



UNILEVER N.V.,  
Opposer,

-versus-

ROYALE BUSINESS CLUB  
INTERNATIONAL INC.,  
Respondent-Applicant.

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IPC No. 14-2011-00551  
Opposition to:  
Appln. Serial No. 4-2011-009429  
Date Filed: 10 August 2011  
TM: "PINKISH GLOW"

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**NOTICE OF DECISION**

**QUISUMBING TORRES**  
Counsel for the Opposer  
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26<sup>th</sup> Street corner 3<sup>rd</sup> Avenue  
Crescent Park West, Bonifacio Global City  
Taguig City

**ROYALE BUSINESS CLUB INTERNATIONAL, INC.,**  
Respondent-Applicant  
G/F, Mezzanine & 3/F JR Building  
1520 Quezon Avenue, South Avenue  
Quezon City

**GREETINGS:**

Please be informed that Decision No. 2015 - 31 dated June 29, 2015 (copy enclosed) was promulgated in the above entitled case.

Taguig City, June 29, 2015.

For the Director:

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



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}Opposition to:  
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}Trademark: "PINKISH GLOW"  
}  
}Decision No. 2015- 131

### DECISION

UNILEVER N.V., (Opposer)<sup>1</sup> filed an opposition to Trademark Application Serial No. 4-2011-009429. The application, filed by ROYALE BUSINESS CLUB INTERNATIONAL (Respondent-Applicant)<sup>2</sup>, covers the mark "PINKISH GLOW", for use on "food supplements" under Class 5 of the International Classification of Goods<sup>3</sup>.

The Opposer anchors its opposition on the following grounds:

"a) Opposer is the prior user and first registrant of the PINKISH WHITE trademarks in the Philippines, well before the filing date of Respondent's PINKISH GLOW mark, which was filed only on 8 October 2011. xxx Opposer has also registered the PINKISH WHITE trademarks in other countries. Opposer continues to use the PINKISH WHITE Trademarks in the Philippines and throughout the world.

b) As registered owner of the PINKISH WHITE trademarks, particularly PINKISH WHITE GLOW trademark, Opposer enjoys exclusive right to prevent all third parties not having its consent from using in the course of trade identical or similar signs for goods which are identical or similar to those in respect of which its trademarks are registered where such use would result in a likelihood of confusion.

c) Respondent's PINKISH GLOW mark is confusingly similar, if not identical, to Opposer's PINKISH WHITE trademarks, particularly PINKISH WHITE GLOW trademark, and thus runs contrary to Section

<sup>1</sup> A corporation duly organized and existing under the laws of Netherlands with address at Weena 455, Rotterdam 3013 AL, Netherlands

<sup>2</sup> A domestic corporation with address at G/F Mezzanine & 3/F JR Building 1520 Quezon Avenue, South Avenue, Quezon City

<sup>3</sup> The Nice Classification of Goods and Services is for registering trademarks and service marks based on multilateral treaty administered by the WIPO, called the Nice Agreement Concerning the International Classification of Goods and Services for Registration of Marks concluded in 1957.

123 of the IP Code. Section 123 (d), (e), (f) and (g) of the IP Code provide:

Section 123. Registrability.- 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;

(e) Is identical with, or confusingly similar to, or constitutes a translation of a mark with which is considered by the competent authority of the Philippines to be well-known internationally and in the Philippines, whether or not it is registered here, as being already the mark of a person other than the applicant for registration, and used for identical or similar goods or services: *Provided*, That in determining whether a mark is well-known, account shall be taken of the public at large, including knowledge in the Philippines which has been obtained as a result of the promotion of the mark;

(f) Is identical with or confusingly similar to, or constitutes a translation of a mark, considered well known in accordance with the preceding paragraph, which is registered in the Philippines with respect to goods and services which are not similar to those with respect to which registration is applied for: *Provided*, that the use of the mark in relation to the goods or services would indicate a connection between those goods or services, and the owner of the registered mark: *Provided further*, that the interests of the owner of the registered mark are likely to be damaged by such use.”

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

To support its opposition, the Opposer submitted as evidence the following:

1. Original verified Notice of Opposition dated 9 February 2012;
2. Special Power of Attorney dated 23 January 2012;
3. Affidavit of Leah Jose-Sebastian dated 9 February 2012;
4. Actual product labels of “PINKISH WHITE GLOW”;
5. Samples of promotional materials; and
6. Affidavit of Bienvenido Marquez III dated 9 February 2012;
7. Certificate of Registration No. 4-2007-006951 issued on 21 January 2008 for the mark “PINKISH WHITE GLOW”;

8. Certificate of Registration No. 4-2007-006872 issued on 7 July 2008 for the mark "POND'S PINKISH WHITE";
9. Certificate of Registration No. 4-2009-005435 issued on 1 November 2009 for the mark "PINKISH WHITE BEAUTY"<sup>4</sup>

This Bureau served upon the Respondent-Applicant a "Notice to Answer" on 28 February 2012. The Respondent-Applicant, however, did not file an Answer.

Should the Respondent-Applicant be allowed to register the trademark PINKISH GLOW?

Sec. 123.1. Registrability. 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.

The records show that when the Respondent-Applicant filed its application on 10 August, the Opposer already has an existing registration for the trademark Certificate of Registration No. 4-2007-006951 issued on 21 January 2008 for the mark "PINKISH WHITE GLOW"; Certificate of Registration No. 4-2007-006872 issued on 7 July 2008 for the mark "POND'S PINKISH WHITE" and Certificate of Registration No. 4-2009-005435 issued on 1 November 2009 for the mark "PINKISH WHITE BEAUTY"<sup>5</sup>. The Respondent-Applicant's trademark application therefore indicates goods that are similar and/or closely related to those covered by the Opposer's trademark registration. The Respondent-Applicant uses its mark on goods that are similar or closely related to the Opposer's, which flow through the same channels of trade.

But are the competing marks, depicted below resemble each other such that confusion, even deception, is likely to occur?

**PINKISH-WHITE GLOW**

Opposer's mark

**PINKISH GLOW**

Respondent-Applicant's mark

The marks are similar with respect to the words PINKISH and GLOW, differing only in that the Respondent-Applicant deleted the word WHITE from its mark. Visually and aurally, the marks are confusingly similar. The marks have the same spelling and

<sup>4</sup> Exhibits "A" to "G" inclusive of submarkings

<sup>5</sup> Exhibit "G"



connotation. The Respondent-Applicant appropriated the arbitrary and distinct words PINKISH GLOW, which it applied on its product, "nutritional supplements", specifically, skin whitening pills. It is not farfetched that the purchasing public may make a connection between PINKISH GLOW nutritional supplements with the Opposer's products, i.e. skin lightening cream, cleansers and powders<sup>6</sup> carrying the PINKISH WHITE GLOW, POND'S PINKISH WHITE and PINKISH WHITE BEAUTY marks.


Succinctly, the public interest, requires that two marks, identical to or closely resembling each other and used on the same and closely related goods, but utilized by different proprietors should not be allowed to co-exist. Confusion, mistake, deception, and even fraud, should be prevented. It is emphasized that 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>7</sup> The confusion or mistake would subsist not only the purchaser's perception of goods but on the origin thereof as held by the Supreme Court, to wit:

Callman notes two types of confusion. The first is the confusion of goods in which event the ordinary 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 belief that there is some connection between the plaintiff and defendant which, in fact does not exist.<sup>8</sup>

**WHEREFORE**, premises considered, the instant Opposition to Trademark Application No. 4-2011-009429 is hereby **SUSTAINED**. Let the filewrapper of the subject trademark be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

**SO ORDERED.**

Taguig City, 29 June 2015.

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

<sup>6</sup> Exhibits "C" and "E"

<sup>7</sup> *Pribhdas J. Mirpuri v. Court of Appeals*, G. R. No. 114508, 19 November 1999, citing *Etepha v. Director of Patents*, *supra*, *Gabriel v. Perez*, 55 SCRA 406 (1974). See also Article 15, par. (1), Art. 16, par. (1), of the Trade Related Aspects of Intellectual Property (TRIPS Agreement).

<sup>8</sup> *Converse Rubber Corp. v. Universal Rubber Products, Inc., et. al.*, G. R. No. L-27906, 08 January 1987.