

ADOLFO R. REYES, RAMON R. REYES  
and CARLOS R. REYES,

Opposers,

-versus-

FRANCISCO R. REYES,  
Respondent- Applicant.

X-----X

IPC No. 14-2012-00471

Opposition to:

Appln. Serial No. 4-2012-008676

Date Filed: 17 July 2012

TM: "RBQ & FLAME DEVICE"

**NOTICE OF DECISION**

**REYES ROJAS & ASSOCIATES**

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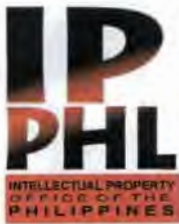
**GREETINGS:**

Please be informed that Decision No. 2016 - 419 dated November 18, 2016 (copy enclosed) was promulgated in the above entitled case.

Pursuant to Section 2, Rule 9 of the IPOPHL Memorandum Circular No. 16-007 series of 2016, any party may appeal the decision to the Director of the Bureau of Legal Affairs within ten (10) days after receipt of the decision together with the payment of applicable fees.

Taguig City, November 21, 2016.

  
**MARILYN F. RETUAL**  
IPRS IV  
Bureau of Legal Affairs



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IPC No. 14-2012-00471  
Opposition to:

Appln. Serial No. 4-2012-008676  
Date Filed : 17 July 2012  
Trademark: **"RBQ & FLAME  
DEVICE"**

Decision No. 2016 - 419

### DECISION

ADOLFO R. REYES, RAMON R. REYES and CARLOS R. REYES ("Opposers")<sup>1</sup> filed an opposition to Trademark Application Serial No. 4-2012-008676. The application, filed by FRANCISCO R. REYES ("Respondent-Applicant")<sup>2</sup>, covers the mark "RBQ & FLAME DEVICE" for the use on Class 43<sup>3</sup> namely, "*fast food and restaurant services*".

The Opposers allege among other things, the following:

- "A. Considering that the Oppositors and the Applicant, collectively, and/or their partnership, is (*sic*) the owner of the business "Reyes Barbeque", Applicant is not entitled to the subject "RBQ & FLAME DEVICE" trademark application that pertains to "Reyes-Barbeque".
- B. As the Subject Application violated provisions of relevant laws and rules, the same should thus be denied registration.
- C. The Applicant is in bad faith in causing the registration of the Subject Application."

The Opposers submitted the following evidence in support of the Opposition:

1. Copy of the complaint in the case docketed as Civil Case No. Q-08-62804 before the Regional Trial Court of Quezon City, Branch 84 (RTC);
2. Copy of their submission/manifestation (Re: Judicial Affidavits of Plaintiffs) dated 04 July 2008;
3. Supplemental Judicial Affidavit dated 16 August 2010 filed by Ramon Reyes; and,
4. Copy of the Status Quo Ante Order dated 10 September 2008.

1 Filipino, of legal age and with address c/o The Law Firm of REYES CABRERA ROJAS & ASSOCIATES located at Unit 1502, Jollibee Plaza Condominium, F. Ortigas Jr. Avenue, Ortigas Center, Pasig City

2 With address at 135 F. Manalo corner Col. Ver Street. San Juan City

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 cancelled in 1957.

On 13 February 2013, the Respondent-Applicant filed his Answer admitting some of the allegations of the opposition and denying all the material allegations thereof. Her argued that there is no violation of Section 123 of the Intellectual Property Code of the Philippines ("IP Code") as the Respondent-Applicant is the sole and exclusive owner of the REYES BARBEQUE trademarks and RB trademarks, and that Opposers have no Registration under their names and/or confusingly similar with that of RBQ & DEVICE and/or any trademark applied and/or registered under the name of the Respondent-Applicant.

Further, Respondent-Applicant claims that the subject application for the mark "RBQ & Device" is derived and/or a derivative and composite mark from Respondent-Applicant's various Trademark Registrations. The Respondent-Applicant also claimed the subject application is a simulation of the previously registered trademarks in the name of the Respondent-Applicant's Registration No. 4-2005-006587, which registration was cancelled in Decision No. 2011-18 dated 28 February 2011.<sup>4</sup>

In support of Respondent-Applicant's position, the following evidence are submitted:

1. Affidavit testimony of FRANCISCO R. REYES;
2. Copy of Decision No. 2011-18 dated 28 February 2011 issued by the Bureau of Legal Affairs granting the Petition for Cancellation of the mark "REYES BARBEQUE" fraudulently assigned to Ronnie P. Enriquez;
3. Certified true copy of the Notice of Resolution denying the Motion for Reconsideration filed by RONNIE P. ENRIQUEZ issued by the Bureau of Legal Affairs;
4. Copy of the Complaint filed by the Opposers for damages docketed as Civil Case No. Q-08-62804 before the Regional Trial Court of Quezon City Branch 84, copy of the complaint attached in the Opposition Annex "A";
5. Order issued by the Regional Trial Court Branch 84 of Quezon City, denying the Defendant's Motion and the Plaintiff's Motion for Reconsideration of Order dated October 19, 2011;
6. Certified true copy of Registration No. 4-2010- 011380 for the mark RB & Flaming Device Express Toppings label mark issued in the name of FRANCISCO R. REYES;
7. Certificate of Incorporation and/In Articles of Incorporation and By-Laws of RBQ FOOD CONCEPTS, INC.; and,
8. By Laws of RBQ FOOD CONCEPTS, INC..

Should the Respondent-Applicant's trademark application be allowed?

Jurisprudence says that 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 the prospective buyer. The trademark complained should be compared and contrasted with the purchaser's memory (not in juxtaposition) of the trademark said to be infringed. Some factors such as sound; color; idea connoted by the mark; the meaning; spelling and pronunciation of the words used; and the setting in which the words appear may be considered for indeed, trademark infringement is a form of unfair competition.<sup>5</sup>

Records show that at the time the Respondent-Applicant filed his trademark application on 17 July 2012, the Opposers have no single registered mark, earlier applied mark or a priority dated applied mark filed with the Bureau of Trademarks of this Office<sup>6</sup> which is identical, similar and/or

<sup>4</sup> Exhibit "2"

<sup>5</sup> Clarks v. Manila Candy Co., Phil. 100, Co Tiong S.A.V. Director of Patents, 95 Phil. 1, 4

<sup>6</sup> Intellectual Property Office of the Philippines.

confusingly similar with the mark "RBQ & FLAME DEVICE", the subject trademark application of Respondent-Applicant.

Thus, there is no violation of Section 123.1 paragraph (d) of Republic Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IPCode"), or any provision thereof, including any Rules or Regulations of the Bureau of Trademarks. It appears that the Respondent-Applicant is the sole and exclusive owner and registrant of the REYES BARBEQUE marks filed and registered with the Intellectual Property Office of the Philippines.

As further shown by the records, herein Respondent-Applicant ("FRANCISCO R. REYES") was the registrant of the mark "REYES BARBEQUE" under Registration No. 4-2005-006587 issued on 27 November 2006, and which registration was purportedly assigned by FRANCISCO R. REYES to a certain RONNIE P. ENRIQUEZ. As a consequence thereof, Certificate of Registration No. 4-2005-000587 was issued in the name of RONNIE ENRIQUEZ. However, this registration was cancelled pursuant to the petition filed by FRANCISCO R. REYES<sup>7</sup>

In conclusion, this Bureau finds that the Respondent-Applicant's trademark application is not proscribed by Section 123.1 paragraph (d) of Republic Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code").

**WHEREFORE**, premises considered, the opposition is hereby **DENIED**. Let the filewrapper of Trademark Application Serial No. 4-2012-008676, together with a copy of this Decision be returned to the Bureau of Trademark (BOT) for information and appropriate action.

**SO ORDERED.**

Taguig City. **18 NOV 2016**



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

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<sup>7</sup> Decision No. 2011-18 dated 28 February 2011 in the case FRANCISCO R. REYES, Petitioner, versus RONNIE P. ENRIQUEZ, Respondent in IPC No. 14-2009-00094