



PEDIATRICA, INC.,
Opposer,

-versus-

JORLAND S. LABID,
Respondent-Applicant.

IPC No. 14-2013-00226
Opposition to Trademark
Application No. 4-2012-014466
Date Filed: 28 November 2012
Trademark: "CEE-F"

x ----- x

Decision No. 2014- 266

DECISION

Pediatrica, Inc.¹ ("Opposer") filed an opposition to Trademark Application Serial No. 4-2012-014466. The contested application, filed by Jorland S. Labid² ("Respondent-Applicant"), covers the mark "CEE-F" for use on *"food supplement; dietetic substances adapted for medical use"* under Class 05 of the International Classification of Goods³.

According to the Opposer, its company is engaged in the marketing and sale of a wide variety of pharmaceutical products. It claims that it is the owner of the trademark "CEELIN" and that it has extensively used the same in commerce in the Philippines. It avers that the Intercontinental Marketing Services ("IMS") acknowledged and listed the said brand as the leading brand in the Philippines in the category of "A11G – Vit C Inc. Minerals Combs" in terms of market share and sales performance. It maintains that it also registered the product with the Bureau of Food and Drugs ("BFAD"). It contends that the registration of the Respondent-Applicant's mark "CEE-F" will be contrary to the provisions of Section 123.1 (d) of Republic Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code").

In support of the allegations in the Opposition, the Opposer submitted the following as evidence:

1. copy of the Respondent-Applicant's application as published in the Intellectual Property Office ("IPO") E-Gazette;
2. certified true copy of Certificate of Registration No. 25281 for the mark "CEELIN";

¹ A domestic corporation duly organized and existing under the laws of the Philippines with business address at 3rd Floor, Bonaventure Plaza, Ortigas Avenue, Greenhills.

² Appears to be an individual with address at CF Wellness Philippines, Inc., G/F Merton 1 Building, Quezon Avenue, Quezon City 1668, Philippines..

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.

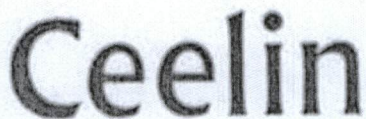
3. certified true copy of Certificate of Renewal Registration No. 25281 for the mark "CEELIN";
4. certified true copies of the Affidavits of Use;
5. sample product label bearing the mark "CEELIN";
6. certification issued by the IMS; and
7. certified true copy of the Certificate of Product Registration issued by the BFAD.⁴

A Notice to Answer was issued and served to the Respondent-Applicant on 18 June 2013. The Respondent-Applicant, however, did not file his Answer. Thus, the Hearing Officer issued Order No. 2013-1618 on 28 November 2013 declaring the Respondent-Applicant in default and the case submitted for decision.

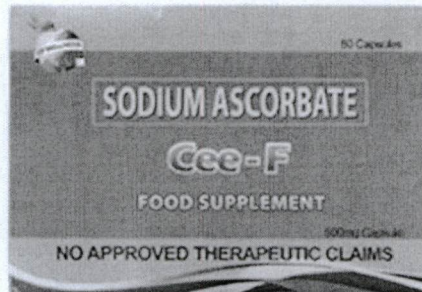
The issue is whether Trademark Application Serial No. 4-2009-001547 should be allowed.

Records reveal that at the time the Respondent-Applicant filed its application for the mark "CEE-F" on 28 November 2012, the Opposer has a valid and existing registration for the mark "CEELIN" under Certificate of Registration No. 25281 issued as early as 05 December 1977.

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



Opposer's mark



Respondent-Applicant's mark

The competing marks both begin with the letters or syllable "CEE". As the marks, however, pertain to vitamins, particularly vitamin C, the syllable "CEE" is generic to the class of goods they pertain. Hence, despite the prior adoption thereof by the Opposer, it cannot claim exclusive use of "C" or "CEE" to its vitamin C

⁴ Marked as Exhibits "A" to "G".

products. The Supreme Court further explained in **Societe des Produits Nestle vs. Court of Appeals**⁵ that:

"Generic terms are those which constitute 'the common descriptive name of an article or substance,' or comprise the 'genus of which the particular product is a species'" or are 'commonly used as the name or description of a kind of goods,' or 'imply reference to every member of a genus and the exclusion of individuating characters,' or 'refer to the basic nature of the wares or services provided rather than to the more idiosyncratic characteristics of a particular product,' and are not legally protectable. On the other hand, a term is descriptive and therefore invalid as a trademark if, as understood in its normal and natural sense, it 'forthwith conveys the characteristics, functions, qualities or ingredients of a product to one who has never seen it and does not know what it is,' or 'if it forthwith conveys an immediate idea of the ingredients, qualities or characteristics of the goods,' or if it clearly denotes what goods or services are provided in such a way that the consumer does not have to exercise powers of perception or imagination." (Emphasis supplied.)

What easily comes to the mind one when one sees or hears a mark or brand name of oral antiseptics of which the prefix "CEE" is a part of is the very concept or idea of the goods. What will then determine whether the contending marks are indeed confusingly similar are the words or device that follows the common prefix. In this case, the syllable "LIN" follows "CEE" in the Opposer's mark as opposed to the suffix "-F" in the Respondent-Applicant's mark. The syllables "LIN" and "F" are easily distinguishable from each other as they obviously vary in spelling, pronunciation and connotation.

Moreover, a search on the Trademark Registry of this Office, which this Bureau takes judicial notice, would reveal that many parties other than the Opposer have registered marks that include the word "CEE" likewise for Class 05 such as "ULTRA-CEE", "CHILVIT-CEE", "EFFICA-CEE", "MIGHTEE-CEE", "CALCIUM ALKA-CEE", "ASCOR-CEE", "CALCIUM-CEE", "CEE-NERGY VITAMIN", "U-CEE" and "CAL-CEE", among others. Therefore, the mark which adopts "CEE" is already a weak mark with respect to goods under Class 35, particularly Vitamin C products. What will determine its registrability are the words, logo and/or style that accompany the same.

Furthermore, 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

⁵ G.R. No. 112012, 04 April 2001.

manufacturer against substitution and sale of an inferior and different article as his product.⁶ Respondent-Applicant's trademark sufficiently met this requirement.

WHEREFORE, premises considered, the instant opposition is hereby **DISMISSED**. Let the filewrapper of Trademark Application Serial No. 4-2012-014466 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 27 October 2014.


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

⁶ Pribhdas J. Mirpuri vs. Court of Appeals, G.R. No. 114508, 19 November 1999.