

**SAN MIGUEL PURE FOODS
COMPANY, INC.,**
Opposer,

-versus-

PRIFOOD CORPORATION,
Respondent- Applicant.

x-----x

}
} **IPC No. 14-2015-00103**
} Opposition to:
} Appln. No. 4-2014-013617
} Date Filed: 31 October 2014
} **TM: "SNACKERS**
} **FAVORITE CHIPS"**

NOTICE OF DECISION

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GREETINGS:

Please be informed that Decision No. 2017 - 103 dated April 03, 2017 (copy enclosed) was promulgated in the above entitled case.

Pursuant to Section 2, Rule 9 of the IPOPHEL 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, April 04, 2017.


MARILYN F. RETUTAL
IPRS IV
Bureau of Legal Affairs

SAN MIGUEL PURE FOODS COMPANY, INC.,

Opposer,

-versus-

PRIFOOD CORPORATION,

Respondent-Applicant.

X ----- X

IPC No. 14-2015-00103

Opposition to Trademark

Appln. No. 4-2014-013617

Date Filed: 31 October 2014

Trademark: **"SNACKERS
FAVORITE CHIPS"**

Decision No. 2017- 103

DECISION

San Miguel Pure Foods Company, Inc.¹ ("Opposer") filed an opposition to Trademark Application Serial No. 4-2014-013617. The contested application, filed by Prifood Corporation² ("Respondent-Applicant"), covers the mark "SNACKERS FAVORITE CHIPS" for use on *"savory corn-based, rice-based, wheat flour-based and tapioca flour based snack-foods, coated, based on or flavoured with chocolate"* under Class 30 of the International Classification of Goods³.

According to the Opposer, the "SNACKERS" mark was first used on 01 August 2000 on the "JELLYACE" ready-to-serve gelatin products by Sugarland Beverage Corporation, now Sugarland Corporation, a subsidiary of Magnolia, Inc. and thus part of the San Miguel Food Group. Since then, the Opposer, its predecessors and/or licensees have used, sold and advertised the "SNACKERS" ready-to-serve gelatin products, which are available in major supermarkets, groceries, convenience and sari-sari stores. On 26 August 1999, Dante Y. Go, president of Sugarland Beverage Corporation, first applied for registration of the trademark "SNACKERS". The said application was thereafter assigned to Sugarland Beverage Corporation, which merged with SMC Juice, Inc. and Metro Bottled Water Corporation forming La Tondeña Distillers, Inc.. The corporate name of La Tondeña Distillers, Inc. was then changed to Ginebra San Miguel, Inc.. The latter company assigned the application for "SNACKERS" to its parent company, San Miguel Corporation. On 05 August 2004, the said application was granted registration under Certificate of Registration No. 4-1999-006310. Eventually, the registered mark was assigned to the Opposer.

The Opposer essentially objects the registration of the Respondent-Applicant's mark "SNACKERS FAVORITE CHIPS" on the ground that the same is identical or

¹ A corporation organized and existing under the laws of the Philippines with business address at 9660 23rd Floor, JMT Corporation Condominium, ADB Avenue, Ortigas Center, Pasig City.

² A domestic corporation with address at Don S. Suico St., Riverside, Canduman6014, Mandaue City, Cebu.

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

confusingly similar to its "SNACKERS" mark in violation of Section 123.1 (d) of Republic Act No. 8293, otherwise known as the Intellectual Property Code ("IP Code"). In support of its opposition, the Opposer submitted the printout of the E-Gazette publication of the contested application and the affidavit of Ma. Francesca Q. Baltazar, with annexes.⁴

The Respondent-Applicant filed its Answer on 06 August 2015 alleging, among others, that it applied for registration of "SNACKERS FAVORITE CHIPS" label on 03 January 2003. The same eventually ripened to registration on 16 June 2016. Due to inadvertence, however, it failed to file the 3rd Year Declaration of Actual Use ("DAU"). Despite this, it continued to use its mark. Thereafter, on 31 October, 2014, it again filed an application for "SNACKERS FAVORITE CHIPS" mark.

The Respondent-Applicant contends that the Opposer's mark is different from its applied mark. First, its mark contains the additional words "FAVORITE CHIPS" while the Opposer's is accompanied by the "JELLYACE" brand. Second, its mark includes a representation of chips while the Opposer's with photographs of ready-to-eat gelatin products. Third, the Opposer's mark has a leaf-like device on top of the letter "S". Lastly, the Opposer's mark is composed of different colors. It moreover avers that when consumers look at the Opposer's mark, they will think of the different flavors of sweet gelatin. In contrast, when buyers look at its mark, they will think of salty and crunchy treats. Furthermore, it asserts that consumers of the Opposer's products refer thereto as "JELLYACE", not "SNACKERS". The Respondent-Applicant submitted a copy of Certificate of Registration No. 4-2003-00031 as evidence.⁵

Pursuant to Office Order No. 154, s. 2010, the case is referred to mediation. The parties, however, did not reach any settlement. Thereafter, the preliminary conference was scheduled on 09 June 2016. Upon termination thereof on the same date, the parties were directed to submit their respective position papers. After which, the case is deemed submitted for decision.

The issue to be resolved in this case is whether the Respondent-Applicant's mark "SNACKERS" should be allowed registration.

Section 123.1 (d) of the IP Code provides that:

"123.1. A mark cannot be registered if it:

(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:

⁴ Marked as Exhibits "B" to "K".

⁵ Marked as Exhibit "1".

- (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; x x x"*

Records reveal that at the time Respondent-Applicant filed for an application of registration of its mark "SNACKERS FAVORITE CHIPS" on 31 October 2014, the Opposer has a valid and existing registration of "SNACKERS" under Certificate of Registration No. 4-1999-006310 issued on 05 August 2004 for "ready to serve gelatin".

Now, to determine whether the marks of the Opposer and Respondent-Applicant are confusingly similar, the two are shown below for comparison:

SNACKERS

Opposer's Mark



Respondent-Applicant's Mark

From the illustration, it can be gleaned that the only difference between the competing marks is the addition of "FAVORITE CHIPS" and a depiction of corn chips in the Respondent-Applicant's mark. The Respondent-Applicant's application, however, disclaims the words "FAVORITE CHIPS" and the representation of the corn chips. Without the disclaimed portions, the competing marks are identical. Any difference in fonts, if at all, is insufficient to eradicate the possibility of confusion. After all, confusion cannot be avoided by merely adding, removing or changing some letters of a registered mark. Confusing similarity exists when there is such a close or ingenuous imitation as to be calculated to deceive ordinary persons, or such resemblance to the original as to deceive ordinary purchased as to cause him to purchase the one supposing it to be the other.⁶

This Bureau also quotes with favor the ruling of the Supreme Court in the case of Del Monte Corporation vs. Court of Appeals⁷, thus:

⁶ Societe des Produits Nestle, S.A. vs. Court of Appeals, GR No. 112012, 04 April 2001.

⁷ G.R. No. L-78325, 25 January 1990.

"The question is not whether the two articles are distinguishable by their label when set side by side but whether the general confusion made by the article upon the eye of the casual purchaser who is unsuspecting and off his guard, is such as to likely result in his confounding it with the original. As observed in several cases, the general impression of the ordinary purchaser, buying under the normally prevalent conditions in trade and giving the attention such purchasers usually give in buying that class of goods is the touchstone."

Succinctly, since the Respondent-Applicant's chips and the Opposer's gelatin products have the same target market and flow in the same channels of trade, the minor differences in the mark will not diminish the likelihood of the occurrence of confusion, mistake and/or deception. It is highly probable that the purchasers will be led to believe that Respondent-Applicant's mark is a mere variation of Opposer's mark. This especially so with respect to the kind of goods the competing marks cover, which are less expensive products. As such, consumers thereof less inclined to closely examine specific details of similarities and dissimilarities between competing marks.

Moreover, it is settled that the likelihood of confusion would not extend not only as to the purchaser's perception of the goods but likewise on its origin. Callman notes two types of confusion. The first is the *confusion of goods* "in which event the ordinarily prudent purchaser would be induced to purchase one product in the belief that he was purchasing the other." In which case, "defendant's goods are then bought as the plaintiff's, and the poorer quality of the former reflects adversely on the plaintiff's reputation." The other is the *confusion of business*: "Here though the goods of the parties are different, the defendant's product is such as might reasonably be assumed to originate with the plaintiff, and the public would then be deceived either into that belief or into the belief that there is some connection between the plaintiff and defendant which, in fact, does not exist."⁸

Finally, it is emphasized that 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.⁹ Based on the above discussion, the Respondent-Applicant's trademark fell short in meeting this function.


⁸ Societe des Produits Nestle, S.A. vs. Dy, G.R. No. 172276, 08 August 2010.

⁹ Pribhdas J. Mirpuri vs. Court of Appeals, G.R. No. 114508, 19 November 1999.

WHEREFORE, premises considered, the instant opposition is hereby **SUSTAINED**. Let the filewrapper of Trademark Application Serial No. 4-2014-0013617 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, **03 APR 2017**


ATTY. Z'SA MAY B. SUBEJANO-PE LIM
Adjudication Officer
Bureau of Legal Affairs