



OFFICE OF THE DIRECTOR GENERAL

UNITEDHEALTH GROUP
INCORPORATED,
Appellant,

APPEAL NO. 14-2013-0048
IPC No. 14-2012-00505
Opposition to:

-versus-

Application No. 4-2011-012808
Date Filed: 24 October 2011
Trademark: UNITED HEALTH

UNITED LABORATORIES,
INCORPORATED,
Appellee.

X-----X

NOTICE

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IPOPHL LIBRARY
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and Technology Transfer Bureau
Intellectual Property Office
Taguig City



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BY: [Signature]

GREETINGS:

Please be informed that on 15 December 2014, the Office of the Director General issued a Decision in this case (copy attached).

Taguig City, 15 December 2014.

Very truly yours,

[Signature]
ROBERT NEREO B. SAMSON
Attorney V



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ATTORNEY V
Office of the Director General



OFFICE OF THE DIRECTOR GENERAL

UNITEDHEALTH GROUP
INCORPORATED,

Opposer-Appellant,

-versus-

UNITED LABORATORIES
INCORPORATED,

Respondent-Appellee.

x-----x

Appeal No. 14-2013-0048

IPC No. 14-2012-00505

Opposition to:

Application No. 4-2011-012808

Date Filed: 24 October 2011

Trademark: UNITED HEALTH

DECISION

UNITEDHEALTH GROUP INCORPORATED (“Appellant”) appeals the order¹ of the Director of Bureau of Legal Affairs (“Director”) which denied the Appellant’s “Motion with Leave to Admit Duly Legalized Documents Cum Ad Cautelam” and accordingly dismissed the Appellant’s opposition to the registration of the mark “UNITED HEALTH”.

On 24 October 2011, the Appellee filed Trademark Application No. 4-2011-012808 for UNITED HEALTH for use on advertising, business management, business administration, and office functions. The trademark application was published in the Intellectual Property Office Electronics Gazette for Trademarks on 08 October 2012. Subsequently, the Appellant filed on 06 December 2012 a “VERIFIED NOTICE OF OPPOSITION” claiming that it will be damaged by the registration of UNITED HEALTH.

The Appellant alleged that it is a leading worldwide manufacturer and seller of a diverse range of drugs with a history of almost 67 years of operation in many countries. The Appellant claimed that it is the owner, originator, and prior user of the mark “United Health” which is a major part of its corporate name. According to the Appellant, the Appellee’s mark is deceptively and confusingly similar to its mark and that it has spent much for the advertisement and promotion of its mark. The Appellant maintained that it is a citizen and subject of the United States of America which is a member of the Convention of Paris for the Protection of Industrial Property and the World Trade Organization and is, thus, entitled to protection under these organizations. The Appellant

¹ Order No. 2013-161(D) dated 02 September 2013.



unitedhealth

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asserted that its mark is well-known locally and internationally which deserves protection under the provisions of the Intellectual Property Code of the Philippines ("IP Code").

The Bureau of Legal Affairs ("BLA") issued an Order² directing the Appellant to submit within five (5) days from receipt of the Order the Special Power of Attorney showing the authority of Mr. Apur Patel to sign the Verification and Affidavit of Non-Forum Shopping on behalf of the Appellant. The Order stated that the failure by the Appellant to comply may cause the dismissal of the opposition.

On 25 January 2013, the Appellant filed a "COMPLIANCE" with an attached copy of a "POWER OF ATTORNEY AND APPOINTMENT OF RESIDENT AGENT" appointing "Messrs. EMETERIO V. SOLIVEN & ASSOCIATES and/or ATTY. EMETERIO V. SOLIVEN" as its local representative and agent. On 31 January 2014, the Appellant filed a "MANIFESTATION" stating that it is submitting the original copy of the aforementioned power of attorney.

The BLA issued another Order³ directing the Appellant to submit within five (5) days from receipt of the Order, the original and duly authenticated/legalized Power of Attorney and Verification and Affidavit of Non-Forum Shopping, with further warning that failure to do so shall cause the dismissal of the case.

On 22 February 2013, the Appellant requested an extension⁴ of thirty (30) days from 25 February 2013 to submit the authenticated verified documents. The BLA issued another Order⁵ giving the Appellant until 02 March 2013 to submit the original and duly authenticated Power of Attorney and Affidavit of Non-Forum Shopping with a similar warning that failure to do so shall cause the dismissal of the case.

On 07 May 2013, the Appellant filed the Motion with Leave to Admit Duly Legalized Documents Cum Ad Cautelam seeking the admission of the duly legalized Special Power of Attorney as well as the authenticated Verified Notice of Opposition and alleged that the delay was unavoidable due to the distance, time, and costs in securing the legalization of these documents with the nearest Philippine consul.

Consequently, the Director issued the appealed Order stating that the Appellant's notice of opposition was not compliant with the provisions of the Regulations on Inter Partes Proceedings as the authentication of the required documents was only done after the filing of the notice of opposition. The Director held that that the opposition was not accompanied by a Special Power of Attorney or Secretary's Certificate showing the

² Order No. 2013-064 dated 15 January 2013.

³ Order No. 2013-241 dated 11 February 2013.

⁴ MOTION FOR EXTENSION OF TIME TO SUBMIT AUTHENTICATED DOCUMENTS dated 22 February 2013.

⁵ Order No. 2013-367 dated 01 March 2013.



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authority of Apur Patel to sign and execute the Verification and Affidavit of Non-Forum Shopping on behalf of the Appellant.

On 07 October 2013, the Appellant filed an "APPEAL MEMORANDUM" claiming that the Bureau of Legal Affairs acted with grave abuse of discretion amounting to grave error of law due to mere technicalities and "not substantially on the merits". The Appellant seeks the denial and rejection of the Appellee's trademark application for UNITED HEALTH.

The Appellee filed on 06 January 2014 a "COMMENT/OPPOSITION [To Opposer-Appellant's Appeal Memorandum dated 7 October 2013]" maintaining that the Bureau of Legal Affairs was correct in dismissing the notice of opposition. The Appellee claims that the factual circumstances surrounding the instant case does not justify the liberal application of the amended rules and regulations on *inter partes* proceedings. The Appellee avers that the Appellant's failure to comply with the pertinent provisions of the rules and regulations was entirely the fault of the Appellant.

On 14 January 2014, this Office referred the case to the IPOPHL Alternative Dispute Resolution (ADR) Services pursuant to Office Order No. 154, Series of 2010, Rules of Procedure for IPO Mediation Proceedings. Subsequently, on 13 October 2014, the IPOPHL ADR Services informed this Office that the parties failed to settle the case in the mediation proceedings.

The issue in this appeal is whether the Director was correct in denying the Appellant's Motion with Leave to Admit Duly Legalized Documents Cum Ad Cautelam and in dismissing the Appellant's opposition to the registration of the mark UNITED HEALTH.

The appeal is not meritorious.

Rule 2, Section 8 of the Regulations on Inter Partes Proceedings provides that:

Section 8. *Action on the Notice of Opposition or Motion for Extension to File Notice of Opposition, and Petition.* -(a) A case is deemed to have commenced upon the filing of a notice of opposition, or a motion for extension of time to file a notice of opposition, or a petition for cancellation or compulsory licensing.

(b) The notice of opposition or petition may be dismissed outright and/or *motu proprio* for having been filed out of time, due to lack of jurisdiction, and/or failure to state a cause of action. Likewise, a motion for extension of time to file notice of opposition shall be denied outright if the opposer fails to state meritorious grounds.

(c) The opposer, including those who file a motion for extension of time to file notice of opposition, or the petitioner shall be given a period of five (5) days from receipt of the order to complete or to cure any of the following defects:

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- (1) Non-payment in full or in part of the filing fees and other applicable fees;
- (2) Failure to attach the originals of the following documents:
 - (i) Verification;
 - (ii) Certification of non-forum shopping;
 - (iii) Special Power of Attorney of representative(s) who signed the pleadings, the verification, and the certification of non-forum shopping; the proof of authority to issue or execute the Special Power of Attorney; and
 - (iv) Proof of authentication by the appropriate Philippine diplomatic or consular office, of the foregoing documents, if executed abroad.

The 5-day period to complete or cure the defects in the filing may be extended for another 5 days upon motion by the opposer or petitioner based on meritorious grounds which must be explicitly stated in the motion, and upon payment of the applicable fees.

Failure to complete or cure the defect shall cause the dismissal of the case.

(d) If the opposition or petition is determined to be compliant with the requirements, or, upon compliance with the order provided in par. (c), the Bureau shall immediately issue a Notice to Answer, for the respondent to file an answer.

In the case at hand, the Appellant's notice of opposition was defective for lack of proof of the Special Power of Attorney of the representative(s) who signed the pleadings, the verification, and the certification of non-forum shopping. It is for this reason that the BLA issued the order directing the Appellant to comply with the requirements in the filing of an opposition to the registration of a mark. These requirements include proof of authority to issue or execute the Special Power of Attorney and to sign the verification and certification of non-forum shopping, and proof of authentication by the appropriate Philippine diplomatic or consular office of documents executed abroad.

The Appellant, however, failed to comply with the order issued by the BLA despite the notice and warning that the opposition may be dismissed. This notwithstanding, the BLA issued another order requiring the Appellant to submit the original and duly authenticated/legalized Power of Attorney and Verification and Affidavit of Non-Forum Shopping with further warning that failure to do so shall cause the dismissal of the case. The Appellant, instead of complying with this order filed a motion for extension of time requesting an extension of thirty (30) days from 25 February 2013 to submit the authenticated documents. The BLA gave the Appellant until 02 March 2013 to submit the required documents.

Still, the Appellant did not comply with the order of the BLA. It was only on 17 May 2013, when the Appellant filed the Motion with Leave to Admit Duly Legalized Documents Cum Ad Cautelam manifesting that the delay in the submission is



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unavoidable due to the distance, time, and costs in securing the legalization of the documents. The Director; therefore, was correct in dismissing the opposition.

While it is true that in some instances, even the Supreme Court of the Philippines allowed a relaxation in the application of its rules, this applies only in proper cases and under justifiable causes and circumstances. While litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to insure an orderly and speedy administration of justice.⁶

In an opposition proceeding such as the instant case, the right of an applicant to the registration of a mark is also recognized and protected by the strict implementation of the timelines provided in the IP Code and the corresponding implementing rules and regulations. These timelines and the rules and regulations were promulgated in order not to delay the registration of a trademark that has duly satisfied the requirements for registration.

The Appellant has been given liberality to comply with the requirements in filing an opposition to the registration of UNITED HEALTH. Under the Regulations on Inter Partes Proceedings, an opposition to the registration of a mark must be filed within thirty (30) days from publication of the trademark application. Upon proper motion anchored on meritorious grounds which must be expressly indicated in the motion, and the payment of the filing fee for opposition and other applicable fees, the Bureau may grant an additional period of 30 days within which to file the opposition.⁷

In this regard, the trademark application for UNITED HEALTH was published on 08 October 2012. The Appellant, therefore, has only until 07 November 2012 to file the opposition including the payment of the applicable fees. On 07 November 2012, the Appellant sought an extension of time to file the opposition.⁸ The Appellant, however, did not file the applicable fees, and accordingly, the Bureau of Legal Affairs issued an order requiring the Appellant to present proof of payment of filing fee for the opposition. It was only on 06 December 2012 when the Appellant filed the opposition with the accompanying filing fees. This shows that the Appellant is not really mindful of the requirements in filing the opposition.

In addition, the Director correctly pointed out that:

Moreover, an evaluation of the Verified Notice of Opposition indicates that it was not accompanied by a Special Power of Attorney or Secretary's Certificate showing the authority of Apur Patel to sign and execute the Verification and Affidavit of Non-Forum Shopping on behalf of the Opposer, as required under Rule 2, Section 7(b) of the amended rules. While there has been a Power of Attorney submitted by the Opposer, as

⁶Garbo v. Court of Appeals, G. R. No. 107698, 05 July 1996.

⁷Regulations on Inter Partes Proceedings, Rule 7 Section 2.

⁸ Letter dated 07 November 2012.



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directed by this Bureau, the same pertains only to the appointment of EMETERIO V. SOLIVEN & ASSOCIATES as representative and agent of the Opposer in the instant case and not necessarily on the authority of Apur Patel to sign the Verification and Affidavit of Non-Forum Shopping on behalf of the Opposer corporation.⁹

The Appellant must, thus, suffer the consequences of its failure to be diligent in the filing of the notice of opposition. Nonetheless, if the Appellant believes that it has a meritorious case in enforcing its right over UNITED HEALTH it has other remedies to enforce its right. The IP Code, for example, provides provisions on cancellation proceedings and actions for violations of intellectual property rights.


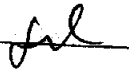
Wherefore, premises considered, the appeal is hereby dismissed. Let a copy of this Decision be furnished to the Director of Bureau of Legal Affairs and the Director of Bureau of Trademarks for their appropriate action and information. Further, let a copy of this Decision be furnished to the library of the Documentation, Information and Technology Transfer Bureau for records purposes.

SO ORDERED.

DEC 15 2014 , Taguig City.


RICARDO R. BLANCAFLOR
Director General

⁹ Order No. 2013-161 (D) dated 02 September 2013.


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