has already an existing trademark registrations and/or applied for registration of its mark JOLLIBEE and its variants with the Intellectual Property Office ("IPO") for a wide range of food products and related services in various classes.

But are the marks of Opposer and Respondent-Applicant identical or confusingly similar so as to prevent the registration of the latter's mark? The competing marks are reproduced below for comparison:



Opposer's Mark

BEECARD

Respondent-Applicant's Mark

This Bureau does not agree with the Opposer's claim that the Respondent-Applicant's BEECARD mark is confusingly similar to its JOLLIBEE marks. While the word "BEE" which is a component of Respondent's BEECARD mark is identical with the last syllable of Opposer's mark, the word BEE is a commonly used mark either as a stand-alone mark or in combination with other word or words. In fact, as shown by this Office's Trademark Database, there are several marks that have been registered and pending registration with the Bureau of Trademarks that uses the word BEE as a stand-alone mark or in combination with other terms in various classes including class 35. Among these marks are BEE, BEEBEE, BEE POWERED, BEE FUN, BEE PAMPERED, MUSIC BEE, BEE EASY KING BEE, ROSE BEE AND CRISPEE BEE. The marks LITTLE BEE, CRISPY BEE, GOLDEN BEE and BEE LED-BOARD have been registered for Class 35. This only shows that the use of the word BEE has not been exclusively appropriated by Opposer. Thus, the use by Respondent of the word BEE as part of its mark will not bring about association with Opposer.

Furthermore, the presentation of the mark of Respondent-Applicant is not in any way similar to any of Opposer's mark so as to likely create confusion, mistake or deception to the public nor does it suggest that Respondent-Applicant is riding on the popularity of Opposer's marks. Although Opposer also offers a card to its customer for cashless payments and rewards, its card is called HAPPY PLUS which is not at all similar to Respondent's BEECARD. In view thereof, the possibility that the consumers or the public in general will likely be

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confused or mistaken or be deceived that the product of Respondent-Applicant comes from, originated or sourced from or manufactured by Opposer is remote.

It must be 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. It is found that Respondent-Applicant's mark sufficiently met the requirement of the law.

WHEREFORE, premises considered, the instant opposition is hereby **DISMISSED**. Let the filewrapper of Trademark Application Serial No. 4-2011-005820 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, **23 SEP 2016**


MARLITA V. DAGOSA
Adjudication Officer
Bureau of Legal Affairs