



DMI MEDICAL SUPPLY CO., INC.,	}	IPC No. 14-2015-00389
Opposer,	}	Opposition to:
	}	
-versus-	}	Application No. 4-2014-00014388
	}	Date Filed: 19 November 2014
EDGAR L. DELIBO,	}	
Respondent-Applicant.	}	Trademark: DOK F MIX 10
x-----x		Order No. 2015 - _ _ _ (D)

ORDER

DMI MEDICAL SUPPLY CO., INC. ("Opposer") filed on 26 August 2015 a Motion to Admit Attached Notice of Opposition. In its motion, the Opposer alleges that the subject trademark application was published for opposition in the IPOPHIL's e-Gazette on 06 July 2015. However, according to the Opposer, the publication was discovered by its staff only on 25 August 2015.

Section 134 of R. A. No. 8293, otherwise known as the Intellectual Property Code of the Philippines ("IP Code") provides that:

Sec. 134. Opposition Any person who believes that he would be damaged by the registration of a mark may, upon payment of the required fee and within thirty (30) days after the publication referred to in Subsection 133.2, file with the Office an opposition to the application. Such opposition shall be in writing and verified by the oppositor or by any person on his behalf who knows the facts, and shall specify the grounds on which it is based and include a statement of the facts relied upon. Copies of certificates of registration of marks registered in other countries or other supporting documents mentioned in the opposition shall be filed therewith, together with the translation in English, if not in the English language. For good cause shown and upon payment of the required surcharge, the time for filing an opposition may be extended by the Director of Legal Affairs, who shall notify the applicant of such extension. The Regulations shall fix the maximum period of time within which to file the opposition.

Corollarily thereto, Rule 7, Section 2 of the Rules and Regulations on Inter Partes Proceedings, as amended¹, provides the period for filing opposition, to wit:

"Section 2. *Period to file opposition.* - The verified notice of opposition must be filed within 30 days from the date of the publication of the trademark application in the IPOPHIL "Gazette". 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. A second motion for extension of 30 days may be granted on compelling grounds and upon payment of the applicable fees;

¹ Promulgated through Office Order No. 99, series of 2011.

Provided, that in no case will the filing of the opposition exceed ninety (90) days from the date of the aforementioned publication, *Provided, further*, that if the last day for filing of the verified opposition or motion for extension falls on a Saturday, Sunday, holiday, non-working day or on a day when the Office or the Bureau is closed for business as may be declared by the Director General, the filing must be done the next succeeding working day." [Emphasis supplied]

Thus, since the subject trademark application was published for opposition on 06 July 2015, the verified notice of opposition or a motion for extension of time to file the same should have been filed thirty (30) days from 06 July 2015 or until 05 August 2015. The filing, therefore, of the Opposer's notice of opposition on 26 August 2015 is clearly beyond the reglementary period.

Hence, this Bureau is constrained to deny the motion and to dismiss the opposition. Rule 2, Section 8 (b) of the amended Rules and 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. - x x x (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."

WHEREFORE, premises considered, the Opposer's Motion to Admit Attached Notice of Opposition is hereby **DENIED**. Accordingly, the instant opposition case is hereby **DISMISSED**. Let the filewrapper of Trademark Application No. 4-2014-00014388 be returned, together with a copy of this Order, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 08 September 2015.

Atty. NATANIEL S. AREVALO
Director, IV, Bureau of Legal Affairs

Copy furnished:

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