

SHELL BRANDS INTERNATIONAL AG, Opposer,	}	IPC No. 14-2007-00356
	}	
	}	Opposition to:
	}	Serial No. 4-2007-000939
-versus-	}	Date filed: 30 January 2007
	}	Trademark: "SHELL 2, 4-D AMINE"
	}	
KEMISTAR CORPORATION, Respondent-Applicant.	}	
x-----x	}	Decision No. 2008-224

DECISION

This pertains to a Verified Opposition filed 17 December 2007 by herein opposer, Shell Brands International AG, a corporation existing and registered under the laws of Switzerland, with postal address at Baareratte, 6340 Baar, Switzerland. Opposer is the trademark owning entity of the Shell Group of oil, gas and petrochemical companies. This instant opposition is against the application filed on 30 January 2007 bearing Serial No. 4-2007-000939 for the registration of the trademark "SHELL 2, 4-D AMINE" used for goods in Classification No. 05 for herbicide for the control of sedges and broadleaf weed in rice, corn and sugarcane, which application was published in the Intellectual Property Office's Official Gazette and officially released for circulation.

The respondent-applicant in this instant opposition is Kemistar Corporation, a corporation organized and existing under the laws of the Republic of the Philippines with address on record at No. 62-E WYH Building, Katipunan Street, Concepcion Dos, Marikina City.

The following are the allegations of facts and the grounds for the instant opposition:

3. Section 123.1 (d) of the Intellectual Property Code of the Philippines (IPC) states that a mark cannot be registered if it is identical to 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.

4. Opposer is the owner of the mark SHELL which has been registered in the Opposer's name with the IPO. x x x

5. Respondent-Applicant's SHELL 2, 4-D AMINE is identical to Opposer's SHELL mark.

6. Respondent-Applicant's mark comprises the terms SHELL 2, 4-D AMINE is a generic term and as such, does not add distinctiveness to Respondent-Applicant's entire SHELL 2, 4-D AMINE mark.

7. The term 2, 4-D refers to a group of herbicides called phenoxy-carboxylic acid and is a common herbicide used to control broadleaf weeds.

8. 2, 4-D AMINE is one of the two major formations of the 2, 4-D herbicides. The term 2, 4-D AMINE is the chemical name or the most common name for this herbicides product. x x x

9. Various 2, 4-D AMINE herbicides are manufactured and sold by numerous agro-chemical and crop protections companies all over the world, all

using the name 2, 4-D AMINE e.g., Interprovincial Cooperative Limited (IPCO), NuFarm, Limited, United AgriProducts and Dow AgriScience.

10. 2, 4-D AMINE is also registered with the Philippine Department of Agriculture's Fertilizer and Pesticide Authority. x x x

11. The schedule lists Philippine manufacturers and dealers of 2, 4-D AMINE with varying product names, all using 2, 4-D AMINE. x x x

12. Clearly then the 2, 4-D AMINE element of Respondent-Applicant's mark is unregistrable under Section 123.1 (h) which prohibits the registration of marks that are generic for the goods they seek to identify and (i) which prohibits the registration of marks that have become customary or usual to designate the goods or services in everyday language or in bona fide and established trade practice.

13. The only element of Respondent-Applicant's mark bearing distinctiveness is the term SHELL. The 2, 4-D AMINE element, being per se unregistrable and wholly incapable of exclusive appropriation cannot be considered as a distinctive part of the Respondent-Applicant's trademark.

14. Hence, the only distinctive part of the Respondent-Applicant's application is actually for the word SHELL alone which is identical to the mark Opposer.

15. As for the similarity of the goods, the Opposer's SHELL registration 4-2002-000984 in class 5 includes pesticides which are closely related to Respondent-Applicant's herbicide product in class 5.

16. Pesticides generally refer to substances that control pests, including weeds, and herbicides are a category of or type of pesticide. The case of Esso Standard Eastern Inc. v. Court of Appeals, G.R. No. L-29971, 31 August 1982 is instructive,

Goods are related when they belong to the same class or have the same descriptive properties; when they possess the same physical attributes or essential characteristics with reference to their form, composition, texture or quality.

17. Consumers who see the mark SHELL on Respondent-Applicant's SHELL 2, 4-D AMINE herbicides can reasonably be expected to believe that it is a product of the Opposer, or that it is associated, licensed or approved by the Opposer.

Therefore, Respondent-Applicant's SHELL 2, 4-D AMINE is identical to Opposer's SHELL for use on closely related goods as to result in confusion as to source or origin, and buyers will believe that SHELL 2, 4-D AMINE is a product of or is associated, sponsored or licensed by the Opposer.

18. Alternatively, even if Respondent-Applicant's mark was considered in its entirety, Respondent-Applicant's mark is confusingly similar with that of the Opposer's because of the identical of the term SHELL.

19. The term SHELL in SHELL 2, 4-D AMINE, being the most distinctive and noticeable feature of the mark, is the dominant element of Respondent-Applicant's mark. The other elements are generic/descriptive as referred to above.

20. SHELL is the dominant element as it is a well-known mark and the consuming public will naturally be drawn to the recognizable and identifiable portion of the Respondent-Applicant's mark, which is SHELL.

21. Also, consumers tend to focus on the element of a mark that indicates the origin or source of the goods. SHELL as the sole distinctive element of Respondent-Applicant's SHELL 2, 4-D AMINE mark is the origin or source identifying element of Respondent-Applicant's mark.

22. Apart from the proscription in Section 123 (d), registration of Respondent-Applicant's SHELL 2, 4-D AMINE mark would also be contrary to Section 155 of the Trademark Rules which prohibits the use by any person, without the consent of the owner of the registered mark any reproduction, counterfeit, copy or colorable imitation of a registered mark or a dominant feature thereof.

23. Opposer has not allowed, permitted or authorized Respondent-Applicant to use the SHELL mark.

24. As to the similarity of the goods, the Opposer's SHELL registration 4-2002-000984 in class 5 includes pesticides, herbicides and insecticides which are closely related to Respondent-Applicant's herbicide product in class 5. Opposer's arguments with respect to the similarity of the goods in paragraphs 15-17 are the same. It is further the case that all of these goods are sold in the same channels of trade. Therefore, Respondent-Applicant's SHELL 2, 4-D AMINE so clearly resembles the Opposer's trademark SHELL, for use on closely related goods as to result in confusion as to source or origin, and buyers will believe that the SHELL 2, 4-D AMINE is a product of or associated with the Opposer.

25. Section 123 states that registration of mark that is identical with, or confusingly similar to, or constitutes a translation of a mark which is considered by the competent authority of the Philippines to be well-known internationally and in the Philippines, whether or not it is registered here, as being already the mark of a person other than the applicant for registration, and used for identical or similar goods or services: Provided, That in determining whether a mark is well-known, account shall be taken of the knowledge of the relevant sector of the public, rather than of the public at large, including knowledge in the Philippines which has been obtained as a result of the promotion of the mark.

26. SHELL is a famous mark and allowing Kemistar Corporation's SHELL 2, 4-D AMINE to be registered would also be contrary to the protection given to famous marks under the TRIPS Agreement to which the Philippines is a signatory.

27. To establish fame, Rule 102 of the Trademark Rules sets out the following criteria: x x x

Taking these in turn:

(a) The SHELL mark's history spans over 100 years, including in the Philippines. In the Philippines, promotion and advertising of the SHELL trademark is achieved through television commercials, posters and sponsorship. The mark is used extensively on the following goods in the Philippines, for example, SHELL Helix Motor Oils, SHELL Advance Motorcycle Oils, SHELL V-Power, SHELL Premium Unleaded, SHELL Super Unleaded, SHELL Super Unleaded E-10, SHELL Super Premium, SHELL Diesoline Ultra, SHELLANE LPG, SHELL Flinkote, SHELL Turbo Oil-T and Shell retail stations and SHELL SELECT convenience stores.

(b) In terms of fuel, the Philippines' Department of Energy has reported that Pilipinas Shell Petroleum Corporation (part of the Shell Group of Companies) has a market share (as measured against the other major oil companies in the Philippines) at 32.3%.

(c) SHELL was first used as a trademark by the Opposer in its retail business in 1891 and remains protected as a highly distinctive trademark around the world. In the Philippines, SHELL-branded kerosene first reached the country in 1897 and up to the present SHELL-branded products are extensively sold throughout the Philippines. SHELL is clearly distinctive of SHELL-branded product.

(d) By virtue of Opposer's extensive use of the mark SHELL, in the Philippines as well as all over the world, the mark SHELL has become associated with Opposer and has come to symbolize the quality of Opposer's products and service. The mark SHELL, accordingly, carries with it goodwill identified by the public with the Opposer. The mark SHELL is also associated with the Opposer's philanthropic and charitable activities, which in the Philippines are undertaken by Pilipinas Shell Foundation Inc.

(e) The trademark SHELL is registered in numerous countries.

(f) SHELL is a unique brand belonging solely to the Opposer across many classes of goods and services.

(g) The SHELL trademark is used in over 130 countries and jurisdictions all over the world. For example, more than 20 million customers a day visit Shell service stations for fuels, motor oils and car care products all over the world.

(h) The SHELL mark is used exclusively by the proprietor or with its consent in respect of the goods produced and services rendered by the Shell group of companies.

(i) Based on the annual report for the Shell group for the year 2005, its revenue was US\$ 306,731 million with an annual profit of US\$ 54,109 million. In 2006, Shell group's revenue was US\$ 318,845 million with an annual profit of US\$ 55,816.00 million. As for the value of the SHELL brand, in a study released by Business Week in conjunction with Interbrand, the brand value for SHELL was estimated to be US\$ 3.5 billion.

(j) The Opposer is vigilant in protecting its statutory and proprietary rights in respect of the SHELL trade mark in the Philippines. Opposer successfully opposed trademark application no. 7403 in the name of Faustino Co for WHITE SHELL AND DEVICE in Class 51 for laundry soap (Phil. Patent Office Decision No. 216, 13 February 1962) and trademark application no. 4-1990-073500 in the name of Hi Chiok Ang for RED SHELL DEVICE in class 25 for garments, t-shirts, sando and polo shirts (IPO Decision No. 2006-70, 31 July 2006).

(k) The Opposer's SHELL mark has been declared well-known in Greece and Taiwan.

(l) The Opposer's SHELL mark is a highly distinctive brand and was created by the Opposer. The Opposer continues to enforce its rights to the exclusive use of the SHELL mark throughout the world.

28. As for fame in the relevant sector in the public, the mark SHELL and SHELL-branded products are famous in the following sectors: exploration for and production of oil and gas, producing gas and power, refining and selling oil

products and producing and selling chemical products. In each of these sectors, the SHELL mark has become well-known through its exclusive use and extensive promotion over a long period of time. x x x

29. Should the IPO consider the goods dissimilar, Section 123 (f) prohibits the registration of a mark that is identical with or confusingly similar to, or constitutes a translation of a mark that is considered well-known in accordance with the preceding paragraph, which is registered in the Philippines with respect to goods and services which are not similar to those with respect to which the registration is applied for; Provided further, that the interests of the owner of the registered mark are likely to be damaged by such use.

30. Respondent-Applicant's SHELL 2, 4-D AMINE is identical with the Opposer SHELL mark and the arguments in respect of the identity between the marks stated in paragraphs 4-14 are the same.

31. Alternatively, Respondent-Applicant's SHELL 2, 4-D AMINE is confusingly similar to the Opposer's SHELL mark and the arguments in respect of the confusing similarity of both marks in paragraphs 18-21 are the same.

32. The Respondent-Applicant's use of the SHELL mark in relation to herbicide products would indicate a connection between those goods or services and the Opposer's own due to largely to the presence of the SHELL mark, which is quite clearly to bring to the public's mind the Opposer's SHELL trademark.

33. The Opposer's interest will be damaged by registration and use of the mark SHELL 2, 4-D AMINE for herbicides since consumers may believe that there be an association with SHELL. In the highly technical agrochemical industry, there is great risk with incorrect association. Not only could unsatisfied customers of SHELL 2, 4-D AMINE blame the Opposer, but if any customer is in anyway harmed by the Applicant's treatment, then there could not only be claims made against the Opposer, but its brand could be severely damaged.

34. Respondent-Applicant's SHELL 2, 4-D AMINE mark would dilute the Opposer's SHELL mark by tarnishing its reputation through sale of products of different quality and blurring the distinctiveness of the SHELL mark.

35. The Opposer has established goodwill and reputation in the SHELL trademark internationally and in the Philippines.

36. Opposer's SHELL products are branded using the SHELL trademark in combination with other words. In the Philippines, Opposer has 65 trademark registration using the mark SHELL, x x x.

37. Respondent-Applicant, by using the mark SHELL in SHELL 2, 4-D AMINE, is giving its SHELL 2, 4-D AMINE herbicides product the general appearance of the Opposer's SHELL products, and may pass off Respondent-Applicant's SHELL 2, 4-D AMINE products as that of the Opposer.

38. In using the term SHELL, Respondent-Applicant could clearly mislead the public that its products is manufactured by, produced by or in some way related to the Opposer, to the detriment of the public."

On 12 May 2008, respondent-applicant submitted its Verified Answer. It admitted partially the allegations in the opening paragraph of the Opposition relative to the particulars of the trademark application for SHELL 2, 4-D AMINE. It likewise admitted all the allegations in paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 18, 25, 29 and 30 of the said Opposition. As

to the other allegations, respondent-applicant denied the same setting forth the following Affirmative Allegations and Special and Affirmative Defenses, to wit:

8. Respondent-applicant is engaged in the manufacture, production and sale of agrochemicals;
9. Agrochemical (or agrichemical), contraction of agricultural chemical, is a generic term for the various chemical products used in agriculture. In most cases, agrochemical refers to the broad range of insecticides, herbicides, and fungicides, but it may also include synthetic fertilizers, hormones and other chemical growth agents, and concentrated stores of raw animal manure;
10. On 17 December 2004, respondent-applicant lodged an application with the Bureau of Trademarks to register the mark SHELL 2, 4-D ESTER for goods falling under International Class 5 namely, herbicide for the control of sedges and broadleaf weeds in rice, corn and sugarcane. The said application was docketed as Application No. 4-2004-011937;
11. The Bureau of Trademarks found said trademark SHELL 2, 4-D ESTER of respondent-applicant to be registrable under the provisions of Republic Act No. 8293 and allowed the publication of the application for oppositions purposes;
12. On 16 November 2006, Shell International Petroleum Company Limited of the opposer manifested before this Honorable bureau its intention to oppose the registration of the trademark SHELL 2, 4-D ESTER of respondent-applicant;
13. However, despite the lapse of the mandatory period of 120 days from the publication of the application of the respondent-applicant, Shell International Petroleum Company Limited of the opposed did not file the verified notice of opposition to the said application of the respondent-applicant;
14. On 08 January 2007, this Honorable Bureau issued a promulgated Order No. 2007-11(D) the dispositive portion of which reads as follows:

“WHEREFORE, for failure of the Opposer to file its Verified Notice of Opposition within the reglementary period provided for by law, this case is, as it is hereby MOTU PROPRIO DISMISSED. Accordingly, Application No. 4-2004-011937 filed on 17 December 2004 by Kemistar Corporation, for the registration of the trademark SHELL 2, 4-D ESTER used for herbicide for the control of sedges and broadleaf weeds in rice, corn and sugarcane, as it is hereby GIVEN DUE COURSE. x x x
15. On 15 February 2007, Certificate of Registration No. 4-2004-011937 issued for the trademark SHELL 2, 4-D ESTER of respondent-applicant. x x x
16. Similarly, respondent-applicant is the registered owner of the trademark SHELL 2, 4-D ESTER * Logo under Certificate of Registration no. 4-2006-006921 for goods falling under International Class 5 namely, herbicide for the control of sedges and broadleaf weeds in rice, corn and sugarcane. The said twin trademark registrations obtained by respondent-applicant each have a term of ten (10) years. x x x
17. Respondent-applicant has built a substantial business on its agrochemical products and has spent and will continue to spend considerable sums of money, time and effort in advertising and promoting its agrochemical products without having made the least attempt to palm-off its goods as emanating or associated in any way with the opposer; x x x

20. Opposer has no cause of action against the respondent-applicant and has no valid and justifiable legal ground to oppose the registration of respondent-applicant's trademark SHELL 2, 4-D AMINE;
21. The registration of the mark SHELL 2, 4-D AMINE in the name of the respondent-applicant will not likely mislead the buying public on the nature and origin of the goods because opposer is not using the said mark in the Philippines and anywhere in the world for agrochemical products. Opposer's conspicuous absence in the Philippine agrochemical market precludes any claim of confusion to the consumer;
22. The variety is, there is no realistic prospect of the public being confused with the products of the herein parties because opposer is actually using its trademark SHELL exclusively on petrochemicals which are chemicals products made from raw materials of petroleum or other hydrocarbon origin;
23. Further, the petrochemical products of the opposer are sold solely in its service stations and nowhere else. Opposer's products namely, gasoline, diesel, oil and other lubricants are not available anywhere except in its service stations;
24. More importantly, opposer's products are always labeled and identified using its distinctive corporate logo and oftentimes sans the word SHELL.
25. It is very clear from the foregoing discussion that the goods on which the competing trademarks of the herein parties are used in the Philippines are different, non-competing, unrelated, are not complementary to each other, are not sold to the same consumer group and flow through different channels of trade;
26. Opposer's trademark has not been declared by a competent authority of the Philippines to be "well-known" internationally AND in the Philippines;
27. Therefore, the institution of the present notice of Opposition is downright premature in the absence of an expressed acknowledgment from a competent Philippine government agency that opposer's trademark has attained worldwide fame and recognition;
28. Respondent-applicant has every right to register the trademark SHELL 2, 4-D AMINE in the Philippines because it is the true and rightful owner of the said trademark by reason of its real, actual and absolute use of the mark in the concept of owner and its being the senior-registrant and the first to file for the registration of the same in the Philippines for herbicide for the control of sedges and broadleaf weed in rice, corn and sugarcane;
29. The application for registration of the trademark SHELL 2, 4-D AMINE was allowed by the Bureau of Trademark in accordance with the provisions of Republic act No. 8293 and

Subsequently, Preliminary Conference was held in several occasions to allow the possibility of amicable settlement. However, parties failed to reach into common terms. Hence, the conference was terminated and parties were directed to file their respective position papers and, if desired, draft decisions within a non-extendible period of ten (10) days from receipt of the order directing them to do so.

The Issues –

I. Whether or not respondent-applicant's trademark "SHELL 2, 4-D AMINE" covering goods under class 05 is confusingly similar to opposer's registered mark "SHELL" covering goods under class 05.

II. Whether or not opposer's registered trademark "SHELL" is a well-known mark.

After careful perusal of the evidence submitted herein, this Bureau finds merit to the instant opposition case under the pertinent provision enunciated in Section 123.1 (d), supra which reads:

"Sec. 123. *Registrability*. – 123.1. A mark cannot be registered if it:

x x x

(d) Is identical with a registered mark belonging to a different proprietor or a mark with a 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;"

(Emphasis Ours.)

In a contest involving registration of trademark, the determinative factor is not whether the challenged mark would actually cause confusion or deception of the purchasers but whether the use of the mark would *likely* cause confusion or mistake on the part of the buying public. It does not require that the competing trademarks must be so identical as to produce actual error or mistake. It is rather sufficient that the similarity between the two trademarks is such that there is a possibility or likelihood of the older brand mistaking the newer brand for it.

The existence of confusion of trademark or the possibility of deception to the public hinges on "*colorable imitation*", which has been defined as "such similarity in form, content, words, sound, meaning, special arrangement or general appearance of the trademark or trade name in their overall presentation or in their essential and substantive and distinctive part as would likely to mislead or confuse persons in the ordinary course of purchasing the genuine article." (Emerald Garment Mfg. Corp. v Court of Appeals, 251 SCRA 600)

In resolving the issue of confusing similarity, the law and jurisprudence has developed two kinds of tests – the *Dominancy Test* as applied in a litany of Supreme Court decisions including Asia Brewery, Inc. v. Court of Appeals, 224 SCRA 437; Co Tong v. Director of Patents, 95 Phil, 1; Lim Hoa v. Director of Patents, 100 Phil. 214; American Wire & Cable Co. v. Director of Patents, 31 SCRA 544; Philippine Nut Industry, Inc. v. Standard Brands, Inc., 65 SCRA 5775; Converse Rubber Corp. v. Universal Rubber Products, Inc., 147 SCRA 154; and the *Holistic Test* developed in Del Monte Corporation v. Court of Appeals, 181 SCRA 410; Mead Johnson & Co. v. N.V.J. Van Dorp, Ltd., 7 SCRA 771; Fruit of the Loom, Inc. v. Court of Appeals, 133 SCRA 405.

The Test of Dominancy has been consistently relied upon by the Honorable Supreme Court in cases relating to infringement of marks. It is in fact incorporated in Section 155 of R.A. 8293 which focuses on the similarity of the prevalent features, or the main, essential and dominant features of the competing trademarks which might cause confusion or deception. As to what constitutes a dominant feature of a label, no set of rules can be deduced. Usually, these are signs, color, design, peculiar shape or name, or some special, easily remembered earmark of the brand that easily attracts and catches the eye of the ordinary consumer.

The issue on confusion of marks and trade names are split into two types: (1) confusion of goods or services, and (2) confusion of business or of origin, in the first type, the ordinary

prudent purchaser would be induced to purchase one product or service because of the similarity of the marks or trade names used thereon, relating to same or related kind of products or services, the second type of confusion exists, when one party's product or service, though different from that of another, is such as might reasonably be assumed to originate from the latter, and the public would then be deceived into that belief or into the belief that there is some connection or business association between the parties which, in fact, is absent.

The instant case revealed both confusion of goods and service, and confusion of business or of origin.

A perusal of the contending marks show that the dominant feature thereof is the word "SHELL" which is the registered mark of Opposer; and part of the composite word mark "SHELL 2, 4-D AMINE" of respondent-applicant. Even if the contending marks have distinguishing fonts, and bears a logo, the dominant word "SHELL" is so apparent visually and aurally capable of retention I purchaser's memento. "Neither duplication/imitation, of the fact that the infringing label suggests an effort to emulate, is necessary. The competing marks need only contain the main, essential or dominant features of another; and that confusion and deception are likely." (Sterling Products International, Inc. v. Farbenfabriken Bayer Aktiengesellschaft, G.R. No. L-19906, April 30, 1969; Lim Hoa v. Director of Patents, G.R. No. L-8072, October 31, 1956; Co Tiong Sa v. Director of Patents, et al., G.R. No. L-5378, May 24, 1954).

More so, comprising respondent-applicant's trademark, which is "2, 4-D AMINE" was proved as the chemical name for herbicide product. It is therefore a generic term which cannot be allowed registration unless it is disclaimed in the application for trademark registration.

"A common or generic name of an article or a word or phrase which is merely descriptive of the character, qualities or composition of an article cannot be monopolized as a trademark or tradename." (East Pacific Merchandising Corp. v. Director of Patents, 110 Phil. 443 [1960]) To allow the registration of a generic name as trademark will give the registrant a monopoly in the sale of goods other than those produced by him.

With respect to the goods/service of the contending marks, this Bureau finds that the contending goods: opposer's various products falling under classes 01, 03, 04, 05, 12 and 19, where class 05 in particular consists of medicine and pharmacy and in the preparation of cosmetics; wetting, spreading, dispersing and emulsifying agents; insecticides, larvicides, fungicides, pesticides; preparations for killing woods and destroying vermin; wood preservatives; disinfectants, chemical preparations for preventing the premature fall of fruit, tomato set, fertilizers, tobacco lumectant; de-icing fluid and compounds, apparatus and instruments for dispersing insecticides vis-à-vis respondent-applicant's products under class 5 namely: herbicide for the control of sedges and broadleaf weeds in rice, corn and sugarcane, belong to the same classification. They are competing because they are similar and related in their physical properties and characteristics. As a matter of fact, the projected consumers of these goods belong to the same class and available in the same channels of trade.

As held in the case of Mc Donald's Corporation et al. v. L.C. Big Mak Burger, Inc. et al., G.R. No. 143993, August 18, 2003; Sterling Products International, Inc. v. Fabriken Bayer Aktiengesellschaft, supra., "an ordinary purchaser might likely be induced to believe that the goods of one party are related to those of the other party and/or that, at the least, there is some connection between opposer and respondent-applicant which, in fact, does not exist. There is likelihood not only of confusion of goods but also confusion of business."

Anent the issue of well-known mark, this Bureau finds no sufficient basis to declare opposer's registered mark "SHELL" as well-known internationally and in the Philippines. Opposer failed to sustain by eloquent proof its allegation pursuant to Rule 102 of the Rules and Regulations on Trademarks, Service Marks, Trade Names and Marked or Stamped Containers, which enumerates the criteria of a well-known mark.

Under the foregoing, the application for registration of respondent-applicant's subject mark "SHELL 2, 4-D AMINE" cannot be allowed for being confusingly similar to opposer's registered mark "SHELL" Thus, opposer's right is vested upon Section 138 of the IP Code which provides that, "The 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 and those that are related thereto specified in the certificate. (Emphasis Supplied.)

WHEREFORE, the Verified Opposition is, as it is, hereby SUSTAINED. Consequently, Application Serial No. 4-2007-000939 for the mark "SHELL 2, 4-D AMINE" of Kemistar Corporation under class 05 covering the aforementioned goods filed on 30 January 2007, is as it is hereby, REJECTED.

Let the filewrapper of "SHELL 2, 4-D AMINE" subject mater in this case be forwarded to the Bureau of Trademarks with (BOT) for appropriate action in accordance with this Decision.

SO ORDERED.

Makati City, 17 December 2008.

ESTRELLITA BELTRAN-ABELARDO
Director, Bureau of Legal Affairs
Intellectual Property Office