

JOLLIBEE FOODS CORPORATION,
Opposer,

-versus-

ALPHA ALLEANZA MANUFACTURING INC.,
Respondent-Applicant.

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IPC No. 14-2014-00094
Opposition to:
Appln. Serial No. 4-2013-013774
Date Filed: 18 November 2013

**TM: YUMDOG YUMMEATY
HOTDOG**

NOTICE OF DECISION

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ALPHA ALLEANZA MANUFACTURING INC.
c/o MILA A. JAMANDRON
Respondent- Applicant
88 Iglesia ni Cristo Street,
Sta. Rosa 2, Marilao, Bulacan

GREETINGS:

Please be informed that Decision No. 2017 - 257 dated 28 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, 29 June 2017.


MARILYN F. RETUAL
IPRS IV
Bureau of Legal Affairs

JOLLIBEE FOODS CORPORATION,

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-versus-

ALPHA ALLEANZA MANUFACTURING INC.,

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} **IPC NO. 14-2014-00094**

} Opposition to:

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} **Appln. Ser. No. 4-2013-013774**

} **Date Filed: 18 November 2013**

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} **Trademark: "YUMDOG**

} **'YUMMEATY' HOTDOG"**

} **Decision No. 2017- 257**

DECISION

JOLLIBEE FOODS CORPORATION, (Opposer)¹ filed an opposition to Trademark Application Serial No. 4-2013-013774. The application, filed by ALPHA ALLEANZA MANUFACTURING INC., (Respondent-Applicant)², covers the mark "YUMDOG 'YUMMEATY' HOTDOG", for use on "Meat, poultry and game, meat extracts" under Class 29 of the International Classification of Goods³.

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

"1. The Opposer and the JOLLIBEE brand are recognized as one of our country's greatest success stories and is an undeniable symbol of Filipino pride worldwide. The Opposer has been in existence for nearly four (4) decades and operates the very popular chain of quick service restaurants called JOLLIBEE which are found all over the Philippines and abroad. One of the key elements in the JOLLIBEE branding is the trademark YUM and other marks associated with the YUM brand thereafter referred to as the 'YUM trademarks' which have continuously been used in each Jollibee outlet and in almost all product packaging, advertising and promotional materials throughout the years.

"2. The Opposer respectfully comes before this Honorable Office to ask for the rejection of the application for the mark YUMDOG sought to be registered by the Respondent-Applicant for being confusingly similar to the Opposer's YUM trademarks.

"3. The details of the Respondent-Applicant's trademark application are as follows:

¹ A corporation duly organized and existing under Philippine laws with address at 10th Floor, Jollibee Plaza Building, #10 Emerald Avenue, Ortigas Center, Pasig City

² Philippine corporation with address at 88 Iglesia ni Cristo St. Sta. Rosa 2, Marilao, Bulacan

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.



Trademark:

Application No. 4-2013-013774

Application Date: 18 November 2013


Goods: Meat, poultry and game, meat extracts

Class: 29

“4. The registration of the mark YUMDOG is contrary to Section 123.1 (d) of the Republic Act No. 8293 or the Intellectual Property Code of the Philippines (hereafter referred to as the ‘IP Code’) which prohibits the registration of a mark that:

- (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.

“5. The Opposer is the rightful owner of the YUM trademarks, which are registered with the Philippine Intellectual Property Office (hereafter referred to as the ‘IPO;’) for various products and services. The details of these trademarks appear below:

Trademark	Registration No.	Issuance Date	Classes
YUM	4-2003-008177	11 November 2010	29, 43
	4-2008-007565	23 July 2009	16,18, 20, 21, 24, 25, 27, 26, 41
YUM MASCOT HOUSE DEVICE (IN COLORS)	4-2010-005371	14 October 2010	16, 18, 25, 28, 41
YUM MASCOT HOUSE DEVICE (IN BLACK & WHITE)	4-2010-005362	6 January 2011	16, 18, 25, 28, 41

The YUM trademarks have also been registered in the name of the Company in the United States of America and in Italy, to wit: xxx.

Likewise, the Opposer has pending applications for the YUM trademarks in Bahrain, Brunei Darussalam, Cambodia, Canada, Indonesia, South Korea, Kuwait, Malaysia, Oman, Saudi Arabia, Singapore, Spain, United Arab Emirates and Vietnam.

“6. The Respondent-Applicant’s mark YUMDOG is confusingly similar. If not exactly identical, to the Opposer’s YUM word mark, as to be likely to deceive or cause confusion in the minds of the relevant sector of the purchasing public. xxx

“7. It is surprising that notwithstanding a boundless choice of words, phrases and symbols, the Respondent-Applicant has adopted the identical element YUM with the same look and appearance as the Opposer’s YUM trademark to cover the same food products. In the absence of plausible explanation from the Respondent-Applicant as to how this happened, it is only logical to conclude that the Respondent-Applicant is aware of the existence, prior use and registration, renown and reputation of the Opposer’s mark and deliberately appropriated the mark YUMDOG to trade on the goodwill attached to the Opposer’s YUM trademarks. xxx

“9. It is further settled that exact duplication of the mark is not necessary for public confusion to occur. xxx

“10. The Opposer enjoys the exclusive right to prevent all third parties not having its consent from using in the course of trade identical or similar signs for identical or similar goods and services in respect of which its trademarks are registered where such use would result in a likelihood of confusion. The Opposer has not consented to the Respondent-Applicant’s use and registration of the similar mark YUMDOG or any other mark identical or similar to its YUM trademarks. Accordingly, the Respondent-Applicant should not be allowed to register the same.

“11. The Opposer has not used the YUM trademarks in the Philippines as early as 1 October 1976, and continues to use these trademarks throughout the Philippines, as well as abroad. At present, YUM is used by the Opposer for the following variants: xxx

“12. Over the years, the Opposer has also obtained significant exposure for the products upon which the YUM trademarks are used in various media, including television show JOLLITOWN, television commercials, outdoor advertisements, well-known print publications, and other promotional events. Its products can be viewed online through its website www.jollibee.com.ph where the YUM trademarks are prominently featured. Below are some evidence of use of the YUM trademarks. xxx

“15. It is worth noting that the Opposer is a very famous and dynamic food product and service provider that comes out with products regularly. The confusing similarity between the Respondent-Applicant’s mark YUMDOG and the Opposer’s mark YUM will most likely deceive the consumers by suggesting a connection, association, affiliation with the Opposer when none exists, thereby causing substantial damage to the goodwill and reputation associated with the Opposer and its marks. The consumers would rely on the word YUM and its association with the Opposer.

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

1. Original Notarized Notice of Opposition;
2. Affidavit of Atty. Angeline L. Chong;
3. Copies of Philippine registrations and applications;
4. Copies of registrations and applications in the United States of America and other territories;
5. Food packaging bearing the “YUM” trademark;
6. Screenshots of website www.jollibee.com.ph ;
7. Samples of promotional materials and advertisements;
8. Screenshots of website www.jollitown.com.ph;
9. Sample photographs of JOLLIBEE restaurants;
10. Notarized Special Power of Attorney; and
11. Notarized Secretary’s Certificate executed by William Tan Untiong.⁴

This Bureau served upon the Respondent-Applicant a “Notice to Answer” on 8 April 2014. The Respondent-Applicant, however, did not file an Answer.

Should the Respondent-Applicant be allowed to register the mark “YUMDOG YUMMEATY HOTDOG”?

Records show that at the time Respondent-Applicant applied for registration of the mark “YUMDOG YUMMEATY HOTDOG” the Opposer already registered the mark “YUM” under Reg. No. 4-2003-008177⁵ on 11 November 2010 for class 29, namely “Hamburger sandwiches, spaghetti, French fries, chicken sandwiches, and fried chicken for consumption on or off the premises”; and class 43, namely: “Restaurant services, self-service and fast-food restaurant services, catering services, cafeteria services and café services; YUM MASCOT DESIGN under Reg. No. 4-2008-007565; YUM MASCOT HOUSE AND DEVICE under Reg. No. 4-2010-005371 and YUM MASCOT HOUSE AND DEVICE under Reg. No. 4-2010-005362.⁶ The goods covered by the “YUM” trademark are also under class 29.

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

⁴ Exhibits “A” to “K” with submarkings

⁵ Exhibit “C”

⁶ Exhibit “C”

Opposer's marks

Respondent-Applicant's mark

YUM



As observed, the Respondent-Applicant's composite mark contains the word YUM, a registered mark of the Opposer. This similarity does not automatically result to a finding of confusing similarity. The Respondent-Applicant's mark contains other elements like a representation of a dog in a costume with a cap and a cape. The word YUM is joined by the word DOG, hence, "YUM DOG" written in a bold stylized font. The words "YUMMEATY" is also written under the words "YUMDOG". Visually and aurally, the marks are distinguishable from each other. Over-all, the commercial impression generated by the competing marks are different.

Aside from the visual dissimilarities of the marks, it is evident that the marks are to be applied on different goods. Even if the parties use the mark YUM and YUMDOG on goods under Class 29, the Respondent-Applicant applies its mark on "Meat, poultry and game, meat extracts" while the Opposer applies its mark on "Hamburger sandwiches, spaghetti, French fries, chicken sandwiches, and fried chicken for consumption on or off the premises". Thus, the likelihood that confusion or deception may result in the contemporaneous use of the marks is remote.

In the case of Taiwan Kolin Corporation, Ltd. v. Kolin Electronics, Co., Inc.⁷, 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.

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 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.

⁷ G.R. No. 209843, March 25, 2015



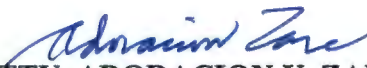
Finally, it is worthy of note, that YUM⁸ is an exclamation to express pleasure at eating. As an expression, YUM, in reference to food, also signifies delectable, appetizing or delicious. Predictably, YUM can be appended to other words to form marks, such as YUM DOG or YUMMEATY, as suggestive marks in forming unique trademarks.

Preceding there from, the Respondent-Applicant's mark may be registered considering that the marks are distinguishable and the products of parties are different, thus, confusion is unlikely.

WHEREFORE, premises considered, the instant Opposition to Trademark Application No. 4-2013-013774 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, 28 JUN 2017.


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

⁸ <https://www.google.com/search?q=yummy+meaning&ie=utf-8&oe=utf-8#q=yum+meaning>