

SOCIETE DES PRODUITS  
NESTLE S.A and  
NESTLE PHILIPPINES, INC.,  
Opposer,  
3112

INTER PARTES CASE NO. 3109 AND

OPPOSITION TO:

Application Serial No. 45176  
Filed : June 19, 1981  
Applicant : Melkunie Holland BV  
Trademark : VITANOVA  
Used on : Dietetic product based on  
milk

- versus -

MELKUNIE HOLLAND BV,  
Respondent-Applicant.

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DECISION NO. 89-5 (TM)  
January 27, 1989

#### DECISION

This is a consolidation of two (2) opposition cases: Inter Partes Case No. 3109 wherein Societe des Produits Nestle S.A lodged on June 22, 1988 its opposition against the registration of the trademark "VITANOVA" used on dietetic products based on milk filed by Melkunie Holland BV in application Serial No. 45176, published on Page 173, Volume 1, No. 3 of the BPTTT Official Gazette released for circulation on May 23, 1988, and Inter Partes Case No. 3112 wherein in Nestle Philippines, Inc. likewise lodged on June 22, 1988 its opposition against the registration of the same mark "VITANOVA" used on the same products filed by the same Respondent, Melkunie Holland BV and attended by similar circumstances as appearing above in Inter Partes Case No. 3109.

Opposer Societe des Produits Nestle S.A is a foreign corporation duly organized under the laws of Switzerland, with business address at Vevey, Switzerland, and the other Opposer, Nestle Philippines, Inc., is a domestic corporation organized and existing under the laws of the Philippines, with business address at No. 335 Sen. Gil Puyat Avenue, Makati, Metro Manila; while Respondent-Applicant is a foreign private limited liability company, organized and existing under the laws of the Kingdom of The Netherlands established at The Hague and doing business at Johan de Wittlaan 13, Woerden, The Netherlands.

The grounds alleged in the herein Opposition is:

"THE REGISTRATION OF THE MARK VITANOVA IN THE NAME OF RESPONDENT-APPLICANT IS PROSCRIBED BY SEC. 4(d) OF REPUBLIC ACT NO. 166, AS AMENDED".

In its Answer, Respondent-Applicant denied all the material allegations made in the Notice of Opposition and, by way of special and affirmative defenses, countered that:

"7. The trademark "VITANOVA" applied for registration by the Respondent-Applicant in this jurisdiction has long enjoyed trademark protection in its Home Country, The Netherlands as well as in other countries abroad.

8. As stated in the foregoing, the fact that the trademark at issue has long been registered, said mark cannot be imputed to be falsely suggestive that a connection exists between the respective businesses of the parties.

9. The trademark "VITANOVA" as previously registered in the Netherlands and other countries worldwide in favor of the Respondent-Applicant has been in continuous use since the time of its adoption; hence, the same has gained tremendous goodwill for the Respondent-Applicant and has become clearly distinctive of the goods it manufactures and distributes.

10. The mark alleged to be confusingly similar are not even remotely akin in terms of spelling and number of letters comprising the respective word marks. Also, the label presentation of each as uses in actual commerce would negate the possibility of confusion to the buying public.

11. Moreover Opposer`s trademark 'VITA' is used on products specified as 'vegetable based meat extender and soya-based food products, especially beverage soya drinks', all falling under Classes 29 and 32, whereas, herein Respondent-Applicant`s goods under the specification 'dietetic products based on milk' fall under Class 2, an entirely different class of goods."

After the pre-trial conference of both cases on different dates, on Motion filed by the Opposer without opposition on the part of the Respondent-Applicant, Inter Partes Cases Nos. 3109 and 3112 were consolidated in Order No. 88-397 dated September 22, 1988.

At the hearing of the cases, as consolidated on December 1, 1988, counsel for Respondent-Applicant manifested in open court that his client has given instructions to withdraw its application for the registration of the subject mark under litigations.

On December 6, 1988, Respondent-Applicant through counsel filed a pending manifestation that through a communication, Respondent "intimated its desire and intention to withdraw the trademark application subject of instant Opposition", and in view therefore requested that the voluntary withdrawal of Respondent`s Application Serial No. 45176 for the mark "VITANOVA" be made of record and the necessary orders and process be issued accordingly.

WHEREFORE, the herein Notices of Opposition are DISMISSED for having become moot. Application Serial No. 45176 for the mark "VITANOVA" is hereby declared voluntarily withdrawn by Respondent-Applicant.

Let the records of these cases be forwarded to the application, Issuance and Publication Division for appropriate action in accordance with this Decision.

SO ORDERED.

IGNACIO S. SAPALO  
Director