

COMPAGNIE GERVAIS DANONE,
Opposer,

-versus-

KRAFT FOODS GLOBAL BRANDS LLC,
Respondent- Applicant.

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}
} IPC No. 14-2012-00403
} Opposition to:
} Appln. Serial No. 4-2011-501934
} Date Filed: 22 December 2011
} TM: "ACTIMIX"

NOTICE OF ORDER

SALUDO FERNANDEZ AQUINO & TALEON
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5858 SAFA Building
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ORTEGA BACORRO ODULIO CALMA & CARBONELL
Counsel for Respondent-Applicant
5th & 6th Floors, ALPAP 1 Building
140 L.P. Leviste Street
Salcedo Village, Makati City

GREETINGS:

Please be informed that Order No. 2017 - 115 (D) dated May 23, 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 final order to the Director of the Bureau of Legal Affairs within ten (10) days after receipt of the final order together with the payment of applicable fees.

Taguig City, May 25, 2017.


MARILYN F. RETUAL
IPRS IV
Bureau of Legal Affairs

COMPAGNIE GERVAIS DANONE,
Opposer,

- versus -

**KRAFT FOODS GLOBAL
BRANDS LLC,**

Respondent·Applicant.

IPC NO. 14 – 2012 - 00403
Case Filed on: 29 October 2012

Opposition to:
Appln Serial No. 42011501934
Date filed: 22 December 2011
TM: "ACTIMIX"

ORDER NO. 2017 -

115(d)

X-----X

O R D E R

COMPAGNIE GERVAIS DANONE. (Opposer)¹ filed an Opposition to Trademark Application Serial No. 4-2011-501934. The trademark application filed by KRAFT FOODS GLOBAL BRANDS LLC (Respondent·Applicant)², covers the mark ACTIMIX for "*meat, fish, poultry and game; meat extracts preserved, dried and cooked fruits and vegetables; jellies, jams, fruit sauces; eggs and milky products; edible oils and fats; and biscuits, cookies and crackers.*" under Classes 29 and 30 of the International Classification of Goods and Services³.

However, a check with the records of the Intellectual Property Office of the Philippines, show that no Declaration of Actual Use (DAU) for the mark "ACTIMIX" was filed. The non-filing of the requisite DAU shall result in the removal of the mark from the Trademark Registry of the Intellectual Property Office. Section 124.2 of Republic Act No. 8293 explicitly provides:

Sec. 124. Requirements of Application. – xxx 124.2. The applicant or the registrant shall file a declaration of actual use of the mark with evidence to that effect, as prescribed by the Regulations within three (3) years from the filing date of the application. Otherwise, the application shall be refused or the mark shall be removed from the Register by the Director.

¹A corporation organized and existing under the law of France with principal address at 17 Boulevard, Haussmann, 75009, Paris, France.

²A foreign corporation with business address at Three Lakes Drive, NorthField, Illinois 60093, USA

³The 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.

Republic of the Philippines

INTELLECTUAL PROPERTY OFFICE

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Furthermore, Rule 204 of the Rules & Regulations on Trademarks, Service Marks, Trade Names and Marked or Stamped Containers ("Trademark IRR") provides:


RULE 204. Declaration of Actual Use. – The Office will not require any proof of use in commerce in the processing of trademark applications. However, without need of any notice from the Office, all applicants or registrant shall file a declaration of actual use of the mark with evidence to that effect within three years, without possibility of extension, from the filing date of the application. Otherwise, the application shall be refused or the mark shall be removed from the register by the Director motu proprio.

Accordingly, with the removal from the Register of the mark ACTIMIX, there is no more reason nor basis to proceed with this case.

WHEREFORE, premises considered, the instant Opposition to Trademark Application Serial No. 42012502394 is hereby **DISMISSED**. Let the filewrapper of Trademark Application Serial No. 42012502394 be returned together with a copy of this DECISION to the Bureau of Trademarks (BOT) for appropriate action.

SO ORDERED.

Taguig City, 23 MAY 2017


Leonardo Oliver Limbo
Adjudication Officer
Bureau of Legal Affairs