

SAN MIGUEL PURE FOODS COMPANY, INC.,
Opposer,

-versus-

QUICKFOODS INTERNATIONAL CORP.,
Respondent-Applicant.

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IPC No. 14-2011-00520
Opposition to:

Appl. Serial No. 4-2011-001054
Date Filed: 31 January 2011

**TM: QUICKMELT ORIGINAL
SPECIALTY BAKESHOP
ENSAYMADA EST. 1992 & DEVICE**

NOTICE OF DECISION

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GREETINGS:

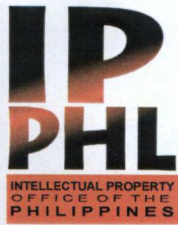
Please be informed that Decision No. 2016 - 499 dated 23 December 2016 (copy enclosed) was promulgated in the above entitled case.

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, 03 January 2017.

MARILYN F. RETUTAL
IPRS IV

Bureau of Legal Affairs



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COMPANY INC.,

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-versus-

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Decision No. 2016- 499

DECISION

SAN MIGUEL PURE FOODS COMPANY, INC.¹ ("Opposer") filed an opposition to Trademark Application Serial No. 4-2011-001054. The application, filed by Quickfoods International Corp.² ("Respondent-Applicant"), covers the mark "QUICKMELT ORIGINAL SPECIALTY BAKESHOP ENSAYMADA EST. 1992 AND DEVICE " for use on "ensaymada" under Class 30 of the International Classification of Goods and Services.³

The Opposer alleges:

x x x

"V. DISCUSSION

"5.1. Opposer is the true owner and rightful proprietor of the internationally and locally well-known MAGNOLIA QUICKMELT Marks used in connection with Opposer's cheese products under Class 29. Actual packaging labels of Opposer's Magnolia Quickmelt cheese products bearing the MAGNOLIA QUICKMELT Marks are attached hereto x x x

"5.2. As early as 2008, Opposer already sought protection for its MAGNOLIA QUICKMELT Marks by filing applications for the registration thereof with this Honorable Office. At present, Opposer owns the following Philippine trademark registrations covering cheese products under Class 29.

x x x

"5.3. In exercise of its lawful ownership of the MAGNOLIA QUICKMELT Marks, Opposer obtained registration of, and filed applications for the registration of the

¹A corporation organized and existing under the laws of the Philippines, with business address at 22nd Florr, JMT Corporate Condominium, ADB Avenue, Ortigas Center, Pasig City, Philippines.

² A domestic corporation with business address at 1765 Nicanor Garcia St., San Miguel Village, Poblacion, Makati City.

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.

MAGNOLIA QUICKMELT Marks in various countries outside of the Philippines, namely Thailand and the United States. A list showing the particulars of the worldwide registrations and pending applications for the registration of Opposer's MAGNOLIA QUICKMELT Marks is attached hereto x x x

"5.4. Opposer has conducted extensive advertising and promotional campaigns for goods bearing the 'MAGNOLIA QUICKMELT' Marks. Pages from the 02 December 2010, 13 January 2011 and 10 February 2011 of the Philippine Daily Inquirer showing advertisements for Opposer's cheese products bearing the 'MAGNOLIA QUICKMELT' Marks are attached hereto x x x

"5.5. Opposer's cheese products bearing the MAGNOLIA QUICKMELT Marks are also featured in television commercials and the websites of Opposer and its wholly owned business, Magnolia Inc. Print-outs of the relevant web pages from the website <http://www.magnolia.com.ph/consumer-based.php> featuring the MAGNOLIA QUICKMELT cheese products are attached hereto x x x

"5.5. Opposer has continuously and extensively used the MAGNOLIA QUICKMELT Marks since 1971 when Magnolia dairy products, including the Magnolia quickmelt cheese products were first produced and commercially sold in the Philippines. x x x

"5.9. In view of Opposer's efforts in promoting, advertising, and widely marketing its products bearing the MAGNOLIA QUICKMELT Marks through the years, coupled with the global maintenance of its trademark registrations, Opposer has undoubtedly acquired substantial goodwill and reputation over these marks, elevating them to the level of well-known marks exclusively identified with Opposer and its products. In fact, Opposer's Magnolia quickmelt cheese products are patronized and considered to be a favorite of chefs and cooks since the products are always featured in numerous recipes. x x x

"5.10. It is clear from the foregoing that Opposer is the true and legitimate owner of the MAGNOLIA QUICKMELT Marks. Consequently, Respondent-Applicant's application for the registration of a confusingly similar mark, the 'Quickmelt Ensaymada' mark, must be refused.

"5.11. Section 123.1 (d) of the IP Code prohibits the registration of a mark that is identical with, or nearly resembles, a registered mark belonging to another, with an earlier filing or priority date, to wit:

x x x

"5.12. As shown in the discussion below, Respondent-Applicant's application for the registration of its 'Quickmelt Ensaymada' mark squarely falls within the proscription under Section 123 (d) of the IP Code. First, Opposer's MAGNOLIA QUICKMELT Marks have earlier filing and registration dates. Second, Respondent-Applicant's 'Quickmelt Ensaymada' mark is used on closely related goods belonging to the same class. And lastly, the resemblance of Respondent-Applicant's mark to Opposer's MAGNOLIA QUICKMELT Marks will likely deceive or cause confusion among the consuming public. Below is a comparative table showing the Opposer's MAGNOLIA QUICKMELT Marks and Respondent-Applicant's 'Quickmelt Ensaymada' mark:

x x x

"5.13. The Supreme Court has consistently used the Dominancy Test in determining whether two marks are confusingly similar with each other. As its name suggests, the Dominancy Test focuses on the similarity of the prevalent, essential or dominant features of competing marks that might cause confusion or deception. x x x

"5.14. As clearly shown in the comparative table, Respondent-Applicant's 'Quickmelt Ensaymada' mark appropriates the dominant element of, and so resembles, Opposer's MAGNOLIA QUICKMELT Marks as to be likely to cause confusion, mistake and deception on the part of the purchasing public by misleading them into purchasing Respondent-Applicant's goods thinking these to be Opposer's goods. Specifically, the font used in the dominant word 'Quickmelt' in Respondent-Applicant's mark is extremely similar if not identical to the font used in Opposer's mark. The letter Q's lower right stroke in both marks are extended under the letters of the word 'QUICKMELT'.

"5.15. The relevant rule is that the use of only one of the words comprising a trademark may constitute an invasion of the property right in the trademark, where the result is that the two marks are confusingly similar. Thus, the use of only one of the words constituting a trademark may be sufficient to constitute an infringement, and it is not necessary to this end that all of the words comprising the trademark should be appropriated.

"5.16. In the present case, the close similarity of the word 'Quickmelt' in both marks is more than sufficient to render Respondent-Applicant's mark confusingly similar to Opposer's registered trademark. Notwithstanding the presence of other elements in Respondent-Applicant's mark, the fact that it utilized the most recognizable portion of Opposer's MAGNOLIA QUICKMELT Marks is enough to constitute infringement.

"5.17. It bears stressing that it is not uncommon for an entity, especially one as well-known and established as Opposer, to have several variants, versions or combinations of its trademark and logo and even of its products. In fact, companies often use its core products for other pre-made, pre-packages products such as the use of milk in flavored milk drinks or the use of cheese to flavor chips or biscuits. Thus, it is highly probable that the public will likely assume that Respondent-Applicant's Ensaymada product bearing the 'Quickmelt Ensaymada' mark is a mere variant of, or a new product line bearing Opposer's 'MAGNOLIA' mark and brand of products.

"5.18. Moreover, Respondent-Applicant seeks to register its 'Quickmelt Ensaymada' mark for ensaymadas in Class 30, which are closely related, to Opposer's MAGNOLIA QUICKMELT cheese products bearing the MAGNOLIA QUICKMELT Marks. The fact that Ensaymada, a type of bread or pastry, is topped with grated cheese makes the likelihood of confusion between the competing marks not only likely but inevitable. In all probability, consumers will be led to believe that Opposer's well-known MAGNOLIA QUICKMELT cheese product is used on Respondent-Applicant's ensaymada pastries. The use of the word 'QUICKMELT' will most likely lead purchasers to assume that the cheese on top of Respondent-Applicant's ensaymada products is the good quality cheese products of Opposer.

"5.19. The basic issue in controversies between competing trademarks is the likelihood of confusion, mistake or deception upon purchasers of the goods of the junior user of the mark and the goods manufactured by the senior user. If a purchaser sees the goods bearing Respondent-Applicant's mark, particularly ensaymada topped with grated cheese, it is extremely possible for that purchaser to assume that these products

are being manufactured and sold in partnership with, or sourced from, Opposer. Confusion among consumers is a very real consequence if Respondent-Applicant's mark will be allowed to co-exist with Opposer's MAGNOLIA QUICKMELT Marks.

"5.20. Consequently, the resemblance between Respondent-Applicant's 'Quickmelt Ensaymada' mark and Opposer's MAGNOLIA QUICKMELT Marks and the close relation between the goods covered by the respective marks render the former unregistrable as expressly provided in Section 123.1 (d) of the IP Code.

"5.21. The paramount purpose of a trademark is to indicate a product's origin effectively and reliably. The consumer must be provided with a means through which he will be able to identify the goods which please him and thereby reward the source with continued patronage. If the consumer is confused, the distinguishing role of the trademark is not functioning, and the consumer may fail to buy the product that he wants.

"5.22. In the present case, Respondent-Applicant's unauthorized use and application for the registration of the 'Quickmelt Ensaymada' mark, which is confusingly similar to Opposer's MAGNOLIA QUICKMELT Marks, falsely represents the true ownership of Respondent-Applicant's mark and suggests a fictitious connection between it and Opposer, thereby deceiving the consuming public as to the affiliation, connection or association of either of both parties, or as to the origin, sponsorship or approval of the goods bearing the 'Quickmelt Ensaymada' mark.

"5.23. To reiterate, based on official records, Opposer's MAGNOLIA QUICKMELT Marks have earlier filing and registration dates. It was only on 31 January 2011, or three (3) years after Opposer secured its registration for the MAGNOLIA QUICKMELT Marks bearing Registration Nos. 4-2008-007361 and 4-2008-008659 and thirty-five (35) years after Opposer first launched its Magnolia quickmelt cheese products in 1976, that Respondent-Applicant filed its trademark application for the 'Quickmelt Ensaymada' mark in Class 30. Clearly, Respondent-Applicant filed its application for its 'Quickmelt Ensaymada' mark in order to take advantage of the popularity and goodwill already generated by, and associated with, Opposer's MAGNOLIA QUICKMELT Marks.

"5.24. The unauthorized use by Respondent-Applicant of the term 'QUICKMELT' as an element of its own mark will inevitably result in confusion among the relevant sector of the public. This is because the term 'QUICKMELT' has developed substantial goodwill and automatic recognition among consumers as exclusively pertaining to Opposer's Magnolia quickmelt cheese products. The term 'QUICKMELT' was coined by Opposer in order to emphasize and showcase the innovative fast-melting properties of its cheese product, which were novel and revolutionary at the time of its launching. As a result, the word 'Quickmelt' progressed to be exclusively associated with Opposer's Magnolia Quickmelt cheese product. Opposer uses its MAGNOLIA QUICKMELT Marks on different products in order to emphasize the products' high quality and superior taste. The MAGNOLIA QUICKMELT Marks are utilized by Opposer as its own way of maintaining strict quality control over its products. Respondent-Applicant in adopting a confusingly similar mark, clearly intends to trade upon Opposer's goodwill.

"5.25. The real danger in allowing the registration of the Respondent-Applicant's mark is that the public may be mistaken that one's product is just a variation of the other's product and that both came from the same manufacturer, thereby

deceiving the consuming public as to the affiliation, connection or association of either or both parties, or as to the origin, sponsorship or approval of the goods bearing the 'Quickmelt Ensaymada' mark. The resulting damage to the Opposer is not limited to a possible confusion of goods but also includes confusion in reputation if the public could perceptibly assume that the goods of the parties originated from the same source.

"5.26. The consumer's right to be told the truth not only extends to the facts about the nature and quality of the product, but also extends to the true facts about the source and sponsorship of the products purchased. These facts are usually conveyed by way of a trademark on the product,

"5.27. As the registered owner of the MAGNOLIA QUICKMELT Marks, Opposer has the exclusive right to use the same and to prevent other persons from using a mark that so resembles its MAGNOLIA QUICKMELT Marks as to be likely to deceive or cause confusion. Respondent-Applicant's unauthorized use of the 'Quickmelt Ensaymada' mark on closely related products would cause a likelihood of confusion among the buying public. All said, Respondent-Applicant's application for the registration of the confusingly similar 'Quickmelt Ensayma' mark should not be allowed to proceed to registration pursuant to Sections 123.1 (e) of the IP Code.

The Opposer's evidence consists of the actual packaging labels of Opposer's Magnolia Quickmelt cheese products; print outs bearing the details of Trademark Registration Nos. 4-2008-007631 and 4-2008-008659; a list showing the particulars of the worldwide registrations and pending applications for the registration of Opposer's MAGNOLIA QUICKMELT Marks; a copy of the Thai Certificate of Registration No. TM228151; pages from the 02 December 2010, 13 January 2011 and 10 February 2011 of the Philippine Daily Inquirer showing advertisements for Opposer's cheese products bearing the "MAGNOLIA QUICKMELT" Marks; print-outs of the relevant web pages from the website <http://www.magnolia.com.ph/consumer-based.php> featuring the MAGNOLIA QUICKMELT cheese products; DVDs showing the numerous television commercial advertisements for the MAGNOLIA QUICKMELT cheese goods since the 1980s up to the present; a copy of the 1976 Annual Report of San Miguel Corporation showing the company's different products; the Affidavit of Atty. Alexandra Bengson-Trillana, General Counsel for Opposer, attesting to the veracity of the 1976 Annual Report; a print out of the results of an internet search on "Magnolia Quickmelt recipes"; cookbook entitled "In My Basket Cookbook" by Lydia D. Castillo.⁴

This Bureau issued a Notice to Answer and sent a copy thereof upon Respondent-Applicant on 20 September 2011. The Respondent-Applicant filed their Answer on 25 October 2011 and avers the following:

x x x
"IV.
DISCUSSION

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

"4.1. At the outset, the products and the respective marks at issue are as follows:

x x x

"4.2. Respondent-Applicant's 'Quickmelt Ensaymada' mark is registrable since it is not identical with Opposer's 'Magnolia Quickmelt' mark. It does not fall under Section 123.1 (d) of R.A. No. 8293, which provides:

x x x

"4.3. The following table illustrates the significant differences between the goods of the Respondent-Applicant and Opposer:

x x x

"4.4. Based on the foregoing, the use of 'Quickmelt Ensaymada' will not cause confusion or mistake or deceive the ordinarily intelligent buyer of either bread and pastry product or cheese product as to the identity of the goods, their source and origin, or the identity of the business of the Respondent-Applicant and Opposer.

"4.5. There is a world of difference between Respondent-Applicant's 'Quickmelt Ensaymada', which is a bread and pastry product, and Opposer's 'Magnolia Quickmelt!', that is a cheese product. One does not get confused into buying bread and pastry, thinking that cheese was bought, and vice versa. Aside from this obvious distinction, the above table enumerated the substantial dissimilarity of the two products.

"4.6. The gravamen of confusion of goods is that 'the ordinarily prudent purchaser must be induced to purchase one product in the belief that he was purchasing the other'. There is no such inducement in this case as clearly proven by the above-marked distinction.

"4.7. The case of Mighty Corporation and La Campana Fabrica De Tabaco, Inc. vs. E. & J. Gallo Winery and the Andersons Group Inc., 434 SCRA 473, (2004), (x x x) is applicable in this instance to rule that 'Quickmelt Ensaymada' is not identical, similar, competing or related with 'Magnolia Quickmelt!'. In the same case, the Supreme Court prescribed certain factors, as adopted in the above table, to be considered in resolving that goods are not identical, similar, competing or related, to quote:

x x x

"4.8. In the present case, after comparing the trademarks involved, the striking dissimilarities are significant for any purchaser to know that one is different from the other.

"4.9. Applying the Dominancy and Holistic Tests, we find that sufficient differences exist between the marks to preclude any danger of confusion as to the products and their origin. As shown above, the shape, inscriptions, color and pre-eminent composite element of both marks are substantially dissimilar.

"4.10. Aside from the dissimilarities extant between the 'Quickmelt Ensaymada' and 'Magnolia Quickmelt!' marks, the fact that the same marks

pertain to unrelated goods (as discussed above) only bolsters Respondent-Applicant's case for the registration of its 'Quickmelt Ensaymada' mark.

"4.11. In the Mighty Corporation Case cited above, the Supreme Court allowed the use of 'Gallo' by both petitioners and respondents in the labels of their respective cigarette and wine products, thus:

x x x

"4.12. More importantly, in the same Mighty Corporation Case, the Supreme Court cited a plethora of cases, allowing the contemporaneous registration of marks for dissimilar and unrelated goods, as follows:

x x x

"4.13. From the above discussions, it is clear that Respondent-Applicant may register its 'Quickmelt Ensaymada' mark since it is not identical with the 'Magnolia Quickmelt' marks.

"4.14. The subject marks and the relevant dates that will be discussed hereunder are as follows:

x x x

"4.15. On 5 December 2007, Ms. Cherrie Lou I. Muhlach, the predecessor-in-interest of Respondent-Applicant, filed an application for the registration of the 'Quickmelt Ensaymada' mark. Subsequently, a Certificate of Registration dated 2 July 2009 was issued for Ms. Muhlach's 'Quickmelt Ensaymada'. Then, on 21 October 2010, Ms. Muhlach assigned all her rights and interests appertaining to the 'Quickmelt Ensaymada' mark to Respondent-Applicant through a Deed of Assignment (Exhibit '7').

"4.16. Pending said application of Ms. Muhlach's 'Quickmelt Ensaymada' mark, Opposer filed two (2) applications for trademark registration of its 'Magnolia Quickmelt' marks - the first one on 20 June 2008 and the second one on 18 July 2008. Opposer also obtained Certificates of Registration for its 'Magnolia Quickmelt' marks on 8 June 2009 and 23 October 2009.

"4.17. Given the contemporaneous registration of Ms. Muhlach's 'Quickmelt Ensaymada' and Opposer's 'Magnolia Quickmelt' marks, it proves that Respondent-Applicant's 'Quickmelt Ensaymada' is not identical with 'Magnolia Quickmelt'. This circumstance negates Opposer's claim that Respondent-Applicant's 'Quickmelt Ensaymada' mark is not registrable.

"4.18. Section 138 of R.A. No. 8293 provides:

x x x

"4.19. A Certificate of Registration is only issued after a trademark application has successfully undergone the steps required to register a mark. It is proof that the mark does not fall under any of the enumerations in Section 123 of R.A. No. 8293. Ultimately, a Certificate of Registration signifies that the mark covered is not identical with a registered mark.

"4.20. Accordingly, it is obvious that, with the contemporaneous issuance of Certificates of Registration for both Ms. Muhlach's 'Quickmelt Ensaymada' and

Opposer's 'Magnolia Quickmelt!' marks, Respondent-Applicant's 'Quickmelt Ensaymada' is registrable since it is not identical with a registered mark.

"4.21. On 31 January 2011, Respondent-Applicant filed its Trademark Application No. 4-2011-001054 for its 'Quickmelt Ensaymada' mark. Consequently, the Notice of Allowance dated 30 September 2011 (Exhibit '8') was issued in its favor. At the time, both the 'Magnolia Quickmelt!' marks were already in effect.

"4.22. Based on the following laws, the Examiner's search function delves on determining 'identical' marks within the contemplation of Section 123 of R.A. No. 8293, for purposes of passing upon their registrability. Once the application satisfies all the requirements, the Director of Trademark, through a Notice of Allowance, directs its publication in the IPO Gazette.

"4.23. Hence, the issuance of the Notice of Allowance dated 30 September 2011 for the publication of Respondent-Applicant's 'Quickmelt Ensaymada' Trademark Application No. 4-2011-001054 confirms that the same is not 'identical' with 'Magnolia Quickmelt!' or other registered marks, and thus entitled to be registered.

"4.24. The relevant provisions are the following:

x x x

"4.25. The 'Quickmelt Ensaymada' business was established in 1992 by QIC/Ms. Muhlach. Throughout the course of almost twenty (20) years, 'Quickmelt Ensaymada' has carved out its own niche in the bread and pastry industry. It has established itself as a well-recognized brand both here and abroad.

"4.26. In the Philippines, 'Quickmelt Ensaymada' is widely known as a quality-maker of bread and pastry products, as can be seen on newspaper features (Exhibits 9 and 10) and online blog entries (Exhibits '11' and '12'), recognizing its reputation as a leader in the bread and pastry retail industry. 'Quickmelt Ensaymada' outlets (Exhibit '13') are also regular fixtures in major city malls - a testament to its commercial success.

"4.27. To highlight, 'Quickmelt Ensaymada' was one of the major sponsors of the 1999 Ms. Asia Pacific Pageant then held in Quezon City. Attached herewith are pictures (Exhibits '14' to '14-F') of the winning candidates endorsing 'Quickmelt Ensaymada' products.

"4.28. Another milestone in 'Quickmelt Ensaymada's' history occurred in 2002 when it entered into a contract with Macro Asia- an international catering service that serves food on board airlines flying in and out of Manila. Pursuant to said contract, 'Quickmelt Ensaymada' served its products to at least fourteen (14) international flights. Thereafter, 'Quickmelt Ensaymada' opened an outlet in Las Vegas, Nevada, U.S.A. x x x

"4.29. With the kind of recognition that 'Quickmelt Ensaymada' has steadily acquired throughout the years, there can be no possibility of confusion or deception as to the origin of its products as contended by Opposer. All told,

'Quickmelt Ensaymada' does not need to 'ride' on Opposer's 'Magnolia Quickmelt!' name to sell its bread and pastry products.

x x x

The Respondent-Applicant's evidence consists of sample Quickmelt Ensaymada Box Front, Box Bottomside, Roll Sheet and Special Broas Label; actual packaging label of Magnolia Quickmelt!; a list of item of ensaymada of Quickfoods International Corp. with suggested retail price; copy of Trademark Registration No. 4-2007-013379 for the mark QUICKMELT & DEVICE OF A SCROLL AND A ROLLING PIN BELOW THE WORD QUICKMELT issued on 02 July 2009; a copy of Trademark Registration No 4-2008-007361 for the mark MAGNOLIA QUICKMELT issued on 08 June 2009; a copy of Trademark Registration No. 4-2008-008659 for the mark MAGNOLIA QUICKMELT LABEL AND DESIGN issued on 23 October 2009; the Deed of Assignment executed between Cherrie Lou I. Muhlach and Fritz Kenneth Chua dated 21 October 2010; a copy of Quickfoods International Corp.'s Quickmelt Ensaymada Notice of Allowance dated 30 September 2011; a copy of Quickmelt Ensaymada Advertisement Spread, Inquirer Newspaper 12 February 2000 issue; a copy of Quickmelt Ensaymada Article "Ensaymada Queen is now baker to stars", Inquirer Newspaper 11 March 2004 issue; "My Smart Hub" Quickmelt Ensaymada Blog Entry; "Taste of Both World's" Quickmelt Ensaymada Blog Entry; Quickmelt Ensaymada Outlet and Dealer List; picture of 1999 Ms. Asia Pacific winning candidates holding Quickmelt Ensaymada Boxes in front of Quickmelt Ensaymada Outlet; a picture of 1999 Ms. Asia Pacific winning candidates with Quickmelt Ensaymada Outlet Staff in front of Quickmelt Ensaymada Outlet; a picture of 1999 Ms. Asia Pacific 1st runner up endorsing Quickmelt Ensaymada in front of Quickmelt Ensaymada Outlet; a picture of 1999 Ms. Asia Pacific 2nd runner up holding a Quickmelt Ensaymada Box in front of Quickmelt Ensaymada Outlet; a picture of 1999 Ms. Asia Pacific 4th runner up holding a piece of Quickmelt Ensaymada in front of Quickmelt Ensaymada Outlet; and Quickmelt Ensaymada Article "Pinoy 'ensaymada' chain goes international; first stop is Las Vegas", Manila Bulletin 20 October 2002 issue.⁵

Should the Respondent-Applicant be allowed to register the trademark QUICKMELT ORIGINAL SPECIALTY BAKESHOP ENSAYMADA EST. 1992 AND DEVICE?

The Opposer anchors its opposition on the following provision of Republic Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code"):

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

x x x

- (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 :

⁵ Marked as Annexes "1" to "15", inclusive.

- (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;”

It must be emphasized, however, that the protection to a trademark under the afore-quoted provision hinges on a factual finding of the existence of confusing similarity between the trademark sought to be protected and the other.

Hence, the question, does QUICKMELT ORIGINAL SPECIALTY BAKESHOP ENSAYMADA EST. 1992 AND DEVICE resemble MAGNOLIA QUICKMELT Trademarks such that confusion or deception is likely to occur? The marks are shown below:



Opposer's trademark



Respondent-Applicant's mark

This Bureau finds that confusion or deception is unlikely to occur at this instance. Although both marks have the same word "QUICKMELT", the visual and aural properties in respect of the Respondent-Applicant's mark has rendered said mark a character that is distinct from the Opposer's. While the marks are common as to the word "QUICKMELT", the arrangement of other essential features in the Respondent-Applicant's mark consisting of an oblong wherein written in the middle the words "QUICKMELT ENSAYMADA EST. 1992" and the outer portion of the oblong written are the words "ORIGINAL SPECIALTY BAKESHOP", such make it easier for the consumers to distinguish Respondent's QUICKMELT mark from the Opposer's MAGNOLIA QUICKMELT trademarks. They vary substantially in the composition and integration of the other main and essential features, in the general design and their overall appearance. In Opposer's mark, the word QUICKMELT accompany its trademark or housemark MAGNOLIA. Likewise, Respondent-Applicant's mark QUICKMELT describes its bread and pastry product, ENSAYMADA. It is observed that an ordinary consumer's attention would not be drawn on the minute similarities that were noted but on the differences or dissimilarities of both marks that are glaring

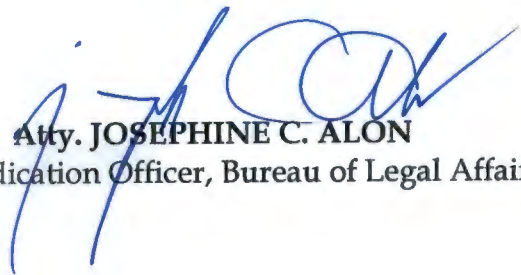
and striking to the eye and ring to the ears conferred on it visual and aural projection that would easily distinguish one from the other.

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.⁶ This Bureau finds that the Respondent-Applicant's mark sufficiently serves this function.

WHEREFORE, premises considered, the instant Opposition is hereby DISMISSED. Let the filewrapper of Trademark Application Serial No. 4-2011-001054 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 2016.


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

⁶Pribhdas J. Mirpuri vs. Court of Appeals, G.R. No. 114508, 19 Nov. 1999.