

ALFREDO NGOSIOK,
Opposer,

-versus-

CENTENNIAL FOOD CORPORATION,
Respondent- Applicant.

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} **IPC No. 14-2013-00011**
}
} Opposition to:
}
} Appln. Serial No. 4-2012-001714
}
} **TM: "DELI Q"**
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}
}

NOTICE OF DECISION

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GREETINGS:

Please be informed that Decision No. 2016 - 224 dated June 30, 2016 (copy enclosed) was promulgated in the above entitled case.

Taguig City, July 01, 2016.

For the Director:

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

ALFREDO NGOSIOK ,

Opposer,

- versus -

CENTENNIAL FOOD CORPORATION,
Respondent-Applicant.

X-----X

IPC NO. 14 - 2013 - 00011

Opposition to:
Trademark Application Serial No.
42012001714

TM: "DELI Q"

DECISION NO. 2016 - 224

DECISION

ALFREDO NGOSIOK (Opposer)¹ filed an Opposition to Trademark Application Serial No. 4-2012-001714. The trademark application filed by CENTENNIAL FOOD CORPORATION (Respondent-Applicant)², covers the mark DELI Q for goods under Class 30 of the International Classification of Goods³ particularly, "noodles."

The Opposer's based its Opposition on the following grounds:

- 1.) The Opposer is the prior user in lawful commerce in the Philippines as well as the prior registrant of the "SUPER Q," "GOLDEN Q," "Q" and "Q1" marks in Class 30 for different kinds of noodle products. Thus, the Opposer has a better and superior right over the respondent.
- 2.) The subject mark is confusingly similar to the marks of the Opposer and is being applied for the same goods (noodles). Hence, If the subject mark is allowed registration, this will lead to a confusion of source and business. Thus, the subject trademark application should be rejected.

Te Opposer further alleges:

"1. The Opposer is a third generation manufacturer of bihon and other noodle products. His family has been in the business of manufacturing and selling bihon and other noodle products are sold in various groceries and stores nationwide.

"2. On September 6, 1999, the Opposer applied for the registration of the 'SUPER Q' mark for noodle products. He was granted registration on February 10, 2005. x x x

¹ Filipino citizen with office address at 325 B. Aranas Street, Cebu City, Cebu.

² A domestic corporation with office address located at E. Rodriguez, Sta Rosa Marilao, Bulacan.

³ *The Nice Classification of Goods and Services is for registering trademarks and service marks based on 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.*

- "3. At present, the Opposer also has the following trademark registrations for noodle products in his name:
- a.) 'Q' – Trademark Registration No. 4-2006-500156 x x x
 - b.) 'Q1' – Trademark Registration No. 4-2006-500157 x x x
 - c.) 'GOLDEN Q' Trademark Registration No. 4-2010-001788 x x x
- "4. Since their adoption and their continued use in commerce up to the present day, the Opposer's mark have been developed and applied for trademark registration.
- "5. The Opposer is filing this Opposition against the registration of the 'DELI Q' mark on the ground that it creates confusion of origin, source, and business – causing injury and damage on the original 'SUPER Q,' 'GOLDEN Q,' 'Q,' and 'Q1' marks. The Opposer is entitled to the preservation of the valuable link between him and the public that has been created by his adoption and use of the 'SUPER Q,' 'GOLDEN Q,' 'Q,' and 'Q1' marks for many years, the Opposer has established goodwill and a distinct reputation for his products, and consumers recognize them to belong to him.
- "6. The opposed mark 'DELI Q' is being applied for 'noodles' – exactly the same goods as those covered by the Opposer's registration."

To support its Opposition, the Opposer submitted the following exhibits:

- Exhibit "A" – Copy of the Certificate of Registration No. 4-1999-00620;
- Exhibit "B" – Copy of the Certificate of Registration No. 4-2006-500156;
- Exhibit "C" – Copy of the Certificate of Registration No. 4-2006-500157;
- Exhibit "D" – Copy of the Certificate of Registration No. 4-2010-001788;

This Bureau served a Notice to Answer to the Respondent-Applicant on 25 February 2013. On 2 April 2013, Respondent-Applicant filed a Motion for Extension of Time to File Verified Answer until 4 May 2013, which was granted by this Office. However, the Respondent-Applicant still failed to file an Answer to the Opposition. In view thereof, an Order dated 2 October 2013 was issued declaring the Respondent-Applicant in default. Consequently, this case was deemed submitted for decision.

The issue in the present case is whether to allow the registration of herein Respondent-Applicant "DELI Q" trademark.

The instant opposition is primarily based on Section 123.1, paragraph (d), of the IP Code which 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 mark as to be likely to deceive or cause confusion.

Records show that at the time the Respondent-Applicant filed its trademark application on 14 February 2012, the Opposer has already an existing trademark registrations for "SUPER Q," "GOLDEN Q," "Q," and "Q1" trademarks covering noodles products under Class 30 of International Classification of Goods.⁴

⁴ Exhibits A to D

Clearly, the competing trademarks are being used on identical goods. Nevertheless, the similarity in the goods of the parties will only be relevant and the aforementioned provision of the IP Code apply if there will be a finding of confusing similarity between the two competing trademarks. In this instant, this bureau finds that the marks are confusingly similar.

The trademarks subject of the instant case are reproduced below for examination.



Opposer's Trademarks

Respondent's – Applicant's Trademark

Upon perusal of the above trademarks, it is very evident that the letter "Q" is the most prominent feature of the competing marks. The said letter, as represented in the above trademarks, conveys the same impression to the consuming public. Moreover, the separation of the prefix "DELI" from the letter "Q" in the Respondent-Applicant's wordmark only makes the letter "Q" stand out. Thus, even with the additional word "DELI" in the Respondent-Applicant's mark, it did not distinguish the Respondent-Applicant mark from that of the Opposer's.

The field from which a person may select a trademark is practically unlimited. As in all other cases of colorable imitation, the unanswered riddle is why, of the millions of terms and combination of design 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.⁵

Time and again, it has been held in our jurisdiction that the law does not require that the competing trademarks must be so identical as to produce actual error or mistake. It would be sufficient, for purposes of the law that the similarity between the two labels is such that there is a possibility or likelihood of the purchaser of the older brand mistaking the newer brand for it.⁶ Corollarily, the law does not require actual confusion, it being sufficient that confusion is likely to occur.⁷ Because the respondent-applicant will use his mark on goods that are similar and/or closely related to the opposer's, the consumer is likely to assume that the respondent-applicant's goods originate from or sponsored by the opposer or believe that there is a connection between them, as in a trademark licensing agreement. The likelihood of confusion

⁵ American Wire & Cable Company vs. Dir. Of Patent , G.R. No. L-26557, February 18, 1970.

⁶ American Wire & Cable Co. vs. Director of Patents, et. al., G.R. No. L-26557, February 18, 1970

⁷ Philips Export B.V. et. al. vs. Court of Appeals, et. al., G.R. No. 96161, February 21, 1992


would subsist not only on the purchaser's perception of goods but on the origins thereof as held by the Supreme Court:⁸

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 belief that there is some connection between the plaintiff and defendant which, in fact does not exist.

WHEREFORE, premises considered, the instant opposition to Trademark Application Serial No. 42012001714 is hereby **SUSTAINED**. Let the filewrapper of Trademark Application Serial No. 42012001714 be returned together with a copy of this Decision to the Bureau of Trademarks (BOT) for appropriate action.

SO ORDERED.

Taguig City, 30 JUN 2016


ATTY. NATHANIEL S. AREVALO
Director IV
Bureau of Legal Affairs

⁸ Converse Rubber Corporation vs. Universal Rubber-Products, Inc. et. al. G.R. No. L27906, January 8, 1987