

SAN MIGUEL PURE FOODS COMPANY, INC.,
Opposer,

-versus-

FRABELLE FISHING CORPORATION,
Respondent-Applicant.

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IPC No. 14-2015-00247
Opposition to:
Appln. Serial No. 4-2015-011048
Date Filed: 30 January 2015

TM: KING INSTANT NOODLES

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NOTICE OF DECISION

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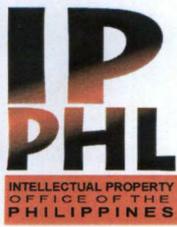
GREETINGS:

Please be informed that Decision No. 2017 - 193 dated 02 June 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, 02 June 2017.


MARILYN F. RETUAL
IPRS IV
Bureau of Legal Affairs



SAN MIGUEL PURE FOODS COMPANY, INC.,

Opposer,

-versus-

FRABELLE FISHING CORPORATION,
Respondent-Applicant.

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} **IPC NO. 14-2015-00247**

} Opposition to:

} Appln. Serial No. 4-2015-001048

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} Date filed: 30 January 2015

} Trademark: **KING INSTANT NOODLES**

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} Decision No. 2017 - 193

DECISION

SAN MIGUEL PURE FOODS COMPANY, INC (“Opposer”)¹ filed an opposition to Trademark Application Serial No. 4-2015-001048. The application, filed by FRABELLE FISHING CORPORATION (“Respondent-Applicant”)², covers the mark “KING INSTANT NOODLES” for use on “flour” under Class 30 of the International Classification of Goods and Services³.

The Opposer alleges, among others, that it is the prior user and true, lawful owner of the KING HARD WHEAT FLOUR LOGO. It asserts the mark is identical with or confusingly similar to Opposer’s registered “KING” Marks and falsely suggests a connection between it and the Opposer. According to the Opposer, the registration of the mark “KING INSTANT NOODLES” in favor of Respondent-Applicant is contrary to Sec. 123.1, par. (d), of Rep. Act No. 8293, also known as the Intellectual Property Code of the Philippines (“IP Code”), to wit:

“Sec. 123. Registrability – 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:
 - 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;”

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

1. Opposer’s brochure showing its “KING” Marks on its flour products;
2. Photographs of actual bag of flour Opposer;

¹ A corporation duly organized and existing under the laws of the Philippines with address at 23rd Floor JMT Corporate Condominium , ADB Avenue, Ortigas Center

² A domestic corporation with address at 1051 North Bay Boulevard, Navotas City

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.

3. Advertising material; Web page featuring Opposer's flour products bearing the "KING" Marks;
4. Print-out of Opposer's corporate structure from its website;
5. A copy of Certificate of Registration for the trademark "KING" bearing Registration No. 4-2006-003747 issued on 18 February 2008; and
6. Affidavit of Ma. Francesca Baltazar dated 16 July 2015⁴

This Bureau issued a Notice to Answer and served a copy thereof upon the Respondent-Applicant on 10 August 2015. However, the Respondent-Applicant did not file an answer. Thus, the Hearing Officer issued Order No. 2016-275, on 11 February 2016, declaring the Respondent-Applicant in default and the instant opposition deemed submitted for decision.

Should the Respondent-Applicant's trademark application be allowed?

It is emphasized that the essence of trademark registration is to give protection to the owner of the trademark. 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 of his products.⁵

Records show that at the time the Respondent-Applicant filed its trademark application on 30 January 2015, Opposer San Miguel Pure Foods Company, Inc. already has existing trademark registrations in the Philippines for the marks "KING" and "KING HARD WHEAT FLOUR LOGO" bearing Registration Nos. 4-2006-003747 and 4-2006-003746, respectively. Opposer's aforementioned KING Marks were registered on 18 February 2008, covering flour products under Class 30. Respondent-Applicant's mark "KING INSTANT NOODLES" likewise cover goods under Class 30, i.e., instant noodles.

Are the competing marks depicted below, confusingly similar?

Opposer's mark



Respondent-Applicant's mark



The marks are similar with respect to the word KING. Apart from the similarity in the word KING, there are enough elements to distinguish one mark from the other. Opposer's mark

⁴Exhibits "A"- "H"

⁵ Pribhdas J. Mirpuri v. Court of Appeals, G.R. No. 114509, 19 November 1999.

has a "lion head" while the Respondent-Applicant's mark has a representation of a "crown" on top of the word KING. Although noodles are made from flour, noodles are not the only food product made from flour. In that case, no confusion may result even if the marks with the similar word component KING, is used for goods under class 30. Visually, taking into account all the elements in the marks, there is no likelihood of confusion in the contemporaneous use of the marks. Applying the ruling of the Supreme Court in the case of Great White Shark Enterprises, Inc. v. Danilo M. Caralde, Jr.⁶, where the High Court explained:

Irespective of both tests, the Court finds no confusing similarity between the subject marks. While both marks use the shape of a shark, the Court noted distinct visual and aural differences between them. 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, to wit: xxx 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.

By the same reasoning, in the instant case, although the contending marks contain the word KING, Opposer's mark includes the portrait of a lion's head on top of the word king. In contrast, in Respondent-Applicant's mark, the word KING is illustrated in an oblong shape with a picture of a crown on top of the stylized word KING. Moreover, Respondent-Applicant claimed the colors red, blue and yellow for its mark, while the Opposer does not. These elements sufficiently differentiate one mark from the other, thereby excluding any likelihood of confusion.

WHEREFORE, premises considered, the instant Opposition to Trademark Application No. 4-2015-001048 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, 02 JUN 2017


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

⁶ G.R. No. 192294, 21 November 2012