



**VICTORIAS MILLING COMPANY INC.,
& VICTORIAS FOODS CORPORATION,**
Petitioner,

-versus-

VICTORIA FOODS COMPANY,
Respondent-Registrant.

X-----X

IPC No. 14-2009-00038

Cancellation of:

Reg. No. 4-2005-008419

Date Issued: 23 July 2007

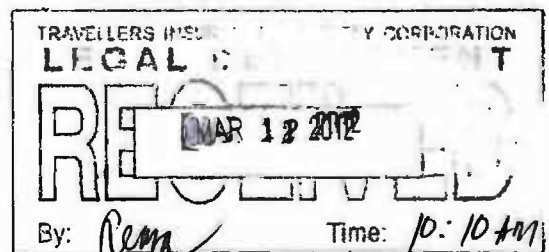
TM: "VICTORIA FOODS COMPANY"

NOTICE OF DECISION

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GREETINGS:

Please be informed that Decision No. 2012- 44 dated March 07, 2012 (copy enclosed) was promulgated in the above entitled case.

Taguig City, March 07, 2012.

For the Director:

Catherine Socorro O. Estrada
Atty. CATHERINE SOCORRO O. ESTRADA
Hearing Officer, BLA



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Date Issued: 23 July 2007

Trademark: "VICTORIA FOODS
COMPANY"

Decision No. 2012- 44

DECISION

VICTORIAS MILLING COMPANY, INC.¹ ("Opposer") filed on 30 October 2008 a petition to cancel Trademark Registration Serial No. 4-2005-008419. The registration, issued on 23 July 2007 to VICTORIA FOODS COMPANY² ("Respondent-Registrant") covers the mark "VICTORIA FOODS COMPANY" for use on goods in Class 16, namely, *"letter head, product label for all products of Victoria Foods Company namely: Willybee, Juices, Pure Honey, Victoria peanut products, fruit preserves namely dried mangoes"*.

- "3. Petitioner VICMICO is the prior user and owner of the mark 'VICTORIAS' and variations thereof (collectively, 'VICTORIAS marks'), which the Petitioner VMC started using when it was established on 07 May 1919. VICMICO was among the earliest sugar mills in the Philippines at the turn of the 20th century. In 1921, VICMICO expanded its facilities and established a sugarcane agriculture research department, the first in a sugar central in the country. In 1928, VICMICO established a sugar refinery. In 1929, the company made its first export of raw sugar to the United States and from then on became a regular sugar exported thereto. In 1934, VICMICO made its first export of high-grade refined sugar to the United States. VICMICO suffered excessive damages during the outbreak of the Japanese war but not continued operations in 1946.
- "4. Through long, continued and exclusive use for over eighty nine (89) years up to the present, the corporate name/business names 'Victorias Milling Company, Inc.' and 'Victoria Foods Corporation', and the trademark/service mark 'VICTORIAS' have become distinctive of the business, products and services of Petitioner. The mark 'VICTORIAS' has long become well-known in the sugar and food industry and synonymous with the quality of the goods and services that Petitioner offers.
- "5. Thus, the registration of the mark 'Victoria Foods Company' in the name of Respondent-Registrant for paraphernalia to be used in marketing goods similar

¹ A corporation organized and existing under the laws of the Republic of the Philippines, with principal address at VICMICO Compound, Victorias City, Negros Occidental, Philippines

² A company with address of record at Soliven cor. MRR St., Manggahan, Pasig City.

to those Petitioners deal, i.e., food products, is likely to mislead the public, particularly as to the nature, quality, characteristics and origin of said goods. in Class 29 is likely to mislead the public, particularly as to the nature, quality, characteristics and origin of said goods.

"6. As the owner of the 'VICTORIAS' mark, Petitioner VICMICO obtained registration for the trademark 'VICTORIAS & Design' as early as 09 November 1961. this fact was established in the case of *Victorias Milling Company, Inc. vs. Ong Su, et.al.*, where it was also established that the petitioner has been using the mark VICTORIAS for granulated refined sugar at least as 1947. the Supreme Court adopted the findings of the Director of Patent, as follows: x x x

"7. Thus, in said case, the Supreme Court ruled that: 'The word "Victorias" is what identifies the sugar contained in the bag as the product of the petitioner' and that the word 'Victorias' is the domainant feature of the trademark in questrion.

"8. On 24 January 1989 Petetioner VICMICO also obtained registration for the trademark 'VICTORIAS' under Certificate of TM Registration No. 42861 for goods under class 29 (meat, fish, poultry and game; preserved, driedand cooked fruits and vegetables ; preserver and pickles; edible oils and fats, squid) and class 30 (sugar, ninegar, salt, pepper, mustard, sauces, spices). Said registration was cancelled for failure of Petition to file the Decleration of Actual Use. Petetioner, however, had no intensions of abandoning the use of said mark and continues to use the same up to the present certified true copy of TM Registration No. 42861 is attached hereto as EXHIBIT 'D.'

"9. Thus when petitioner VICMICO decided to spin off its food processing an packaging operations, Petitioner incorporated its subsidiaries under the names 'VICTORIAS QUALITY PACKAGING COMPANY, INC.' respectively. Information in this subsidiaries may be accessed at Petitioner's official website at <http://www.victoriasmilling.com/v2/corporate/joint.asp>. Other subsidiaries of Petitioner a5re VICTORIAS GOLF & COUNTRY CLUB, INC. and VICTORIAS AGRICULTURAL LAND CORPORATION.

"10. VICMICO also has pending application and/or registration for the mark 'VICTORIAS' and its variation with the Intellectual Property office, as follows:
x x x

Copies of the details of the foregoing applications/registrations as downloaded from the official website of the IP Philippines are attached hereto as Exhibit 'E' to 'E-3'.

"11. Petitioner VFC also has a pending application 'VFC' with the Intellectual Property Office, as follows: x x x

Copy of the details of the foregoing application as downloaded from the official website of the IP Philippines is attached hereto as Exhibit 'F.'

The marks 'Victorias', 'VFC' and 'Victorias Foods Company' as used by VFC are Shown in the Following samples, which are hereto attached as Exhibits 'G' with submarkings:

Exhibit	Document
"G"	Official Receipt No. 079 dated 29 November 1994
"G-1"	Letter of Mr. M. Lorilla (VFC general Manager) dated 22 August 1994, written on stationary with VFC letterhead
"G-1-a"	Letter of Mr. Nelson M. Sotomil (VFC Asst. General Manager) dated 17 July 1997, written on stationary with VFC letterhead
"G-2" to "G-2-e"	Labels used on VFC food rproduct
"G-3"	VFC Brochure

- "12. The fame reown of the 'Victorias' mark was established and expanded by the successful growth of petitioners' busuness since its inception in 1919. Through the years and as a result of petitioners' continuous effort in providing quality products and services, 'VICTORIAS' has become well-known in the sugar and food processing industry.
- "13. Information on the history, product and services, and businesses of petitioners as well as the latest news and activities may be accessed worldwide at Petitioners' official website.
- "14. The continued registration of the mark 'Victoria Foods Company' in the name of the Respondent-Applicant violates and contravenes the provisions of Sections 123.1 (e) and (g) of Republic Act 8293 (the IP Code), as amended, because said mark is confusingly similar to Petitioners well-known mark 'VICTORIAS', owned, used and not abandoned by the petitioners as to be likely when applied to or used in connection with the goods og the Respondent-Registrant to cause confusion or mistake, or device the purchasers thereof as to the origins of the goods.
- "15. The continued registration of the mark 'Victoria Foods Company' name of Respondent-Registrant, for paraphernalia to be used on goods similar to Petitioners' goods, causes grave and irreparable injury and damage to Petitioners, for which reason it is filing the instant Petition for Cancellation.
- "16. The continued registratin of the trademark 'Victoria Foods Company' in the name of Respondent-Registrant contravenes and violates Section 123.1 (e) and (g) of the Intellectual Property Code (the 'IP Code') which provide: x x x
- "17. The identity or confusing similarity between Respondent-Registrant's mark and Petitioner's mark 'VICTORIAS' is very likely to deceive the purchasers of goods on which the mark is being used as to the origin or source of said goods and as to the nature, character, quality and characteristics of the goods, to which it is affixed.
- "18. Confusion as to the origin or source of goods is all the more likely considering that the word 'VICTORIAS' is the dominant and distinguishing portion of the registered corporate name or business name of Victorias Milling Company, Inc. Under Sections 165.2(a) and (b) of the IP Code, 'trade names or business names shall be protected, even prior to or without registration, against any unlawful act committed by third parties. In particular, any subsequent use of the trade name by a third party, whether as a trade name or a mark or collective mark, or any

such use of a similar trade name or mark, likely to mislead the public, shall be deemed unlawful.'

- "19. In the case of *Philips Exports B.V vs. Court of Appeals*, 206 SCRA 457, the Supreme Court held: x x x
- "20. Petitioner will be damaged by the continued registration of the mark 'VICTORIAS' in the name of Respondent-Registrant, considering the fact that Petitioner's registered corporate name/business name 'Victorias Milling Company, Inc.,' and its well-known trademark/service mark 'VICTORIAS' have long been established and have obtained goodwill and consumer recognition.
- "21. Respondent-Registrant's registration of the 'VICTORIAS' mark is in unfair competition with and an infringement of Petitioner's registered business name/corporate name 'Victorias Milling Company' as the use of the said on the goods described in Respondent-Registrant's registration clearly violates the exclusive right of the Petitioner to said mark.
- "22. The registration of the mark 'VICTORIAS' in the name of the Respondent-Registrant violates the proprietary rights, interest, business reputation and goodwill of the Petitioner over its corporate name and its trademark/service mark 'VICTORIAS,' considering that the distinctiveness of said mark will be diluted, thereby causing irreparable injury to the Petitioner.
- "23. It is also apparent that the registration of the mark 'VICTORIAS' in the name of Respondent-Registrant, which mark is confusingly similar to Petitioner's registered corporate name/business name Victorias Milling Company, Inc. and the well-known trademark/service mark 'VICTORIAS' will not only prejudice the Petitioner but will also allow the Respondent-Registrant to unfairly benefit from and get a free ride on the goodwill of Petitioner's mark.

The Respondent-Registrant filed on 15 June 2009 its Answer alleging, among other things, the following:

- "9. It must be established that VICTORIA is a partnership duly established on 05 August 1999 and registered with the Securities and Exchange Commission, with an initial capital of FIVE HUNDRED THOUSAND PESOS (Php500,000.00)
- "10. The initial purpose of which VICTORIA was formed as embodied in Article 5 of its Articles of Partnership was for the manufacture, sale, import and distribution of bee products like honey;
- "11. Two (2) months later, the partners DOLORES G. FERNANDEZ and MEDARDO PINEDA, amended the Articles of Partnership by increasing the capitalization of VICTORIA to TWO MILLION PESOS (PHp2,000,000.00) as duly approved by the Securities and Exchange Commission on 25 October 1999.
- "12. Due to the increase in its capitalization, the partners deemed it proper to amend the purpose of VICTORIA and included in its duly approved *Amended Articles of Partnership dated 29 November 1999* the manufacture, sale, import, export and distribution of soap, candles, fruit preserves like nata de coco, macapuno and the likes.

- "13. Business was good for VICTORIA and in the span of three (3) years it has further improved its business and ventured further to fruit and vegetable preserves like jam, jellies, dried fruits and pickles; beverages like fruit juice and puree; preserved and seafood and processed meat.
- "14. Wit its seven (7) hectare farm in Tagaytay City, VICTORIA as of 2004 engaged also in cattle farming, poultry and piggery.
- "15. Indeed, VICTORIA is a small business venture that made it somehow and is still on its way of improving it business and goodwill, VICTORIA deemed it proper to apply for a trademark application of 'VICTORIA and DEVICE' on 30 August 2005. The said mark can be directly viewed from the official website of the Honorable Office.
- "16. The said trademark application went through the legal process of the Honorable Office.

Respondent-registrant then makes the following affirmative and special defense:

"VICTORIA has the exclusive right over the registered trademark of VICTORIA FOODS COMPANY hence, has the full right to use the same for its products.

"A certificate of registration of a mark or tradename shall be prima facie of the validity of the registration, the registrant's ownership of the mark or tradename, and of the registrant's exclusive right to use the same in connection with the goods, business or services specified in the certificate.

"It must be noted that the application for 'VICTORIA FOODS COMPANY' went through the process imposed by the Honorable Office. The trademark application was allowed and its publication in the Official Gazette pursuant to Sec. 133.2 of Republic act No. 8293, as amended, was approved.

"Actually, it is noteworthy to mention that NO OPPOSITION to the registration of the mark was filed within thirty (30) days from publication of VICTORIA's mark in the E-Gazette. And it bears stressing that a Declaration of Actual Use of the said mark was filed by VICTORIA.

"A trademark has been generally defined as any word, name, symbol or device adopted and used by a manufacturer or merchant to identify his goods and distinguish them from those manufactured and sold by others. xxx In determining whether two trademarks are confusingly similar, the two marks in their entirety as they appear in the respective labels must be considered in relation to the goods to which they are attached; the discerning eye of the observer must focus not only on the predominant words but also on the other features appearing on both labels.

"A careful perusal of 'VICTORIA FOODS COMPANY' of VICTORIA would reveal that the LOGO is comprised of a white disk with green outer rim. In the white disk is a sketch of a woman's face with the word 'VICTORIA' in blue color written below it, extending beyond the green rim. The letter 'V' of the word 'VICTORIA' defines the torso of the woman. On the green rim, the word 'FOODS' is found at the upper right perimeter and the word 'COMPANY' is found at the lower left perimeter. On the other hand, PETITIONER's mark as evidenced in the labels of its multifarious products

attached as annexes in its Petition actually filed on 02 February 2009, would establish that its sole mark is dependent on its good name 'VICTORIAS'. As overly emphasized by herein PETITIONER, VICTORIAS has carved its own niche in the business industry not only locally but worldwide as well. With that in hand, it can be safely deduced that the consumers in general cannot be likely deceived by the mark of VICTORIA to that of the PETITIONER considering that there is nothing similar about the said marks not only because of the absence of the Letter 'S' in 'VICTORIA AND DEVICE' nor the presence of a woman in the same which is obviously lacking in the mark of the PETITIONER but more so on the fact that 'VICTORIAS' already has an established clientele who can construe by the application of commonsense that VICTORIA is entirely different from that of 'VICTORIAS'. Not only are they both spelled differently but the font used as to how the two (2) names were written is dissimilar.






"In fact, there is no need to apply the *test of dominancy* - focuses on the similarity of the prevalent features of the competing trademarks which might cause confusion or deception and thus constitutes infringement or the *holistic test* - mandates that the entirety of the marks in question must be considered in determining confusing similarity, because there is really nothing confusingly similar about the 'VICTORIA FOODS COMPANY' mark of VICTORIA as opposed to the mark of the PETITIONER. Even an ordinary person who does not patronize PETITIONER's products would not be ensconced in a confounding position when presented with the labels of PETITIONER and that of VICTORIA.

"Furthermore, 'VICTORIA FOODS COMPANY' applies only to Class 16 goods, specifically letterhead, product labels and packaging for all products of VICTORIA FOODS COMPANY namely Willybee, Juices, pure joney, Victoria peanut products, fruit preserves namely dried mangoes. Marketing paraphernalia namely: flyers, brochures, streamers and banners. As averred by herein PETITIONER in its Petition, its registration for Class 29 and 30 products has been cancelled. Verily, there is no point of comparison since the goods which would be the basis for alleged confusion would now be unrelated and entirely different.

"Nonetheless, it is timely to point that the PETITIONER has a pending application for a mark 'VICTORIAS AND OVAL DEVICE' covering goods/services under Class 29 and 30, filed on 17 October 2008 as can be gleaned from the official website of the Honorable Office. Assuming arguendo that the mark would be later on registered, notwithstanding the fact that the goods belong to the same class, there would still be no confusion as to the respective marks of the parties considering their disparity. In the description alone, the world difference between the two is apparent. 'VICTORIAS AND OVAL DEVICE' mark consists of the word 'VICTORIAS' in stylized big bold script rendered in dark blue color. The letter 'V' is in upper case font and its right upper extension the letters 'I', 'C', 'T', 'O', 'R', 'I', and 'A' with its tip curled upwards. The term shown prominently inside a lighter blue oval device outlined in a darker shade of blue. Whereas, 'VICTORIA FOODS COMPANY' of VICTORIA is simply described as a mark comprising of the word VICTORIA in white font, arching over a blue ribbon twirled on both ends."

Should the petition to cancel Registration No. 4-2005-008419 be granted?

The Petitioner's marks are depicted below:

Trademark	Application # / Registration #	Date Filed/ Registration	Goods Cover	Class
 VICTORIAS MILLING COMPANY, INC.	4-2008-500038	1-29-08/ 8-22-08	Sugar, refined sugar	30
	4-2008-500039	1-29-08/ 8-22-08	Sugar, refined sugar	30
 MILLING COMPANY, INC.	4-2007-500803	1-26-07	Meat, fish, poultry, preserve, dried and cooked fruits and vegetables; preserve and pickels; edible oils and fats, squid Sugar, vinegar, salt, mustard, sauces, spices	29 30
	4-2008-012796	10-17-08	Meat, fish, poultry, preserve, dried and cooked fruits and vegetables; preserve and pickels; edible oils and fats, squid in Class 29 Sugar, vinegar, salt, mustard, sauces, spices in Class 30	29 30
	4-2008-012795	10-17-08	Meat, fish, poultry, preserve, dried and cooked fruits and vegetables; preserve and pickels; edible oils and fats, squid in Class 29 Sugar, vinegar, salt, mustard, sauces, spices in Class 30	29 30

while the Respondent-Registrant's mark looks like this:



There is no doubt that as a word mark, the Respondent-Registrant's mark is practically identical to the Petitioner's. The word VICTORIA is prominent and the most likely to be remembered feature of the marks. The similarity between the Petitioner's marks on one hand and the Respondent-Registrant's on the other, is highlighted because the goods on which the Respondent-Registrant uses its mark are similar or at least closely related to the Petitioner's. The goods dealt in by the parties are processed or packed food products which flow on the same channels of trade. Thus, the embellishments or ornaments while serving aesthetic purposes, are not sufficient to distinguish the Respondent-Registrant's mark from those of the Petitioner.

In this regard, the law does not require that the competing trademarks must be so identical as to produce actual error or mistake; it would be sufficient, for purposes of the law, that the similarity between the two labels is such that there is a possibility or likelihood of the purchaser of the older brand mistaking the newer brand for it.³ Corollarily, the law does not require actual confusion, it being sufficient that confusion is likely to occur.⁴ The likelihood of confusion would then subsist not only on the public's perception of services but on the origins thereof.⁵ The consumers may assume that the Respondent-Registrant's goods originate from or sponsored by the Petitioner or believe that there is a connection between them, as in a trademark licensing agreement. The likelihood of confusion would subsist not only on the purchaser's perception of goods but on the origins thereof as held by the Supreme Court.⁶

Callman notes two types of confusion. The first is the confusion of goods in which event the ordinarily prudent purchaser would be induced to purchase one product in the belief that he was purchasing the other. In which case, defendant's goods are then bought as the plaintiff's and the poorer quality of the former reflects adversely on the plaintiff's reputation. The other is the confusion of business. Here, though the goods of the parties are different, the defendant's product is such as might reasonably be assumed to originate with the plaintiff and the public would then be deceived either into that belief or into belief that there is some connection between the plaintiff and defendant which, in fact does not exist.

Succinctly, the inclusion in the Trademark Registry of two separate registrations for identical or confusingly similar marks for use on similar and/or closely related marks, in favor of different persons or entities, cannot be allowed.

In this regard, records show that the Respondent-Registrant was issued Cert. of Reg. No. 4-2005-008419 on 23 July 2007, earlier than the registration of the

³ *American Wire & Cable Co. v. Director of Patents, et al.*, G.R. No. L-26557, 18 Feb. 1970.

⁴ See *Philips Export B.V., et al. v. Court of Appeals, et al.*, G.R. No. 96161, 21 Feb. 1992.

⁵ See *Converse Rubber Corporation v. Universal Rubber Products, Inc., et al.*, G.R. No. L-27906, 08 Jan. 1987.

⁶ See *Converse Rubber Corporation v. Universal Rubber Products, Inc., et al.*, G.R. No. L-27906, 08 Jan. 1987.

following marks in favor of the Petitioner, to wit:

1. "Victorias and Oval Device" - filed on 17 October 2008 and registered on 25 May 2009 (Reg. No. 4-2008-012796);
2. "Victorias Milling Co., Inc. & Device" - filed on 26 November 2007 and registered on 23 October 2009 (Reg. No. 4-2007-500803);
3. "Victorias Pure Refined Sugar & Device" - filed on 29 January 2008 and registered on 22 September 2008 (Reg. No. 4-2008-500038);
4. "Victorias Pure Refined Sugar & Device" - filed on 29 January 2008 and registered on 22 September 2008 (Reg. No. 4-2008-500039); and
5. "Victorias Milling Company Inc. Logo" - filed on 18 October 2010 and pending registration.

The Petitioner, however, raised basically the issue of ownership of the mark.

It is emphasized that 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 imposition; and to protect the manufacturer against substitution and sale of an inferior and different article as his product.⁷

Thus, the right to register trademarks, trade names and service marks is based on ownership. Only the owner of the mark may apply for its registration. Although a certificate of registration is *prima facie* evidence of the registrant's ownership of a mark, this presumption can be overcome by contrary evidence. The Supreme Court held:

By itself, registration is not a mode of acquiring ownership. When the applicant is not the owner of the trademark being applied for, he has no right to apply for registration of the same. x x x

Registration, without more, does not confer upon the registrant an absolute right to the registered mark. The certificate of registration is merely a *prima facie* proof that the registrant is the owner of the registered mark or trade name. Evidence of prior and continuous use of the mark or trade name by another can overcome the presumptive ownership of the registrant and may very well entitle the former to be declared the owner in an appropriate case.

Accordingly, Sec. 151 of the IP Code provides:

⁷ *Pribhdas J. Mirpuri v. Court of Appeals*, G.R. No. 114508, 19 Nov. 1999, citing *Etepha v. Director of Patents*, G.R. No. L-20635, 31 Mar. 1966.

Sec. 151. Cancellation. – 151.1 A petition to cancel a registration of mark under this Act may be filed with the Bureau of Legal Affairs by any person who believes that he is or will be damaged by the registration of a mark under this Act as follows:

x x x

(b) At any time, if the registered mark becomes generic name for the goods or services, or a portion thereof, for which it is registered, or has been abandoned, or its registration was obtained fraudulently or contrary to the provisions of this Act, or if the registered mark is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services or in connection with which the mark is used. x x x

To prove its ownership of the contested mark, the Petitioner submitted evidence of the use of the mark VICTORIAS long before the Respondent-Registrant filed a trademark application for VICTORIA in 2005. The registration of the mark in the Principal Register on 24 January 1989 for a term of twenty (20) years under Serial No. 42861 for use *"sugar, vinegar, salt, pepper, mustard, sauces, spices"* in class 30, and *"meat, fish, poultry and game; preserved dried and cooked fruits and vegetables; preserves and pickles; edible oils and fats, squid"* in class 29 proves the Petitioner's expansion of its business in fresh and processed food products. Thus, the Petitioner has shown ownership of the mark VICTORIAS not only for sugar but also for other goods including those which are similar to the Respondent-Registrant's goods.

While the Petitioner's registration in the Principal Register was cancelled on 13 October 2003 for non-filing of affidavit of use/non-use for the 10th anniversary per cancellation, this fact alone is not sufficient to support a conclusion that the Petitioner had abandoned its mark. The Petitioner has continuously used its mark for sugar and other goods up to present. It submitted articles which are essentially about its business under the corporate name Victorias Milling Co., Inc., both from its own publication as well as from independent publications⁸; pictures of its refinery and the mark "Victorias Milling Co., Inc. and Device" on sacks⁹ and labels of its canned goods with the mark "Victorias"¹⁰ The articles talked about the dock of petitioner's sugar central being used for loading into barges of petitioner's produced sugar for distribution in various parts of the country¹¹ the locomotives that still chug to and from the mills during milling season from October to April of the year¹²; petitioner's real property devoted to the production of corn, vegetables, roots crops, bananas, and coconut aside from production of sugar and fishery ventures¹³. These articles taken in conjunction with the picture of a building of petitioner's sugar central with the mark "Victorias"¹⁴ pictures of petitioner's sacks for sugar with the

⁸ Annexes "B", "D", and "E" of Exh. "B"; and Annex "D" and submarkings of Exh. "C".

⁹ Annexes "A", and "B-6" to "B-7" of Exh. "C".

¹⁰ Annexes "C" to "C-12" of Exh. "C".

¹¹ Page 3 of Annex "A" of Exh. "B".

¹² Page 2 of Annex "B" of Exh. "B".

¹³ Annex "D" of Exh. "B".

¹⁴ Annex "A" of Exh. "C".

mark "Victorias Milling Co., Inc. and Device"¹⁵ and labels of petitioner's canned goods with the mark "Victorias"¹⁶ point to the conclusion that petitioner has indeed uninterruptedly continued using its marks with the dominant feature "Victorias" to the present. Taken as a whole, there is evidence that petitioner has always been engaged in the production and sale in commerce of sugar and other food products to which it uses marks with the dominant feature "VICTORIAS", uninterrupted, even during the years when the registrations of some of its marks were canceled for failure to file declarations of actual use

This Bureau also noticed that the registration of the Petitioner's cancelled mark had a term of twenty (20) years from the date of registration in 1989, or until 2009. When the Respondent-Registrant registered with the Securities and Exchange Commission for the purpose of engaging in the food business in 1999, the Petitioner's trademark registration was still subsisting. Also, the cancellation of the Petitioner's mark took place less than two years before the Respondent-Registrant filed its trademark application. Moreover, while the Petitioner did not file an opposition to the Respondent-Registrant's trademark registration, the Petitioner's filing of the trademark application in 2007 and subsequently, of this petition for cancellation negate any impression that the said party Petitioner had abandoned its mark and/or relinquished its right thereto with respect to goods that are similar and/or closely related to those covered by the Respondent-Registrant's trademark registration.

WHEREFORE, premises considered, the instant petition is hereby GRANTED. Accordingly, Trademark Registration Serial No. 4-2005-008419 is hereby CANCELLED. Let the filewrapper of this case be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action in accordance with this Decision.

SO ORDERED.

Taguig City, 07 March 2012.


ATTY. NATHANIEL S. AREVALO
Director IV
Bureau of Legal Affairs 

¹⁵ Annexes "B-6" to "B-7" of Exh. "C".

¹⁶ Annexes "C" to "C-12" of Exh. "C".