PEDIATRICA, INC.,	}	**IPC No. 14-2012-00465**
Opposer,	}	Opposition to:
	}	Appln. Serial No. 4-2012-005115
	}	Date filed: 26 April 2012
-versus-	}	**TM: "NEUROLIN"**
	}	
	}	
FORAMEN PRODUCTS CORPORATION,	}	
Respondent-Applicant.	}	

x----------x

NOTICE OF DECISION

OCHAVE & ESCALONA
Counsel for the Opposer
No. 66 United Street
Mandaluyong City

FORAMEN PRODUCTS CORPORATION
Respondent-Applicant
67 Scout Fuentabella Street
Brgy. Laging Handa, Tomas Morato
Quezon City

GREETINGS:

Please be informed that Decision No. 2013 - 132 dated July 16, 2013 (copy enclosed) was promulgated in the above entitled case.

Taguig City, July 16, 2013.

For the Director:

Atty. EDWIN DANILO A. DATING
Director III
Bureau of Legal Affairs

PEDIATRICA, INC.,
Opposer,

- versus -

FORAMEN PRODUCTS CORP.,
Respondent-Applicant.

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IPC NO. 14 – 2012 - 00465
Case Filed on: 17 October 2012

Opposition to:
Appln Serial No. 42012005115
Date filed: 26 April 2012
TM: "NEUROLIN"

DECISION NO. 2013 - 132

DECISION

PEDIATRICA, INC. (opposer)[1] filed an opposition to Trademark Application No. 4-2012-005115. The application filed by FORAMEN PRODUCTS CORP. (respondent-applicant)[2], covers the mark "NEUROLIN" for goods under Class 05 of the International Classification of Goods[3] particularly, *"pharmaceutical product categorized as a nootropic for treatment of cerebrovascular disorders including ischemic stroke, parkinsonism & head injury."*

The opposer alleges that it is the registered owner of the trademark "NUTRILIN" which application was filed on 10 May 1971 with then Philippine Patent Office and was approved for registration on 29 March 1973. Before the expiration on 29 March 1993, opposer applied and was granted renewal of the registration of the mark for another 20 years. Opposer also alleges that "NUTRILIN" has been extensively used in commerce in the Philippines and already acquired exclusive ownership over the trademark "NUTRILIN" to the exclusion of the others.

To support its claims the opposer submitted the following evidence:

1.) Exhibit "A" to "A-1" – Intellectual Property Office ("IPO") E-Gazette with released date: 17 September 2012.
2.) Exhibit "B" – Certified True Copy of the Certificate of Registration No. 18566 for the trademark "NUTRILIN"
3.) Exhibit "D", "D-1" to "D-5" – Certified True Copies of the Affidavit of Use.

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[1] A domestic corporation duly organized and existing under the laws of the Philippines, with office address at 3rd Floor, Bonaventure Plaza, Ortigas Avenue, Greenhills, San Juan City, Philippines.
[2] A domestic corporation with business address at #67 Scout Fuentebella St. Brgy. Laging Handa, Tomas Morato.
[3] The Nice Classification of Goods and Services is for registering trademarks and service marks based on 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.

4.) Exhibit "E" – a Sample of the Product Label bearing the Trademark "NUTRILIN"
5.) Exhibit "F" – Certified True Copy of the Certificate of Product Registration for "NUTRILIN" issued by BFAD

This Bureau issued a Notice to Answer on 29 October 2012 and served a copy to the respondent-applicant on 13 November 2012. However, the respondent-applicant did not file an answer to the Opposition. In view thereof, an Order dated 4 April 2013 was issued declaring the respondent-applicant in default. Consequently, this case was submitted for Decision.

The issue to resolve in the present case is whether the respondent - applicant should be allowed to register the trademark "NEUROLIN."

The instant opposition is anchored on Section 123.1, paragraph (d), of the IP Code which 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 mark as to be likely to deceive or cause confusion.

The competing marks are reproduced below for comparison:

Opposer's Trademark

Respondent's – Applicant's Trademark

In the instant Opposition, the opposer argues that applying the dominancy test, the trademark "NEUROLIN" resembles the opposer's trademark "NUTRILIN" which will likely cause confusion, mistake and deception on the part of the purchasing public. More particularly, the opposer contends that: 1.) the mark "NEUROLIN" appears and sound almost the same as trademark "NUTRILIN"; 2.) Both marks start with the letter "N"; 3.) The last three letters of both marks are the same; 4.) Both marks are composed of 9 (sic) letters; and 5.) Both marks composed of three (3) syllables.

Opposer further claims that the two marks can easily be confused for one over the other or that the public will be deceived either into believing that the two products originated with the herein opposer or that there is connection between the opposer and the respondent-applicant.

Upon perusal of the two competing trademarks and the evidence submitted by the opposer, this office finds merit to the contentions of the opposer.

At the outset, it is worthy to note that both competing word marks have eight (8) letters each and five (5) of these eight (8) letters are identical with each other, namely, the letters "N," "U," "R," "L," "I," and "N." Also, taking in consideration both from the visual and aural standpoints, the two word marks closely resemble each other since they are both composed of three (3) syllables with almost identical sounds.

The Supreme Court has consistently held that trademarks with *idem sonans* or similarities of sounds are sufficient ground to constitute confusing similarity in trademarks.[4] Thus, the Court ruled that the following words: Lusolin and Sapolin;[5] Salonpas and Lionpas;[6] Celdura and Cordura[7] are confusingly similar. Definitely, the subject trademarks "NEUROLIN" and "NUTRILIN" falls squarely within the purview of this *idem sonans* rule.

Furthermore, this office also notes that the two products subject of the competing trademarks, are closely related goods. The product of the opposer is a supplement composed of vitamins and minerals for general nutrition; while the product of the respondent-applicant is categorized as nootropics, which are also vitamins or mineral supplements that nourish the brain and enhance its function. Thus, there is also high probability that the product of the respondent-applicant may be confused with the opposer's product or the public may be deceived that respondent-applicant's product may have originated from the opposer, or at the very least there is a connection between them.

In addition, unfair appropriation of other's goodwill, which is one of the evil sought to be prevented by our intellectual property law, is especially real in the instant case as records show that the trademark "NUTRILIN" was applied for registration by the opposer as early as 1971 or over 40 years ago while the respondent-applicant only applied for trademark application only last 26 April 2012.

Verily, the field from which a person may select a trademark is practically unlimited. As in all other cases of colorable imitation, the unanswered riddle is why, of the millions of terms and combination of design available, the Respondent-Applicant had to come up with a mark identical or so closely similar to another's mark if there was no intent to take advantage of the goodwill generated by the other mark.[8]

Time and again, it has been held in our jurisdiction that the law does not require that the competing trademarks must be so identical as to produce actual error or mistake. It would be sufficient, for purposes of the law that the similarity between the two labels is such that there is a possibility or likelihood of the purchaser of the older brand mistaking the newer brand for it.[9] Corollarily, the law does not require actual confusion, it being sufficient that confusion is likely to occur.[10] Because the

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[4] Marvex Commercial Co., Inc. vs. Petra Hawpia and Co, G.R. No. L-19297, 22 December 1966
[5] Sapolin Co. vs. Balmaceda, 67 Phil 795
[6] Marvex Commercial Co., Inc. vs. Petra Hawpa and Co, G.R. No. L-19297, 22 December 1966
[7] Co Tiong vs. Director of Patents, 95 Phil 1
[8] American Wire & Cable Company vs. Dir. Of Patent , G.R. No. L-26557, February 18, 1970.
[9] American Wire & Cable Co. vs. Director of Patents, et. al., G.R. No. L-26557, February 18, 1970
[10] Philips Export B.V. et. al. vs. Court of Appeals, et. al., G.R. No. 96161, February 21, 1992

respondent-applicant will use his mark on goods that are similar and/or closely related to the opposer's, the consumer is likely to assume that the respondent-applicant's goods originate from or sponsored by the opposer or believe that there is a connection between them, as in a trademark licensing agreement. The likelihood of confusion would subsist not only on the purchaser's perception of goods but on the origins thereof as held by the Supreme Court:[11]

> Callman notes two types of confusion. The first is the confusion of goods in which event the ordinarily 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.

WHEREFORE, premises considered, the instant opposition to Trademark Application Serial No. 42012005115 is hereby **SUSTAINED.** Let the filewrapper of Trademark Application Serial No. 42012005115 be returned together with a copy of this Decision to the Bureau of Trademarks (BOT) for appropriate action.

SO ORDERED.

Taguig City, 16 July 2013

ATTY. NATHANIEL S. AREVALO
Director IV
Bureau of Legal Affairs

[11] Converse Rubber Corporation vs. Universal Rubber-Products, Inc. et. al. G.R. No. L27906, January 8, 1987