



UNITED LABORATORIES, INC.,  
Opposer,

-versus-

BELLIE M. QUIBOD doing business  
under the name and style of 24-25  
MANUFACTURING,  
Respondent - Applicant.

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IPC No. 14-2013-00376  
Opposition to:  
Appln. Serial No. 4-2012-00014281  
Date filed: 23 November 2012  
TM: "FORTICEE"

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**NOTICE OF DECISION**

**OCHAVE & ESCALONA**  
Counsel for Opposer  
No. 66 United Street  
Mandaluyong City

**BELLIE M. QUIBOD doing business  
under the name and style of  
24-25 MANUFACTURING**  
Respondent-Applicant  
24-25 Manufacturing  
Phil-Japan Friendship Highway  
Sasa, Davao City

**GREETINGS:**

Please be informed that Decision No. 2014 - 254 dated October 16, 2014 (copy enclosed) was promulgated in the above entitled case.

Taguig City, October 16, 2014.

For the Director:

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



**UNITED LABORATORIES, INC.,**

Opposer,

-versus-

**BELLIE M. QUIBOD doing business  
under the name and style of 24-25  
MANUFACTURING,**

Respondent-Applicant.

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IPC No. 14-2013-00376

Opposition to Trademark

Application No. 4-2012-00014281

Date Filed: 23 November 2012

Trademark: **"FORTICEE"**

Decision No. 2014- 254

### DECISION

United Laboratories, Inc.<sup>1</sup> ("Opposer") filed an opposition to Trademark Application Serial No. 4-2012-00014281. The contested application, filed by Bellie M. Quibod doing under the name and style of 24-25 Manufacturing<sup>2</sup> ("Respondent-Applicant"), covers the mark "FORTICEE" for use on "*food supplement, vitamin & minerals, pharmaceutical preparations*" under Class 05 of the International Classification of Goods<sup>3</sup>.

The Opposer anchors its opposition on the provision of Section 123.1 (d) of Republic Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code"). It maintains that it is the registered owner of the trademark "FORTI-D" and is engaged in the marketing and sale of a wide range of pharmaceutical products. It asserts that the Respondent-Applicant adopted the dominant features of its mark and that the competing marks are practically identical in sound and appearance that they leave the same commercial impression on the public. It thus contends that the two marks can be easily confused for one over the other, most especially that the opposed mark "FORTICEE" is applied to the same class and goods as that of the Opposer's trademark "FORTI-D".

In support of its Opposition, the Opposer submitted a copy of the Respondent-Applicant's trademark application as published in the Intellectual Property Office ("IPO")

<sup>1</sup> A domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with business address at No. 66 United Street, Mandaluyong City, Metro Manila, Philippines.

<sup>2</sup> Appears to be a sole proprietorship with office address at 24-25 Manufacturing, Phil-Japan Friendship Highway, Sasa Davao City, Philippines.

<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.

Republic of the Philippines  
INTELLECTUAL PROPERTY OFFICE

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E-Gazette and a certified true copy of its Certificate of Registration No. 4-2012-00013823.<sup>4</sup>

A Notice to Answer was issued and served to the Respondent-Applicant on 10 October 2013. The Respondent-Applicant, however, did not file her/its Answer. Thus, the Hearing Officer issued Order No. 2014-374 on 20 March 2014 declaring the Respondent-Applicant in default and the case submitted for decision.

Records reveal that at the time the Respondent-Applicant filed her/its application for the mark "FORTICEE" on 23 November 2012, the Opposer has a valid and existing registration for the mark "FORTI-D" under Certificate of Registration No. 4-2012-00013823 issued on 18 April 2013. The trademark application for the latter mark was filed on 13 November 2012.

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

**FORTI-D      FortiCee**

*Opposer's mark*

*Respondent-Applicant's mark*

Both marks are similar in the sense that they both share the same first two syllables "FOR-TI". It can be assumed that the word "FORTI" is derived from the word "FORTIFIED" since the products both marks pertain are vitamins and/or food supplements. As such, it is common for this class of goods the marks are used for to use the word "FORTIFIED" or a part thereof. What will then determine whether the marks are distinguishable are the letters, words or figures placed before or after the said term. In this case, the Opposer's mark utilizes the letter "D" while the Respondent-Applicant uses the words "CEE". Clearly, the Respondent-Applicant followed the pattern used by the Opposer by conveniently placing one of the kinds of vitamins after the word "FORTI". That the letter "C" was spelled out does not make the latter mark any less similar to that of the Opposer's.

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<sup>4</sup> Marked as Exhibits "A" and "B".

Succinctly, 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 ingenuous 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> Worthy to reiterate, the trademarks "FORTI-D" and "FORTICEE" both refer to goods under Class 05, specifically vitamins and thus, the latter is seen as a variation of the other. It is easy to commit mistake that the Opposer merely ventured to a new product by the name of "FORTICEE" if the latter mark should be allowed registration. In the case of **Societes des Produits Nestle, S.A. vs. Martin T. Dy, Jr.**, the Supreme Court made the following pronouncement:<sup>6</sup>

***"It has been time and again reiterated by the Supreme Court that the registered trademark owner may use his mark on the same or similar products, in different segments of the market, and at different price levels depending on variations of the products for specific segments of the market. The Court has recognized that the registered trademark owner enjoys protection in product and market areas that are the normal potential expansion of his business."***

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, April 4, 2001.

<sup>6</sup> G.R. No. 172276, August 8, 2010.

<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> Respondent-Applicant's trademark fell short in meeting this function.

Accordingly, this Bureau finds and concludes that 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. 4-2012-00014281 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.



**F. HOFFMAN-LA ROCHE AG,**  
Opposer,

-versus-

**PHARMA NUTRIA N.A., INC.,**  
Respondent-Applicant.

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**IPC NO. 14-2014-00051**

Opposition to:

Ser. No. 4-2013-00014068

Date Filed: 26 November 2013

Trademark: **TRADOL**

Order No. 2014- 150 (D)

### ORDER

The Respondent-Applicant filed on 22 September 2014 via registered mail a Manifestation and Motion to Withdraw Trademark stating its intention to withdraw its Trademark Application Serial No. 4-2013-00014068 for the trademark "TRADOL". With the express withdrawal by the Respondent-Applicant of its trademark application, there is no more reason or basis to proceed with this case.

**WHEREFORE**, premises considered, this case is hereby **DISMISSED**. Let the filewrapper of Trademark Application Serial No. 4-2013-00014068 be returned, together with a copy of this Order and the aforementioned Manifestation and Motion to Withdraw Trademark of the Respondent-Applicant, to the Bureau of Trademarks for information and appropriate action.

### SO ORDERED.

Taguig City, 20 October 2014.

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

Copy furnished:

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