

JOLLIBEE FOODS CORPORATION,
Opposer,

-versus-

ETIKA BRANDS PTE LTD.,
Respondent- Applicant.

}
} **IPC No. 14-2012-00507**
} Opposition to:
} Appln. Serial No. 4-2011-014772
} Date Filed: 13 December 2011
} **TM: "DAILY CHAMP"**
}

x-----x

NOTICE OF DECISION

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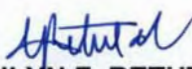
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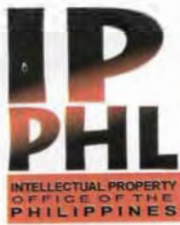
GREETINGS:

Please be informed that Decision No. 2016 - 408 dated November 16, 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 Legal Affairs within ten (10) days after receipt of the decision together with the payment of applicable fees.

Taguig City, November 16, 2016.


MARILYN F. RETUTAL
IPRS IV
Bureau of Legal Affairs



JOLLIBEE FOODS CORPORATION,
Opposer,

-versus-

ETIKA BRANDS PTE LTD.,
Respondent-Applicant.

IPC No. 14-2012-00507

Opposition to Trademark
Application No. 4-2011-014772
Date Filed: 13 December 2011
Trademark: "**DAILY CHAMP**"

x ----- x Decision No. 2016- 408

DECISION

Jollibee Foods Corporation¹ ("Opposer") filed an opposition to Trademark Application Serial No. 4-2011-014772. The contested application, filed by Etika Brands Pte Ltd.² ("Respondent-Applicant"), covers the mark "DAILY CHAMP" for use on *sweetened condensed milk; sweetened creamer; vitaminised milk; evaporated milk; evaporated creamer; milk powder uht milk; sterilized milk; pasteurized milk; milk and fruit beverages (based on milk); yoghurt drink; unsweetened beverage milk* under Class 29 of the International Classification of Goods³.

The Opposer anchors its opposition on Section 123.1 (d) of R.A. No. 8293, also known as the Intellectual Property Code of the Philippines "IP Code". It alleges, among others, that it is the owner of the registered marks "CHAMP", "JOLLIBEE CHAMP", "JOLLIBEE CHAMP. BIG BURGER GOODNESS LIKE NO OTHER.", "1/3 POUND PATTY CHAMP EXTRA BIG LOGO & DEVICE" and "1/3 POUND PATTY CHAMP EXTRA BIG LOGO & DEVICE (IN COLOUR)". It contends that the Respondent-Applicant's mark "DAILY CHAMP" is confusingly similar to its "CHAMP" trademarks as to confuse the minds of the relevant sector of the purchasing public. In support of its opposition, the Opposer submitted the affidavit of Atty. Gonzalo D.V. Go III, with annexes, and sample photographs of Jollibee restaurants/branches.⁴

The Respondent-Applicant filed its Answer on 04 March 2013 alleging, among others, that it is the current owner of the mark "DAILY CHAMP", a brand offering various milk and dairy products. It is an affiliate corporation of Etika Dairies SDN BHD and Etika International Holdings Limited, which group was founded in 1997 as manufacturer and distributor of sweetened condensed milk and evaporated milk. In

¹A domestic corporation with business address at 10th Floor, Jollibee Plaza Building, #10 Emerald Avenue, Ortigas Center, Pasig City.

²With known address at SGX Centre 2, #17-01, 4 Shenton Way, Singapore.

³The 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.

⁴Marked as Exhibits "A" to "G".

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the years following its listing, it has evolved into a diversified regional food and beverage player with several acquisitions.

The Respondent-Applicant asserts that "DAILY CHAMP" is sufficiently dissimilar with the Opposer's "CHAMP" marks. It contends that the word "DAILY" in its mark makes it significantly distinctive visually and aurally with any of the Opposer's marks. It also claims that the word "CHAMP" in their marks can be characterized as a descriptive matter which can be considered as an unregistrable component and should be disclaimed explaining that "CHAMP" is synonymous to "CHAMPION", which is defined as "one who shows marked superiority". It likewise notes other trademarks co-existing in the trademark registry containing the word "CHAMP" also used for food products. The Respondent-Applicant's evidence consists of the affidavit of Khor Sin Kok, with annexes.⁵

Pursuant to Office Order No. 154, s. 2010, the case was referred to mediation. The parties, however, refused to mediate. Accordingly, the Hearing Officer conducted a preliminary conference and the same was terminated on 28 August 2013. Thereafter, the parties submitted their respective position papers. After which, the case is deemed submitted for decision.

The issue to be resolved is whether the Respondent-Applicant's mark "DAILY CHAMP" should be allowed registration.

Section 123.1 (d) of the IP Code provides that:

"123.1. A mark cannot be registered if it:

(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"

Records reveal that at the time the Respondent-Applicant filed an application for registration of the contested mark on 13 December 2011, the Opposer already has valid and existing registrations of the marks containing the word "CHAMP" issued as early as 12 November 2009.

To determine whether the competing marks are indeed confusingly similar, the same are reproduced hereafter:

⁵ Marked as Exhibit "1", inclusive.

Opposers' marks:

CHAMP Jollibee Champ

**Jollibee Champ.
Big Burger Goodness
Like No Other.**



Respondent-Applicant's mark

DAILY CHAMP

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 a prospective buyer. The trademark complained of should be compared and contrasted with the purchaser's memory (not in juxtaposition) of the trademark said to be infringed. Some such factors as "sound; appearance; form, style, shape, size or format; color; ideas connoted by marks; the meaning, spelling, and pronunciation, of words used; and the setting in which the words appear" may be considered.⁶ Thus, confusion is likely between marks only if their over-all presentation, as to sound, appearance, or meaning, would make it possible for the consumers to believe that the goods or products, to

⁶ Etepha A.G. vs. Director of Patents, G.R. No. L-20635, 31 March 1966.

which the marks are attached, emanate from the same source or are connected or associated with each other.

Perusing the Opposer's marks, it can be observed that the word "CHAMP" is appropriated alone or in conjunction with other words and/or devices. It is unquestionable that the Respondent-Applicant's mark also makes use of the same word. There is no merit in the Respondent-Applicant's contention, however, that "CHAMP" is descriptive and therefore, not registrable. The Supreme Court explained in **Societe des Produits Nestle vs. Court of Appeals**⁷ that:

"Generic terms are those which constitute 'the common descriptive name of an article or substance,' or comprise the 'genus of which the particular product is a species'" or are 'commonly used as the name or description of a kind of goods,' or 'imply reference to every member of a genus and the exclusion of individuating characters,' or 'refer to the basic nature of the wares or services provided rather than to the more idiosyncratic characteristics of a particular product,' and are not legally protectable. On the other hand, a term is descriptive and therefore invalid as a trademark if, as understood in its normal and natural sense, it 'forthwith conveys the characteristics, functions, qualities or ingredients of a product to one who has never seen it and does not know what it is,' or 'if it forthwith conveys an immediate idea of the ingredients, qualities or characteristics of the goods,' or if it clearly denotes what goods or services are provided in such a way that the consumer does not have to exercise powers of perception or imagination." (Emphasis supplied.)

When one encounters the word "CHAMP", it does not automatically come to the mind that the mark pertains to food products. While it does connote "winner" or "champion", the said word does not convey an immediate idea of the goods the mark cover. Be that as it may, "CHAMP" is a common English word and hence, what will determine whether the marks are indeed confusingly similar are the words and/or device that accompany the same. In this case, the word "DAILY" placed before the word "CHAMP" in the Respondent-Applicant's mark is easily distinguishable from any of the Opposer's marks. It is noteworthy that the word "CHAMP" in the Respondent-Applicant's mark is neither highlighted nor emphasized. Hence, the applied mark should be appreciated as a whole. Even in respect of aural and conceptual projection, mistake is remote to occur.

Moreover, the Opposer's goods and services can be purchased and availed of in its restaurants and/or fast food chains while that of Respondent-Applicant in ordinary stores. In view thereof, it is highly improbable that the consumers will be deceived, or at least confused, that "DAILY CHAMP" products are the same or are sourced from the Opposer as they flow in different channels of trade.

⁷ G.R. No. 112012, 04 April 2001.


Furthermore, the Trademark Registry shows that there are other registered marks belonging to different proprietors that use the word "CHAMP" also pertaining to food products. These marks include "GOLDEN CHAMP AND DEVICE" and "WHITE KING CHAMP-O-RADO", under Certificates of Registration Nos. 4-2009-500201 and 4-2001-003701, respectively. These only show that the Opposer does not exclusively use the word "CHAMP" in its trademarks.

Finally, it is 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.⁸ In this case, the Respondent-Applicant's mark sufficiently met this function.

WHEREFORE, premises considered, the instant Opposition to Trademark Application No. 4-2011-014772 is hereby **DISMISSED**. 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, **16 NOV 2016**


Atty. ZSA MAY B. SUBEJANO-PE LIM
Adjudication Officer
Bureau of Legal Affairs

⁸ Pribhdas J. Mirpuri vs. Court of Appeals, G.R. No. 114508, 19 November 1999.