



UNITED LABORATORIES, INC.,  
Opposer,

-versus-

WATSON ENTERPRISES LTD.,  
Respondent-Applicant.

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}  
} IPC No. 14-2010-00228  
} Opposition to:  
} Appln. Serial No. 4-2009-007839  
} Date filed: 06 August 2009  
} TM: "PURE SOFT  
} & DEVICE"  
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}

### NOTICE OF DECISION

#### OCHAVE & ESCALONA

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#### GREETINGS:

Please be informed that Decision No. 2015 - 237 dated November 02, 2015 (copy enclosed) was promulgated in the above entitled case.

Taguig City, November 02, 2015.

For the Director:

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



UNITED LABORATORIES, INC.  
*Opposer,*

-versus-

WATSON ENTERPRISES LTD.  
*Respondent-Applicant.*

IPC No. 14-2010-00228  
Case Filed: 06 October 2010  
Opposition to:  
Application No. 4-2009-007839  
Date Filed: 06 August 2009  
Trademark: "PURE SOFT  
& DEVICE"

Decision No. 2015- 237

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### DECISION

UNITED LABORATORIES, INC.<sup>1</sup> ("Opposer") filed an opposition to Trademark Application Serial No. 4-2009-007839. The application, filed by Watson Enterprises Limited<sup>2</sup> ("Respondent-Applicant"), covers the mark "PURE SOFT & DEVICE" for use on "*cleaning preparations for sanitary purposes; sanitary preparations (other than for medical purposes); sanitary preparations (toiletries); non-medicated preparations for oral hygiene purposes; preparations for personal hygiene (non-medicated)*" under Class 03 and "*pharmaceutical veterinary and sanitary preparations for medical purposes and for personal hygiene; disinfectants for medical or sanitary purposes (other than soaps); feminine sanitary protection products; feminine hygiene products; sanitary napkins, towels, pads, panties, tampons; panty liners; wipes for hygienic (cleaning) purposes, other than impregnated with cleaning preparations; wipes for hygienic (medical) purposes; feminine wash; feminine wipe*" under Class 05 of the International Classification of Goods and Services.<sup>3</sup>

The Opposer alleges:

x xx

#### "GROUNDS FOR OPPOSITION

"The grounds for this Notice of Verified Opposition are as follows:

"7. The mark 'PURE 'N SOFT' owned by Respondent-Applicant so resembles 'PURE 'N FRESH' owned by Opposer and duly registered with this Honorable Bureau prior to the publication for opposition of the mark 'PURE 'N SOFT'.

"8. The mark 'PURE 'N SOFT' will likely cause confusion, mistake and deception on the part of the purchasing public, most especially considering that the opposed trademark 'PURE 'N SOFT' is applied for the same class and goods as that of

<sup>1</sup>A domestic corporation duly organized and existing under the laws of Philippines, with office address at 66 United Street, Mandaluyong City, Philippines.

<sup>2</sup>A foreign corporation with address on record at Trident Chambers, Road Town Tortola, British Virgin Islands.

<sup>3</sup>The Nice Classification is a classification of goods and services for the purpose of registering trademark and service marks, based on a 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 Purposes of the Registration of Marks concluded in 1957.

Opposer's trademark 'PURE 'N FRESH', i.e. Class 03 of the International Classification of Goods for Feminine Wash.

"9. The registration of the mark 'PURE 'N SOFT' in the name of the Respondent-Applicant will violate Sec. 123 of the IP Code, which provides, in part, that a mark cannot be registered if it:

x x x

"10. Under the above-quoted provision, any mark, which is similar to a registered mark, shall be denied registration in respect of similar or related goods or if the mark applied for nearly resembles a registered mark that confusion or deception in the mind of the purchasers will likely result.

#### "ALLEGATIONS IN SUPPORT OF THE OPPOSITION

"In support of the Notice of Verified Opposition, Opposer will rely upon and prove the following facts:

"11. Opposer is the registered owner of the trademark 'PURE 'N FRESH'.

"11.1. Opposer is engaged in the marketing and sale of a wide range of pharmaceutical products. The trademark application for the trademark 'PURE 'N FRESH' was filed with the IPO on 26 May 2006 by Unam Brands (BVI) Ltd. ('Unam'), an affiliate of herein Opposer, and was approved for registration on 30 April 2007 to be valid for a period of ten (10) years, or until 30 April 2017. A certified true copy of the Certificate of Registration No. 4-2006-005603 for the trademark 'PURE 'N FRESH' is hereto attached x xx

"11.2. On 5 February 2008, Unam assigned the ownership of the trademark 'PURE 'N FRESH' to Opposer. A certified true copy of the Assignment of Registered Trademark is hereto attached x xx

"11.3. Thus, the registration of the trademark 'PURE 'N FRESH' subsists and remains valid to date.

"12. The trademark "PURE 'N FRESH' has been extensively used in commerce in the Philippines.

"12.1. Opposer has dutifully filed its Declaration of Actual Use over the trademark 'PURE 'N FRESH' pursuant to the requirement of the law. A certified true copy of the Declaration of Actual Use filed is hereto attached x xx

"12.2. A sample product label bearing the trademark over the trademark 'PURE 'N FRESH' actually used in commerce is hereto attached x xx

"12.3. No less than the Intercontinental Marketing Services ('IMS') itself, the world's leading provider of business intelligence and strategic consulting services for the pharmaceutical and healthcare industries with operations in more than 100 countries, acknowledged and listed the brand 'PURE 'N FRESH' as one of the leading brands in the Philippines in the category

of 'Other Gynaecological Products (GO2X)' in terms of market share and sales performance. A copy of the Certification and sales performance is hereto attached x x x

"12.4. Pursuant to the requirements of the BFAD, a Notification of Cosmetic Product was filed on 12 February 2008, which is valid until 12 February 2011, to maintain the product registration of 'PURE 'N FRESH' with the BFAD. A certified true copy of the Notification of Cosmetic Product is hereto attached x x x

"13. By virtue of the foregoing, there is no doubt that Opposer has acquired an exclusive ownership over the trademark 'PURE 'N FRESH' to the exclusion of all others.

"14. As provided in Section 138 of the IP Code, 'A certificate of registration of a mark shall be prima facie evidence of the validity of the registration, the registrant's ownership of the mark, and of the registrant's exclusive right to use the same in connection with the goods or services and those that are related thereto specified in the certificate.'

"15. The registration of Respondent-Applicant's mark 'PURE 'N SOFT' will be contrary to Section 123.1 (d) of the IP Code. 'PURE 'N SOFT' is confusingly similar to Opposer's trademark 'PURE 'N FRESH'.

"15.1. There are no set rules that can be deduced in particularly ascertaining whether one trademark is confusingly similar to, or is a colorable imitation of, another. Nonetheless, jurisprudence provides enough guidelines and tests to determine the same.

"15.1.1. In *Societe' Des Produits Nestle', S.A. vs. Court of Appeals* [356 SCRA 207, 216 [2001]], the Supreme Court, citing *Ethepa v. Director of Patents* (16 SCRA 495, 497-498 [1966]), held "[i]n determining if colorable imitation exists, jurisprudence has developed two kinds of tests - the Dominancy Test and the Holistic Test. The test of dominancy focuses on the similarity of the prevalent features of the competing trademarks which might cause confusion or deception and thus constitute infringement. On the side of the spectrum, the holistic test mandates that the entirety of the marks in question must be considered in determining confusing similarity."

"15.1.2. It is worthy to note at this point that in *Societe' Des Produits Nestle', S.A. vs. Court of Appeals* (supra, p. 221) the Supreme Court held "[T]he totality or holistic test only relies on visual comparison between two trademarks whereas the dominancy test relies not only on the visual but also on the aural and connotative comparisons and overall impressions between the two trademarks."

"15.1.3. Relative thereto, the Supreme Court in *McDonalds' Corporation vs. L.C. Big Mak Burger, Inc.* [437 SCRA 10] held:

x xx

"15.1.4 This was affirmed in McDonald's Corporation vs. Macjory Fastfood Corporation (514 SCRA 95, 109 [2007]), which held that, '[t]he Court has consistently used and applied the dominancy test in determining confusing similarity or likelihood of confusion between competing trademarks.'

"15.1.5. In fact, the dominancy test is 'now explicitly incorporated into law in Section 155.1 of the Intellectual Property Code, which defines infringement as the colorable imitation of a registered mark xxx or a dominant feature thereof.' x xx

"15.1.6. Thus, applying the dominancy test in the instant case, it can be readily concluded that the mark 'PURE 'N SOFT', owned by Respondent-Applicant, so resembles Opposer's trademark 'PURE 'N FRESH', that it will likely cause confusion, mistake and deception on the part of the purchasing public.

"15.1.6.1. Respondent-Applicant's mark 'PURE 'N SOFT' appears and sounds almost the same as Opposer's trademark 'PURE 'N FRESH'.

"15.1.6.2. The first five letters of Opposer's trademark 'PURE 'N FRESH' is exactly the same with Respondent-Applicant's mark 'PURE 'N SOFT'.

"15.1.6.3. Both marks are composed of three (3) syllables: /PURE/-/'N/-/FRESH/ and /PURE/-/'N/-/SOFT/.

"15.1.7. Clearly, Respondent-Applicant's mark 'PURE 'N SOFT' adopted the dominant features of the Opposer's trademark 'PURE 'N FRESH'.

"15.1.8. As further ruled by the High Court in McDonald's Corporation case [supra, p.33-34 [2004]]:

x x x

"15.1.9. In American Wire & Cable Co., vs. Director of Patents (31 SCRA 544, 547-548 [1970]), the Supreme Court explained:

x x x

"15.2. Opposer's trademark 'PURE 'N FRESH' and Respondent-Applicant's mark 'PURE 'N SOFT' are practically identical marks in sound and appearance that they leave the same commercial impression upon the public.

"15.3. Thus, the two marks can easily be confused for one over the other, most especially considering that the opposed mark 'PURE 'N SOFT' is applied for the same class and goods as that of Opposer's trademark 'PURE 'N FRESH' under Class 03 of the International Classification of Goods for Pharmaceutical Preparation for Feminine Wash.

"15.4. Yet, Respondent still filed a trademark application for 'PURE 'N SOFT' despite its knowledge of the existing trademark registration of 'PURE 'N FRESH', which is confusingly similar thereto in both its sound and appearance, to the extreme damage and prejudice of Opposer.

"15.5. Opposer's intellectual property right over its trademark is protected under Section 147 of the IP Code, which states:

x x x

"15.6. 'When, as in the present case, one applies for the registration of a trademark or label which is almost the same or very closely resembles one already used and registered by another, the application should be rejected and dismissed outright, even without any opposition on the part of the owner and user of a previously registered label or trademark, this not only to avoid confusion on the part of the public, but also to protect an already used and registered trademark and an established goodwill.' x x x

"16. To allow Respondent-Applicant to continue to market its products bearing the mark 'PURE 'N SOFT' undermines Opposer's right to its trademark 'PURE 'N FRESH'. As the lawful owner of the trademark 'PURE 'N FRESH', Opposer is entitled to prevent the Respondent-Applicant from using a confusingly similar mark in the course of trade where such would likely mislead the public.

"16.1. Being the lawful owner of 'PURE 'N FRESH', Opposer has the exclusive right to use and/or appropriate the said marks and prevent all third parties not having its consent from using in the course of trade identical or similar marks, where such would result in a likelihood of confusion.

"16.2. By reason of Opposer's ownership of the trademark 'PURE 'N FRESH', it also has the right to prevent third parties, such as Respondent-Applicant, from claiming ownership over Opposer's marks or any depiction similar thereto, without its authority or consent.

"16.3. Moreover, following the illustrative list of confusingly similar sounds in trademarks cited in McDonald's Corporation case (supra, p. 34 , [2004]), it is evident that Respondent-Applicant's mark 'PURE 'N SOFT' is aurally confusingly similar to Opposer's trademark 'PURE 'N FRESH':

x x x

"16.4. Further, the fact that Respondent-Applicant seeks to have its mark 'PURE 'N SOFT' registered in the same class (Nice Classification 03) as Opposer's trademark 'PURE 'N FRESH', coupled by the fact that both are Feminine Wash, will undoubtedly add to the likelihood of confusion among the purchasers of these two goods.

"17. The registration and use of Respondent-Applicant's confusingly similar 'PURE 'N SOFT' on its goods will enable the latter to obtain benefit from Opposer's reputation, goodwill and advertising and will tend to deceive and/or confuse the public into believing that Respondent-Applicant is in any way connected with the Opposer.

"17.1. As held in Sterling Products International, Inc. vs. Farbenfabriken Bayer Aktiengesellschaft, et. al. (27 SCRA 1214, 1227 [1968]) there are two types of confusion in trademark infringement. '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 assumed to originate with the plaintiff, and the public would be deceived either into that belief or in to belief that there is some connection between the plaintiff and defendant which, in fact, does not exist.'

"17.2. The doctrine of confusion of business or origin is based on cogent reasons of equity and fair dealing. It has to be realized that there can be unfair dealing by having one's business reputation confused with another. 'The owner of a trademark or trade name has a property right in which he is entitled to protection, since there is damage to him from confusion of reputation or goodwill in the mind of the public as well as from confusion of goods.' x xx

"17.3. Applying the foregoing to the instant case, to allow Respondent-Applicant to use its mark 'PURE 'N SOFT' on its product would likely cause confusion or mistake in the mind of the public or deceive purchasers into believing that the product of Respondent-Applicant with a mark 'PURE 'N SOFT' originate from or is being manufactured by Opposer, or at the very least, is connected or associated with the 'PURE 'N FRESH' product of Opposer, when such connection does not exist.

"17.4. In Canon Kabushiki Kaisha vs. Court of Appeals (336 SCRA 266, 275 [2000]), the Supreme Court explained that:

x x x

"17.5. Clearly, the scope of protection accorded to trademark owners includes not only confusion of goods but also confusion of origin. As in this case, besides from the confusion of goods already discussed, there is undoubtedly also a confusion of the origin of the goods covered by the marks of Respondent-Applicant and Opposer, which should not be allowed.

x x x

"18. In case of grave doubt, the rule is that, '[a]s between a newcomer [Respondent-Applicant] who by confusion has nothing to lose and everything to gain and one [Opposer] who by honest dealing has already achieved favor with the public, any doubt should be resolved against the newcomer [Respondent-Applicant] inasmuch as the field from which he can select a desirable trademark to indicate the origin of his product is obviously a large one.' (Del Monte Corporation, et. al. vs. Court of Appeals, 181 SCRA 410, 420 [1990])

"18.1. In American Wire & Cable Co., vs. Director of Patents (supra, p. 551), it was observed that:

x x x

"18.2. When, as in the instant case, Respondent-Applicant used, without a reasonable explanation, a confusingly similar trademark as that of Opposer 'though the field of its selection was so broad, the inevitable conclusion is that it was done deliberately to deceive.' (Del Monte Corporation, et. al. vs. Court of Appeals, supra, p. 419-420)

"19. Respondent-Applicant's use of the mark 'PURE 'N SOFT' in relation to any of the goods covered by the opposed application, if these goods are considered not

similar or closely related to the goods covered by Opposer's trademark 'PURE 'N FRESH', will take unfair advantage of, dilute and diminish the distinctive character or reputation of the latter trademark. Potential damage to Opposer will be caused as a result of its inability to control the quality of the products put on the market by Respondent-Applicant under the mark 'PURE 'N SOFT'. Thus, Opposer's interests are likely to be damaged by the registration and use of the Respondent-Applicant of the mark 'PURE 'N SOFT'. The denial of the application subject of this opposition is authorized under the IP Code.

"20. In support of the foregoing, the instant Opposition is herein verified by Mr. Jose Maria A. Ochave, which will likewise serves as his affidavit. (Nasser vs. Court of Appeals, 191 SCRA 783, 792-793 [1990])

The Opposer's evidence consists of copies of pertinent pages of the IPO E-Gazette officially released on 06 September 2010; a copy of the Certificate of Registration No. 4-2006-005603 for the trademark PURE 'N FRESH issued on 30 April 2007; a copy of the assignment of registered trademark "PURE 'N FRESH" in favor of United Laboratories, Inc.; a copy of the declaration of actual use for the trademark "PURE 'N FRESH"; a sample product label bearing the trademark "PURE 'N FRESH"; a copy of the certification of "PURE 'N FRESH" as one of the leading brands in the Philippines and sales performance of the trademark "PURE 'N FRESH"; and, a copy of the notification of cosmetic product pursuant to the requirements of BFAD.<sup>4</sup>

This Bureau issued a Notice to Answer and sent a copy thereof upon Respondent-Applicant on 24 November 2010. The Respondent-Applicant filed their Answer on 09 February 2011 and avers the following:

x x x

"III.

"DEFENSES

"5. Respondent-Applicant's mark 'PURE 'N SOFT' is aurally distinct from the Opposer's 'PURE 'N FRESH' mark.

"5.1 We cannot escape notice of the fact that, by mere pronouncing the two marks, it could hardly be said that it will provoke confusion, as to mistake one for the other. Appeals to the ear are dissimilar. It is evident that in the pronunciation, the dominant feature of Respondent-Applicant's trademark 'PURE 'N SOFT' is the word 'SOFT'. On the other hand, the dominant feature in Opposer's trademark 'PURE 'N FRESH' is the word 'FRESH'. Standing by itself, 'PURE 'N SOFT' is wholly different from 'PURE 'N FRESH'.

"5.2 The pronunciation and the sound created by the vowel 'O' from the word 'SOFT' are so different from that created by the vowel 'E' from the word 'FRESH', making confusion as to both trademarks very unlikely to occur.

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<sup>4</sup>Marked as Exhibits "A" to "G", inclusive.



"6. The general appearance of Respondent-Applicant's 'PURE 'N SOFT' mark and the Opposer's 'PURE 'N FRESH' mark shows that no confusion as to the goods or its source may arise among consumers, even among those who are unfamiliar with the Respondent-Applicant's and Opposer's marks.

"6.1 The form and the style of lettering employed by the Respondent-Applicant in its mark 'PURE 'N SOFT' are completely different from that of the Opposer's mark 'PURE 'N FRESH'.

"6.2 The words 'PURE 'N SOFT' appear within a device, with Chinese characters above such words, whereas the Opposer's mark merely consists of the words 'PURE 'N FRESH', with no design whatsoever. Thus, both marks would reveal that, they indeed have glaring visual dissimilarities which are striking to the eye.

"6.3 Moreover, the Respondent-Applicant's 'PURE 'N SOFT' mark consists of nine (9) letters, while Opposer's mark 'PURE 'N FRESH' consists of ten (10) letters.

"6.4 The similarities in the first five (5) letters of the two marks are not sufficient to deny the application of Respondent-Applicant's mark 'PURE 'N SOFT'. While the two marks have the same first five (5) letters, it is the vowel 'O' from the word 'SOFT' appearing in Respondent-Applicant's 'PURE 'N SOFT' mark, which is given emphasis, not just in its pronunciation, but in the spelling as well. On the other hand, it is the vowel 'E' from the word 'FRESH', which is given stress in Opposer's mark 'PURE 'N FRESH'. Thus, it is unlikely for the consumers to misunderstand the two marks.

"7. Even if the dominance test is to be applied in the instant case, confusion as to the goods or its source is inconceivable. As previously pointed out, Respondent-Applicant's 'PURE 'N SOFT' mark and Opposer's 'PURE 'N FRESH' mark create an entirely different visual impression on Filipino customers. A significant difference results with the presence of the inscriptions in Chinese characters on top of the words 'PURE 'N SOFT'. And such Chinese characters, when transliterated, mean Rou Bai, which has no meaning. On the other hand, in the Opposer's mark, only the words 'PURE 'N FRESH' appear therein. There are no inscriptions in Chinese characters, or whatsoever. Evidently, the presence of such inscriptions in Chinese characters on top of the words 'PURE 'N SOFT' in Respondent-Applicant's mark is remarkable enough to prevent confusion in the minds of the public. With the absence of such inscriptions in Opposer's mark 'PURE 'N FRESH', it is unlikely for the consuming public to mistake one for the other.

"7.1 As held by the Supreme Court in the case of American Cyanamid Company vs. the Director of Patents, et al., citing the landmark case of Etepha vs. Director of Patents:

x x x

"7.2 As such, the mark of Respondent-Applicant's 'PURE 'N SOFT' cannot be mistaken with that of Opposer's mark 'PURE 'N FRESH', given their differences in color, contents, arrangement of words, sizes, shapes and general appearance.

"8. Moreover, contrary to Opposer's claim, the registration of Respondent-Applicant's 'PURE 'N SOFT' mark is in accordance with the law, rules and jurisprudence. As quoted in the Opposition, Section 123 of the Intellectual Property Code prohibits the registration of a mark if it:

x x x

"8.1 Respondent-Applicant's 'PURE 'N SOFT' mark does not qualify as such mark. 'PURE 'N SOFT' mark is evidently not identical with any registered mark belonging to a different proprietor or a mark with an earlier filing or priority date.

"8.2 Likewise, Section 123 (g) of the Intellectual Property Code only prohibits the registration of marks that are 'likely to mislead the public, particularly as to the nature, quality, characteristics or geographical origin of goods and services'.

"8.3 Again, Respondent-Applicant's 'PURE 'N SOFT' mark does not qualify as such. The differences in color, contents, arrangement of words, sizes, shapes and general appearance between Respondent-Applicant's 'PURE 'N SOFT' mark and Opposer's 'PURE 'N FRESH' mark wipe away the possibility of confusion as to the nature, quality, characteristics or geographical origin of goods and services of the Respondent-Applicant and the Opposer.

"9. Likewise, enumerating or providing for a list of confusingly similar sounds in the matter of trademarks, as what Opposer quoted in Paragraph 16.3, will not prove anything. As held by the Supreme Court in the case of Philip Morris, Inc. vs. Fortune Tobacco Corporation:

x x x

"10. Moreover, Respondent-Applicant has registered and applied for the registration of its mark 'PURE 'N SOFT' worldwide. The Respondent-Applicant's mark 'PURE 'N SOFT' is registered in Macau, Singapore and Taiwan, and has pending applications for trademark registration in Indonesia, South Korea, People's Republic of China, Thailand, Malaysia and Turkey. The Affidavit of Mr. Dominic Lai, the Director of Respondent-Applicant Watson Enterprises Limited, attesting to the fact of its trademark application and registration of the mark 'PURE 'N SOFT' worldwide is hereto attached x x x

"11. All told, it is clear that Opposer's claims are utterly without merit. The Respondent-Applicant has proven that its mark 'PURE 'N SOFT' is capable of being used in commerce and registered with the Intellectual Property Office without running afoul with the law and usurping the intellectual property rights of the Opposer over its mark 'PURE 'N FRESH'.

The Respondent-Applicant's evidence consists of copies of some trademark registration certificates for Respondent-Applicant's mark PURE 'N SOFT & DEVICE; and, samples of marketing and advertising materials used to promote Respondent-Applicant's products and its mark PURE 'N SOFT & DEVICE.<sup>5</sup>

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<sup>5</sup>Marked as Annexes "A" and "B".

On 23 June 2011, the Preliminary Conference was terminated. Opposer and Respondent-Applicant were directed to submit their respective position papers.

Should the Respondent-Applicant be allowed to register the trademark PURE 'N SOFT & DEVICE?

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>6</sup>

Thus, Sec. 123.1 (d) of Republic Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code") provides:

- (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;"

Records show that at the time the Respondent-Applicant filed its trademark application on 06 August 2009, the Opposer already owns trademark registration for PURE 'N FRESH under Trademark Registration No. 4-2006-005603 issued on 30 April 2007. The registration covers feminine wash in Class 03. This Bureau noticed that the goods indicated in the Respondent-Applicant's trademark application, i.e. cleaning preparations for sanitary purposes; sanitary preparations (other than for medical purposes); sanitary preparations (toiletries); non-medicated preparations for oral hygiene purposes; preparations for personal hygiene (non-medicated) in Class 03 and pharmaceutical veterinary and sanitary preparations for medical purposes and for personal hygiene; disinfectants for medical or sanitary purposes (other than soaps); feminine sanitary protection products; feminine hygiene products; sanitary napkins, towels, pads, panties, tampons; panty liners; wipes for hygienic (cleaning) purposes, other than impregnated with cleaning preparations; wipes for hygienic (medical) purposes; feminine wash; feminine wipe in Class 05, are similar and/or closely-related to the Opposer's.

<sup>6</sup> *Pribhdas J. Mirpuri v. Court of Appeals*, G.R. No. 114508, 19 November 1999, citing *Ethepe 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).

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

Pure 'n Fresh



Opposer's trademark

Respondent-Applicant's mark

The Respondent-Applicant's mark PURE 'N SOFT & DEVICE is confusingly similar to Opposer's trademark PURE 'N FRESH. Even with the presence of the Chinese characters above the word mark PURE 'N SOFT and written within an apparently leaf device, to the Bureau's mind, top of the mind recall would be the word PURE and the letter N with apostrophe (') in between two words. Both marks bear words that are almost similar. Their meanings are the same. Thus, PURE 'N SOFT & DEVICE is confusingly similar to Opposer's PURE 'N FRESH. Respondent-Applicant's mark PURE 'N SOFT & DEVICE covers feminine hygiene products, both in Class 03 and Class 05, goods which the Opposer deals in under the mark PURE 'N FRESH. It is likely therefore, that a consumer who wishes to buy personal hygiene and is confronted with the mark PURE 'N SOFT & DEVICE, will think or assume that the mark or brand is just a variation of PURE 'N FRESH or is affiliated with the Opposer's.

The confusion or mistake would subsist not only on 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>7</sup>

In conclusion, the Bureau finds that the Respondent-Applicant's trademark application is proscribed by Sec. 123.1 (d) (iii) of the IP Code.

<sup>7</sup> *Converse Rubber Corp. v. Universal Rubber Products, Inc. et. al.*, G.R. No. L-27906, 08 Jan. 1987.

A handwritten signature or set of initials in blue ink, located in the bottom right corner of the page.

WHEREFORE, premises considered, the instant Opposition to Trademark Application No. 4-2009-007839 is hereby SUSTAINED. Let the filewrapper of the subject trademark application be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

**SO ORDERED.**

Taguig City, 02 November 2015.



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