

NUTRI-ASIA, INC.,
Opposer,

-versus-

UNIVERSAL FOOD PUBLIC COMPANY LIMITED,
Respondent-Applicant.

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}	IPC No. 14-2011-00505
}	Opposition to:
}	Appln. Serial No. 4-2010-001122
}	Date Filed: 18 May 2011
}	
}	
}	TM: UFC & DEVICE

NOTICE OF DECISION

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GREETINGS:

Please be informed that Decision No. 2017 - 76 dated 15 March 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, 16 March 2017.


MARILYN F. RETUAL
IPRS IV
Bureau of Legal Affairs

NUTRI –ASIA, INC.,
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} IPC NO. 14-2011-00505
} Opposition to:
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} Appln. Ser. No. 4-2010-001122
} Date Filed: 18 May 2011
} Trademark: UFC & DEVICE
}
} Decision No. 2017- 76

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DECISION

NUTRI-ASIA, INC., (Opposer)¹ filed an opposition to Trademark Application Serial No. 4-2010-001122. The application, filed by UNIVERSAL FOOD PUBLIC COMPANY LIMITED (Respondent-Applicant)², covers the mark “UFC (Logo)”, for use on “fruit juices” under Class 32 of the International Classification of Goods³.

The Opposer anchors its opposition on the following grounds:

“14. NUTRI-ASIA will be damaged by the registration of the trademark UFC (LOGO) and thus opposes the application on the following grounds:

- I. When Opposer NUTRI-ASIA merged with UFC Philippines, Inc. it acquired the latter’s rights as owner, by prior registration of the trade name ‘UFC Philippines’ and trademarks ‘UFC AND DEVICE’ and ‘UFC LABEL’. Respondent-Applicant’s mark infringes on NUTRI-ASIA’s trade name and registered marks.
- II. The registration of Respondent-Applicant’s ‘UFC & DEVICE’ trademark will cause confusion among the relevant consuming public and will hamper the normal expansion of NUTRI-ASIA’s business.
- III. The registration of Respondent-Applicant’s UFC & DEVICE trademark will cause damage to goodwill built by NUTRI-ASIA/UFC Philippines, Inc. upon its trade name and trademarks.

Opposer alleges, among other things, the following:

“9. In 2006, Heinz UFC Philippines, Inc. dropped ‘Heinz’ from its corporate name and became known as UFC Philippines, Inc. Again, the word ‘UFC’ was part of said corporation’s corporate and trade name

¹ Philippine corporation with address at 12th Floor Centerpoint Condominium, Garnet Road corner Julia Vargas, Ortigas Center

² A limited liability company organized and existing under the laws of the State of Nevada, USA with address at 2960 West Sahara Avenue, Las Vegas, Nevada 89102, U.S.A.

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

apart from its holding rights to the trademark registrations for UFC AND DEVICE and UFC LABEL. Xxx

“11. The ‘UFC’ brand and trade name has achieved an iconic status in the Philippines. While it was originally used for, and was widely known as a brand for a host of products manufactured and distributed by NUTRI ASIA (doing business under the name and style of UFC Philippines) in the Philippines and abroad. The UFC brand is now used on catsup and several kinds of sauces (such as but not limited to, vinegar, soy sauce, tomato sauce and spaghetti sauce) powdered flavorings or cooking mixes, concentrated broth and seasoning, cooking oils. It and vegetable preserves, such as nata de coco, sweet jackfruit, sweets sugar palms fruit and sweet bananas.xxx”

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

1. Certificate of filing Amended Articles of Incorporation of NUTR-ASIA, INC.,
2. Articles of Incorporation and Amended Articles of Incorporation;
3. Judicial Affidavit of Lalaine Gonzales-Camina dated 13 April 2012;
4. Assignment of Registered Trademark;
5. Copy of Certificate of Registration No. 4-1999-009590 dated 26 May 2006 for the mark “UFC AND DEVICE”;
6. Copy of Certificate of Registration No. 4-1999-009589 dated 26 May 2006 for the mark “UFC LABEL”;
7. Affidavit of Catherine Ramos dated 4 October 2012;
8. Photographs of products;
9. Print-out of print advertisements; and
10. Compact disc showing advertisements/promotional activities .⁴

The Respondent-Applicant filed its Answer on 24 April 2012, alleging among other things, the following:

“12. As with the usual business practice, here and abroad, the initials of the corporate name, more often, identifies or is adopted to form the principal trademark of the company, thus, BDO for the universal bank Banco de Oro, MNC for the car giant General Motors Company or ING for the investment firm International Netherlands Group. In the instant case, UFC is for Universal Food Public Company Limited. The P for Public having been dispensed with to avoid any misconception or false label of being a government owned corporation.

“13. Thus, Respondent adopted the principal trademark-UFC & Device-which has been registered in the trademark registries of the world, among them, United States of America, Australia, European Union, India, Indonesia, Pakistan, Myanmar, United Arab Emirates, Cambodia, Vietnam

⁴ Exhibits “A” to “O” with submarkings



and of course, its home country Thailand in at least three classes 29, 30, 32.

“14. In the Philippines, what is being registered for Respondent’s UFC & Device is only for class 32, for the goods fruit juice-the same having been not applied for or registered by the Opposer, Nutri-Asia, Inc. xxx

“17. To paraphrase, if one is in the market for catsup, a consumer is not likely to purchase fruit juices just because of the letters or mark UFC.

“18. It is noted that cooking oil is under Class 29 and soy sauce under Class 30. Thus the Respondent respectfully submits that registration of the same mark UFC & Device is allowed, so long as the same is for another class, not appropriated by a prior registrant.xxx

“32. Respondent respectfully submits that as far as Classes 29 and 30 are concerned, the mark UFC belongs to the Opposer, however, as far as 32 and fruit juices are concerned, the UFC mark belongs to the Respondent.xxx”

To support its Answer, the Respondent-Applicant submitted as evidence the following:

1. Affidavit of Mr. Foo Say Suan Francis dated 16 March 2012;
2. Examples of advertising and promotional materials /activities;
3. Copies of trademark registrations in other countries, i.e. Thailand, Indonesia, India, Pakistan, Australia, United States of America, Myanmar, Cambodia, United Arab Emirates;
4. Status report of trademark registrations and applications; and
5. Special Power of Attorney dated 16 March 2012.⁵

Should the Respondent-Applicant be allowed to register the trademark UFC & DEVICE?

Records show that at the time Respondent-Applicant applied for registration of the mark “UFC (LOGO)” the Opposer already registered the mark UFC under Registration No. 4-1999-009590⁶ issued on 26 May 2006 for the mark “UFC AND DEVICE for goods under class 30, namely : “Catsup, soy sauce, vinegar, fish sauce”. Respondent-Applicant’s trademark application is applied on goods under class 32 namely: “fruit juices”.

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

⁵ Exhibit “1” to “27”(“AA”)

⁶ Exhibit “H”



Opposer's mark

Respondent-Applicant's mark

Scrutinizing the marks, it is observed that both have identical letters U-F-C. In spite of this similarity, Opposer's mark is depicted in a representation of an earthen pot or "palayok" on top of a potholder, with the mark UFC in the contour of a pot. Respondent-Applicant's mark is a device and are the initials of its corporate name "Universal Food Public Company Limited", the letter "P" deleted to avoid any false notion that it is public or government owned.

Even if the marks of the parties are identical, the kind, nature or type of goods upon which the marks are to be applied must be considered in determining the likelihood of confusion. The Opposer uses its mark on goods mainly under class 30, sauces, catsup etc., while the Respondent-Applicant uses its mark on fruit juices under class 32. As correctly pointed out by the Respondent-Applicant, the goods are unrelated as they do not have the same descriptive properties. A customer intending to buy catsup, will not end up buying fruit juice. The target market or consumers are also different, thus it is unlikely that on account of the identity of the marks UFC, the public would be vulnerable to confusion much less deception.

It is basic in trademark law that the same mark can be used on different types of goods. The Supreme Court in *Philippine Refining Co. Inc. v. Ng Sam*⁷ held:

A rudimentary precept in trademark protection is that "the right to a trademark is a limited one, in the sense that others may used the same mark on unrelated goods." ¹ Thus, as pronounced by the United States Supreme Court in the case of *American Foundries vs. Robertson*, "the mere fact that one person has adopted and used a trademark on his goods does not prevent the adoption and use of the same trademark by others on articles of a different description."

Such restricted right over a trademark is likewise reflected in our Trademark law. Under Section 4(d) of the law, registration of a trademark which so resembles another already registered or in use should be denied, where to allow such registration could likely result in confusion, mistake or deception to the consumers. Conversely, where no confusion is likely to arise, as in this case, registration of a similar or even identical mark may be allowed.

In *Canon Kabushiki Kaisha v. Court of Appeals*⁸ likewise held:

⁷ .GR. No. L-26676 July 30, 1982

⁸ G R. 120900 July 20, 2000

xxx petroleum products on which the petitioner therein used the trademark ESSO, and the product of respondent, cigarettes are "so foreign to each other as to make it unlikely that purchasers would think that petitioner is the manufacturer of respondent's goods". Moreover, the fact that the goods involved therein flow through different channels of trade highlighted their dissimilarity xxx

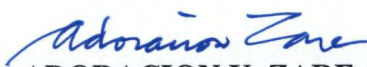
Thus, the evident disparity of the products of the parties in the case at bar renders unfounded the apprehension of petitioner that confusion of business or origin might occur if private respondent is allowed to use the mark CANON."

Moreover, the Respondent-Applicant showed that it has registered its mark in other jurisdictions. As seen from its website, it has promoted and advertised its goods in other territories. The Bureau believes that no damage will accrue to the Opposer, being that it mainly sells catsup and Respondent-Applicant's UFC mark is applied on fruit juices. Because the marks are used on products of different nature, confusion and deception is unlikely. There is no likelihood of confusion of business. It is improbable for one who is buying or patronizing Opposer's food products to be reminded of the Respondent-Applicant's mark "UFC" which is applied on fruit juice. Thus, both co-exist as long as the goods/services are not similar or closely related.

WHEREFORE, premises considered, the instant Opposition to Trademark Application No. 4-2010-001122 is hereby **DISMISSED**. Let the filewrapper of the subject trademark be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 15 MAR 2017


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