



UNITEDHEALTH GROUP	}	IPC No. 14-2012-00505
INCORPORATED,	}	Opposition to:
Opposer,	}	
	}	Appln. Serial No. 4-2011-012808
- versus -	}	Date Filed: 24 October 2011
	}	
UNITED LABORATORIES, INC.,	}	Trademark: UNITED HEALTH
Respondent-Applicant.	}	
x-----x		Order No. 2013 - <u>141</u> (D)

ORDER

UNITEDHEALTH GROUP INCORPORATED ("Opposer") filed on 06 December 2012 a Verified Notice of Opposition to Trademark Application No. 4-2011-012808. Acting thereto, this Bureau issued Order No. 2013-064 dated 15 January 2013, directing the Opposer to submit within five (5) days from receipt thereof the proof of service as well as the Special Power of Attorney showing the authority of Mr./Ms. Patel to sign the Verification and Affidavit of Non-Forum Shopping on behalf of UnitedHealth Group, Incorporated, with warning that:

"Failure to comply with this Order may cause the dismissal of the notice of opposition in accordance with the amended IPC Rules, and the Rules of Court as applied in suppletory manner."

In compliance with the Order dated 15 January 2013, the Opposer submitted on 31 January 2013 the original Special Power of Attorney executed by Apur Patel in favor of the Opposer's counsel. Subsequently, this Bureau issued Order No. 2013-241 dated 11 February 2013, directing the Opposer to submit within five (5) days from receipt of the Order, the original and duly authenticated/legalized Power of Attorney and Verification and Affidavit of Non-Forum Shopping, with further warning that failure to do so shall cause the dismissal of the case in accordance with the amended rules.

Anticipating that it will not be able to file the requested legalized documents within the given period, the Opposer filed on 22 February 2013 a Motion for Extension of Time to Submit Authenticated Documents requesting for an extension of thirty (30) days from 25 February 2013 within which to submit the authenticated verified documents. Relying on Section 8(c), Rule 2 of the amended Rules and Regulations on Inter Partes Proceedings, this Bureau gave the Opposer instead an additional period of five (5) days or until 02 March 2013 within which to submit the original and duly authenticated Power of Attorney and Verification and Affidavit of Non-Forum Shopping with the same warning as in the previous Orders.

On 07 May 2013, the Opposer filed the instant Motion with Leave to Admit Duly Legalized Documents Cum Ad Cautelam seeking the admission of the duly legalized Special Power of Attorney as well as the authenticated Verified Notice of Opposition with precaution since the manifest delay is unavoidable due to the distance, time and costs in securing the legalization of these documents with the nearest Philippine consul.

After a careful review of the records and applicable rules as well as the submissions

filed by Opposer, this Bureau rules to deny Opposer's Motion With Leave to Admit Duly Legalized Documents Cum Ad Cautelam.

Rule 2, Section 8(c) of the amended Rules and Regulations on Inter Partes Proceedings, provides that:

Section 8. *Action on the Notice of Opposition or Motion for Extension to File Notice of Opposition, and Petitioner.* - x x x (c) The opposer, including those who file a motion for extension of time to file notice of opposition, or the petitioner shall be given a period of five (5) days from receipt of the order to complete or cure any of the following defects:

x x x

(2) Failure to attach the originals of the following documents:

- (i) Verification;
- (ii) Certification of non-forum shopping;
- (iii) Special Power of Attorney of representative(s) who signed the pleadings, the verification, and the certification of non-forum shopping; the proof of authority to issue or execute the Special Power of Attorney; and
- (iv) Proof of authentication by the appropriate Philippine diplomatic or consular office, of the foregoing documents, if executed abroad.

The 5-day period to complete or cure the defects in the filing may be extended for another 5 days upon motion by the opposer or petitioner based on meritorious grounds which must be explicitly stated in the motion, and upon of the applicable fees.

Failure to complete or cure the defects shall cause the dismissal of the case.

In the instant case, the Opposer was given an extended period of until 02 March 2013 within which to submit the authenticated Power of Attorney and Verification and Affidavit of Non-Forum Shopping. However, the Opposer submitted the requested legalized documents only on 07 May 2013, in violation of the above-quoted provision and the previous Order issued by this Bureau. Assuming *arguendo*, that the Opposer's request for 30-day extension has been granted, the authenticated documents should have been filed on 27 March 2013 or thirty (30) days from 25 February 2013.

Even assuming that the Opposer's submission of authenticated documents have been filed on time, the same cannot still be given credit by this Bureau for having been executed and authenticated after the filing of the opposition. A perusal of the Verification and Affidavit of Non-Forum Shopping indicates that it was executed by Apur Patel only on 21 February 2013 and was authenticated by the appropriate Philippine consular office in the State of Illinois, U. S. A. only on 26 April 2013 or beyond the period for filing the Verified Notice of Opposition. In this regard, Rule 2, Section 7 (b) of the amended rules provides that:

x x x The verification and certification of non-forum shopping as well as the documents showing the authority of the signatory or signatories thereto, affidavits and other supporting documents, if executed and notarized abroad, must have been authenticated by the appropriate Philippine diplomatic or consular office. The execution and authentication of these documents must have been done before the filing of the opposition or petition. [Underscoring supplied]

The execution and authentication of the Opposer's Verified Notice of Opposition after the deadline for filing the opposition violates the above-quoted provision.

Moreover, an evaluation of the Verified Notice of Opposition indicates that it was not accompanied by a Special Power of Attorney or Secretary's Certificate showing the authority of Apur Patel to sign and execute the Verification and Affidavit of Non-Forum Shopping on behalf of the Opposer, as required under Rule 2, Section 7 (b) of the amended rules. While there has been a Power of Attorney submitted by the Opposer, as directed by this Bureau, the same pertains only to the appointment of EMETERIO V. SOLIVEN & ASSOCIATES as representative and agent of the Opposer in the instant case and not necessarily on the authority of Apur Patel to sign the Verification and Affidavit of Non-Forum Shopping on behalf of the Opposer corporation.

Time and again, it has been ruled that only individuals vested with authority by a valid board resolution may sign the certificate of non-forum shopping in behalf of a corporation. In addition, it is required that proof of said authority must be attached. Failure to provide a certificate of non-forum shopping is sufficient ground to dismiss the opposition. Likewise, the petition is subject to dismissal if a certification was submitted unaccompanied by proof of the signatory's authority.¹

The Opposer's filing of the Verified Notice of Opposition, therefore, was not in compliance with the provisions of the amended rules and in violation of the Order of this Bureau.

WHEREFORE, premises considered, the Opposer's Motion with Leave to Admit Duly Legalized Documents Cum Ad Cautelam is hereby **DENIED**. Accordingly, the instant case is hereby **DISMISSED**. Let the filewrapper of Trademark Application Serial No. 4-2011-012808 be returned, together with a copy of this Order, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 02 September 2013.


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

¹ *Philippine Airlines, Inc., et. al. v. Flight Attendants and Stewards Association of the Philippines*, G. R. No. 143088, January 24, 2006.

Copy furnished:

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BUREAU OF TRADEMARKS