



OFFICE OF THE DIRECTOR GENERAL

**SOCIETE DES PRODUITS NESTLE S.A.,
Opposer-Appellant,**

-versus-

**NATURE'S HARVEST CORPORATION,
Respondent-Appellee.**

X-----X

**APPEAL NO. 14-2012-0008
IPC No. 14-2008-00362
Opposition to:
Application No. 4-2008-001657
Date Filed: 11 February 2008**

Trademark: MAGIC

NOTICE

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IPOPHL LIBRARY
Documentation, Information
and Technology Transfer Bureau
Intellectual Property Office
Taguig City

LIBRARY
DATE: OCT 10 2014
BY: [Signature]

NATHANIEL S. AREVALO
Director, Bureau of Legal Affairs
Intellectual Property Office
Taguig City

GREETINGS:

Please be informed that on 02 October 2014, the Office of the Director General issued an Order in this case (copy attached).

Taguig City, 03 October 2014.

Very truly yours,

[Signature]
ROBERT NEREO B. SAMSON
Attorney V

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O R D E R

Records show that this Office issued a decision on this case on 20 December 2013 the dispositive portion of which states:

"WHEREFORE, premises considered, the appeal is hereby **DISMISSED**. Let a copy of this Decision and the records of this case be furnished and returned to the Director of Bureau of Legal Affairs for appropriate action. Further, let also the Director of the Bureau of Trademarks and the library of the Documentation, Information and Technology Transfer Bureau be furnished a copy of this Decision for information, guidance, and records purposes.

SO ORDERED."

The Appellant's counsel on record received a copy of this decision on 07 January 2014.

On 19 May 2014, the Appellant, through its new counsel, filed a "PETITION FOR RELIEF FROM DENIAL OF APPEAL" requesting that in the interest of substantial justice, this Office issue an Order granting the Appellant a fresh period of fifteen (15) days from receipt of the Order to file a "Petition for Review in Appeal No. 14-2012-0008 and IPC No. 14-2008-00362 to the Court of Appeals." The Appellant maintains that:

13. On May 2013, Petitioner-Opposer [Appellant] engaged the services of the undersigned's law firm, Bengzon Negre Untalan Intellectual Property Attorneys ("BNU"), as counsel. Petitioner-Opposer transferred its entire trademark portfolio from Sapalo Velez Bundang & Bulilan ("SVBB"), its previous counsel of record, to BNU. This agreement was formalized upon Petitioner-Opposer's issuance of a General Power of Attorney in favor of BNU dated 12 July 2013.

14. SVBB began transferring its documents in August 2013. Ms. Anne Kathrin Cardenas, BNU's paralegal assistant, coordinated with SVBB in the transfer of the files and case documents to BNU. Since then, SVBB had been sporadically transferring the files and case documents from their office.

15. On 20 December 2013, this Honorable Office issued a Decision dismissing Petitioner-Opposer's Appeal.

16. The **Decision** dated **20 December 2013** was purportedly received by SVBB, Petitioner-Opposer's previous counsel on record, on **07 January 2014**. Neither Petitioner-Opposer, nor the undersigned, were informed of the Decision rendered by this Honorable Office.

17. Through BNU, Petitioner-Opposer learned of the 20 December 2013 Decision in relation to the Opposition to **Trademark Application No. 4-2008-001657**. Petitioner-Opposer's counsel only came into possession of the same on 19 March 2014, or fifty six (56) days past the reglementary period to file a Petition for Review with the Court of Appeals.

18. Section 4, Rule 43 of the Revised Rules of Civil Procedure states that:

Sec. 4. Period of appeal.- The appeal shall be taken within fifteen (15) days from notice of the award, judgment, final order or resolution, or from the date of its last publication, if publication is required by law for its effectivity, or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency a quo. Only one (1) motion for reconsideration shall be allowed. Upon proper motion and the payment of the full amount of the docket fee before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.

19. It is respectfully submitted that had Petitioner-Opposer and/or its new counsel of record been informed of the adverse decision in the instant case, they could have timely filed the necessary appeal to protect its rights over the mark "MAGGI".

The Appellant's petition must be dismissed outright.

There is nothing in the IPOPHL's Uniform Rules on Appeals that allows the filing of a petition for relief from denial of appeal. In addition, the application of the provisions of the Revised Rules of Court in Inter-Partes proceedings, such as an opposition to the registration of a mark, is not mandatory.¹ In this regard, to give due course to the instant petition would not only be contrary to the provisions of the Uniform Rules on Appeals², but would also go against public policy and sound

¹ Rule 2 Section 5 of the Rules and Regulations on Inter-Partes Proceedings provides that:

Section 5. Applicability of the Rules of Court.- In the absence of any applicable rules, the Rules of Court may be applied in suppletory manner.

² Section 9 of the Uniform Rules on Appeals provides that :

Section 9. Decision.- The decision or order of the Director General shall be final and executory fifteen (15) days after receipt of a copy thereof by the parties unless appealed to the Court of Appeals in case of appeals from decisions or final orders of the BLA, BOP and BOT, or the Secretary of the Department of Trade and Industry in case of appeals from the decisions or final orders of the DITTB. The appeal shall not stay the decision or order of the Director General unless the Court of Appeals or the Secretary of the Department of Trade and Industry directs otherwise. No motion for reconsideration of the decision or order of the Director General shall be allowed.

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practice, that, at the risk of occasional errors, judgments or orders must become final at some definite time fixed by law.³


If a final order or judgment can be reopened every time a party alleges that the party has not previously been aware thereof and that the party's attorney, on a mistaken notion or without authority, has failed to appeal, the end of litigations would be speculative, if not dependent upon the will of the parties.⁴ In this case, the Appellant is not disputing that its former counsel (counsel on record for the Appellant at the time of the Decision dated 20 December 2013) received a copy of the decision dismissing the Appellant's appeal filed in this Office.

This notice to the Appellant's former counsel is a notice to it and the failure of the Appellant's former counsel to notify it of the decision issued by this Office on 20 December 2013 does not justify the giving of due course to the instant petition for relief from denial of appeal. Regarding, the Appellant's contention of the absence of the required "Declaration of Actual Use"⁵ for the subject trademark application, this is for the appropriate action by the Bureau of Trademarks.

Wherefore, premises considered, the PETITION FOR RELIEF FROM DENIAL OF APPEAL is hereby dismissed. Let a copy of this Order be furnished to the Director of the Bureau of Legal Affairs, the Director of the Bureau of Trademarks, and the library of the Documentation, Information and Technology Transfer Bureau for information, guidance, and records purposes.

SO ORDERED.

02 OCT 2014 Taguig City.


RICARDO R. BLANCAFLOR
Director General

³ See *The Provincial Sheriff of Rizal v. The Honorable Court of Appeals and Sandra K. Shaouy*, G. R. No. L-22606, 12 December 1975 and *Charles Hollman v. Sandra Shaouy and The Honorable Court of Appeals*, G. R. No. L-23114, 12 December 1975.

⁴ See *Valeriano v. Kerr*, G. R. No. L-10657, 16 May 1958.

⁵ Affidavit of Merit page 2, Annex "A" of the PETITION FOR RELIEF FROM DENIAL OF APPEAL dated 19 May 2014.

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