



UNITED HOME, INC.,
Opposer,

-versus-

RICARDO L. BRITO,
Respondent-Applicant.

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}
} IPC No. 14-2011-00387
} Opposition to:
} Appln. Serial No. 4-2011-003074
} Date Filed: 17 March 2011
} Trademark: "UNI-HOME"
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}

NOTICE OF DECISION

OCHAVE & ESCALONA
Counsel for the Opposer
66 United Street
Mandaluyong City

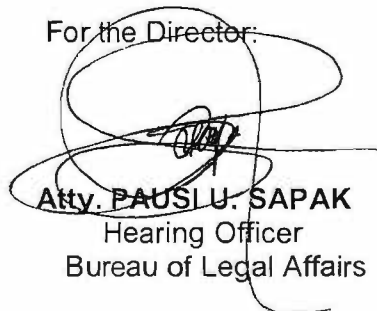
RICARDO L. BRITO
For Respondent-Applicant
Unitop Building
#242 Sevilla Street
corner Jaboneros, Binondo
Manila


GREETINGS:

Please be informed that Decision No. 2012 – 181 dated September 27, 2012 (copy enclosed) was promulgated in the above entitled case.

Taguig City, September 27, 2012.

For the Director:


Atty. PAUSU J. SAPAK
Hearing Officer
Bureau of Legal Affairs

CERTIFIED TRUE COPY

SHARON S. ALCANTARA
Records Officer II
Bureau of Legal Affairs, IPO



UNITED HOME, INC.,
Opposer,

-versus-

RICARDO L. BRITO,
Respondent.

x-----x

IPC No. 14-2011-00387

Opposition to:
Appln. No. : 4-2011-003074
(Filing Date: 17 March 2011)
TM: "UNI-HOME"

Decision No. 2012- 181

DECISION

UNITED HOME PRODUCTS, INC. ("Opposer")¹ filed on 10 August 2011 an opposition to Trademark Application Serial No. 4-2011-003074. The application, filed by RICARDO BRITO, ("respondent-Applicant")², covers the mark "UNI HOME" for use on the following

1. paints, varnishes, lacquers; preservatives against rust and against deterioration of wood; coloring matters; dyestuffs; mordants; natural resins; metals in foil and powder form for painters and decorators (Class 2);
2. bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps and perfumery, essential oils, cosmetics, hair lotions; dentifrices (Class 3);
3. industrial oils and greases (other than edible oils and fats and essential oils); lubricants; dust laying and absorbing compositions; fuels (including motor spirit) and illuminants; candles; tapers nightlights and wicks (Class 4);
4. pharmaceuticals namely: medicines for human beings, veterinary and sanitary substances; infants; and invalid foods; plasters, material for bandaging; material for stopping teeth, dental wax; disinfectants; preparations for killing weeds and destroying vermin (Class 5);
5. unwrought and partly wrought common metals and their alloys; anchors, anvils, bells, rolled and cast building materials; rails and other metallic pipes and tubes; safes and cash boxes; steel balls; horseshoes; nails and screws; other goods in non-precious metal not included in other classes; ores (Class 6);
6. machines and machines tools; motors (except for land vehicles); machine couplings and belting (except for land vehicles); machine couplings and beltings (except for land vehicles); machine couplings and belting (except for land vehicles); large size agricultural implements; incubators (Class 7);
7. hand tools and instruments; cutlery, forks and sporks; side arms (Class 8);
8. scientific, nautical, surveying and electrical apparatus and instruments (including wireless), photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision) life saving and teaching apparatus and instruments; coin or counted-freed apparatus; talking machines; cash registers; calculating machines; fire extinguishing apparatus (Class 9);
9. surgical, medical, dental and veterinary instruments and apparatus (including artificial limbs, eyes and teeth) (Class 10);

¹ A corporation duly organized and existing under the laws of the Philippines with principal office address at Bonaventure Plaza, Ortigas Avenue, Greenhills, San Juan City, Metro Manila.

² With address at Unitop Bldg., No. 242 Sevilla St., cor. Jaboneros, Binondo, Manila.

10. installations for lighting, heating, steam, generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes (Class 11);
11. vehicles; apparatus for locomotion by land, air or water (Class 12);
12. precious metals and their alloys and goods in precious or coated therewith (except) cutlery forks (Class 14);
13. musical instruments (other than talking machines and wireless apparatus) (Class 15);
14. paper and articles, cardboard and cardboard articles; printed matter, newspaper and periodicals, books, bookbinding materials; photographs, stationery, adhesive materials (stationery); artists materials; paint brushes; typewriters and office requisites (other than furniture); instructional and teaching material (other than apparatus); playing cards; (printers) type and clichés (stereotype) (Class 16);
15. gutta percha, India rubber, balata and substitutes, articles made from these substances, and not included in other classes; plastics in the form of sheets, blocks and rods, being for use in manufactures; materials for packing, stopping or insulating; asbestos, mica and other products; hose pipes (non-metallic) (Class 17);
16. leather and imitations of leather, articles made from these materials and not included in other classes, skins, hides, trunks and traveling bags; umbrellas, parasols and walking sticks; whips harness and saddlery (Class 18);
17. building materials, natural and artificial stone, cement, lime, mortar, plaster and gravel; pipes of earthenware or cement; road-making materials, asphalt, pitch and bitumen, portable buildings; stone monuments; chimney pots (Class 19);
18. furniture, mirrors, picture frames; articles (not included in other classes) of wood, cork reeds, cane, wicker, horn, bone, ivory, whale bone, shell, amber, mother-of-pearl, meerscham, celluloid, substitutes for all these materials, or of plastic (Class 20);
19. small domestic utensils and containers (not of precious metal, nor coated therewith); combs and sponges; brushes (other than paint brushes); brushmaking materials; instruments and materials for cleaning purposes, steel wool; unworked or semi-worked glass (excluding glass used in building); glassware, porcelain and earthenware not included in other classes (Class 21);
20. rope, string, nets, tents, awning, tarpaulins, sails, sacks; padding and stuffing materials (hair, capoc, feathers, seaweeds, etc); raw textile materials (Class 22);
21. yarns, threads (Class 23);
22. tissues (piece of goods); bed and table covers; textile articles not included in other classes (Class 24);
23. clothing namely skirts, blouses, pants, jeans, jackets, t-shirts, shorts, briefs, socks, dress, skirt, belt, shoes, slippers, sandals, boots (Class 25);
24. lace and embroidery, ribbons and braids; buttons, press buttons, hooks and eyes, pins and needles; artificial flowers (Class 26);
25. carpets, rugs, mats and matting; linoleums and other materials for covering existing floors; wall hangings (non-textile) (Class 27);
26. games and playthings; gymnastics and sporting articles (except clothing); ornaments and decorations for Christmas trees (Class 28);
27. meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams; eggs; mild and other dairy products; edible oils and fats; preserves, pickles (Class 29);
28. coffee, tea, cocoa, sugar, rice, tapioca, sago, coffee substitutes; flour, and preparations made from cereals; breads, biscuits, cakes, pastry and confectionery, ices; honey, treacle; yeast, baking powder; salt; mustard; pepper, vinegar, sauces; spices; ice (Class 30);
29. agricultural, horticultural and forestry products and grains not included in other classes; living animals; fresh fruits and vegetables; seeds; live plants and flowers; foodstuffs for animals, malt (Class 31);

30. beer, ale and porter; mineral and aerated waters and other non-alcoholic drinks; syrups and other preparations for making beverages (Class 32);
31. wines, spirits and liquors (Class 33);
32. tobacco, raw or manufactured; smokers' articles; matches (Class 34); and
33. supermarket, mall, advertising, business management, business administration; office function (Class 35).³

The Opposer alleges, among other things, that UNI HOME is confusingly similar to its registered marks "UNITED HOME" and "UNITED HOME PRODUCTS". According to the Opposer, the registration of UNI HOME in favor of the Respondent-Applicant will violate Sec. 123.1(d) of Rep. Act. No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code"). It also claims that the Respondent-Applicant's use and registration of UNI HOME will diminish the distinctiveness and dilute the goodwill of the UNITED HOME trademarks.

To support its opposition, the Opposer submitted as evidence a print-out of page 1 of the "IPO E-Gazette" released on 11 July 2011, copies of certificates of registration for the marks UNITED HOME and UNITED HOME PRODUCTS, copies of affidavits of use (fifth, tenth and fifteenth anniversaries) for the aforementioned marks, and a copy of the "License to Operate as a Drug Trader" issued to the Opposer by the Bureau of Food and Drugs on 15 March 2010.⁴

This Bureau issued a Notice to Answer and served a copy thereof upon the Respondent-Applicant on 02 September 2011. The Respondent-Applicant, however, did not file an Answer.⁵

Should the Respondent-Applicant's be allowed to register the mark UNI HOME?

Thus, Sec. 123.1 (d) of the IP Code 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 is nearly resembles such a mark as to be likely to deceive or cause confusion.

Records show that at the time the Respondent-Applicant filed his trademark application on 17 March 2011, the Opposer has existing trademark registrations, particularly:

1. Reg. No. 57624 for the mark UNITED HOME PRODUCTS, issued on 05 April 1994, for use on its "*product lines (marketing and promotion of pharmaceutical and healthcare preparations)*" under Class 35, and
2. Reg. No. 57773 for the mark UNITED HOME, issued on 20 April 1994, for use on various pharmaceutical and healthcare products under class 5.

In this regard, this Bureau noticed that the goods covered by the Opposer's trademark registrations are not similar and/or closely to the goods and services indicated in the application except for "*pharmaceuticals namely: medicines for human beings, veterinary and sanitary substances; infants; and invalid foods; plasters, material for bandaging; material for stopping teeth, dental wax; disinfectants; preparations for killing weeds and destroying vermin*" which fall under Class 5.

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.

⁴ Marked as Annexes "A" to "J", inclusive.

⁵ Thus, on 09 July 2012, this Bureau issued Order No. 938.

But, are the competing marks, as shown below, identical or resemble each other such that confusion or even deception is likely to occur?

Opposer's Marks

Respondent-Applicant's Mark

UNITED HOME

UNI HOME

UNITED HOME PRODUCTS

The Respondent-Applicant's mark and the Opposer's mark covered by Reg. No. 57773 both consist of two words, the second word ("HOME") being identical. The first word in the Respondent-Applicant's mark ("UNI") is also the first two syllables in the Opposer's. Aply, because the Respondent-Applicant will use or uses the mark UNI HOME on pharmaceutical products which are similar and/or closely related to the goods covered by the Opposer's registered trademarks, there is the likelihood of mistake, confusion, or even deception. This is so because "uni", is a common prefix for words in the English language to connote the idea or concept of singularity, a fine example of which is the word "united". Consumers will likely assume that the Respondent-Applicant's mark is just a variation of the Opposer's such that information, assessment, perception or impression about UNI HOME branded or marked products may unfairly cast upon or attributed to goods that bear the UNITED HOME and the Opposer, and *vice-versa*.

Confusion cannot be avoided by merely adding, removing or changing some letters of a registered mark. Confusing similarity exists when there is such a close or ingenuous imitation as to be calculated to deceive ordinary persons, or such resemblance to the original as to deceive ordinary purchaser as to cause him to purchase the one supposing it to be the other⁶. The determinative factor in a contest involving trademark registration is not whether the challenged mark would actually cause confusion or deception of the purchasers but whether the use of such mark will likely cause confusion or mistake on the part of the buying public. To constitute an infringement of an existing trademark, patent and warrant a denial of an application for registration, 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.⁷

The likelihood of confusion is also true in respect of the Opposer's mark under Reg. No. 57624, notwithstanding that the mark bears the additional word PRODUCTS. This is so because the word "product" is a generic term, which in this instance does not add to the distinctive character of the Opposer's mark. The word therefore is easily glossed over, as the eyes and ears are drawn to the words UNITED and HOME.

⁶ See *Societe Des Produits Nestle, S.A v. Court of Appeals*, G.R. No.112012, 4 April 2001, 356 SCRA 207, 217.

⁷ See *American Wire and Cable Co. v. Director of Patents et al.*, (31 SCRA 544) G.R. No. L-26557, 18 Feb. 1970.

The foregoing notwithstanding, this Bureau finds and concludes that as regards the other goods and services indicated in the Respondent-Applicant's application, confusion, much less deception, is unlikely. The Respondent-Applicant's mark is not identical to the Opposer's marks, which in the first place are not really unique by themselves in the sense that they are composed of words not invented by the Opposer. "United", "home" and "products" are ordinary words in the English language. Hence, the Opposer's marks are distinctive only insofar as the goods indicated in the registrations (pharmaceutical products), as well as those closely related thereto, are concerned. Except for the goods falling under class 5, the Respondent-Applicant's various goods and services are so different from those covered by the Opposer's trademarks in terms of composition, nature and purpose.

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 manufacture against and sale of an inferior and different article of his products.⁸ The Respondent-Applicant's mark for use on goods indicated in the opposed trademark application other than those falling under Class 5, serve the afore-stated purpose and function.

WHEREFORE, premises considered, the opposition is hereby **SUSTAINED** insofar as the goods falling under class 5 are concerned, namely "*pharmaceuticals namely, medicines for human beings, veterinary and sanitary substances, infants and invalid foods; plasters, material for bandaging, material for stopping teeth, dental wax, disinfectants; preparation for killing weeds and destroying vermin*". The opposition, however, is **DISMISSED** with respect to the goods indicated in the subject trademark application not falling under class 5.

Let the filewrapper of Trademark Application Serial No. 4-2011-003074 be returned, together with a copy of this Decision, to the Bureau of Trademark for information and appropriate action.

SO ORDERED.

Taguig City, 27 September 2012.


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

⁸ See *Pribhdas J. Mirpuri v. Court of Appeals*, G.R. No. 114509, 19 Nov. 1999.