

**SUNMARU CONFECTIONERY
MANUFACTURING CORPORATION,**
Petitioner,

-versus-

INTERNATIONAL FOODSTUFFS COMPANY,
Respondent-Registrant.

X-----X

IPC No. 14-2011-00123

Cancellation of:
Reg. No. 4-1995-106478
Date of Registration: 28 April 2003

TM: TIFFANY

NOTICE OF DECISION

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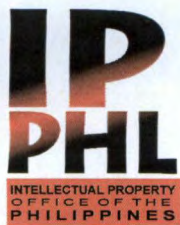
GREETINGS:

Please be informed that Decision No. 2017 - 06 dated 18 January 2017 (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, 19 January 2017.


MARILYN F. RETUAL
IPRS IV
Bureau of Legal Affairs



INTERNATIONAL FOODSTUFFS COMPANY,
Opposer,

-versus-

**SUNMARU CONFECTIONERY
MANUFACTURING CORPORATION,**
Respondent-Applicant.

IPC No. 14-2010-00150
Opposition to:
Appln. Serial No. 4-2009-009678
Date Filed: 24 September 2009

TM: PRINCESS TIFFANY DEVICE

X-----X

NOTICE OF DECISION

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**Republic of the Philippines
INTELLECTUAL PROPERTY OFFICE**

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INTERNATIONAL FOODSTUFFS COMPANY,	}	IPC No. 14-2010-00150
Opposer,	}	Appln. No. 4-2009-009678
	}	Date filed: 24 September 2009
-versus-	}	Trademark: "PRINCESS
	}	TIFFANY DEVICE"
SUNMARU CONFECTIONERY	}	
MANUFACTURING CORPORATION,	}	
Respondent-Applicant.	}	
x-----x	}	
SUNMARU CONFECTIONERY	}	IPC No. 14-2011-00123
MANUFACTURING CORPORATION,	}	
Petitioner,	}	Cancellation of :
	}	Registration No. 4-1995-106478
	}	Date of Registration: 28 April 2003
-versus-	}	
	}	Trademark: TIFFANY
INTERNATIONAL FOODSTUFFS COMPANY,	}	
Respondent-Registrant.	}	
x-----x	}	Decision No. 2017- <u>06</u>

DECISION

INTERNATIONAL FOODSTUFFS COMPANY ("Opposer")¹ filed on 21 July 2010, Inter Partes Case ("IPC") No. 14-2010-00150, an opposition to Application No. 4-2009-009678. The application, in the name of SUNMARU CONFECTIONERY MANUFACTURING CORPORATION ("Respondent-Applicant")², covers the mark "PRINCESS TIFFANY AND DEVICE", for use on "breads, cakes and pastry" under Class 30 of the International Classification of Goods³.

The Opposer alleges, among other things, the following as grounds for its opposition:

"A. Opposer is the prior adopter, user and true owner of the trademark 'TIFFANY' and its various variations in the Philippines and elsewhere around the world.

¹ A partnership organized and existing under the laws of the United Arab Emirates, with address at Al Wahda Street, Industrial Area No. 1.P.O. Box 4115 Sharja, UAE

² A Domestic corporation with address at #112 Balingasa Street, Balintawak, Quezon City

³ The Nice Classification of Goods and Services is for registering trademarks and service marks based on multilateral treaty administered by the World Intellectual Property Office (WIPO), called the Nice Agreement Concerning the International Classification of Goods and Services for Registration of Marks concluded in 1957.

“9. Opposer is the owner of the following internationally well-known trademarks, which are registered with the Intellectual Property Office of the Philippines.

Trademark	Registration No.	Date Registered	Class
TIFFANY	4-1995-106478	April 28, 2003	30
TIFFANY BREAK	4-2009-5000583	January 14, 2010	30
TIFFANY SWOOP	4-2009-500452	November 26, 2009	30
TIFFANY TIGER	4-2009-500584	January 14, 2010	30
TIFANNY TURBO	4-2009-500447	November 26, 2009	30

“10. Opposer along with its predecessors in interest, subsidiaries, affiliated /associated companies, is internationally renowned and carries on a reputable business in UAE and elsewhere as manufacturer and merchant of a wide range of mass market consumer products, such as food and beverages, edible oil and fats, flour, pasta, chocolates, confectionary, frozen foods, ice cream, juices, milk, culinary products, home and personal care products, hair care products and detergents.

“11. Opposer was established as a trading house in UAE in 1975. During the two decades since its inception, Opposer emerged as a major business house with its own state-of-the-art, highly reliable process equipment and facilities, cold storage, warehouses and outlets all over the United Arab Emirates and abroad.

“12. Opposer’s manufacturing activities started in the year 1981, when the Opposer’s established its meat and seafood processing plants in Sharjah. Later, the manufacturing activities of the Opposer were organized and brought under the aegis of the Opposer’s associate company EMIRATES INDUSTRIAL & TRADING COMPANY’S LTD., which was incorporated in 1985 by a decree of His Highness the Ruler of Sharjah.

“13. During the period of its transformation from a trading company to a manufacturing organization, Opposer has been investing to build winning brands and has earned the confidence and loyalty of consumers in over sixty countries.

“14. In order to distinguish its goods from those of its competitors the Opposer uses among others the trade mark TIFFANY, which was first adopted by the Opposer in the year 1982 to distinguish a range of goods including ‘biscuits confectionary and snack food’. Since then, TIFFANY has been extensively used by the Opposer in many countries in the world, on and in connection with goods covered by the Respondent-Applicant’s trademark application.

“15. In the Philippines, Opposer’s TIFFANY products are currently distributed by WINNING TOUCH INTERNATIONAL MARKETING,

INC. located at KLG Building Dwelbros Ave., Cor. Venecia, De Leon, Paranaque City, Philippines. Winning Touch has been the Opposer's appointed distributor since 2009.

"B. Respondent-Applicant's PRINCESS TIFFANY DEVICE is confusingly similar with Opposer's Internationally well-known trademarks TIFFANY, TIFFANY BREAK, TIFFANY TIGER, TIFFANY TURBO, TIFFANY SWOOP.

"16. The subject mark is a composite mark, components of which include the words 'PRINCESS' and 'TIFFANY'. The description contained in Respondent-Applicant's application reads as such:

'THE MARK PRINCESS TIFFANY IS ENCIRCLE [sic] IN AN OBLONG SHAPE. THE WORD PRINCESS IS SURROUNDED BY SPARKLE WITH VECTOR GRAPHICS ON TOP OF PRINCESS AND WHOLE LOGO IS ENCIRCLE [sic] WITH VECTOR GRAPHICS. THE BACKGROUND OF THE LOGO IS IN FUSCHIA RED COLOR. THE WORD PRINCESS TIFFANY AND VECTOR GRAPHICS IN WHITE COLOR.

"17. The test of dominancy is usually applied where the marks involved are composite marks. A composite mark consists of two or more features, one of which is dominant. If the dominant feature is imitated, or if such dominant feature is made part of another composite mark, a case of confusing similarity may result.

"18. It must be noted that the dominant feature of Respondent-Applicant's mark is the word component 'TIFFANY'. The word 'PRINCESS' is too common and general a term to be considered dominant. It is the word 'TIFFANY', a specific name and which is a trademark registered in the IPOPhil under the name of the Opposer, which renders the mark distinctive.

"19. It is readily apparent that Respondent-Applicant's PRINCESS TIFFANY DEVICE has incorporated the entirety of Opposer's registered trademark TIFFANY. The TIFFANY is Respondent-Applicant's mark is IDENTICAL with Opposer's registered mark TIFFANY.

"20. Having established that Opposer's registered mark TIFFANY is the dominant feature of the subject mark, it follows that the latter is likewise confusingly similar with Opposer's other registered trademarks in the Philippines, namely TIFFANY BREAK, TIFFANY TIGER, TIFFANY SWOOP, TIFFANY TURBO.

"21. The confusing similarity between Respondent-Applicant's PRINCESS TIFFANY DEVICE and Opposer's internationally well-known trademark TIFFANY and its variations is highly likely to deceive the

purchasers of goods on which the mark is being used as to the origin or source of the goods on which the mark is being used as to the nature, character, quality and characteristics of the goods to which it is affixed. Furthermore, the unauthorized use by others of a trademark similar or identical to Opposer's TIFFANY and its variations, covering similar or related goods and services, will certainly dilute the distinctiveness of the latter, and adversely affect the function of said trademark as an indicator of origin, and/ or the quality of the product.

"22. Indeed, because of the confusing similarity between the mark of Respondent-Applicant with Opposer's internationally well-known marks TIFFANY, TIFFANY TIGER, TIFFANY SWOOP, TIFFANY TURBO, and TIFFANY BREAK, the purchasing public is likely to be misled into thinking that Respondent-Applicant's products are affiliated with the Opposer, or are manufactured, by the Opposer.

"C. Being confusingly similar, the registration of Respondent-Applicant's mark PRINCESS TIFFANY DEVICE should not be allowed, since Opposer's trademarks TIFFANY, TIFFANY BREAK, TIFFANY SWOOP, TIFFANY TURBO, and TIFFANY TIGER are registered in the Philippines.

"23. Respondent-Applicant's application for the registration of PRINCESS TIFFANY DEVICE covers goods in Class 30, specifically 'breads, cakes, pastry'. Meanwhile, the goods covered by Opposer's registrations for the trademarks TIFFANY, TIFFANY TIGER, TIFFANY BREAK, TIFFANY SWOOP, TIFFANY TURBO likewise cover goods in Class 30, as follows:

TRADEMARK(s)	Nice class	Description of Goods
TIFFANY	30	Biscuits, confectionary and snack foods namely potato crisps and potato chips, fried snacks, potato corn and other cereal based extruded snacks corn and other cereal based snacks
TIFFANY TIGER	30	Chocolates and chocolate confectionery products, sugar confectionery products, candies, biscuits (all types), CAKES , pasta, Macaroni, noodles, instant noodles, spaghetti, vermicelli, yeast, baking powder, salad dressings, mayonnaise, vinegar, ketchups and sauces (condiments), ready to cook dough products, frozen dough, frozen parathas, ice-cream, non-dairy frozen desserts, coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee, BREAD , PASTRY , honey, treacle ices, salt, mustard, flour, flour made cereals
TIFFANY TURBO	30	
TIFFANY SWOOP	30	
TIFFANY BREAK	30	

xxx

“25. Aside from belonging to the same NICE class i.e. Class 30, the goods covered by Respondent-Applicant’s application are similar and/or closely related to the goods covered by Opposer’s registered mark TIFFANY, as they are all ready-to-eat/prepared food products. Ergo, the goods covered by the subject trademark and Opposer’s TIFFANY mark are reasonably expected to move within the same channels of trade. Respondent-Applicant’s goods and the goods covered by Opposer’s TIFFANY mark are sold in establishments that sell a wide variety of food products, such as in bakeries, supermarkets, restaurants, or convenience stores.

“26. Opposer would like to turn this Honorable Office’s attention to the goods covered by its registered trademarks TIFFANY BREAK, TIFFANY SWOOP, TIFFANY TIGER and TIFFANY TURBO. It is crucial to note that not only do the goods covered by the aforementioned registration also belong to Class 30, but that they include goods identical to those covered by Respondent-Applicant’s application, namely ‘breads, cakes, pastry.’ xxx

“D. Opposer’s trademarks TIFFANY, TIFFANY TIGER, TIFFANY SWOOP, TIFFANY BREAK and TIFFANY TURBO are internationally well-known.

“32. In order to protect their rights in TIFFANY as well-known mark, the Opposer has applied for and/or caused the registration of said mark in large number of countries worldwide. xxx

“35. Opposer’s products are manufactured after extensive and through research, which necessarily entails substantial expenditure. Opposer’s mark TIFFANY and its variations have acquired immense and valuable goodwill as a result of enormous sums of money spent in advertising and promotions worldwide including the Philippines. xxx

“36. Opposer has been exporting to their manufactured products in large quantities in many parts of the world, and has established substantial goodwill and reputation in the general public internationally. xxx

“37. Worldwide sales of Opposer’s TIFFANY products for the period of 1994 to 2007 are as follows: xxx

“38. In the Philippines, sales of Opposer’s TIFFANY products from 2000 to 2010 are as follows: xxx

“39. In a continued effort to reach more consumers worldwide and to better provide information about itself and its products, Opposer maintains as official website at <http://www.iffco.com>. Xxx

“40. Opposer’s trademarks TIFFANY, TIFFANY BREAK, TIFFANY SWOOP, TIFFANY TIGER, and TIFFANY TURBO are internationally well-known, having met the criteria under Rule 102 of the Rules and Regulations on Trademarks, Service Marks, Tradenames, and Marked or Stamped Containers. xxx

“43. Opposer will be damaged by the registration of the mark PRINCESS TIFFANY DEVICE in the name of Respondent-Applicant, considering that Opposer’s registered trademarks TIFFANY and its variations have already obtained goodwill and consumer recognition throughout the world. xxx”

The Opposer submitted as evidence, the following:

1. Special Power of Attorney;
2. Certified true copies of Certificate of Registration Nos. 4-2009-500583; 4-2009-500452; 4-2009-500584 and 4-2009-500447;
3. Pictures of cake bearing “TIFFANY” mark;
4. Affidavit of Sangeeta Dattaram Chavan;
5. Sample Sales Invoices; and
6. Affidavit of Chrissie Ann L. Barredo⁴

The Respondent-Applicant filed its Verified Answer on 3 January 2011, alleging the following observations and defenses:

“A. Although stated in paragraph 9 that the trademark TIFFANY has been registered under Regn. 4-1995-106748 on April 28, 2003, no certified true copy thereof was presented. xxx

Moreover, no evidence of use in the Philippines was submitted by Opposer to support its claim that it owns the trademark TIFFANY, TIFFANY BREAK, TIFFANY TIGER, TIFFANY TURBO and TIFFANY SWOOP. xxx

“B. With regard to the alleged registrations of TIFFANY BREAK, TIFFANY SWOOP, TIFFANY TIGER and TIFFANY TURBO, the filing dates of all applications for registration in the Philippines are all in 2009 which is seventeen (17) years later that Respondent’s adoption and actual commercial use of its trademark TIFFANY’S for bread, cakes and pastry in 1992.

Moreover, all the cited marks are composite marks consisting of words alone which cannot be confusingly similar to herein mark PRINCESS TIFFANY DEVICE, as it consist of the words PRINCESS TIFFANY and Device described as – ‘THE MARK PRINCESS TFFANY IS ENCIRCLED

⁴ Exhibits “A” to “D” inclusive of submarkings.

IN AN OBLONG SHAPE, THE WORD PRINCESS IS SURROUNDED BY SPARKLE WITH VECTOR GRAPHICS ON TOP OF PRINCESS AND WHOLE LOGO IS ENCIRCLED WITH VECTOR GRAPHICS. THE BACKGROUND OF THE LOGO IS FUSCHIA RED COLOR. THE WORD PRINCESS TIFFANY AND VECTOR GRAPHICS IN WHITE COLOR.' xxx

"12. Respondent is the true owner of the trademark TIFFANY'S for bread, cakes and pastries, having adopted and actually used the same in commerce as early as 1992 up to the present. xxx

"B. Being the prior adopter and user therefore, the owner of the mark TIFFANY in the Philippines it has the right to adopt trademark PRINCESS TIFFANY which was derived from its earlier mark TIFFANY adopted and used as early as 1992 continuously up to the present;

"C. When R.A. No. 8293 or the present Intellectual Property Code took effect, the marks acquired in good faith under Section 2-A of R.A. 166 as amended, was preserved under Section 236 of R.A. No. 8293 which provides as follows: xxx

"13. The claim that Respondent is the true owner of the trademark TIFFANY'S for bread, cakes and pastries having actually used the same in commerce in the Philippines since 1992 up to the present is supported by the following documentary evidence which are attached to the Verified Answer: xxx

"14. Finally, the allegation that the marks TIFFANY and variations are internationally well-known has no factual and legal basis as was earlier shown and discussed xxx

The Respondent-Applicant submitted as evidence the following:

1. Affidavit of Jerry T. Lao;
2. Copy of Securities and Exchange Commission Articles of Incorporation of Sunmaru Confectionary Mfg. Corp dated 22 January 1992;
3. Copy of birth certificate of Tiffany Grace G. Lao born on 1 August 1987;
4. Affidavit of Catherine Bendicion;
5. Representative sample of stickers, logo, price tags, labels and containers with the mark "PRINCESS TIFFANY";
6. Representative sales invoices dated from 1992 – 2002 to the present;
7. List of TIFFANY products and customers;
8. Affidavit of Jacinto Tan;
9. Affidavit of Merigen Ytang;
10. Affidavit of Marie Go;
11. Affidavit of Danilo Madtrazo;
12. Affidavit of Miriam Pasia;
13. Affidavit of Rosario Requillman;

14. Trademark Application for PRINCESS TIFFANY DEVICE and Declaration of Actual Use; and
15. Trademark Application for TIFFANY and Declaration of Actual Use⁵

On 24 March 2011, Opposer filed a Motion to Admit Additional Evidence which consisted of the Affidavit of Lucas F. Pasiliao. The motion was opposed by Respondent-Applicant and the thereafter Order dated 28 June 2011 was issued denying the Motion to Admit for being contrary to Section 5, Office Order No. 79. Opposer's Tender of Excluded Evidence was filed on 8 July 2011.

On 11 April 2011, SUNMARU CONFECTIONERY MANUFACTURING CORPORATION (hereinafter referred to as "Petitioner/Respondent-Applicant")⁶ filed Petition for Cancellation of Registration No. 4-1995-106478 docketed as IPC Case No. 14-2011-00123. The registration, in the name of INTERNATIONAL FOODSTUFFS COMPANY (hereinafter referred to as "Respondent-Registrant/Opposer")⁷, covers the mark "TIFFANY", for use on "biscuits, confectionery, and snack foods namely potato crisps and potato chips, fried snacks, potato, corn and other cereal based snacks" under Class 30 of the International Classification of Goods.

Petitioner relies on the following grounds in support of its petition:

"1. Respondent-Registrant's registration of the trademark TIFFANY bearing Registration No. 4-1995-106478 issued on April 28, 2003, submitted in evidence by petitioner as Exhibit 'A' is contrary to the provisions of Section 4 and 4(d) of Republic Act 166, the law on which the registration was based.

"2. Petitioner Sunmaru Confectionery Manufacturing Corporation is the real and rightful owner of the mark TIFFANY'S for bread, cakes and pastries, being the prior adopter and actual user of the mark TIFFANY'S in commerce in the Philippines since 1992 up to the present. The 'PRIOR ADOPTER AND ACTUAL USER' of the mark in commerce in the Philippines is the basis for acquiring ownership of the mark, as provided under Section 2 and 2-A of Republic Act No. 166, the law under which the TIFFANY trademark was registered by respondent International Foodstuffs Company. Xxx

"3. Respondent's registration of subject mark TIFFANY is likewise contrary to the provisions of Sections 2 and 2-A of Republic Act 166, the law under which subject registration was based, as it has used the mark TIFFANY in commerce in the Philippines at least two months before its filing on November 22, 1995 and even at the time of its registration on April 28, 2003 hence, pursuant to Section 2 and 2-A of R.A. 166 respondent International Foodstuffs Company, cannot apply for

⁵ Exhibits "1" to "22" inclusive of submarkings

⁶ A domestic corporation with address at #112 Balingasa Street, Balintawak, Quezon City

⁷ A partnership organized and existing under the laws of the United Arab Emirates, with address at Al Wahda Street, Industrial Area No. 1.P.O. Box 4115 Sharja, UAE

registration based on local use as it has not acquired ownership over the trademark TIFFANY. Xxx

“3.4. To prove that respondent has not used the trademark TIFFANY in commerce in the Philippines, the records of the Bureau of Trademarks show that respondent, International Foodstuffs Company filed another application for TIFANNY with the Bureau of Trademarks bearing Application No. 4-2000-002086 on March 17, 2000 which was refused registration by the Bureau of Trademarks for non-filing of the required Declaration of Actual Use (DAU).

“3.5. In this regard, petitioner has secured a Certification from the Bureau of Trademarks hereto submitted as Exhibit ‘B’, to the effect that as per records of the Bureau of Trademarks, respondent, International Foodstuffs Company filed another application for TIFFANY bearing Application No. 4-2000-002086 on March 17, 2000 but the application was refused registration for non-filing of the Declaration of Actual Use (DAU) required under the Section 124.2 of the IP Code, R.A. 8293. This certification will show that the respondent International Foodstuffs Company, has not used the trademark TIFFANY in commerce in the Philippines at least two months before it applied for registration and even after filing the application which matured into registration subject of this petition for cancellation.

“3.6. Since the basis of the registration by respondent, International Foodstuffs Company of the TIFFANY trademark is local use (R.A. 166) respondent should use the trademark TIFFANY in commerce in the Philippines at least two months before the filing of its application or at the time of its application on November 22, 1995. However, no evidence of actual use was submitted by respondent even at the time the Certificate of Registration was issued on 23 April 2003 or EIGHT (8) YEARS AFTER FILING OF THE APPLICATION.

“3.7. It was only in 2009 that respondent International Foodstuffs Company submitted a Declaration of Actual Use (DAU) with no evidence of use to that effect, submitted by herein petitioner as Exhibit ‘C’. This Declaration of Actual Use (DAU) filed in 2009 with the Bureau of Trademarks of the Intellectual Property Office shows that the establishment who distributes International Foodstuff Company’s TIFFANY products in the Philippines is Winning Touch International Marketing which was appointed by Opposer to distribute its products in the Philippines only in 2009.

“3.8. In the Affidavit Direct Testimony of Sangeeta Dattaram Chavan, the Constituted Attorney of International Foodstuffs Co. appointed since 2009, and submitted as evidence in IPC 14-2010-00150 in support of its International Foodstuff’s opposition to petitioner’s trademark PRINCESS TIFFANY and which petitioner submits as Exhibit ‘D’ he admitted in

paragraph 12 (Exhibit 'D-1'), that the company's product is being distributed in the Philippines by Winning Touch International Marketing Incorporated located at KLG Building Delbros Avenue, corner Venecia de Leon, Paranaque City which was appointed distributor in the Philippines since the year 2009. (Exhibit 'C-4 of Opposer in IPC 14-2010-00150), submitted by herein petitioner as Exhibit 'D'. As shown by respondent International Foodstuff Company's own exhibits, it started to use the trademark TIFFANY in commerce in the Philippines, only in the year 2009 when it appointed Winning Touch International Marketing Incorporated to distribute its products in the Philippines.

"3.9. The foregoing facts established by the record show that respondent International Foodstuffs Company cannot claim local use of the TIFFANY mark in the Philippines at least two months before the filing date of its application, contrary to its claim that its application bearing 4-1995-106478 as shown in Exhibit 'A' that it is based on local use (R.A. 166), the truth of the matter being that International Foodstuffs Company only started to use the mark TIFFANY in commerce in the Philippines in 2009 when it appointed its distributor, Winning Touch International Marketing, Inc. This was confirmed in paragraph 12 of the Affidavit direct testimony of Sangeeta Dattaram Chavan, the Constituted Attorney of International Foodstuffs Company. Xxx

"3.10. As shown by the foregoing evidence, the mark TIFFANY was fraudulently registered by International Foodstuffs Company which managed to secure registration based on local use (R.A. 166) without even commercially using it in the Philippines.

"4. Petitioner Sunmaru Confectionary Manufacturing Corporation was the first to adopt and actually use on commerce the brand name 'TIFFANY'S' for goods bread, cakes and pastries, having manufactured and sold the same as early as 1992 and that it continuously manufactures, distributes, sells bread, cakes and pastries bearing the mark 'TIFFANY'S' for bread, cakes and pastries products throughout the Philippines since 1992 up to the present, so that it already established a good name and goodwill for its products.

"5. The ownership acquired by petitioner Sunmaru Confectionary Manufacturing Corporation over the mark TIFFANY'S by virtue of its actual use in commerce as provided under Section 2 and 2-A of Republic Act 166, has been preserved under Section 236 of Republic Act No. 8293 and protected under Section 168 of the same law. Xxx"

To support its petition, the Petitioner submitted as evidence the following:

1. Copy of Certificate of Registration No. 4-1995-106478 issued on 28 April 2003;

2. Certification of the Bureau of Trademarks that application no. 4-2000-002086 was refused registration;
3. Declaration of Actual Use submitted by International Foodstuffs Company in 2009;
4. Affidavit of Sangeeta Dattaram Chavan;
5. Affidavit of Jerry T. Lao dated 8 April 2011;
6. Certified copy of Articles of Incorporation of Sunmaru Confectionary Mfg. Corp dated 22 January 1992;
7. Certificate of Live Birth of Tiffany Grace G. Lao;
8. Affidavit of Catherine Bendicion dated 6 January 2010;
9. Sample Sales Invoices;
10. Certification of SMC Sibesco regarding printing for Tiffany stickers, logo and labels;
11. Certification of Del Reliance regarding printing for Tiffany stickers, logo and labels;
12. Sample stickers, logos, price tags, labels and containers;
13. List of Tiffany products sold to different stores;
14. List of customers;
15. Affidavit of Jacinto Tan dated 17 December 2010;
16. Sample sales invoices issued by Sunmaru Confectionary between 1992 - 1993, 1994, 1996, 2002, 2006 to present;
17. Certification of Michael Ong dated 12 March 2011;
18. Affidavit of Melogina Clava dated 11 April 2011;
19. Affidavit of Merigen Ytang dated 11 April 2011;
20. Affidavit of Jocelyn B. Escoro dated 14 March 2011;
21. Joint Affidavit of Nelia Pascual and Ana Liza Andaya dated 7 March 2011;
22. Affidavit of Mario Go dated 3 January 2011; and
23. Affidavit of Danilo Madtrazo dated 17 December 2010⁸

The Respondent-Registrant filed its Answer on 3 October 2011, alleging among other things, the following special and affirmative defenses:

“3.1. The instant Petition must be denied outright for having been filed out of time, i.e. more than five years from the date of the registration of the mark. Respondent-Registrant's TIFFANY mark was registered with the Bureau of Trademarks on April 28, 2003, and the instant Petition was filed only in April 11, 2011, eight (8) years after the date of registration. xxx

“3.2. According to Section 151 of R.A. 8293, a petition to cancel a registration of a mark may be filed with this Honorable Office within five (5) years from the date of registration of the mark under this Act, to wit:

Section 151. Cancellation – 151.1. A petition to cancel a registration of a mark under this Act may be filed with the Bureau of Legal Affairs by any

⁸ Exhibits “A” to “AA” inclusive of submarkings

person who believes that he is or will be damaged by the registration of a mark under this Act as follows:

- (a) Within five (5) years from the date of registration of the mark under this Act.

“The registration of the mark ‘TIFFANY’ in the name of the Respondent-Registrant is based on foreign registration, in accordance with Section 37 of RA 166, and not on local use.

“3.3. The application for the registration of the mark TIFANNY was filed by Respondent-Registrant in November 22, 1995. At the time, RA 166, promulgated in June 20, 1947, was the governing law on the registration and protection of trademarks, and as such, is the law applicable in the case at bar.

“3.4. Under RA 166, as amended, there are two methods by which a mark may be acquired:

- (a) Based on use, as provided under Section 2 and 2-a; or
- (b) Based on home or foreign registration, which is provided for under Section 37.

Although Section 2 requires that for a trademark to be registrable, it must be actually in use in commerce and services for not less than two (2) months in the Philippines prior to the filing of the application. However, according to Section 37, where the application is based on foreign registration, proof of such local use is not necessary.

“3.5. Section 37 of RA 166, upon which Respondent-Registrant’s application was based, states:

Section 37. Rights of foreign registrants. – Persons who are nationals of domiciled in, or have a bona fide or effective business or commercial establishment in any foreign country, which is a party to any international convention or treaty relating to marks or trade names, or the repression of unfair competition to which the Philippines may be a party, shall be entitled to the benefits and subject to the provisions of this Act to the extent and under the conditions essential to give effect to any such convention and treaties as long as the Philippines shall continue to be a party thereto, except as provided in the following paragraphs of this section.

No registration of a mark or trade-name in the Philippines by a person described in the preceding paragraph of this section shall be granted until such mark or trade-name has been registered in the country of origin of the applicant, unless the applicant alleges use in commerce.

For the purposes of this section, the country of origin of the applicant is the country to which he has bona fide and effective industrial or commercial establishment, or if he has not such an establishment in the country in which he is domiciled, or if he has not a domicile in any of the countries described in the first paragraph of this section, the country of which he is a national.

“3.6. Petitioner’s entire Petition for Cancellation is hinged upon its allegations that Respondent-Registrant’s registration of the mark TIFFANY is ‘contrary to the provisions of Sections 2 and 2-A of RA 166... as it has not used the mark TIFFANY in commerce in the Philippines at least two months before its filing on November 22, 1995. This is precisely why the Petition must fail, among other reasons, because contrary to the Petitioner’s allegations, the applications filed by Respondent-Registrant on November 11, 1995 for the registration of its mark TIFFANY was BASED ON FOREIGN REGISTRATION, NOT LOCAL USE. As proof of the foregoing, herewith attached as Exhibit 4 is a certified true copy of Application No. 4-1995-104197, for the mark TIFFANY.

“3.7. Forming part of Application No. 4-1995-104197 is a letter addressed to the Director of the Bureau of Patents, Trademarks and Technology Transfer, dated November 22, 1995, whereby then Respondent-Registrant’s agent submits and encloses the following documents for purposes of effecting the registration of the mark TIFANNY:

- a) Duly legalized and authenticated trademark application;
- b) Certified true copy of French trademark Registration No. 93/33 NL together with the verified legalized English translation thereof;
- c) Two (2) formal drawings and ten (10) small facsimiles; and
- d) A check payment in the amount of P1,212.00 as payment of the required fees.

“3.8. Respondent-Registrant submitted a certified true copy of the prior registration of its mark TIFFANY in France precisely because it was this foreign registration which Respondent-Registrant based its application for registration of the TIFFANY mark in the Philippines. Why else would Respondent-Registrant make such a submission? If its trademark application was indeed based on ‘local use’, as the Petitioner alleges, a submission and allegation of an existing foreign registration of the same mark would be unnecessary and superfluous.

“3.9. In the above-mentioned duly legalized and authenticated trademark application, the words ‘Based on Foreign Registration Application’ clearly appear below the Trademark (sic) Application’.

“3.10. Furthermore, and most importantly, in the same trademark Application, the Affiant clearly and explicitly states that its application for registration of the mark TIFFANY is based on a foreign registration, pursuant to Section 37 of Sec 166, an excerpt from which is quoted below:

TRADEMARK APPLICATION
(Based on Foreign Registration Application)

Mark: TIFFANY
(Identify Mark)

Class/ess: 30
(Local/International if known)

To the Director:
International Foodstuffs Co. of UAE Al Wahda Street, Industrial Area No.1, PO
Box 4115, Sharjah UAE

The above identified applicant has adopted the mark shown in accompanying Drawing for biscuits, confectionary & snack foods ...
And requests that the said mark be registered in the Bureau of Patents, Trademarks and Technology Transfer on Principal Register in accordance with section 37, Republic Act 166 as amended.

The said mark was registered/applied in (sic) France
With Registration No. /Serial No. 93/33 NL dated 20 August 1993. Said registration is now in full force and effect and certified copy of such registration is now in full force and effect and certified copy of such registration is presented herewith ...

“3.11. Indeed, there is overwhelming evidence showing that Respondent-Registrant intended, as it indicated and signified, to have its TIFFANY mark registered in the Philippines on the basis of foreign registration. Therefore, it was not necessary for Respondent-Registrant to show proof of actual use at least two months before the filing of its application, and contrary to Petitioner’s allegations, Respondent-Registrant was indeed entitled to register the trademark TIFFANY at the time of its application. Petitioner’s assertions then, that the subject mark was ‘fraudulently registered’ are completely without merit.xxx”

The Respondent-Registrant submitted as evidence, the following:

1. Special Power of Attorney;
2. Certified true copy of Trademark Registration No. 4-1995-10621 June 2010.⁹

⁹ Annex “A” to “C”

Upon motion, the two cases were consolidated in Order No. 2012-393 dated 1 March 2012 wherein the case were forwarded to the Hearing Officer of IPC No. 14-2010-00150. Thereafter, the consolidated cases were reassigned on account of the retirement of Hearing Officer therein. Upon order requiring the parties to submit their respective position papers, the Opposer and Respondent-Applicant submitted their position papers on 18 May 2012 and 28 May 2012, respectively. In IPC No. 14-2011-00123, Order no. 2016-1726 dated 10 October 2016 was issued that required the parties to submit a position papers, to which Respondent-Registrant complied on 22 November 2016 and Petitioner on 7 November 2016.

Should the Opposer/Respondent-Registrant's trademark registration TIFFANY be cancelled? Should Petitioner/Respondent-Applicant's mark PRINCESS TIFFANY AND DEVICE be registered? The issues will be discussed simultaneously.

The competing marks, depicted below, contain the word TIFFANY.



Petitioner/Respondent-Applicant's marks

Opposer/Respondent-Registrant's mark

Records show that the Respondent-Registrant filed its application for the mark TIFFANY on 11 November 1995 and was granted Certificate of Registration No. 4-1995-106478 on 28 April 2003 for goods under class 30, namely: "biscuits, confectionery, and snack foods namely potato crisps and potato chips, fried snacks, potato, corn and other cereal based snacks." The Petitioner filed its application for the mark PRINCESS TIFFANY DEVICE on 24 September 2009 for goods under Class 30 namely: "breads, cakes and pastry".

The governing law at the time Opposer/Respondent-Registrant applied for the mark TIFFANY on 11 November 1995, was Republic Act 166.¹⁰, The Opposer/Respondent-Registrant (INTERNATIONAL FOODSTUFFS) claims to be the owner of the mark TIFFANY by virtue of its earlier registration of the mark, TIFFANY on 28 April 2003. The Petitioner/Respondent-Applicant (SUNMARU) challenges this registration because according to Petitioner/Respondent-Applicant, the Registrant did not use the mark in commerce prior to the filing of its application for registration on 11 November 1995 but only in 2009 through its distributor Winning Touch. According to the Petitioner, at the time of the filing of the application on 11 November 1995, the law at the time necessitates that the applicant establish that it is the owner of the mark by actual use in commerce of a mark, which has not been appropriated by another. In addition, in order for the mark to be registrable, the mark must have been in use on commerce at least two months prior to the application. In this regard, Section 2 and 2-A of Republic Act No. 166, states:

¹⁰ 20 June 1947, R.A. 166 as amended by Republic Act 865

A handwritten signature in blue ink, appearing to be "AJ", is located in the bottom right corner of the page.

“SEC. 2. What are registrable — Trademarks, tradenames and service-marks owned by persons, corporations, partnerships or associations domiciled in the Philippines and by persons, corporations, partnerships or corporations domiciled in any foreign country may be registered in accordance with the provisions of this Act: *Provided*, That said trademarks, trade-names, or service marks are actually in use in commerce and services not less than two months in the Philippines before the time the applications for registration are filed: ...”

“SEC. 2-A. Sec. 2-A. Ownership of Trademarks, Tradenames and Service Marks; How Acquired. - Anyone who lawfully produces or deals in merchandise of any kind or who engages in any lawful business, or who renders any lawful service in commerce, by actual use thereof in manufacture or trade, in business, and in the service rendered, may appropriate to his exclusive use a trademark, a trade name, or a service mark not so appropriated by another, to distinguish his merchandise, business or service from the merchandise, business or services of others. The ownership or possession of a trademark, trade name, service mark, heretofore or hereafter appropriated, as in this section provided, shall be recognized and protected in the same manner and to the same extent as are other property rights known to the law.

However, although Respondent-Registrant’s application was filed under the provisions of Section 2 of Republic Act No. 166 as amended by Section 1 of Republic Act 865, it based its application on Sec. 37 of the same law, which provides:

Section 37. Rights of foreign registrants. – Persons who are nationals of domiciled in, or have a bona fide or effective business or commercial establishment in any foreign country, which is a party to any international convention or treaty relating to marks or trade names, or the repression of unfair competition to which the Philippines may be a party, shall be entitled to the benefits and subject to the provisions of this Act to the extent and under the conditions essential to give effect to any such convention and treaties as long as the Philippines shall continue to be a party thereto, except as provided in the following paragraphs of this section.

No registration of a mark or trade-name in the Philippines by a person described in the preceding paragraph of this section shall be granted until such mark or trade-name has been registered in the country of origin of the applicant, unless the applicant alleges use in commerce.

For the purposes of this section, the country of origin of the applicant is the country to which he has bona fide and effective industrial or commercial establishment, or if he has not such an establishment in the country in which he is domiciled, or if he has not a domicile in any of the countries described in the first paragraph of this section, the country of which he is a national.

XXX

An application for registration of a mark or trade-name under the provisions of this Act filed by a person described in the first paragraph of this section who has previously duly filed an application for registration of the same mark or trade-name in one of the countries described in said paragraph shall be accorded the same force and effect as would be accorded to the same application if filed in the Philippines on the same date on which the application was first filed in such foreign country: Provided, That -

- (a) The application in the Philippines is filed within six months from the date on which the applicant was first filed in the foreign country; and within three months from the date of filing or within such time as the Director shall in his discretion grant, the applicant shall furnish a certified copy of the application for or registration in the country of origin of the applicant, together with a translation thereof into English, if not in the English language;
- (b) The application conforms as nearly as practicable to the requirements of this Act, but use in commerce need not be alleged;
- (c) The rights acquired by third parties before the date of the filing of the first application in the foreign country shall in no way be affected by a registration obtained on an application filed under this paragraph; and
- (d) Nothing in this paragraph shall entitle the owner of a registration granted under this section to sue for acts committed prior to the date on which his mark or trade-name was registered in this country unless the registration is based on use in commerce.

The registration of a mark under the provisions of this section shall be independent of the registration in the country of origin and the duration, validity or transfer in the Philippines of such registration shall be governed by the provisions of this Act.

The Supreme Court in *Andres Romero v. Maiden Form Brassiere Co., Inc.*¹¹, recognizes this mode of registering marks, without the need to prove use in the Philippines. The inapplicability of the provision in the afore cited case was because at the time, the Philippines was not yet a party to an international convention or treaty relating to trademarks. The Supreme Court explains:

Section 37 of Republic Act No. 166 can be availed of only where the Philippines is a party to an international convention or treaty relating to trademarks, in which the trade-mark sought to be registered need not be use in the Philippines. The applicability of Section 37 has been commented on by the Director of Patents, in this wise:

¹¹ G.R. L.- 18289, 31 May 1964

Trademark rights in the Philippines, without actual use the trademark in this country can, of course, be created artificially by means of a treaty or convention with another country or countries. Section 37 of the present Philippine Trademark Law, Republic Act No. 166 (incorporated as Rule 82 in the Rules of Practice for Registration of Trademarks) envisions the eventual entrance of the Philippines into such convention treaty. It is provided in said section that applications filed thereunder need not allege use in the Philippines of the trade mark sought to be registered. xxx The Philippines has, however not yet entered into any such treaty or convention and, until she does, actual use in the Philippines of the trademark sought to be registered and allegation in the application of such fact, will be required in all applications for original or renewal registration submitted to the Philippine Patent Office. (Circular Release No. 8.)

In the instant case, the application was filed in 1995, wherein Respondent-Registrant attached the certified true copy of French Trademark Registration No. 93/33 NL with an English translation thereof. Under the provisions of Section 37 of R.A. 166, use need not be proved. Therefore for all intents, Respondent-Registrant's TIFFANY mark remains valid.

The next issue is whether the Petitioner/Respondent-Applicant's PRINCESS TIFFANY AND LOGO can be registered. The records show that the application for registration was made on 24 September 2009. At this time, Opposer/Respondent-Registrant's TIFFANY mark has been registered under Reg. No. 4-1995-106478 for goods under class 30. It is noted that Opposer's other marks, namely TIFFANY BREAK, TIFFANY SWOOP, TIFFANY TIGER and TIFFANY TURBO were not yet registered at the time of the Respondent-Applicant filed its application for PRINCESS TFFSNY & DEVICE. The Opposer asserts that the mark PRINCESS TIFFANY & DEVICE is confusingly similar to its TIFFANY marks. According to the Opposer, it is the prior adopter and user of the mark which was used as early as 1987 in United Arab Emirates (UAE) and is registered in various countries abroad. Evidence show that Opposer ships its products from the UAE, and appointed WinningTouch as its distributor in the Philippines in 2009.

A scrutiny of the contending marks show that they are identical in respect of the word TIFFANY. However, the records show that "Tiffany" is the name of the daughter¹² of the General Manager of Petitioner/Respondent-Applicant, from where the trademark was derived. The mark is a composite mark consisting of the words PRINCESS TIFFANY in stylized font and an oblong shape, with sparkles that surround the word princess and further encircles with vector graphics. The commercial presentation of the contending marks are different, even if both contain the word TIFANNY.

¹² Exhibit "2"

In the case of *Great White Shark v. Danilo Caralde*¹³, the Supreme Court upheld the finding that no confusing similarity existed in spite of the use of by the competing marks of the image of a shark on the same type of goods, it held:

In *Great White Shark's* 'GREG NORMAN LOGO', there is an outline of a shark formed with the use of green, yellow, blue and red lines/strokes. In contrast, the shark in *Caralde's* 'SHARK & LOGO' mark is illustrated in letters outlined in the form of a shark with the letter 'S' forming the head, the letter 'H' forming the fins, the letters 'A' and 'R' forming the body, and the letter 'K' forming the tail. In addition, the latter mark includes several more elements such as the word 'SHARK' in a different font underneath the shark outline, layers of waves, and a tree on the right side, and liberally used the color blue, with some parts in red, yellow, green and white. The whole design is enclosed in an elliptical shape with two linings, thus xxx

As may be gleaned from the foregoing, the visual dissimilarities between the (2) two marks are evident and significant, negating the possibility or confusion in the minds of the ordinary purchaser, especially considering the distinct aural difference between the marks. xxx”

Therefore, when the images of the marks are juxtaposed beside each other, bearing in mind the goods although classified under the same Class 30, are visually not the same. In the case of *Taiwan Kolin Corporation, Ltd. v. Kolin Electronics, Co., Inc.*¹⁴, the Supreme Court held:

While both marks refer to the word 'KOLIN' written in upper case letters and in bold font, the Court at once notes the distinct visual and aural differences between them: *Kolin Electronics'* mark is italicized and colored black while that of *Taiwan Kolin* is white in pantone red color background. The differing features between the two, though they may appear minimal, are sufficient to distinguish one brand from the other.

It cannot be stressed enough that the products involved in the case at bar are, generally speaking, various kinds of electronic products. These are not ordinary household items, catsup, soy sauce or soap which are of minimal cost. The products of the contending parties are relatively luxury items not easily considered affordable. Accordingly, the casual buyer is predisposed to be more cautious and discriminating in and would prefer to mull over his purchase. Confusion and deception, then, is less likely.

x x x

It is hornbook doctrine, as held in the above cited cases, that emphasis should be on the similarity of the products involved and not on the

¹³ G.R. No. 192294, 12 November 2012

¹⁴ G.R. No. 209843, March 25, 2015

arbitrary classification or general description of their properties or characteristics. The mere fact that one person has adopted and used a trademark on his goods would not, without more, prevent the adoption and use of the same trademark by others on unrelated articles of a different kind.”

The marks of the parties are depicted in different style/fonts, specially the letter "T" depicted with an upward artistic loop. The Respondent-Applicant's mark includes a device encasing the words PRINCESS and TIFFANY, in dainty and creative sparkles which portrays a distinct, unique commercial impression. Visually and aurally the marks are not confusingly similar. The Respondent-Applicant's goods are various kinds of breads and pastries that are local delicacies such as asado bread, pianono, hopia, pinoy mocha, pandesal etc. Considering the difference in the goods on which the marks are applied, mistake, confusion as to source or even deception is not likely. In the instant case, a customer intending to buy food, would already have in mind, the brand or the kind of bread, pastry or cake, that will satisfy his food craving before making purchases. Consumers would not immediately form a connection that the goods are that of the Opposer's simply because of the presence of the word TIFFANY on different bread types.

More importantly, the evidence shows that the Respondent-Applicant has been engaged in the sale of its products bearing its PRINCESS TIFFANY AND DEVICE mark since 1992, long before the Opposer/Respondent-Registrant began its business in the Philippines. The records show voluminous duplicate/original copies of sales invoices¹⁵ and delivery receipts, earliest of which was dated 27 December 1992¹⁶ and 21 May 1993¹⁷, stickers¹⁸ meticulously compiled; and testimonies to attest to the day-to-day facet of the operations of the Respondent-Applicant in its business of selling bread. Therefore, its long, consistent prior commercial use has earned for the Respondent-Applicant valuable goodwill for its mark PRINCESS TIFFANY AND DEVICE in relation to the goods in the Philippines since 1992. The Supreme Court in *Sterling Products International v. Farbenfabriken Bayer*, held:

“A rule widely accepted and firmly entrenched because it has come down through the years is that actual use in commerce or business is a prerequisite to the right of ownership over a trademark. xxx Adoption alone of a trademark will not give exclusive right thereto. xxx In fact, a prior registrant cannot claim exclusive use unless it uses it in commerce.”¹⁹

The facts obtaining in the instant case, pertaining to Respondent-Applicant's prior Philippine use of the mark, PRINCESS TIFFANY AND DEVICE, calls to mind the ruling of the Supreme Court in *Arce Sons & Company v. Selecta Biscuit Company, Inc.*²⁰; it held:

¹⁵ Exhibits “6”, “9”, “11”, “17”-“19” series

¹⁶ Exhibit “6”-A

¹⁷ Exhibit “9”-A

¹⁸ Exhibit “3”

¹⁹ 27 SCRA 1214

²⁰ G.R. No. L- 14761, 28 January 28, 1961

The word 'SELECTA', it is true, may be an ordinary or common word in the sense that may be used or employed by any one in promoting his business or enterprise, but once adopted or coined in connection with one's business as an emblem, sign or device to characterize its products, or as a badge of authenticity, it may acquire a secondary meaning as to be exclusively associated with its products and business. xxx And it is also in the sense that the law postulates that "The ownership or possession of a trade-mark, . . . shall be recognized and protected in the same manner and to the same extent, as are other property rights known to the law," thereby giving to any person entitled to the exclusive use of such trade-mark the right to recover damages in a civil action from any person who may have sold goods of similar kind bearing such trade-mark (Sections 2-A and 23, Republic Act No. 166, as amended).

The term 'SELECTA' may be placed at par with the words "Ang Tibay" which this Court has considered not merely as a descriptive term within the meaning of the Trade-mark Law but as a fanciful or coined phrase, or a trade-mark. xxx

The function of a trade-mark is to point distinctively, either by its own meaning or by association, to the origin or ownership of the wares to which it is applied. 'Ang Tibay' as used by the respondent to designate his wares, had exactly performed that function for twenty-two years before the petitioner adopted it as a trade-mark in her own business. xxx”

Trademark goodwill is a property right protectable under the law. The passage of the new law, Republic Act 8293 (“IP Code”), has not diminished Petitioner/Respondent-Applicant’s trademark rights. The IP Code states:


Section 236. Preservation of Existing Rights. - Nothing herein shall adversely affect the rights on the enforcement of rights in patents, utility models, industrial designs, marks and works, acquired in good faith prior to the effective date of this Act. (n)

WHEREFORE, premises considered, the instant Petition for Cancellation of Trademark Registration No. 4-1995-106478 is hereby **DISMISSED**. The instant Verified Opposition to the Application Serial Number 4-2009-009678 is hereby **DISMISSED**. Let the filewrapper of the subject trademark registration and application, be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City,

T8 JAN 2017


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