

**JOLLIBEE FOODS CORPORATION,**  
*Opposer,*

**-versus-**

**VANGUARD DISTRIBUTION AND LOGISTICS  
SPECIALIST, INC.,**  
*Respondent-Applicant.*

X-----X

**IPC No. 14-2013-00151**

Opposition to:

Appln. Serial No. 4-2012-014092

Date Filed: 19 November 2012

**TM: JUBILEU**

**NOTICE OF DECISION**

**QUISUMBING TORRES**

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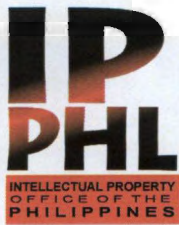
**GREETINGS:**

Please be informed that Decision No. 2016 - 512 dated 23 December 2016 (copy enclosed) was promulgated in the above entitled case.

Pursuant to Section 2, Rule 9 of the IPOP HL 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, 05 January 2017.

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



JOLLIBEE FOODS CORPORATION,	} IPC NO. 14-2013-00151
Opposer,	} Opposition to:
	}
-versus-	} Appln. Ser. No. 4-2012-014092
	} Date Filed: 19 November 2012
VANGUARD DISTRIBUTION AND	} Trademark: JUBILEU
LOGISTICS SPECIALIST, INC.,	}
Respondent-Applicant.	}
x-----x	} Decision No. 2016-512

**DECISION**

JOLLIBEE FOODS CORPORATION, (Opposer)<sup>1</sup> filed an opposition to Trademark Application Serial No. 4-2012-014092. The application, filed by VANGUARD DISTRIBUTION AND LOGISTICS SPECIALIST, INC. (Respondent-Applicant)<sup>2</sup>, covers the mark “JUBILEU”, for use on “Coffee/tea; noodles/pasta; oatmeals; instant coffee/tea; ice cream; candy; chocolate; chocolate based beverages; chocolate covered cookies; cookies; cereal based snack food; biscuit/bread” under Class 30 of the International Classification of Goods<sup>3</sup>.

The Opposer anchors its opposition on the following grounds:

“1. The Opposer is known as Jollibee Foods Corporation. It has been in existence for nearly four decades and operates the very popular chain of quick-service restaurants called JOLLIBEE that is found all over the Philippines and abroad. Throughout the years, Opposer has continuously used the JOLLIBEE name and mark in each Jollibee outlet and in almost all product packaging, advertising and promotional materials. Opposer and its JOLLIBEE brand is recognized as one of our country’s greatest success stories and is an undeniable symbol of Filipino pride worldwide.

“2. Opposer is the registered owner and first user of the internationally well-known JOLLIBEE mark and other JOLLIBEE trademarks. Opposer respectfully comes before the Honorable Office to ask for the rejection of the application for the mark JUBILEU sought to be registered by Respondent-Applicant for being confusingly similar to Opposer’s name and marks. xxx

“4. The registration of the mark JUBILEU is contrary to the provisions of Section 123.1 (d), ( e ) and (f) of Republic Act No. 8293, as

<sup>1</sup> A corporation organized and existing under the laws of the Philippines with address at 7<sup>th</sup> Floor Jollibee Plaza Building, Emerald Ave., Ortigas Center, Pasig City

<sup>2</sup> A domestic corporation with address at 200 Roosevelt Ave., cor. Pitmini St. San Francisco Del Monte, Quezon City

<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.

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amended, otherwise known as the Intellectual Property Office of the Philippines, which prohibit the registration of a mark that:

(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 constitute a translation of a mark which is considered by competent authority of the Philippines to be well-known in accordance with the preceding paragraph, which is registered in the Philippines, with respect to goods or services which are not similar to those with respect to which registration is applied for; Provided, That the use of the mark in relation to those goods or services would indicate a connection between those goods or services, and the owner of the registered mark; Provided, further, That the interests of the owner of the registered mark are likely to be damaged by such use; xxx

(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 with respect to goods and services which are not similar to those with respect to which registration is applied for: Provided, that the use of the mark in relation to the goods or services would indicate a connection between those goods or services, and the owner of the registered mark: Provided further, that the interests of the owner of the registered mark are likely to be damaged by such use.”

The Opposer also alleges, among other things, the following:

“9. The JOLLIBEE mark was first used in the Philippines on 26 January 1978 for quick-service restaurants serving food and beverages. After 35 continuous years in business, there are now 780 JOLLIBEE restaurants in the Philippines alone and 92 JOLLIBEE restaurants abroad located in Bruenei, Hong Kong, Qatar, Kuwait, Saudi Arabia, United States of America and Vietnam. In total, there are currently more than 872 JOLLIBEE restaurants worldwide serving an estimate of more than 2 million customers on a daily basis. The patronage for the JOLIBBEE products is so strong that Filipinos, especially overseas, always form long

lines to welcome every store opening . Just an example, a video of the opening of Opposer's store in New York, USA can be viewed on You Tube and it shows long lines and excitement of customers waiting to enjoy Opposer's food and services. Comments therein refer to lines 'going for blocks' long after the store has opened. xxx

"12. Opposer has continuously used JOLLIBEE mark in each Jollibee outlet and in almost all product packaging, advertising and promotional materials. Its products and services can be viewed online through its website [www.jollibee.com.ph](http://www.jollibee.com.ph) where JOLLIBEE mark is prominently featured. This shows that the JOLLIBEE mark has been promoted for a long time (35 years), and that such use and promotion are extensive and cover a wide geographical area. Xxx

"18. In the Philippines, Opposer is the holder of various JOLLIBEE marks registered and pending application with the Intellectual Property Office. In total, Opposer owns seventy-six (76) registrations and has seven (7) pending applications for the JOLLIBEE mark, either alone or in conjunction with other elements. xxx"

To support its opposition, the Opposer submitted as evidence the following:

1. Verified Notice of Opposition;
2. Copy of Decision in IPC No. 14-2006-00113;
3. Affidavit of Atty. Gonzalo D.V. Go III;
4. Samples of Philippine registrations for "JOLLIBEE" marks and related marks;
5. Sample of food packaging and containers with "JOLLIBEE" marks;
6. Printed screen shots of Opposer's website, [www.jollibee.com.ph](http://www.jollibee.com.ph);
7. Sample of promotional materials and advertising for "JOLLIBEE";
8. Table of applications and registrations for the mark "JOLLIBEE";
9. Sample of registrations for the mark "JOLLIBEE";
10. Various articles and blogs about "JOLLIBEE";
11. Coffee table book entitled "A 25-Year Love Story with the Pinoy";
12. Photographs of powerpoint presentation of WIPO-Sweden Advance Training Course on Industrial Property in the Global Economy during their visit to Opposer's establishment;
13. Annual Reports of Opposer;
14. List of awards received by Opposer;
15. Special Power of Attorney; and
16. Notarized Secretary's Certificate.<sup>4</sup>

This Bureau served upon the Respondent-Applicant a "Notice to Answer" on 15 May 2013. The Respondent-Applicant, however, did not file an Answer. Thus, the Hearing Officer issued on 20 November 2013 Order No. 2013-1565 declaring the Respondent-Applicant in default.

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

Should the Respondent-Applicant be allowed to register the trademark JUBILEU?

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.<sup>5</sup> Thus, 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 Respondent-Applicant applied for registration of the mark "JUBILEU" the Opposer already registered the word mark "JOLLIBEE" under Registration No. 4-2000-004772 issued on 10 March 2006 and "JOLLIBEE LOGO AND DEVICE" under Registration No. 4-2010-002055.<sup>6</sup> The goods covered by the Opposer's trademark registration are also under Class 30, same as indicated in the Respondent-Applicant's trademark application.

The question is: Are the competing marks, depicted below, identical or closely resembling each other such that confusion or mistake is likely to occur?

**JOLLIBEE**

**JUBILEU**

Opposer's mark

Respondent-Applicant's mark

The marks are similar with respect to the first letter "J" and the letters "B"; "I", "L" and "E". Both marks consists of three syllables. In comparing the marks, the first syllable "JO" and "JU" sound similar. The next two syllables of the marks "LLI-BEE" and "BI-LEU" when pronounced also sound the same, except that the sound of letters "L" and "B" are interchanged in each syllable. The sound of JOLLIBEE and JUBILEU are the confusingly similar. At a glance, the mark "JUBILEU" has an uncanny resemblance with "JOLLIBEE". The Respondent-Applicant's marks look like a variant of the other. The choice of a fancy or coined word, which when spoken, sounds very similar with the word JOLLIBEE, may lead to a likelihood of confusion as to the source or affiliation. Visually and aurally, the marks are confusingly similar.

Succinctly, because the Respondent-Applicant uses its mark on goods that are identical or closely related to the Opposer's it is likely that the consumers will have the impression that these goods originate from a single source or origin. The confusion or

<sup>5</sup> *Pribhdas J. Mirpuri v. Court of Appeals*, G. R. No. 114508, 19 November 1999.

<sup>6</sup> Exhibit "D"

mistake would subsist not only the purchaser's perception of goods but on the origin thereof as held by the Supreme Court, to wit:


Callman notes two types of confusion. The first is the confusion of goods in which event the ordinary 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.<sup>7</sup>

The public interest, requires that two marks, identical to or closely resembling each other and used on the same and closely related goods, but utilized by different proprietors should not be allowed to co-exist. Confusion, mistake, deception, and even fraud, should be prevented. It is emphasized that 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.<sup>8</sup>

**WHEREFORE**, premises considered, the instant Opposition to Trademark Application No. 4-2012-014092 is hereby **SUSTAINED**. Let the filewrapper of the subject trademark 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

<sup>7</sup>*Converse Rubber Corp. v. Universal Rubber Products, Inc., et. al.*, G. R. No. L-27906, 08 January 1987.

<sup>8</sup>*Pribhdas J. Mirpuri v. Court of Appeals*, G. R. No. 114508, 19 November 1999, citing *Etepha v. Director of Patents, supra, Gabriel v. Perez*, 55 SCRA 406 (1974). See also Article 15, par. (1), Art. 16, par. (1), of the Trade Related Aspects of Intellectual Property (TRIPS Agreement).