



GENERAL NUTRITION INVESTMENT CO.,  
 Opposer,  
  
 -versus-  
  
 HEALTHWELL NUTRACEUTICALS, INC.,  
 Respondent- Applicant.  
 -----X

IPC No. 14-2013-00207  
 Opposition to:  
 Appln. Serial No. 4-2012-012788  
 Date Filed: 17 October 2012  
 TM: "LIVEWELL"

**NOTICE OF DECISION**

**SYCIP SALAZAR HERNANDEZ & GATMAITAN**  
 Counsel for Opposer  
 4<sup>th</sup> Floor SycipLaw Center  
 105 Paseo de Roxas, Makati City

**HEALTHWELL NUTRACEUTICALS INC.,**  
 Respondent-Applicant  
 No. 1 Pineville Street  
 Whiteplains Subdivision  
 Quezon City

**GREETINGS:**

Please be informed that Decision No. 2014 - 255 October 16, 2014 (copy enclosed) was promulgated in the above entitled case.

Taguig City, October 16, 2014.

For the Director:

*Edwin Danilo A. Dating*  
**Atty. EDWIN DANILO A. DATING**  
 Director III  
 Bureau of Legal Affairs



**GENERAL NUTRITION INVESTMENT CO.,**

Opposer,

-versus-

**HEALTHWELL NUTRACEUTICALS, INC.,**

Respondent-Applicant.

X ----- X

IPC No. 14-2013-00207  
Opposition to Trademark  
Application No. 4-2012-012788  
Date Filed: 17 October 2012  
Trademark: "LIVEWELL"

Decision No. 2014- 255

**DECISION**

General Nutrition Investment Company<sup>1</sup> ("Opposer") filed an opposition to Trademark Application Serial No. 4-2012-012788. The contested application, filed by Healthwell Nutraceuticals, Inc.<sup>2</sup> ("Respondent-Applicant"), covers the mark "LIVEWELL" for use on "*food supplement*" under Class 05 of the International Classification of Goods<sup>3</sup>.

The Opposer avers it is the prior user in the Philippines and elsewhere and the registered owner in several countries of the mark "GNC LIVE WELL" for, among others, dietary supplements tablet, capsule and liquid form under Class 05. It alleges to have first used the mark in the United States since 1997 and in the Philippines, since 1998. It asserts that the applied mark is confusingly similar to its own registered mark and will diminish and dilute the good will of the latter. It contends that the registration of the Respondent-Applicant's mark will be contrary to Section 123.1 (e) of Republic Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code").

In support of its Opposition, the Opposer submitted the legalized and notarized evidentiary exhibit of Gavin M. O'Connor with annexes.<sup>4</sup>

This Bureau issued a Notice to Answer dated 13 August 2013 and served a copy thereof upon the Respondent-Applicant. The Respondent-Applicant, however, did not file an Answer. Accordingly, the Hearing Officer issued on 10 December 2013 Order No.

<sup>1</sup> A corporation duly organized and existing under the laws of the Arizona with business address at South 63<sup>rd</sup> Avenue at Buckeye, Phoenix, AZ 85043 USA.

<sup>2</sup> Appears to be a domestic corporation, with principal business address at #1 Pinesville Street, Whiteplains Subdivision, Quezon City.

<sup>3</sup> 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.

<sup>4</sup> Marked as Exhibit "B", inclusive.



2013-1663 declaring the Respondent-Applicant in default and the case submitted for decision.

The issue to be resolved in this case is whether the trademark application by Respondent-Applicant for the trademark "LIVEWELL" should be allowed.

Section 123.1 (d) of the IP Code provides that:

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

**(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; xxx"**

Records reveal that at the time Respondent-Applicant filed for an application of registration of its mark "LIVEWELL" on 17 October 2012, Opposer has an existing and valid registration for its trademark "GNC LIVE WELL" issued on 28 April 2011 under Certificate of Registration No. 4-2011-000211.

To determine whether the marks of Opposer and Respondent-Applicant are confusingly similar, the two are shown below for comparison:

**GNC LIVE WELL**

*Opposer's Mark*

**Livewell**

*Respondent-Applicant's Mark*

From the illustration, it is apparent that the competing marks closely resemble each other. Both marks appropriate the words "LIVE" and "WELL" in that order. There is no doubt that the two marks are closely alike in spelling and the almost the same sounding when pronounced. That the Opposer's mark begins with the letter-combination "GNC" and spells the words "live" and "well" separately while that of the

Respondent-Applicant comprises of one word "LIVEWELL" will not preclude the likelihood of confusion to the purchasing public. 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 ingenious imitation as to be calculated to deceive ordinary persons, or such resemblance to the original as to deceive ordinary purchased as to cause him to purchase the one supposing it to be the other.<sup>5</sup>

Succinctly, since the Respondent-Applicant will use or uses the mark "LIVEWELL" to food supplements, the likelihood of the occurrence of confusion, mistake and/or deception is even greater since the Opposer's mark "GNC LIVE WELL" also pertains to "*nutritional and dietary supplements*", among others. Undoubtedly, the goods and the target market are similar. Hence, it is highly probable that the purchasers will be led to believe that Respondent-Applicant's "LIVEWELL" products are sponsored by, affiliated with and/or in any way connected to that of the Opposer's goods, and vice-versa. Withal, the protection of trademarks as intellectual property is intended not only to preserve the goodwill and reputation of the business established on the goods bearing the mark through actual use over a period of time, but also to safeguard the public as consumers against confusion on these goods.<sup>6</sup>

Moreover, it is settled that the likelihood of confusion would not extend not only as to the purchaser's perception of the goods but likewise on its origin. 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 the belief that there is some connection between the plaintiff and defendant which, in fact, does not exist."<sup>7</sup>

Finally, it is emphasized that the essence of trademark registration is to give protection to the owners of 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

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<sup>5</sup> Societe des Produits Nestle,S.A. vs. Court of Appeals, GR No. 112012, 04 April 2001.

<sup>6</sup> Skechers, USA, Inc. vs. Inter Pacific Industrial Trading Corp., G.R. No. 164321, 23 March 2011.

<sup>7</sup> Societe des Produits Nestle, S.A. vs. Dy, G.R. No. 172276, 08 August 2010.



manufacturer against substitution and sale of an inferior and different article as his product.<sup>8</sup> Based on the above discussion, Respondent-Applicant's trademark fell short in meeting this function. The latter was given ample opportunity to defend its trademark application but Respondent-Applicant did not bother to do so.

Accordingly, this Bureau finds and concludes that the Respondent-Applicant's trademark application is proscribed by Section 123.1(d) of the IP Code.

**WHEREFORE**, premises considered, the instant opposition is hereby **SUSTAINED**. Let the filewrapper of Trademark Application Serial No. 4-2012-012788 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

**SO ORDERED.**

Taguig City, 16 October 2014.

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

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<sup>8</sup> Pribhdas J. Mirpuri vs. Court of Appeals, G.R. No. 114508, 19 November 1999.