

LEE BIAO LING a.k.a. GRACE LEE,
Opposer,

-versus-

QUINWOOD LIMITED,
Respondent-Applicant.

X-----X

}	IPC No. 14-2010-00008
}	Opposition to:
}	Appln. Serial No. 4-2009-002893
}	Date Filed: 20 March 2009
}	
}	TM: PO CHAI PILLS

NOTICE OF DECISION

BENGZON NEGRE UNTALAN

Counsel for Opposer
2nd Floor, SEDCCO Building,
Rada corner Legaspi Streets,
Legaspi Village, Makati City 1229

ANGARA ABELLO CONCEPCION RAGALA & CRUZ


Counsel for Respondent- Applicant
22nd Floor, ACCRALAW Tower
Second Avenue corner 30th Street,
Crescent Park West, Bonifacio Global City
Taguig

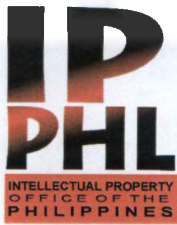
GREETINGS:

Please be informed that Decision No. 2016 - 532 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, 06 January 2017.


MARILYN F. RETUAL
IPRS IV
Bureau of Legal Affairs



LEE BIAO LING a.k.a. GRACE LEE,	}	IPC No. 14-2010-000008
<i>Opposer,</i>	}	
-versus-	}	Opposition to:
	}	Application No. 4-2009-002893
	}	Date Filed: 20 March 2009
	}	Trademark: "PO CHAI PILLS"
QUINWOOD LIMITED,	}	
<i>Respondent-Applicant.</i>	}	
x-----x		<i>Decision No. 2016- <u>532</u></i>

DECISION

LEE BIAO LING a.k.a. GRACE LEE¹ ("Opposer") filed an opposition to Trademark Application Serial No. 4-2009-002893. The application, filed by Quinwood Limited² ("Respondent-Applicant"), covers the mark "PO CHAI PILLS" for use as "*medicinal and pharmaceutical preparations; medicated pills for use in treatment of stomach ailments*" under Class 05 of the International Classification of Goods and Services.³

The Opposer alleges, among others, that she is a distributor of JIN LING BAO JI PILLS, particularly curing/maintenance pills that aids the body's coping mechanism upon the onset of fever, diarrhea, intoxication, over-eating, vomiting and gastrointestinal diseases, among others. Opposer has used the generic and/or descriptive words PO CHAI PILLS, its corresponding CHINESE CHARACTERS and other various translations thereof, to designate its own curing/maintenance pills. According to Opposer, as per the attached original official translation of the terms PO CHAI PILLS IN CHINESE CHARACTERS, it clearly provides that Respondent-Applicant's PO CHAI PILLS IN CHINESE CHARACTERS translates into curing/maintenance in the English language. Opposer contends that to grant Respondent-Applicant the exclusive use as a registered mark of the term PO CHAI PILLS would preclude others, including Opposer, the use of the same commonly used generic and/or descriptive terms, to their great damage and prejudice.

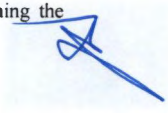
The Opposer's evidence consists of a copy of the power of attorney issued by the Opposer in favor of Bengzon Negre Untalan; photocopy of Respondent-Applicant's product; and copy of the original official international translation of the terms PO CHAI PILLS IN CHINESE CHARACTERS issued by the language institutions Languages Internationale and Berlitz.⁴

¹A sole proprietorship with business address at Unit 901 Dasma Corporate Center, #321 Dasmariñas Street, Binondo Metro Manila.

²With address at Normandy House, Grenville Street, St. Helier, Jersey JE4 8PP, Channel Islands.

³The Nice Classification is a classification of goods and services for the purpose of registering trademark and service marks, based on a 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 Purposes of the Registration of Marks concluded in 1957.

⁴Marked as Exhibits "A" to "D", inclusive.



This Bureau issued a Notice to Answer and served a copy thereof upon Respondent-Applicant on 08 March 2010. Respondent-Applicant filed its Answer on 06 July 2010 and avers the following:

x x x

"DISCUSSION

"8. Opposer bases the instant opposition on Section 123.1, paragraphs (g), (h) and (j) of the Intellectual Property Code of the Philippines (IP Code), which provides:

x x x

"9. Opposer alleges that Respondent-Applicant's mark 'PO CHAI PILLS' is descriptive or misdescriptive of the nature, kind, quality and/or characteristics of the goods upon which it is to be used.

"10. However, a perusal of the Opposition shows that such allegation is unsubstantiated and baseless. Nowhere in the Opposition was it shown why paragraphs (g) and (j) of Section 123.1 of the IP Code were violated by the mark 'PO CHAI PILLS'. Such bare allegation is not equivalent to proof.

"11. The Chinese language comprises many regional languages, the primary ones being Mandarin (or Putonghua), Wu (e.g., Shanghainese), Yue (e.g., Cantonese), and Min (e.g., Hokkien). These languages are distinct in their spoken forms only, and the language, when written, is common.

"12. The three Chinese characters of '保濟丸' are pronounced differently in the various Chinese languages. The words 'PO CHAI' are Cantonese for the first two Chinese characters '保濟'. The third characters "" (pronounced as 'YUEN' in Cantonese) is translated as 'pill' in English.

"13. Contrary to Opposer's allegation,, and as will be shown below, although each of the words has a specific individual meaning, the Chinese characters '保濟' or '保濟丸' comprising the mark 'PO CHAI PILLS IN CHINESE CHARACTERS', taken together, do not have any collective meaning that will mislead the public as to the nature of the goods sought to be registered.

"14. The third character '丸' translated as 'pill' in English, in indicative of the nature of the goods under which it is sought to be registered, i.e., a medicinal preparation. In fact, Respondent-Applicant disclaimed the exclusive right to use the word 'pill' apart from the mark as shown. Precisely, without any intention of misleading the public, the goods covered by the application for registration of the mark 'PO CHAI PILLS' under Class 05 are 'medicinal and pharmaceutical preparations; medicated pills for use in treatment of stomach ailments'.

"15. Further, the first two words 'PO CHAI' do not, in anyway, describe nor misdescribe the word 'pill', but instead, consist of specific individual meanings, that is, (1) to keep, maintain in good condition, to guarantee, and (2) to help, aid, relieve, respectively. The words 'PO CHAI' ('保濟') are used arbitrarily in conjunction with the word 'PILL'. Arbitrary marks are words that have some

meaning to the public, but when used in connection with the relevant products, do not immediately suggest or describe any quality of the products. These are names or elements with significance in certain contexts but no immediate significance with respect to the relevant goods or services.

"16. Based on the foregoing, Opposer cannot claim that the mark 'PO CHAI PILLS' is violative of Section 1231.1 (g) for the said mark does not mislead the public as to the nature, kind, quality and/or characteristics of the goods upon which it is to be used.

"17. Neither is Respondent-Applicant's mark 'PO CHAI PILLS' violative of Section 123.1 (j) for being descriptive of the good for which registration is sought.

"18. To be considered a descriptive mark, the mark must 'directly give some reasonable accurate or tolerably distinct knowledge of the characteristic of the product.' As held in *Espino v. Director of the Bureau of Trademarks*.

x x x

"19. Respondent-Applicant's mark 'PO CHAI PILLS' hardly qualifies as such. As stated above, and as will be discussed below, the first two Chinese words 'PO CHAI' have specific individual meanings [i.e., (1) to keep, maintain in good condition, to guarantee, and (2) to help, aid, relieve] and these meanings do not describe the characteristic of the 'pill', the product for which registration is sought by Respondent-Applicant.

"20. Opposer alleges that the mark 'PO CHAIN PILLS' is generic and hence, not capable of exclusive appropriation.

"21. As proof of such allegation, Opposer presented two (2) versions of the English translation of the Chinese characters '保濟丸'. Based on these two versions of the English translation, Opposer concluded that the mark 'PO CHAI PILLS' translates into 'curing/maintenance' in the English language.

"22. Such conclusion is bereft of any basis. Based on Opposer's two versions of English translation, the Chinese character '保' means 'to safeguard' and 'protect; safeguard', and the Chinese character '濟' means 'system' and 'relieve; and'. The translators did not provide any basis for their supposedly 'official' translations of '保濟丸'. Thus, their translations are merely self-serving opinions. Under the Rules on Evidence, the opinion of a witness is not admissible in evidence, except in a few exceptional cases. This case does not fall under any of the exceptions. The translators did not, as they could not, explain how these two English translations, when taken together, would ultimately mean 'curing/maintenance'. It would require a considerable amount of inference on the part of the consuming public to jump from the given translations to 'curing/maintenance'.

"23. One proof to determine the genericness of a word is its presence as an entry in dictionaries. As held in *Harley-Davidson, Inc. v. Grottanelli*:

x xx

"24. According to the dictionary of the late eminent scholar Dr. LinYutang, the three Chinese characters '保濟丸', taken separately, may mean:

x x x

"25. Opposer's English translations failed to take into account the fact that these three Chinese characters, translated/transliterated as 'PO CHAI PILLS', have specific individual meanings only but collectively, they do not convey any specific meaning at all. The words 'PO CHAI PILLS', when placed together, do not constitute the equivalent of what is referred to as a common noun (as opposed to a proper noun) in English.

"26. In fact, prominent Chinese-English dictionaries, such as A New Century Chinese-English Dictionary published by the Foreign Language Teaching and Research Press in Beijing in 2002, The Chinese-English Dictionary of Scientific and Technical Glossaries published in KexueJishuWenxianChubanshe in Beijing in 1998, and the Chinese-English Dictionary (2 Volumes) published by the Shanghai Jiao Tong University Press contain separate entries for each of these characters but no entry can be found for '保濟' (PO CHAI) nor '保濟丸' (PO CHAI PILL).

"27. In addition, a search of numerous internet online dictionaries produced the same result, i.e., there is no result for the definition of '保濟丸' collectively.

"28. From the foregoing, the Chinese characters '保濟' (PO CHAI) and '保濟丸' (PO CHAI PILL), taken together, do not form a word and have no specific meaning. Therefore, when taken as a whole, the Chinese character '保濟丸' (PO CHAI PILL) is a coined term. When used as a trademark, 'PO CHAI PILLS' is considered as fanciful. A fanciful mark is one that is created for the sole purpose of functioning as a trademark. Fanciful marks are the strongest trademarks because they are invented and few competitors may claim that they accidentally adopted the same mark.

"29. Opposer's claim that the subject mark is descriptive and/or generic is inconsistent with her own application for the 'Jin Ling Bao Ji Pill Package Label' mark which likewise contains the Chinese characters '保濟丸' and their English translation/transliteration 'Baoji Pill' [Mandarin transliteration for '保濟丸'].

"30. It is also important to take note that the marks 'PO CHAI PILLS', 'PO CHAI', '保濟丸', and '保濟' have been registered by Respondent-Applicant in Chinese-speaking countries and jurisdictions, such as China, Hong Kong, Macau, Singapore, and Taiwan. Such registrations are persuasive proof that the words 'PO CHAI' and the Chinese characters '保濟' and '保濟丸' are not generic, descriptive, or even misleading, otherwise, the applications for these marks would not have been allowed to proceed to registration. Packages containing the marks '保濟丸' and 'PO CHAI PILLS' were also registered by Respondent-Applicant in the following Chinese-speaking countries and jurisdictions:

x x x

"31. Based on the registrations obtained by Respondent-Applicant in various Chinese-speaking countries and other countries worldwide, there is a

strong presumption in favor of Respondent-Applicant that the mark consisting of the Chinese characters '保濟丸' and '保濟', and their transliterations 'PO CHAI PILLS' and 'PO CHAI' are not generic and are registrable. Unfortunately for Opposer, the evidence submitted in this Opposition were not sufficient to overcome this strong presumption.

"32. Hence, the mark 'PO CHAI PILLS' is registrable and may be exclusively used by Respondent-Applicant as its own.

"33. Respondent-Applicant is the originator and true owner of the world famous 'PO CHAI PILLS Marks.' The origin of the ownership and use of the 'PO CHAI PILLS Marks' date back to late 19th century, as attested by Lai Kit Ngan, a Director of Respondent-Applicant, showing the rich history of Respondent-Applicant's business.

"34. The following historical background will illustrate the growth of the 'PO CHAI PILLS Marks' into the famous marks that they are known today.

"34.1. In 1896, Mr. Li Shui Kei, the founder of Respondent-Applicant developed in China an herbal medicine by the name PU JI PILLS, which was later renamed PO CHAI PILLS ('保濟丸'). The 'PO CHAI PILLS Marks' are used on 'medicinal and pharmaceutical preparations, medicated pills for use in treatment of stomach ailments' and 'food supplements for human consumption, additives for foodstuff, essences for foodstuff; nutritional meal replacements and nutritional supplements, health beverages being supplements for human consumption.'


"34.2. In 1921, Respondent-Applicant established shops and an agency in Hong Kong. It entered into various Licensing Agreements with Li Chung Shing Tong (Holdings) Limited ('Licensee'), a company incorporated under the laws of Hong Kong.

"34.3. Licensee was given the authority to use, produce and distribute worldwide the goods bearing the 'PO CHAI PILLS Marks.' Licensee was also given the authority to appoint local distributors in each of the countries. At all times, however, Respondent-Applicant retains the ultimate control of the quality of the goods bearing the 'PO CHAI PILLS Marks.'

"34.4. In 1937, Respondent-Applicant registered the 'PO CHAI PILLS Marks' in Hong Kong. Since then, the trademarks have been continuously used worldwide by Respondent-Applicant and/or Licensee with regard to the said goods.

"34.5. The second generation of the Li family handled the business in the 1950's. The decades of 1960's and 1970's saw the active community and various promotional activities by Respondent-Applicant. It invested a significant amount of money and effort in advertisements.

"34.6. The third generation of the Li family are currently handling the business of Respondent-Applicant. They are now engaged in the further development of the business by incorporating Western knowledge of chemistry and science into the preparation of goods using the 'PO CHAI PILLS Marks.'



"35. Respondent-Applicant first applied for the registration of the 'PO CHAI packaging designs' mark in Hong Kong on 17 July 1937 which was granted Reg. No. 19370434. Respondent-Applicant first applied for the registration of the Chinese characters '保濟丸' in Hong Kong on 15 September 1939 which was granted Reg. No. 19370434. Respondent-Applicant first applied for the registration of the wordmark 'PO CHAI PILLS' in France on 25 September 1985 which was granted Reg. No. 19480662. Respondent-Applicant first applied for the registration of the 'BAO JI WAN' mark in Canada on 07 November 1991 which was granted Reg. No. 693214I. Respondent-Applicant first applied for the registration of the 'BAO JI WAN packaging designs' mark in Canada on 07 November 1991 which was granted Reg. No. 693072. Respondent-Applicant first applied for the registration of the '保濟丸' mark in Malaysia on 23 February 1992 which was granted Reg. No. 92000861.

"36. The sale of Respondent-Applicant's goods bearing the 'PO CHAI PILLS Marks' is being done in large scale, especially in Southeast Asia and North America.

"37. In *Mirpuri v. Court of Appeals*, the Court aptly ruled that:
x x x

"38. In addition, the 'PO CHAI PILLS Marks' have been extensively advertised and/or promoted internationally. Respondent-Applicant's products bearing the 'PO CHAI PILLS Marks' have been advertised in several magazines and newspapers in Malaysia and Hong Kong. Samples of these magazines and articles are listed in the table below:

x x x

"39. As a result of Respondent-Applicant's extensive worldwide promotional and advertisement activities, the worldwide promotional/advertising expenses of Respondent-Applicant's goods bearing the 'PO CHAI PILLS Marks' from 2005 to 2008 are:

x x x

"40. Indeed, as amply shown by the Exhibits, Respondent-Applicant has been continuously using the 'PO CHAI PILLS Marks' worldwide since 1896 and in the Philippines for more than four decades.

"41. Respondent-Applicant has sold and advertised its products bearing the 'PO CHAI PILLS Marks' in numerous countries and territories like Argentina, Brazil, Cambodia, China, Egypt, European Union, France, Hong Kong, Japan, Kuwait, Macau, Peru, the Philippines, Portugal, Singapore, Taiwan, Thailand, United Arab Emirates, United Kingdom, United States, Uruguay, and Vietnam. In the Philippines, products bearing the 'PO CHAI PILLS Marks' have been available in local Chinese drugstores as early as the 1950s.

"42. Indeed, as early as 1896, Respondent-Applicant was already developing and manufacturing Chinese medicines bearing the 'PO CHAI PILLS Marks.' Said products have been widely sold, advertised and exported to many

countries, making the marks well-known, as substantiated by evidence shown in this Verified Answer.

"43. As the owner and rightful proprietor of the internationally and locally well-known 'PO CHAI PILLS Marks,' Respondent-Applicant has caused the filing of numerous trademark applications, and has obtained the following registrations for the 'PO CHAI PILLS Marks' in more than twenty-five (25) countries:

x x x

"44. The worldwide registrations of the 'PO CHAI PILLS marks' belie Opposer's claim that the subject mark is generic and/or descriptive.

"45. In the United States, if a mark has been registered with the United States Patent and Trademark Office, it constitutes a strong presumption that the term is not generic and that the other party bears the burden of overcoming the presumption.

"46. Respondent-Applicant has registrations in the United States and Patent and Trademark Office for the marks '保濟丸' and 'PO CHAI PILLS' as well as registrations for packaging designs containing the words 'PO CHAI PILLS' and the three Chinese characters '保濟丸' :

x x x

"47. Being the legitimate owner of the 'PO CHAI PILLS Marks,' Respondent-Applicant is entitled to claim the right to the 'PO CHAI PILLS Marks.' As the owner of the 'PO CHAI PILLS Marks,' Respondent-Applicant has filed applications for registration in the Philippines for the 'PO CHAI PILLS Marks,' specifically, '保濟丸' (PO CHAI PILLS IN CHINESE CHARACTERS) and 'PO CHAI PILLS'.

"48. Moreover, as the legitimate owner, it has also protected the 'PO CHAI PILLS Marks' against unauthorized applications for registrations filed by the following unauthorized persons: Lee Biao Ling a.k.a. Grace Lee; and Chito Lu and Cristina Yao.

"49. Clearly, based on the foregoing, Respondent-Applicant has proven the inherent registrability of the mark 'PO CHAI PILLS' and has fully substantiated Respondent-Applicant's exclusive right over the mark 'PO CHAI PILLS'.

The Respondent-Applicant's evidence consists of a copy of the authenticated Statutory Declaration of Lai Kit Ngan and its Annexes which were attached as Exhibit "A" of IPC No. 14-2009-00149; copy of CTM Reg. No. 001615566 for "Po Chai Yuen" dated 30 July 2001; copy of Australian Trademark Registration No. 397009 dated 15 September 1983; copy of US Trademark Reg. No. 3,282,365 dated 21 August 2007; copy of Canadian Trademark Data for the mark Bao Ji Wan; copy of Canadian Trademark Data for Bao Ji Wan Packaging Designs; copy of Canadian Trademark Registration for "Po Chai Pills (with Chinese characters)" bearing Reg. No. TMA 311, 444 dated 12 July 1984; copy of Singaporean Trademark Reg. for "Po Chai Yuen (in Chinese characters)" bearing Reg. No. T58-23876D with application date 06 September 1958; copy of Hong

Kong Trademark Reg. No. 19390370 for the Chinese characters “保濟丸” ; copy of Vietnam Trademark Reg. No. 698 for the Chinese characters “保濟丸” with filing date 22 December 1986; copy of Malaysia Trademark No. 97015641 for the Chinese character “保濟丸” ; copy of Trademark No. CTM 001613942 for “PO CHAI PILLS” dated 03/07/2001; copy of HK Trademark No. 300128862 for the mark “PO CHAI PILLS”; copy of Singapore Trademark No. T8601921D for the mark “PO CHAI PILLS”; copy of USPTO Reg. No. 3,065,427 for the mark “PO CHAI PILLS” registered on March 7, 2006; copy of Reg. No. 00329831 for the mark “保濟” issued by the Ministry of Economic Affairs, Republic of China; copy of Malaysia Trademark No. 92000861 for the mark “保濟丸”; copy of Fung Pui Yin’s Declaration; copy of the Affidavit of William Cabidog Chua, investigator of MarkGuard, Inc.; copy of Exhibit “L” which forms part of the records of IPC No. 14-2009-00245; copy of Exhibit “M” which forms part of the records of IPC No. 14-2009-00245; copy of Exhibit “N” which forms part of the records of IPC No. 14-2009-00245; copy of Exhibit “Q” which forms part of the records of IPC No. 14-2009-00245; copy of Indonesia Reg. No. IDM000159413; copy of Thailand Reg. No. Kor 163551 for the Chinese character “保濟丸”; copy of the Chinese trademark registration for “PO CHAI” bearing Reg. No. 352767; .⁵

Should the Respondent-Applicant be allowed to register the trademark PO CHAI PILLS?

The Opposer anchors its opposition on Sections 123.1, paragraphs (g), (h) and (j) of Republic Act No. 8293, also known as the Intellectual Property Code of the Philippines (“IP Code”), to wit:

Sec. 123.Registrability. – 123.1. A mark cannot be registered if it:

x x x

- (g) Is likely to mislead the public, particularly as to the nature, quality, characteristics or geographical origin of the goods or services;
- (h) Consists exclusively of signs that are generic for the goods or services that they seek to identify;

x x x

- (j) Consists exclusively of signs or of indications that may serve in trade to designate the kind, quality, quantity, intended purpose, value, geographical origin, time or production of the goods or rendering of the services, or other characteristics of the goods or services.

x x x

Records would show that Respondent-Applicant’s mark consists of the words “PO CHAI PILLS”. Said mark is used for “medicinal and pharmaceutical preparations; medicated pills for use in treatment of stomach ailments” under Class 05

⁵Marked as Exhibits “1” to “28”, inclusive.

Opposer in the case at bar posits that Respondent-Applicant's mark "PO CHAI PILLS" should be denied registration on the ground that it is generic and consists exclusively of signs that designate the kind, quality and intended purpose of the goods covered by the mark. In the case of **SOCIETE DES PRODUITS NESTLE, ET. AL. VS. COURT OF APPEALS** the Supreme Court had the occasion to rule as to what is a generic mark, to wit:

"Generic marks are common words that describe an entire class of goods or services. 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."⁶

Po Chai Pills (保濟丸) as defined in the Wikipedia is a traditional Chinese medicine product made from several herbs formed into tiny spherical pills about 4 mm in diameter resembling buckshot. It is used as a remedy for the relief of indigestion, heartburn, vomiting, diarrhea, and bloating. It can also be used as a hangover prevention remedy. The brand PO CHAI PILLS or the Chinese characters (保濟丸) traces its roots in Guangdong, China. As stated, Po Chai Pills were developed by Li Shiu Kei in Foshan, Guangdong, in 1896. Following the Chinese Civil War, the Li family fled to Hong Kong and reestablished their company, Li Chung Shing Tong.

To further protect its ownership, the Respondent-Applicant secured the extensive registration of the trademarks "PO CHAI PILLS" and "保濟丸" in numerous jurisdictions around the world. In support thereof, the Respondent-Applicant submitted proof that its marks have been registered in various Chinese-speaking countries such as China, Hong Kong, Singapore and to numerous other countries of the world.⁷ The privilege of being issued a registration for its exclusive use, therefore, should be based on the concept of ownership. In addition, Respondent-Applicant's mark "PO CHAI PILLS" have been extensively advertised and/or promoted internationally and in the Philippines, the products bearing the mark PO CHAI PILLS and the CHINESE

⁶ Supra.

⁷ Exhibits '1' to "25" of the Answer.

CHARACTERS “保濟丸” have been available in local chinese drugstore as early as in the 1950's.

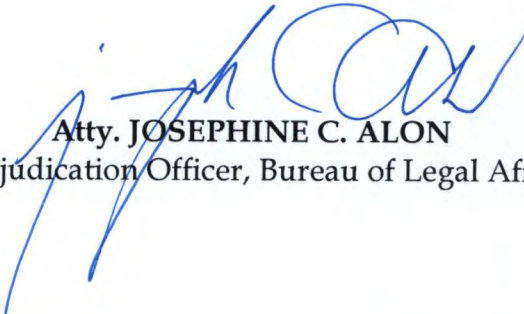
PO CHAI or BO CHAI, in Chinese means, “to help” and “to maintain” (Respondent-Applicant), or “to safeguard” and “system” (Opposer), respectively. But no collective meaning is offered for the words “PO CHAI” or the Chinese characters “保濟” . Hence, “PO CHAI” although suggestive is registrable, and is considered fanciful or arbitrary. Marks or devices that are fanciful, arbitrary or suggestive are considered distinctive enough to function as trademarks. Being so, Respondent-Applicant's mark “PO CHAI PILLS” is not generic or descriptive and therefore its registration is not violative of Section 123.1 paragraphs (g), (h) and (j) of Republic Act No. 8293 known as the Intellectual Property Code of the Philippines.

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 This Bureau finds that the Respondent-Applicant's marks sufficiently serve this function.

WHEREFORE, premises considered, the instant Opposition is hereby DISMISSED. Let the filewrapper of Trademark Application No. 4-2009-002893 together with a copy of this Decision be returned to the Bureau of Trademarks (BOT) for information and appropriate action.

SO ORDERED.

Taguig City, 23 DEC 2015


Atty. JOSEPHINE C. ALON
Adjudication Officer, Bureau of Legal Affairs

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