



THE PROCTER & GAMBLE COMPANY,
Opposer,

-versus-

NUTRILIFE ALLIANCE CORP.,
Respondent –Applicant.

x-----x

}
} **IPC No. 14-2012-00474**
} Opposition to:
} Appln. Serial No. 4-2011-013261
} Date Filed: 04 November 2011
} **TM: "CLODS AND DEVICE"**

NOTICE OF DECISION

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GREETINGS:

Please be informed that Decision No. 2014 - 75 dated March 20, 2014 (copy enclosed) was promulgated in the above entitled case.

Taguig City, March 20, 2014.

For the Director:

Atty. PAUSI U. SAPAK
Bureau of Legal Affairs



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NUTRILIFE ALLIANCE CORP.,	}	TM: CLODS AND DEVICE
<i>Respondent-Applicant.</i>	}	
x-----x		Decision No. 2014- <u>75</u>

DECISION

THE PROCTER & GAMBLE COMPANY (“Opposer”)¹ filed an opposition to Trademark Application Serial No. 4-2011-013261. The application, filed by NUTRILIFE ALLIANCE CORPORATION (“Respondent-Applicant”)², covers the mark “CLODS AND DEVICE” for “laundry use soap (detergent powder)” under Class 3 of the International Classification of Goods and Services.³

The Opposer alleges that the registration of the mark CLODS AND DEVICE is contrary to the provisions of Section 123.1, paragraphs (d), (e) and (f) of Rep. Act No. 8293, also known as the Intellectual Property Code of the Philippines (“IP Code”) which prohibit the registration of a mark that:

- “(d) is identical with 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.

- “(e) 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 is registered here, as being already the mark of a person other than the application

¹ A corporation organized under the laws of Ohio, United States of America and now domiciled and having principal place of business at One Procter & Gamble Plaza, Cincinnati, Ohio 45202, United States of America.

² With address at Unit 219 Regalia Park Tower A, P. Tuazon, Brgy. Socorro, Cubao, Quezon City.

³ 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.

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 at large, including knowledge in the Philippines which has been obtained as a result of the promotion of the mark.

“(f) is identical with, or confusingly similar to, or constitutes a translation of a mark considered well-known in accordance with the preceding paragraph, which is registered in the Philippines with respect to goods or services which are not similar to those with respect to which registration is applied for: Provided, That use of a mark in relation to those goods or services would indicate a connection between those goods or services, and the owner of the registered mark: Provided further, That the interests of the owner of the registered mark are likely to be damaged by such use”.

To support its opposition, the Opposer submitted in evidence the following:

1. Exhibit “A” – original legalized Verified Notice of Opposition;
2. Exhibit “B” – original legalized certificate of Special Power of Attorney;
3. Exhibit “C” – original legalized affidavit of Ms. Tara M. Rosnell;
4. Exhibit “C-1” – exhibits “A-1” to “A-8” of Ms. Rosnell’s affidavit – story board of Ariel television commercials and promotional materials of Ariel products in the Philippines and worldwide;
5. Exhibit “C-2” – screenshots of Opposer’s websites;
6. Exhibit “C-3” – table showing the details of Opposer’s registrations for the Ariel Atomium Device marks worldwide;
7. Exhibit “C-4” – representative samples of Opposer’s certificates of registration for the Ariel Atomium Device mark worldwide;
8. Exhibit “D” – original notarized affidavit of Ms. Jenina Teresa Santos;
9. Exhibit “D-1” – product labels showing the Ariel Atomium Device trademarks;
10. Exhibit “D-2” – CD containing Opposer’s television commercials for products bearing the Ariel Atomium Device trademarks featuring different celebrities; and
11. Exhibit “E” – Opposer’s certificate of registration/trademark application for the Ariel Atomium Device trademarks with the Philippine Intellectual Property Office.

On 25 February 2013, the Respondent-Applicant filed its Verified Answer denying all the material allegations of the Opposition and further argues that its mark is distinct and/or different from the Opposer’s mark.

The case was referred to mediation pursuant to Office Order No. 154, s. 2010. The Respondent-Applicant, however, failed to appear during the mediation conference. The Opposer filed on 10 May 2013 a motion to declare the Respondent-Applicant in default, citing Sec. 8 of Office Order No. 154, s. 2010, to wit:

“Section 8. Effect of the failure of parties to appear during the mediation. – The failure of the party who initiated the case, such as the opposer, petitioner or complainant, to appear for mediation, including the meeting before the Mediation Office in accordance with Section 3 hereof, is a ground for the dismissal of the case. On the other hand, if respondent fails to appear, he may be declared in default.

If circumstances warrant and on proper motion to the Mediation Head, a party absent in the succeeding mediation proceedings may be required to reimburse the other party up to treble the costs incurred, together with the attorney’s fees, for that day.

A party shall also be considered absent if the representative fails to show the appropriate and valid authorization.”

The Hearing Officer, however, issued on 17 May 2013 the Notice of Preliminary Conference. On 19 June 2013, the Preliminary Conference was terminated with the Hearing Officer declaring the Respondent-Applicant to have waived its right to submit Position Paper for non-appearance. On 26 June 2013, the Opposer filed its Position Paper.

Should the Respondent-Applicant’s trademark application be allowed?

Records show that at the time the Respondent-Applicant filed its trademark application on 04 November 2011, the Opposer has existing trademark registrations in the Philippines for the mark ARIEL ATOMIUM DEVICE for bleaching preparations and other substances for laundry use under Class 3 of the International Classification of Goods and Services.⁴ The Opposer likewise submitted proof regarding the worldwide promotion of its mark.

But are the competing marks, as shown below, identical or confusingly similar?



Opposer’s Marks

⁴ Exhibit “E”.



Respondent-Applicant's Mark

This Bureau finds that the mark applied for registration by the Respondent-Applicant is not confusingly similar to the Opposer's mark. The defining feature in the Respondent-Applicant's mark is the word "CLODS" as distinguished from the Opposer's which is the word "ARIEL". These two words, constituting the dominant element of the competing marks, are entirely different from each other both in composition, spelling, and pronunciation as well as in meaning. In regards to the accompanying device of the two marks, the Respondent-Applicant's device consists of four (4) circles on top of one another in different colors, while the Opposer's consists of three (3) overlapping circles or simply the model of an atom. Two of the Opposer's device also includes dots which appear prominently. Succinctly, the configuration and quantity of circles are likewise different, hence confusion and deception is unlikely and/or far fetched.

Because the competing marks are not identical or confusingly similar, the registration of the Respondent-Applicant's mark is not proscribed by Section 123.1 (d) of the IP Code. It is not necessary even to dwell on the issue whether the Opposer's mark is a well-known mark. Paragraphs (e) and (f) of Section 123.1 of the IP Code apply only if the mark sought to be registered is identical or confusingly similar to the well-known mark.

It is emphasized that the essence of trademark registration is to give protection to the owner of the trademarks. The function of a trademark is to point out distinctly the origin or ownership of the goods to which it is affixed; to secure to him, who has been instrumental in bringing into the market a superior article of merchandise, the fruit of his industry and skill; to assure the public that they are procuring the genuine article; to prevent fraud and imposition; and to protect the manufacturer against substitution and sale of an inferior and different article as his products.⁵ This Bureau finds that the Respondent-Applicant's mark satisfies this function.

WHEREFORE, premises considered the instant opposition is hereby **DENIED**. Let the filewrapper of Trademark Application Serial No. 4-2011-013261 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 20 March 2014.


Atty. **NATHANIEL S. AREVALO**
Director IV, Bureau of Legal Affairs

⁵ Pribhdas J. Mirpuri v. Court of Appeals, G.R. No. 114509, 19 November 1999