

RE: APPEAL FROM EXAMIER'S  
FINAL REJECTION OF  
TRADEMARK APPLICATION  
Opposer,

EX- PARTE CASE NO. 221

OPPOSITION TO:

- versus -

Application Serial No. 60864  
Filed : February 3, 1987  
Applicant : Philippine Cocoa  
Corporation  
Trademark : RAINBOW SWEET AND  
REP. OF RAINBOW  
Used on : Hard bite size candy

PHILIPPINE COCOA  
CORPORATION,  
Respondent-Applicant.

x-----x

DECISION NO. 89-35 (TM)  
June 13, 1989

#### DECISION

This is an ex-parte appeal from the action of the Trademark Examiner finally rejecting Application Serial No. 60864 filed on February 3, 1987 for registration in the Principal Register of the mark "RAINBOW SWEET AND REP. OF RAINBOW" used on hard bite size candy by the herein Applicant-Appellant, Philippine Cocoa Corporation, a domestic corporation, doing business at Parang, Marikina, Metro Manila.

The rejection was based on the fact that the mark applied for is confusingly similar to the trademark "RAINBOW" under Registration No. 22333 issued to Malabon Candy Co., Inc.

A review of the records, however, show that the cited reference "RAINBOW (Registration No. 22333) was cancelled by the Director of Patents effective May 31, 1981 as confirmed by Cancellation Order No. 88-6 published on March 31, 1981 for failure of the registrant to file the fifth anniversary affidavit of use/non-use pursuant to Section 12 of Republic Ac 166, as amended. Consequently, no confusing similarity could arise between the cited mark and the instant application as the former has lost the force and effect of the law upon cancellation of its registration.

WHEREFORE, this ex-parte appeal is hereby GRANTED and the final decision of the Examiner-in-Charge rejecting this application is reversed and set aside.

Let the instant application be remanded to the Trademark Examining Division for proper action pursuant to this Decision.

SO ORDERED.

IGNACIO S. SAPALO  
Director