SYNERGEN ASIA PTE. LIMITED, *Opposer*,	}	Inter Partes Case No. 14-2009-00049 Case Filed : 12 February 2009
-versus-	}	Opposition to: Appl'n Serial No. : 4-2008-008970 Date Filed : 25 July 2008 Trademark : "CARTIFLEX"
WELLNESS AG., INC., *Respondent-Applicant*.	}	
x----------x		Decision No. 2009-59

DECISION

This is an opposition to the registration of the trademark "CARTIFLEX" bearing application No. 4-2008-008970 filed on July 25, 2009 covering the goods "*pharmaceutical preparations namely dietary supplements that helps in joints flexibility and mobility and helps to relief pain for people suffering from all types of arthritic*" falling under class 5 of the International Classification of goods which application was published for opposition on Number 113 of the Intellectual Property Philippines (IPP) E-Gazette, officially released on November 14, 2008.

The Opposer in this instant case is "SYNERGEN ASIA PTE., LTD.," a corporation duly organized and existing under the laws of Singapore, with principal address at No. 21-02 International Plaza, 10 Anson Road, Singapore-079903.

The Respondent-Applicant, on the other hand, is "WELLNESS AG, INC.," a corporation existing by virtue of Philippine Laws with principal address at Ground Floor Jose Melo Building, No. 109 Erestain corner 2nd Street, Kamuning, Quezon City.

The grounds of the opposition are as follows:

"1. Opposer is the owner of and/or registrant of the trademark "ARTIFLEX" bearing Registration No. 4-2007-007803 issued on August 5, 2008 covering the goods "*dietary supplement that helps in joints mobility and flexibility*".

"2. The trademark "CARTIFLEX" of the Respondent-Applicant is confusingly similar with the registered trademark "ARTIFLEX" of the Opposer.

"3. Both marks of the Opposer and Respondent-Applicant cover similar goods under Class 5.

"4. Respondent-Applicant intended to ride on the goodwill of Opposer's trademark and pass-off its goods as those of Opposer.

"5. The registration and use of the mark "CARTIFLEX" by Respondent-Applicant will deceive and/or confuse purchasers into believing that Respondent-Applicant's goods bearing the said mark emanate from or under the sponsorship of Opposer and this will therefore diminish the distinctiveness and dilute the goodwill of Opposer's trademark.

Respondent-Applicant failed to file its answer despite receipt of the Notice to Answer on April 11, 2009.

Section 11 of the Summary Rules (Office Order No. 79, Series of 2005), provides:

Section 11. *Effect of failure to file an Answer.* – In case the Respondent-Applicant fails to file an answer, or if the answer is filed out of time, the case shall be decided on the basis of the Petition or Opposition, the affidavit of the witnesses and documentary evidence submitted by the Petition or Opposer.

The lone issue to be resolved in this particular case is:

WHETHER OR NOT RESPONDENT-APPLICANT IS ENTITLED TO THE REGISTRATION OF THE MARK "CARTIFLEX".

The applicable provision of law is Section 123.1 (d) of Republic Act No. 8293, which provides:

"Section 123.1. A mark cannot be registered if it:

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

The contending trademarks are reproduced below for comparison and scrutiny.

Opposer's mark

Respondent-Applicant's mark

The competing trademarks are both composed of three (3) syllables each and the two (2) syllables are exactly the same or identical to each other both in spelling and pronunciation. The first syllable however are different from each other nevertheless, they are almost the same as their distinction lies in the presence of the letter "C" in the Respondent-Applicant's mark. In totality, the competing trademarks are confusingly similar to each other as when pronounced, they are almost identical to each other.

Considering therefore, that the contending trademarks are confusingly similar to each other the remaining issue to be resolved is:

"WHO BETWEEN THEPARTIES HAVE A BETTER RIGHT OVER THE MARK?"

The Opposer's trademark "ARTIFLEX" has been registered with the Intellectual Property Philippines (IPP) bearing Registration No. 4-2007-007803, on May 26, 2008 covering the goods

"*dietary supplement that helps in joints mobility and flexibility*" underclass 5 of the International Classification of goods.

On the other hand, Respondent-Applicant's application for registration of the mark "CARTIFLEX" bearing Application No. 4-2008-008970 covering the same goods under Class 5, was filed only on *July 25, 2008* which is one year and one month and nine days after the Opposer's filing date.

The Opposer's trademark having been registered with the Intellectual Property Philippines, the use and adoption by the Respondent-Applicant of substantially the same trademark as subsequent user can only mean that applicant wishes to reap the goodwill, benefit from the advertising value and reputation of Opposer's mark. The goods or products covered by the competing trademarks are the same or identical under Class 5 of the international classification of goods.

It cannot therefore, be denied that the approval of Respondent-Applicant's application in question is contrary to Section 123.1 (d) of Republic Act No. 8293, otherwise known as the Intellectual Property Code of the Philippines, because the said trademark is confusingly similar to Opposer's registered mark which is not abandoned.

When one applies for the registration of a trademark or label which is almost the same or very closely resembles one already used and registered by another, the application should be rejected and dismissed outright, even without any opposition on the part of the owner and user of a previously registered label or trademark, this not only to avoid confusion on the part of the public, but also to protect an already *used* and *registered* trademark and an established goodwill (Chuanchow Soy & Canning Co., vs. The Director of Patents and Rosario Villapanta [G.R. No. L-13947, June 30, 1960])

The Respondent-Applicant's mark is not overshadowed by the presence of the letter "C" in its first syllable as when the trademark as a whole is pronounced it is exactly the same or identical to the Opposer's registered trademark. The likelihood of confusion on the part of the consuming public is bound to occur, as well as confusion of source affiliation or connection when the Respondent-Applicant's mark be registered and compounding confusion and deception is the fact that the contending trademarks are both covering the same or identical goods under Class 5 of the international classification of goods.

WHEREFORE, in light of all the foregoing, the opposition is, as it is hereby SUSTAINED. Consequently, Application No. 4-2008-008970 filed on July 25, 2008 by Respondent-Applicant "WELLNESS AG, INC." for the mark "CARTIFLEX" is, as it is hereby REJECTED.

Let the filewrapper of the trademark "CARTIFLEX" subject matter of this case together with a copy of this DECISION be forwarded to the Bureau of Trademarks (BOT) for appropriate action.

SO ORDERED.

Makati City, 12 May 2009.

ESTRELLITA BELTRAN-ABELARDO
Director, Bureau of Legal Affairs