

FRESH N' FAMOUS FOODS INC.,

Opposer,

-versus-

FOODCHOICE CORP.,

Respondent-Applicant.

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IPC No. 14-2016-00324

Opposition to:

Appln. Serial No. 4-2015-014440

Date Filed: 21 December 2015

TM: CHICHARAP

X-----X

NOTICE OF DECISION

BETITA CABILAO CASUELA SARMIENTO

Counsel for Opposer

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1215 Acacia Avenue, Madrigal Business Park

Ayala Alabang, Muntinlupa City

FOODCHOICE CORPORATION

Respondent- Applicant

151 Porvenir Street,

Pasay City

GREETINGS:

Please be informed that Decision No. 2017 - 183 dated 01 June 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, 01 June 2017.

MARILYN F. RETUAL

IPRS IV

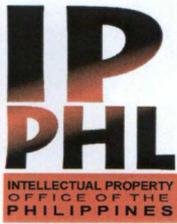
Bureau of Legal Affairs

**Republic of the Philippines
INTELLECTUAL PROPERTY OFFICE**

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FRESH N' FAMOUS FOODS INC.,
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-versus-

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} **IPC No.14-2016-00324**

} Opposition to:

} Appln. No. 4-2015-014440

} Date Filed: 21 December 2015

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} Trademark: **CHICHARAP**

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} Decision No. 2017- 183

DECISION

FRESH N' FAMOUS FOODS INC. ("Opposer")¹ filed an opposition against Trademark Application No. 4-2015-014440. The application, filed by FOODCHOICE CORP. ("Respondent-Applicant"),² covers the mark "CHICHARAP" for use on "corn flour, vegetable oil, salt and spices" under Class 30 of the International Classification of Goods and Services.³

The Opposer anchors its opposition on the following grounds:

"1. The registration of CHICHARAP is contrary to the provisions of Section 123.1 (d), (e), and (f) of Republic Act No. 8293, as amended, which prohibit 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.

"2. The Opposer is the owner and first user of the CHICHARAP mark, which is registered with the Philippine Intellectual Property Office (IPO) for 'prawn fries' in class 29. The details of the registration appear below.

Mark	Registration No.	Date Issued	Classes
CHICHARAP	4-2002-007658	17 January 2005	29

¹ A corporation duly organized and existing under the Philippine laws, with office at 6th Floor, Jollibee Plaza Building, 10 F. Ortigas Jr. Avenue, Ortigas Center, Pasig City.

² A corporation with address 151 Porvenir St., Pasay City

³ The Nice Classification of goods and services is for registering trademark and service marks, based on a 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.

“3. Respondent’s CHICHARAP mark is identical and confusingly similar to the Opposer’s registered CHICHARAP mark as to be likely to deceive or cause confusion. A side-by-side comparison of the marks will suffice to illustrate this point, to wit: xxx

Opposer’s Mark

Respondent’s mark

CHICHARAP

Chicharap

As clearly shown above, Respondent’s CHICHARAP mark completely appropriates the Opposer’s registered CHICHARAP mark as to be likely to cause confusion.

“4. That Respondent’s CHICHARAP application is a blatant copy of the Opposer’s CHICHARAP mark is clear from the fact that ‘CHICHARAP’ is a coined term and has no known meaning. As such, it is highly inherently distinctive and accorded the broadest degree of protection against unauthorized use or adoption by third parties, such as Respondent in this case.

“5. Furthermore, the use of the Respondent’s CHICHARAP mark on ‘corn flour, vegetable oil, salt and spices’ in Class 30, which is closely related or similar to the Opposer’s goods on which the Opposer’s registered CHICHARAP mark is used and registered, will deceive consumers by suggesting a connection, association or affiliation with the Opposer, thereby causing substantial damage to the goodwill and reputation associated with the registered CHICHARAP mark.

“6. Hence, the registration of the Respondent’s CHICHARAP mark will be contrary to Section 123.1 (d) of Republic Act No. 8293. Clearly, the Respondent intends to exploit the goodwill associated with the Opposer’s registered CHICHARAP mark.

“7. Opposer has used the CHICHARAP mark in the Philippines long before Respondent filed its application for the confusingly similar CHICHARAP mark. The Opposer continues to use the CHICHARAP mark in the Philippines in connection with its products and fast food restaurant business.

“8. The Opposer has also extensively promoted the CHICHARAP mark in the Philippines. Over the years, the Opposer has obtained significant exposure for the products upon which the CHICHARAP mark is used in various media, including television commercials, outdoor advertisements, well-known print publications, and other promotional events. Opposer also promotes its CHICHARAP product through its website at <http://www.chowking.com> which is accessible to users

worldwide. As a result, Opposer's CHICHARAP mark enjoys a high degree of recognition from the consuming public in the Philippines. xxx"

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

1. Original notarized Notice of Opposition;
2. Affidavit of Atty. Sheilah Marie P. Tomarong-Canabano;
3. Copy of trademark details of CHICHARAP downloaded from the IPO website;
4. List of Chowking restaurants in the Philippines;
5. Samples and photographs of packaging materials;
6. Screenshots of the website, www.chowking.com;
7. Restaurant menu showing CHICHARAP mark;
8. CD containing advertisements of CHICHARAP;
9. Notarized Certificate and Special Power of Attorney by Valerie F. Amante and Mary Fatima G. Aquino; and
10. Secretary's Certificate executed by William Tan Untiong.⁴

This Bureau served upon the Respondent-Applicant a "Notice to Answer" on 13 September 2016. The Respondent-Applicant, however, did not file an Answer. The Bureau issued an Order dated 7 March 2017 declaring the Respondent-Applicant in default.

Should the Respondent-Applicant be allowed to register the trademark CHICHARAP?

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.⁵ Thus, Sec. 123.1 (d) of R. A. No. 8293, also known as The Intellectual Property Code of the Philippines ("IP Code") provides that a mark cannot be registered if it is identical with a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date, in respect of the same goods or services or closely related goods or services or if it nearly resembles such a mark as to be likely to deceive or cause confusion.

Records show that at the time Respondent-Applicant applied for registration of the mark "CHICHARAP" the Opposer already registered the mark "CHICHARAP" under Registration No. 4-2002-007658 dated 17 December 2005 for the goods "prawn fries" under Class 29.⁶

⁴ Exhibits "A" to "D", inclusive of submarkings.

⁵ *Pribhdas J. Mirpuri v. Court of Appeals*, G. R. No. 114508, 19 November 1999.

⁶ Exhibits "B"-1.

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

CHICHARAP

Chicharap

Opposer's mark

Respondent-Applicant's mark

The marks of the parties are identical. Both marks have the same literal components, C-H-I-C-H-A-R-A-P. The mere fact that Respondent-Applicant's mark is in stylized presentation, is immaterial. This negligible difference gives way to the fact that the mark is a coined original word. Visually and aurally the marks are confusingly similar and when applied to related products, confusion is likely to occur. Moreover, the products are in the same food industry. The Opposer's depiction of its mark in its actual packaging⁷ are similar to Respondent-Applicant's mark. The Opposer's product are 'prawn fries' while Respondent-Applicant's products are "corn flour, vegetable oil, salt and spices". Opposer's products are sold in Chowking restaurants⁸, while Respondent-Applicant's products are likely to be sold in groceries, supermarket food section, therefore, it is likely that on account of the same words used, confusion of business may occur.

Succinctly, because the Respondent-Applicant uses its mark on goods that are identical or closely related to the Opposer's it is likely that the consumers will have the impression that these goods originate from a single source or origin. The confusion or mistake would subsist not only the purchaser's perception of goods but on the origin thereof as held by the Supreme Court, to wit:

Callman notes two types of confusion. The first is the confusion of goods in which event the ordinary 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.⁹

The public interest, requires that two marks, identical to or closely resembling each other and used on the same and closely related goods, but utilized by different proprietors should not be allowed to co-exist. Confusion, mistake, deception, and even

⁷ Exhibit "B-3"

⁸ Exhibit "B-2"

⁹ *Converse Rubber Corp. v. Universal Rubber Products, Inc., et. al.*, G. R. No. L-27906, 08 January 1987.

fraud, should be prevented. It is emphasized that 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.¹⁰

WHEREFORE, premises considered, the instant Opposition to Trademark Application No. 4-2015-014440 is hereby **SUSTAINED**. 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, 01 JUN 2017


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

¹⁰*Pribhdas J. Mirpuri v. Court of Appeals*, G. R. No. 114508, 19 November 1999, citing *Etepha v. Director of Patents, supra, Gabriel v. Perez*, 55 SCRA 406 (1974). See also Article 15, par. (1), Art. 16, par. (1), of the Trade Related Aspects of Intellectual Property (TRIPS Agreement).