

**GRISI HNOS S.A. DE CV.,**  
*Opposer,*

**-versus-**

**TUPPERWARE PRODUCTS S.A.,**  
*Respondent-Applicant.*

X-----X

} **IPC No. 14-2013-00058**  
}  
} Opposition to:  
} Appln. Serial No. 4-2012-006923  
} Date Filed: 11 June 2012  
}  
}  
} **TM: HOLLYWOOD BY MAJA**  
}

**NOTICE OF DECISION**

**VERALAW (Del Rosario & Raboca)**

*Counsel for Opposer*  
A&V Crystal Tower, 105 Esteban Street,  
Legaspi Village, Makati City

**QUISUMBING TORRES**

*Counsel for Respondent- Applicant*  
12<sup>th</sup> Floor, Net One Center,  
26<sup>th</sup> Street corner 3<sup>rd</sup> Avenue,  
Crescent Park west, Bonifacio Global City, Taguig

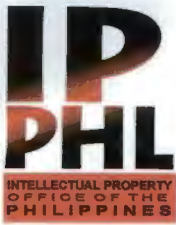
**GREETINGS:**

Please be informed that Decision No. 2016 - 537 dated 23 December 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, 11 January 2017.

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



GRISI HNOS S.A. DE CV., } IPC NO. 14-2013-00058  
 Opposer } Opposition to:  
 }  
 -versus- } Appln. Ser. No. 4-2012-006923  
 } Date Filed: 11 June 2012  
 }  
 TUPPERWARE PRODUCTS S.A., } Trademark: "HOLLYWOOD  
 Respondent-Applicant. } BY MAJA"  
 x-----x } Decision No. 2016- 537

**DECISION**

GRISI HNOS S.A. DE CV. (Opposer)<sup>1</sup> filed an opposition to Trademark Application Serial No. 4-2012-006923. The application, filed by TUPPERWARE PRODUCTS S.A.(Respondent-Applicant)<sup>2</sup>, covers the mark "HOLLYWOOD BY MAJA", for use on "perfumery, fragrances, colognes, eau de toilette, scented body sprays, deodorants and anti-perspirant, lotion and powder" under Class 3 of the International Classification of Goods<sup>3</sup>.

The Opposer anchors its opposition on the ground that the mark sought to be registered by the Respondent-Applicant is identical or confusingly similar to Opposer's well-known trademark "MAJA". It alleges that "MAJA" which is its mark's dominant element was appropriated by the Respondent-Applicant, and is prohibited under Republic Act 8293 Sec. 123.1 (d), ( e ), (f) and (g). Sec. 123.1 of Republic Act. 8293, particularly (d), (e) and (f) thereof provide, in part, that 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.
  
- (e) Is identical with, or confusingly similar to, or constitutes a translation of a mark with which is considered by the competent authority of the Philippines to be well-known internationally and in the Philippines, whether or not it is

<sup>1</sup> A corporation organized and existing under the laws of Mexico with office at Amores 1764, Colonia Del Val, C.P. 03'100, Delegacion benito Juarez, Mexico, Distrito federal, Mexico

<sup>2</sup> A Philippine corporation with address at 7<sup>th</sup> Floor Annapolis Tower, No. 43 Annapolis Street, Greenhills, San Juan

<sup>3</sup> 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.

1 *Am*

registered here, as being already the mark of a person other than the applicant for registration, and used for identical or similar goods or services: *Provided*, That in determining whether a mark is well-known, account shall be taken of the public at large, including knowledge in the Philippines which has been obtained as a result of the promotion of the mark;

(f) Is identical with or confusingly similar to, or constitutes a translation of a mark, considered well known in accordance with the preceding paragraph, which is registered in the Philippines;"

According to the Opposer, it owns the trademark "MAJA" which was first used in Spain in 1918. It obtained registration for the mark in several countries and in the Philippines it registered "MAJA" under Registration No. 021050 issued on 27 December 1973 for the goods "soap of all kinds including toilet, laundry, detergents and soap" and Registration No. 42003007483 issued on 13 January 2006 for the goods "preparations and other substances for laundry use, cleaning, polishing, scouring and abrasive preparations, soaps, perfumery, essential oils, cosmetics, hair lotions".

The Opposer submitted as evidence the following: Special Power of Attorney; Copy of trademark application of Respondent-Applicant; and Affidavit-Direct Testimony of Guillermo Alejandro Grisi Lara<sup>4</sup>

The Respondent-Applicant filed its Answer on 7 August 2013, alleging that there are obvious differences between the contending marks that negate any confusing similarity between them. It also points out that the marks cover different goods. It applies its mark on "perfumery, fragrances, colognes, eau de toilette, scented body spray, deodorants, anti-perspirant, lotion and powder" while the Opposer applies it mark on "soap of all kinds, including toilet, laundry, detergents and soap". It asserts that its mark is compounded by the words "HOLLYWOOD" and "BY" which when combined with "MAJA" is highly distinctive. The Respondent-Applicant emphasized that the term "MAJA" refers to a person, Maja Salvador. Maja Salvador is the celebrity endorser of the celebrity fragrance, "MAJA".

The Respondent-Applicant submitted as evidence the following: Verified Answer; Special Power of Attorney; Affidavit of Atty. Bienvenido A. Marquez; Certification by the Bureau of Trademark; Tupperware's Sustainability Reports; Annual Reports; Copies of magazines and articles regarding Tupperware endorsers; copies of photographs of Tupperware fragrance ambassadors; screenshots of [www.majasoap.com](http://www.majasoap.com); screenshots of yahoo! Search engine and [www.google.com](http://www.google.com).<sup>5</sup>

The Preliminary Conference was held on 10 November 2014 wherein the parties were directed to file their respective position papers. The Opposer and Respondent-

<sup>4</sup> Exhibits "A" to "D" inclusive of submarkings

<sup>5</sup> Exhibits "1" to "15" inclusive of submarkings

Applicant submitted their position papers on 25 November 2014 and 28 November 2014, respectively.

Should the Respondent-Applicant be allowed to register the trademark HOLLYWOOD BY MAJA?

The competing marks are depicted below:

Opposer's mark

Respondent-Applicant's mark

HOLLYWOOD BY MAJA

The records show that at the time Respondent-Applicant applied for registration of the mark "HOLLYWOOD BY MAJA" on 11 June 2012 for goods under Class 3, the Opposer already registered its mark "MAJA" under Registration No. 021050 issued on 27 December 1973 for the goods "soap of all kinds including toilet, laundry, detergents and soap".

Even if the marks of the parties are identical, in respect of the word MAJA, the Respondent-Applicant's mark combines it with the term "HOLLYWOOD BY". In effect, the over-all commercial impression is distinct. "MAJA" is in fact, the name of celebrity in the Philippines, Ms. Maja Salvador. She together with Sam Milby and Marian Rivera have launched their own celebrity fragrances; i.e. "SAM MILBY INTENSE" and "FOREVER BY MARIAN".<sup>6</sup>

The marketing strategy of Respondent-Applicant is through direct selling. The promotions and advertisements<sup>7</sup> of its marks that rely heavily on celebrity endorsement of the celebrity's namesake product highlight its difference from the Opposer's goods. Moreover, the kind, nature or type of goods/services upon which the marks are to be applied must be considered in determining the likelihood of confusion. The Opposer uses its mark on "soaps of all kinds", while the Respondent-Applicant uses its mark on "fragrances". Thus, it is unlikely that on account of the identity of the word MAJA, the public would be vulnerable to confusion much less deception.

In the case of *Emerald Garment Manufacturing v. Court of Appeals*<sup>8</sup>, the Supreme Court held:

Second, like his beer, the average Filipino consumer generally buys his jeans by brand. He does not ask the sales clerk for generic jeans but for, say, Levis, Guess, Wrangler or even an Armani. He is therefore, more or

<sup>6</sup> Exhibits "10" and "11"

<sup>7</sup> Exhibits "11"; "12"; "14"; "15"

<sup>8</sup> G.R. No. 100098, 29 December 1995



less knowledgeable and familiar with his preference and will not easily be distracted.

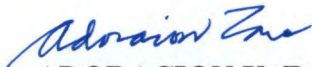
Finally, in line with the foregoing discussions, more credit should be given to the 'ordinary purchaser'. Cast in this particular controversy, the ordinary purchaser is not the 'completely unwary consumer' but is the 'ordinary intelligent buyer' considering the type of product involved.

The ordinary consumer will peruse the purchase of his/her soap or fragrance by brand. Thus, he will not be confused or misled as to the origin of the goods HOLLYWOOD BY MAJA are related to the goods of the Opposer. .

WHEREFORE, premises considered, the instant Opposition to Trademark Application No. 4-2012-006923 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, 23 DEC 2016

  
Atty. ADORACION U. ZARE, LL.M.  
Adjudication Officer  
Bureau of Legal Affairs