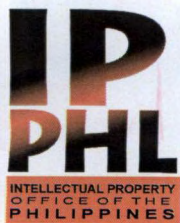


1-5 } 12-12-11  
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**CARL KATCHER ENTERPRISES, INC.**  
**(substituted by: CARLS JR. RESTAURANTS LLC),**  
*Petitioner,*

**-versus-**

**MAO-JEN LO,**  
*Respondent-Registrant.*

X-----X

**IPC No. 14-2012-00486**

Cancellation of:  
Reg. No. 4-2011-013735  
Date Issued: 26 April 2012

**TM: DAKASI DEVICE &  
Chinese Character**

**NOTICE OF DECISION**

**JDF LAW OFFICE**

*Counsel for Petitioner*  
1502 One Global Place, 5<sup>th</sup> Avenue corner  
25<sup>th</sup> Street, Bonifacio Global City, Taguig

**THE LAW FIRM OF COLUSO CHICA & ASSOCIATES**

*Counsel for Respondent- Registrant*  
Unit 201, A & T Building,  
244 Escolta Street, Binondo, Manila

**GREETINGS:**

Please be informed that Decision No. 2016 - 429 dated 29 November 2016 (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.

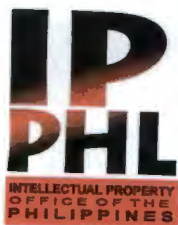
Taguig City, 29 November 2016.

**MARILYN F. RETUAL**  
IPRS IV

Bureau of Legal Affairs

**Republic of the Philippines**  
**INTELLECTUAL PROPERTY OFFICE**

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**CARL KATCHER ENTERPRISES, INC.**  
( substituted by: **CARLS JR.**  
**RESTAURANTS LLC**)

Petitioner,

-versus-

**MAO-JEN LO,**  
Respondent-Registrant.

x-----x

**IPC NO. 14-2012-00486**

Cancellation of:  
Reg. 4-2011-013735  
Date Issued: 26 April 2012

TM: **DAKASI DEVICE &  
Chinese Character**

**Decision No. 2016- 429**

**DECISION**

CARL KATCHER ENTERPRISES, INC. ("CKE") (substituted by CARLS JR. RESTAURANTS LLC)<sup>1</sup> ("Complainant") filed a Petition for Cancellation of Trademark Registration No. 4-2011-013735. The registration issued to MAO-JEN LO<sup>2</sup> ("Respondent-Registrant"), covers the mark "DAKASI DEVICE & CHINESE CHARACTERS" for use on "bar services; cafeterias; cafe; canteens; food and drink catering; hotels; restaurants; self-service restaurants; snack bars" under Class 43 of the International Classification of Goods.<sup>3</sup>

The Petitioner alleges CKE is the owner of the "STAR LOGO" mark which the Intellectual Property Office of the Philippines granted Certificate of Registration No. 046470, registered on 11 September 1989. On 26 April 2012, Respondent was granted registration under Trademark Registration No. 42011013735 for the mark "DAKASI DEVICE & CHINESE CHARACTERS" for goods under Class 43. According to Petitioner, the "Star with Smiling Face" component of the DAKASI DEVICE & CHINESE CHARACTERS, hereinafter "DAKASI SMILING STAR" mark of Respondent is identical and confusingly similar to the mark "STAR LOGO" and its variants, owned by CKE, for which the Petitioner and its goods and services are internationally well-known.

On 04 January 2013, this Bureau issued a Notice to Answer. Respondent-Registrant's representative Laguna Lake Trademarks received the Notice on 08 February 2013. On 22 April 2013, Respondent-Registrant's filed an Entry of Appearance with Manifestation and Motion for Time to File Answer. On 02 May 2013, Petitioner filed a Motion to Declare Respondent in Default. on 14 May 2013, this Bureau issued Order No. 2013-733 declaring Respondent-Registrant in default for failure to file the Answer. Accordingly, the opposition was submitted for resolution on the basis of the affidavits and evidence submitted by Petitioner.

However, a perusal of the Trademark Register of the Office would show that Respondent's registration for the mark DAKASI DEVICE & Chinese Characters has been removed from the register for failure to file the Declaration of Actual Use (DAU).

<sup>1</sup> A corporation duly established and existing in accordance with the laws of U.S.A with principal address at 6307 Carpinteria Ave. Suite A, Carpinteria California 93013, U.S.A.

<sup>2</sup> A Taiwanese national with address at No. 31-113, Kuan Shi Village 6, Shui Shang Town, Chiayi Province, Taiwan represented by its agent Laguna Lake Trademarks P.O. Box 121, College Post Office, University of the Philippines Los Baños, Los Baños 4031, Laguna.

<sup>3</sup> The service marks based on a multilateral treaty administered by the World Intellectual Property Organization. This treaty is called the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of Registration of Marks concluded in 1957.

Section 124.2 of Republic Act No. 8293, otherwise known as the "Intellectual Property Code of the Philippines" (IP Code) provides:

124.2. The applicant or the registrant shall file a declaration of actual use of the mark with evidence to that effect, as prescribed by the Regulations within three (3) years from the filing date of the application. Otherwise, the application shall be refused or the mark shall be removed from the Register by the Director.

Corollary, Rule 204 of the Rules and Regulations on Trademarks, Service Marks, Trade Names and Marked or Stamped Containers ("Trademark IRR") provides:

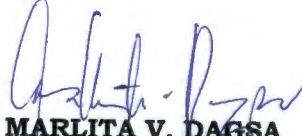
RULE 204. Declaration of Actual Use. - The Office will not require any proof of use in commerce in the processing of trademark applications. However, without need of any notice from the Office, all applicants or registrants shall file a declaration of actual use of the mark with evidence to that effect within three years, without possibility of extension, from the filing date of the application. Otherwise, the application shall be refused or the mark shall be removed from the register by the Director motu proprio.

Accordingly, with the removal of the Respondent's trademark **DAKASI DEVICE & Chinese Characters** from the Register, there is no more reason nor basis to proceed with the case as there is no more trademark to cancel.

**WHEREFORE**, premises considered, the instant Petition for Cancellation is hereby **DISMISSED**. Let the filewrapper of Trademark Registration No. 4-2011-013735 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

**SO ORDERED.**

Taguig City, 29 NOV 2016.

  
**MARLITA V. DAGOSA**  
Adjudication Officer  
Bureau of Legal Affairs