



ASIAN DELIGHTS FOODMAKERS, INC.,  
Petitioner,

-versus-

MONDE NISSIN CORPORATION,  
Respondent- Registrant.

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IPC No. 14-2015-00164  
Petition for Cancellation:  
Registration No. 4-2011-009146  
Date Issued: 22 September 2012  
TM: "NAMNAM"

X-----X

**NOTICE OF DECISION**

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Second Avenue corner 30<sup>th</sup> Street  
Crescent Park West, Bonifacio Global City  
Taguig

**GREETINGS:**

Please be informed that Decision No. 2017 - 271 dated June 30, 2017 (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, June 30, 2017.

  
**MARILYN F. RETUAL**  
IPRS IV  
Bureau of Legal Affairs

**ASIAN DELIGHTS FOODMAKERS, INC.,**  
Petitioner,

-versus-

**MONDE NISSIN CORPORATION,**  
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Petition for Cancellation  
Registration No. 4-2011-009146  
Date Issued: 22 September 2012

Trademark: "**NAMNAM**"  
Decision No. 2017- 271

### DECISION

Asian Delights Foodmakers<sup>1</sup> ("Petitioner") filed a petition to cancel Trademark Registration No. 4-2011-009146. The registration issued on 22 September 2012 to Monde Nissin Corporation<sup>2</sup> ("Respondent-Registrant") covers the mark "NAMNAM" for the use on *"instant noodles, macaroni, pasta, spices, seasonings, sauces, condiments, cereal preparations, namely cereal-based snack foods, processed cereals and biscuits, tarts, cakes made with cereal, curry spices, flour for food, flour-milling products, namely flour for making noodle cake, wheat flour"* under Class 30 of the International Classification of Goods.<sup>3</sup>

The Petitioner alleges, among others, that it was issued registration for the mark "NAMNAM IN STYLIZED BLOCK LETTERS DONE IN SCRIPT AND TITLE CASE" under Certificate of Registration 4-2005-006833 on 08 October 2007. On 14 August 2014, however, it received a notice that the said mark was removed from register for non-filing of the 5<sup>th</sup> Declaration of Actual Use ("DAU"). On 22 August 2014, it filed Trademark Application No. 4-2014-011127 for the same mark and requested for "priority examination". On 01 October 2014, a registrability report was issued with the finding that "NAMNAM" cannot be registered because it is identical with a mark with an earlier filing or priority date for the same goods or services, making reference to Trademark Application Nos. 4-201-009146 and 4-2014-002713, all of which were applied by herein Respondent-Registrant. Then on 29 October 2014, it filed a letter-petition asking for reconsideration of the said findings.

The Respondent-Registrant filed its Answer alleging, among others, that it is the owner of the trademarks "NAMNAM", "NAMNAM STYLIZED WORDMARK" and "ALL YOU NEED IS LOVE AND NAMNAM". It contends that the Petitioner failed to state a cause of action, that the petition is based on a cancelled and a non-existent

<sup>1</sup> A company duly organized and existing under the laws of the Philippines, with business address at 23 Saint Anthony St., CRC-Multinational Village Parañaque City.

<sup>2</sup> A domestic corporation with business address at 22<sup>nd</sup> Floor, 6750 Office Tower Ayala Avenue, Makati City.

<sup>3</sup> The Nice Classification is a classification of goods and services for the purpose of registering trademark and services marks, based on the multilateral treaty administered by the World Intellectual Property Organization. The treaty is called the Nice Agreement Concerning the International Classification of Goods and Services for the Purpose of the Registration of Marks concluded in 1957.

right and that there is no legal basis to grant the Petitioner's prayer to allow Application No. 4-2014-0011127 and/or to reinstate Registration No. 4-2005-0006833.

The Preliminary Conference was held and terminated on 24 May 2016 wherein the parties were directed to file their respective position papers within ten days thereafter. After which, the case is deemed submitted for decision.

Basically, the issue to be resolved is whether Registration No. 4-2012-009692 should be cancelled.

Section 138 of Republic Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code") provides that:

***Sec. 138. Certificates of Registration. - A certificate of registration of a mark shall be prima facie evidence of the validity of the registration, the registrant's ownership of the mark, and of the registrant's exclusive right to use the same in connection with the goods or services and those that are related thereto specified in the certificate.***

As a holder of a trademark registration, the Respondent-Registrant enjoys, among other things, the presumption of ownership of its registered mark "NAMNAM". Thus, the party who seeks cancellation of this trademark registration has the burden of proof to show that the said mark should be cancelled.

Perusing the allegations of the petition, this Adjudication Officer finds that the same cannot prosper. The Petitioner did not show, much less prove, why the subject registration should be cancelled. In fact, it stated in its petition that its mark is not identical with that of the Respondent-Registrant's.

Succinctly, Section 151 of the IP Code provides for the requirements and existence of the grounds for the revocation of a registration certificate, to wit:

***(a) Within five (5) years from the date of the registration of the mark under this Act.***

***(b) At any time, if the registered mark becomes the 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 on or in connection with which the mark is used. If the registered mark becomes the generic name for less than all of the goods or services for which it is registered, a petition to cancel the registration for only those goods or services may be filed. A registered mark shall not be deemed to be the generic name of goods or services***

*solely because such mark is also used as a name of or to identify a unique product or service. The primary significance of the registered mark to the relevant public rather than purchaser motivation shall be the test for determining whether the registered mark has become the generic name of goods or services on or in connection with which it has been used.*

*(c) At any time, if the registered owner of the mark without legitimate reason fails to use the mark within the Philippines, or to cause it to be used in the Philippines by virtue of a license during an uninterrupted period of three (3) years or longer.*

The Petitioner failed to allege and prove the existence of any the said grounds. Essentially, it merely questions the refusal of the trademark examiner to allow Application No. 4-2014-0011127 and/or the removal of Certificate of Registration No. 4-2005-006833. These, however, are not proper issues for a petition for cancellation. A petition for cancellation is not the proper remedy to question the removal from register and disallowance of a trademark application by a trademark examiner are none of the grounds of a cancellation proceeding.

**WHEREFORE**, premises considered, the instant petition for cancellation is hereby **DISMISSED**. Let the filewrapper of Trademark Registration No. 4-2011-009146 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

**SO ORDERED.**

Taguig City, 30 JUN 2017

  
**ATTY. Z'SA MAY B. SUBEJANO-PE LIM**  
Adjudication Officer  
Bureau of Legal Affairs