UNITED LABORATORIES, INC., Opposer, **-versus-** **HEALTHWELL NUTRACEUTICALS, INC.,** Respondent- Applicant.	}	**IPC No. 14-2013-00208** Opposition to: Appln. Serial No. 4-2012-012788 Date Filed: 17 October 2012 **TM: "LIVEWELL"**

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NOTICE OF DECISION

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

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

GREETINGS:

Please be informed that Decision No. 2014 - 229 dated September 25, 2014 (copy enclosed) was promulgated in the above entitled case.

Taguig City, September 25, 2014.

For the Director:

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

UNITED LABORATORIES, INC.,
Opposer,

-versus-

HEALTHWELL NUTRACEUTICALS, INC.,
Respondent-Applicant.
x ---------- x

IPC No. 14-2013-00208
Opposition to Trademark
Application No. 4-2012-012788
Date Filed: 17 October 2012
Trademark: **"LIVEWELL"**

Decision No. 2014-229

DECISION

United Laboratories, Inc.[1] ("Opposer") filed an opposition to Trademark Application Serial No. 4-2012-012788. The contested application, filed by Healthwell Nutraceuticals, Inc.[2] ("Respondent-Applicant"), covers the mark "LIVEWELL" for use on *"food supplement"* under Class 05 of the International Classification of Goods[3].

The Opposer avers that its company is engaged in the marketing and sale of a wide range of pharmaceutical products. It maintains that it filed an application for the trademark "LIVEWELL CLINIC" on 15 July 2011, which is prior to the filing of the Respondent-Applicant for the latter's mark "LIVEWELL" on 17 October 2012. It claims to have acquired exclusive ownership over the mark "LIVEWELL CLINIC" by virtue of its prior filing of an application for registration thereof. It asserts that the registration of the Respondent-Applicant's mark will be contrary to Section 123.1 (d) of Republic Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code").

This Bureau issued a Notice to Answer dated 06 June 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. 2013-1662 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.

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[1] A domestic corporation organized and existing under the laws of the Philippines with business address at 66 United Street, Mandaluyong City, Philippines.
[2] Appears to be a domestic corporation, with principal business address at #1 Pinesville Street, Whiteplains Subdivision, Quezon City.
[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.

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 also has a pending application for its trademark "LIVEWELL CLINIC" filed on 15 July 2011. Clearly, the Opposer is the prior applicant.

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

LIVEWELL CLINIC	Livewell
Opposer's Mark	*Respondent-Applicant's Mark*

From the illustration, it is apparent that the competing marks closely resemble each other. When one looks at the Opposer's mark, what is impressed and retained in the eyes and mind is the word "livewell", which is the dominant feature of the mark that identifies the product and the source thereof. Upon scrutiny of Respondent-Applicant's mark, the same conclusion may be withdrawn therefrom. There is no doubt that the two marks are identical in spelling and the same sounding when pronounced. That the Opposer's mark consists of two words "livewell" and "clinic" is of no moment. For one, the word "clinic" is merely generic and/or descriptive of the service the mark is applied for. Also, 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.[4]

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 "LIVEWELL CLINIC" pertains to *"medical services"*. 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 clinic, 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.[5]

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."[6]

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 manufacturer against substitution and sale of an inferior and different article as his product.[7] 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.

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[4] Societe des Produits Nestle,S.A. vs. Court of Appeals, GR No. 112012, 04 April 2001.
[5] Skechers, USA, Inc. vs. Inter Pacific Industrial Trading Corp., G.R. No. 164321, 23 March 2011.
[6] Societe des Produits Nestle, S.A. vs. Dy, G.R. No. 172276, 08 August 2010.
[7] Pribhdas J. Mirpuri vs. Court of Appeals, G.R. No. 114508, 19 November 1999.

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, 25 September 2014.

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