



SUMITOMO CHEMICAL COMPANY LTD.,  
Opposer,

-versus-

BIAGRO WESTERN SALES, INC.,  
Respondent- Applicant.

}  
} IPC No. 14-2012-00584  
} Opposition to:  
} Appln. Serial No. 4-2010-000278  
} Filing Date: 08 January 2010  
} TM: "TAKE OFF"  
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### NOTICE OF DECISION

#### HECHANOVA BUGAY & VILCHEZ

Counsel for Opposer  
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Makati City

#### SIGUION REYNA MONTECILLO & ONGSIAKO

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Makati City

#### GREETINGS:

Please be informed that Decision No. 2014 - 178 dated July 09, 2014 (copy enclosed) was promulgated in the above entitled case.

Taguig City, July 09, 2014.

For the Director:

  
Atty. EDWIN DANILO A. DATING  
Director III  
Bureau of Legal Affairs



**SUMITOMO CHEMICAL COMPANY LTD.,**  
*Opposer,*

**IPC No. 14-2012-00584**  
**Opposition to:**

- versus -

Appln. Serial No. 4-2010-000278  
(Filing Date: 08 January 2010)

**TM: "TAKE OFF"**

**BIAGRO WESTERN SALES, INC.,**  
*Respondent-Applicant.*

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**Decision No. 2014-** 178

## DECISION

**SUMITOMO CHEMICAL COMPANY LTD.**, ("Opposer")<sup>1</sup> filed an opposition to Trademark Application Serial No. 4-2010-000278. The application, filed by **BIAGRO WESTERN SALES INC.**, ("Respondent-Applicant")<sup>2</sup>, covers the mark "**TAKE OFF**" for use on "*metabolic plant fertilizers and growth regulators for agriculture*" under Class 1 of the International Classification of goods and services.<sup>3</sup>

The Opposer alleges that the registration of the mark TAKE OFF in favor of the Respondent-Applicant is contrary to Section 123.1, paragraphs (d) and (g), of Rep. Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code"). In support of its opposition, the Opposer submitted in evidence the following:

1. Exhibits "A" to "A-4" - authenticated Special Power of Attorney executed by the Opposer in favor of its counsel;
2. Exhibits "B" to "B-3" - authenticated Certification duly signed by the Opposer's Representative Director Osamu Ishitobi;
3. Exhibits "C" to "C-9" - authenticated Declaration of Shuji Kikuma of the translation into English of Certificate of Record of Particulars pertaining to SUMITOMO Chemical Company Ltd. Of Japan in the Commercial Register;
4. Exhibits "D" to "D-9" - authenticated Affidavit Direct Testimony of Kasuhiro Watanabe, and the certificate of Philippine registration of the mark TAKE OFF (No. 4-2008-009562) dated 17 November 2008;
5. Exhibits "E" - Affidavit Direct Testimony of Chrissie Anne L. Barredo;
6. Exhibits "F" - printout from the IPOPHL website showing details regarding the Respondent-Applicant's trademark application;
7. Exhibits "F-1" - printout from the IPOPHL website showing details regarding the Trademark Application Serial No. 4-2002-002552 (with filing date of 25 March 2002) for the mark TAKE OFF filed by

<sup>1</sup> A corporation organized and existing under the laws of Japan, with principal office at 27-1, Shinkawa 2-Chome, Chuo-ku, Tokyo 104-8260, Japan.

<sup>2</sup> A corporation with given address at 35801 Road 132 Visalia California 93792 United States of America.

<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.

- Sumitomo Chemical Agro Company Limited.
8. Exhibits "F-2" - printout from the IPOPHL website showing details regarding the copy of Trademark Reg. No. 4-2005-002685 (with date of registration 18 June 2007) for the mark TAKE OFF issued to Sumitomo Chemical Takada Agro Company Ltd.;
  9. Exhibits "F-3" - printout from the IPOPHL website showing details regarding the Trademark Reg. No. 42008009562 (with date of registration 17 November 2008) for the mark TAKE OFF issued to Sumitomo Chemical Company Limited;
  10. Exhibits "G" to "G-21" – printouts from the Opposer's Official Corporate Website containing Opposer's Corporate Profile, Corporate History, business location and group companies;
  11. Exhibits "H" to "H-11" – printouts from the Official Website of Sumitomo Chemical Singapore; and
  12. Exhibits "I" to "I-3" – photographs of the Opposer's products bearing the mark TAKE OFF.

This Bureau issued a Notice to Answer and served a copy thereof upon the Respondent-Applicant. However, the Respondent-Applicant did not file an Answer. Accordingly, the Hearing Officer issued on 10 July 2013 Order No. 2013-976 declaring the Respondent-Applicant in default and the case submitted for decision.

Should the Respondent-Applicant's Trademark Application be allowed?

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 manufacturer against substitution and sale of an inferior and different article as his product.<sup>4</sup> Thus, Sec. 123.1, pars. (d) and (g), of the IP Code provides that 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;

x x x

(g) Is likely to mislead the public, particularly as to the nature, quality, characteristics or geographical origin of the goods or services.

Records show that at the time the Respondent-Applicant filed its trademark application on 8 January 2010, the Opposer has already existing trademark registrations for the mark TAKE OFF, to wit:

1. Reg. No. 4-2002-2552, application filed on 25 March 2002 and

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<sup>4</sup> *Pribhdas J. Mirpuri v. Court of Appeals*, G. R. No. 114508, 19 November 1999.

- registration issued on 17 November 2008, covering "*Insecticides and herbicides for agricultural use*" under Class 5;
2. Reg. No. 4-2005-2685, application filed on 22 March 2005 and registration issued on 18 June 2007 covering "*Insecticides and herbicides for agricultural use*" under class 5; and
  3. Reg. No. 4-2008-9562, application filed on 07 August 2008, and registration issued on 17 November 2008 for use on "*Herbicides, fungicides, insecticides, and preparations for killing weeds and destroying vermin*" under Class 5.

The goods covered by these registrations are similar and/or closely related to those indicated in the Respondent-Applicant's trademark application.

A scrutiny of the marks, depicted below, show that the marks are identical:

**TAKE OFF**

Opposer's mark

**TAKE OFF**

Respondent-Applicant's mark

Thus, the Respondent-Applicant's trademark application is proscribed by Sec. 123.1(d) of the IP Code.

**WHEREFORE**, premises considered, the instant opposition is hereby **SUSTAINED**. Let the filewrapper of Trademark Application Serial No. 4-2010-000278, together with a copy of this Decision be returned to the Bureau of Trademark for information and appropriate action.

**SO ORDERED.**

Taguig City, 09 July 2014.

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

PUS/Tess N. (take off) 6.4.14