

SAN MIGUEL PURE FOODS COMPANY, INC., }
Opposer, }
 -versus- }
 }

IPC No. 14-2016-00350
 Opposition to:
 Appln. Serial No. 4-2016-0004484
 Date Filed: 28 April 2016

FRABELLE FISHING CORPORATION, }
Respondent-Applicant. }
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NOTICE OF DECISION

OFFICE OF THE GENERAL COUNSEL
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FRABELLE FISHING CORPORATION
Respondent- Applicant
 1051 North Bay Boulevard
 Navotas City, Metro Manila


GREETINGS:

Please be informed that Decision No. 2017 - 290 dated 03 July 2017 (copy enclosed) was promulgated in the above entitled case.

Pursuant to Section 2, Rule 9 of the IPOP HL 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, 05 July 2017.


MARILYN F. RETUTAL
 IPRS IV
 Bureau of Legal Affairs

SAN MIGUEL PURE FOODS COMPANY, INC., } **IPC NO. 14-2016-00350**
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 } Opposition to:
 } Appln. Ser. No. 4-2016-0004484
 -versus- } Date Filed: 28 April 2016
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 } Trademark: 
FRABELLE FISHING CORPORATION, }
 Respondent-Applicant. }
 x-----x } Decision No. 2017 - 290

DECISION

SAN MIGUEL PURE FOODS COMPANY, INC., (Opposer)¹ filed an opposition to Trademark Application Serial No. 4-2016-0004484. The application, filed by FRABELLE FISHING CORPORATION (Respondent-Applicant)², covers the mark “FIESTA BUFFET MARK”, for use on “hotdogs, tocino, sausage, frozen processed meat products” under Class 29 and “services for providing food” under Class 43 of the International Classification of Goods³.

The Opposer anchors its opposition on the following grounds:

- “A. Opposer is the true and lawful owner of the Fiesta marks.
- “B. Respondent-Applicant’s Fiesta Buffet Mark is confusingly similar with Opposer’ Fiesta Marks, the registration of which will violate Section 123.1 of the IP Code.
- “C. Respondent-Applicant’s use and appropriation of Fiesta Buffet Mark falsely suggests a connection between the Respondent-Applicant and Opposer, and will cause damage to the Opposer and the public.”

The Opposer further alleges, among other things, that:

“Opposer is the true and lawful owner of the Fiesta marks.

“10. The word 'FIESTA' was first used in Philippine commerce by PFC as early as 1980. Copies of notarized third and fifth year anniversary Declaration of Actual Use (DAU) submitted in relation to the mark

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

² A 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.



'PUREFOODS FIESTA HAM LABEL DESIGN' and covered by Certificate of Registration No. 4-2007-006325, which was received in due course by the IPOPHIL on 21 May 2010 and 16 December 2013 are attached hereto xxx

"12. For more than thirty five (35) years now, Opposer's Fiesta brand has been consistently associated with, and has acquired goodwill for, great taste, superior quality and food safety of Opposer's ham products. To date, Opposer continues to commercially distribute, market and sell products bearing the Fiesta Marks. Opposer's Fiesta-branded products are currently sold in the different branches of major supermarkets and stores nationwide.xxx

"13. Since the Fiesta ham product was first introduced in 1980, Opposer and Purefoods-Hormel and their predecessors-in- interest have been conducting extensive advertising and promotional campaigns for goods bearing the Fiesta Marks, in order to build up and continue to build up the already enormous goodwill associated with the Fiesta brand. For the years 2012, 2013, 2014 and 2015, Php100 Million, Php45 Million, Php80 Million and Php70 Million, respectively, was spent for its promotion and advertisement campaigns involving products bearing the Fiesta marks. xxx

"16. At present, Opposer owns at least eight (8) active Philippine trademark registrations and pending applications for the Fiesta Marks covering various food products under Class 29. xxx"

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

1. Secretary's Certificate;
2. Print-out of page of IPO gazette showing details of application serial no. 4-2016-0004484;
3. Affidavit of Atty. Ma. Francesca Q. Baltazar;
4. Print-out of "About page" at <http://sanmiguelpurefoods.com/page/about>;
5. Copies of Declaration of Actual Use;
6. Print-out of online articles about Fiesta ham products;
7. Opposer's Facebook page; photographs of advertisements and promotions; news articles about "FIESTA" mark;
8. Deed of Assignment;
9. Copies of Certificates of Registrations for "FIESTA" marks;
10. DVD containing commercials for "FIESTA" brand; and
11. Copy of Certificate of Registration No. 4-2013-00500102 for the mark "FIESTA".⁴

⁴ Exhibits "A" to "N" inclusive of submarkings



This Bureau served upon the Respondent-Applicant a "Notice to Answer" on 12 October 2016. The Respondent-Applicant, however, did not file an Answer. Thus, the Hearing Officer issued an order on 18 March 2017 declaring the Respondent-Applicant in default.

Should the Respondent-Applicant be allowed to register the trademark FRABELLE FOODS FIESTA BUFFET?

Records show that at the time Respondent-Applicant applied for registration of the mark "FRABELLE FIESTA BUFFET", the Opposer already registered the mark "FIESTA" under of Registration No. 4-2013-00500102⁵ dated 22 September 2013. The goods covered by the Opposer's trademark registration are also under Class 29, namely: "Breaded and battered meat, seafood, vegetable and dairy", while the Respondent-Applicant's trademark application under the same Class 29 indicates use as "hotdogs, tocino, sausage, frozen processed meat products". The Opposer also registered "PUREFOODS FIESTA HAM SMOKED BONE-IN SPIRAL SLICED" under Reg. No. 4/2012/00502986⁶ for "hams and cold cuts" on 22 September 2013.

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

FIESTA

Opposer's mark



Respondent-Applicant's mark

Opposer's mark



Opposer and Respondent-Applicant's marks are similar in so far as the word "FIESTA" in Respondent-Applicant's mark resembles in looks and in sound, the word "FIESTA" in Opposer's mark. However, this Bureau finds that the presence of the word "FIESTA" in both marks is insufficient to establish a finding of confusing similarity between the computing marks to sustain the opposition. The word "FIESTA" which means "feast or celebration" is a word commonly used in the Philippines and usually relates to food. That is why, in this Office's Trademark Registry there are numerous trademark registrations and applications for Class 29 and 30 bearing the word "FIESTA"

⁵ Exhibit "N"

⁶ Exhibit "G-2"

AS

such as "FIESTA", "FIESTA GULAMAN", "HAPPY FIESTA", "FIESTA PLATTERS", "FIESTA MIXX", "ROYAL FIESTA", "FIESTA VILLAGE", "EON FIESTA", "FIESTA FOOD", among others. This underscores the fact that "FIESTA" is widely used as a trademark and taken alone is not very distinctive as to effectively identify the source of goods and services. Hence, what will determine whether the computing trademarks are confusingly similar are the other words or symbols present in the marks. The word "FIESTA" is also depicted in different font/style. It is clear from the comparison of the marks that there are no other features that are similar. In Opposer's mark, the "PUREFOODS" is placed on top of the word "FIESTA HAM" and there are other disclaimed terms such as "HAM SMOKED BONE-IN SPIRAL SLICED", while in Respondent-Applicant's mark, an equally dominant word, "FRABELLE" is written in italicized way over the word "FIESTA" encased in a blue ribbon-like device. The colors blue, red, orange, violet, yellow and green are also claimed. These features of the mark confirm that they are not confusingly similar. The over-all commercial impression of the marks are distinct.

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.

As in the preceding case, Respondent's use of various colors, which are different on each and every letter of the word FIESTA, which is written in a style unlike that of the Opposer's with the word FRABELLE above the word FIESTA, designed with a blue background, sufficiently differentiate the two contending marks.

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

⁷ G.R. No. 209843, March 25, 2015

imposition; and to protect the manufacturer against substitution and sale of an inferior and different article as his product.⁸ It is found that Respondent-Applicant's mark has sufficiently met the requirement of the law.

WHEREFORE, premises considered, the instant Opposition to Trademark Application No. 4-2016-0004484 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, 03 JUL 2017



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

⁸ *Pribhdas J. Mirpuri v. Court of Appeals*, G. R. No. 114508, 19 November 1999.