

**NATRAPHARM INC.,**  
Opposer,

**-versus-**

**NATRACARE, INC.,**  
Respondent-Applicant.

X-----X

**IPC No. 14-2009-00097**  
Opposition to:  
Appln. Serial No. 4-2007-001925  
Date filed: 23 February 2007  
**TM: "NATRA Q10"**

### NOTICE OF DECISION

#### FEDERIS & ASSOCIATES LAW OFFICES

Counsel for the Opposer  
Suite 2005 88 Corporate Center  
141 Valero St., Salcedo Village  
Makati City

#### ATTY. JOSEPH C. CEREZO

Counsel for Respondent-Applicant  
Suite 401-B Delta Building  
West Ave. cor. Quezon Avenue  
Quezon City

#### GREETINGS:

Please be informed that Decision No. 2015 - 278 dated December 10, 2015 (copy enclosed) was promulgated in the above entitled case.

Taguig City, December 10, 2015.

For the Director:

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

NATRAPHARM INC.,

Opposer,

-versus-

NATRACARE, INC.,

Respondent-Applicant.

IPC No. 14-2009-00097

Case Filed: 26 March 2009

Opposition to:

Application No. 4-2007-001925

Date Filed: 23 February 2007

Trademark: "NATRA Q10"

x-----x

Decision No. 2015- 278

**DECISION**

NATRAPHARM INC.<sup>1</sup> ("Opposer") filed an opposition to Trademark Application Serial No. 4-2007-001925. The application, filed by Natracare, Inc.<sup>2</sup> ("Respondent-Applicant"), covers the mark "NATRA Q10" for use on "food supplements in liquid capsules" under Class 05 of the International Classification of Goods and Services.<sup>3</sup>

The Opposer alleges:

x x x  
"GROUNDS

"NATRAPHARM, INC. ('Opposer'), believes that as registered owner of the trademark 'NATRAVOX' and also owner of the registered trade name or corporate name 'NATRAPHARM, INC.' the registration in the name of the Respondent-Application of the subject mark: (a) will damage and prejudice the rights and interests of Opposer herein; and, (b) is contrary to the express provisions of the Republic Act 8293 or the Intellectual Property Code of the Philippines ('IP Code') specifying what trademarks may or may not be registered. Therefore, Opposer objects to the registration of the subject mark upon the following grounds:

"a. Opposer is the registered owner of the trademark 'NATRAVOX' under and by virtue of its Certificate of Registration No. 4-2003-001856, which was issued as early as February 23, 2005. The subject mark 'NATRA Q10' is identical with, or confusingly similar with the Opposer's mark 'NATRAVOX'. Hence, under Section 123.1 (d) of the IP Code, it can no longer be registered in the name of Respondent-Applicant. As registered owner, Opposer can prevent the subject application by virtue of Section 146.1 of the IP Code.

"b. The use and registration of the applied for mark by Respondent-Applicant will cause confusion, mistake and deception upon the consuming public and

<sup>1</sup> A domestic corporation organized and existing under and by virtue of the laws of the Republic of the Philippines, with business address at The Patriot Building, Km. 18 West Service Road, South Luzon Expressway, Paranaque City.

<sup>2</sup> With address at 6/F Johntann Bldg., 25 Kabignayan St. Quezon City.

<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.

mislead them as to the origin, nature, quality and characteristics of the goods on which it is affixed pursuant to 123.1(g) of the IP Code.

"c. Section 147 of the IP Code.

"d. The approval of the subject application will also violate Section 165.2 (a) and (b) of the IP Code which protects trade names whether registered or not;

"e. The registration of the subject application will violate the proprietary rights and interests, business reputation and goodwill of the Opposer considering that the applied for mark is identical and/or confusingly similar to Opposer's 'NATRAVOX' mark and Opposer's 'NATRAPHARM' trade name which are both highly distinctive.

"f. The approval of the subject application will enable the Respondent-Applicant to unfairly profit commercially from the goodwill, fame, and notoriety of Opposer and its trademark 'NARAVOX', to the damage and prejudice of the Opposer herein contrary to Section 168.1 of the IP Code.

"g. Trademark dilution under the Supreme Court ruling in the case of Levi Strauss & Co. & Levi Strauss (Phils.), Inc. vs. Clinton Apparelle, Inc., G.R. No. 128900. September 30, 2005.

x x x

#### "DISCUSSION

"14. Records with the IPO will readily bear our that 'NATRAVOX' is already a registered trademark by virtue of Registration No. 4-2003-001856 filed on February 27, 2003. Said trademark registration covers goods in Class 3 particularly, pharmaceutical preparations namely, antibiotics. x x x

"15. In addition, Opposer has also caused the registration of 'NATRAVOX' with the Bureau of Food and Drug. x x x

"16. As such, under Section 123.1 (d) of the IP Code and Supreme Court decisions, 'NATRA Q10' trademark may no longer be applied for by Respondent-Applicant.

"17. Opposer's corporate name, 'NATRAPHARM, INC.' is also registered with the Securities and Exchange Commission. x x x

"18. Opposer's trade name, business name and/or corporate name should be protected as well and hence, by virtue of Section 165.2 (a) and (b).

"19. Opposer has expended huge amounts of money in promoting its trade name 'NATRAPHARM' and its 'NATRAVOX' product. Opposer has promoted and advertised its trade mark and name through advertising materials, brochures, posters, marketing conventions and promotional events.

"20. Opposer has spent large amounts of money in promoting and advertising 'NATRAVOX' and 'NATRAPHARM, INC.' throughout the Philippines. Below are the amounts of monies spent by Opposer annually for the part five years in promoting and marketing 'NATRAVOX' and 'NATRAPHARM, INC.'

x x x

"21. Opposer's 'NATRAVOX' product is being sold nationwide through pharmacies and drug outlets including Mercury Drug stores.

" Advertising materials, promotional items, receipts and invoices of Opposer will be submitted together with this opposition through a separate Affidavit.

"23. Due to Opposer's marketing and advertising efforts, 'NATRAVOX' has become one of the leading brands in antibiotics and is ranked no. 2 in the co-amoxiclav market (Hospital & Drugstore Audit MAT Dec 2008; IMS Update) and No. 4 in the Broad Spectrum Penicillin Market (Hospital & Drugstore Audit MAT Dec 2008; IMS Update).

"24. Opposer was able to make millions in annual sales of the 'NATRAVOX' nationwide. Below are the annual sales figures of Opposer for the last five years which include sales of its 'NATRAVOX' product.

x x x

"25. 'NATRA Q10' in the subject application is identical and/or confusingly similar with the 'NATRAVOX' trademark of Opposer and its trade name 'NATRAPHARM'.

"26. Opposer's trademark 'NATRAVOX' and trade name 'NATRAPHARM' uses the prefix 'NATRA-' 'NATRA' in 'NATRAVOX' and 'NATRAPHARM' is the dominant portion of the said trademark and trade name.

"27. Considering that the subject application also begins with 'NATRA', the subject application should be considered confusingly similar to Opposer's 'NATRAVOX' and 'NATRAPHARM'.

"28. The Supreme Court in *Co Tiong vs. Director of Patents*, held that it is not necessary that the trademark be literally copied or that every word be appropriated in order that confusing similarity can arise, as what is essential is that it is the substantial and distinctive part of the trademark that is copied or imitated.

"29. The marks GOLD TOE and GOLD TOP were found to be confusingly similar to each other by the Supreme Court in *Amigo Manufacturing Inc. vs. Cluett Peabody Inc.* It was ruled that despite the fact that the pronunciations of the ending letters or words are not confusing, the marks are nevertheless similarly confusing due to the same first letters or words, GOLD.

"30. At present, Philippine jurisprudence on the matter is now-settled that regardless of whether the similarity is the first or last syllable, as long as there is similarity in any of the syllables, there will be confusing similarity even if the other part or syllable is pronounced differently.

"31. Thus, in the case of *McDonald's Corporation vs. L.C. Big Mak Burger, Inc., et al*, the High Court invoked *Marvex Commercial Co., Inc. v. Petra Hawpia & Co., Inc.* which provided a list of confusingly similar marks despite the differences in sound when the contending marks are uttered, to wit:

x x x



"32. As could be gleaned from this ruling, the reason given by the Supreme Court is that the variances in either the first or last syllable will only mean that the two contending (2) marks would be 'almost the same' given the fact that the other syllables are the same.

"33. Again, applying the foregoing doctrine, it cannot be doubted that based on the similarity in spelling and pronunciation of the N-A-T-R-A element in 'NATRA Q10' vis-avis 'NATRAVOX' and 'NATRAPHARM', the marks and trade names are clearly confusingly similar, or at the very least, almost the same, rendering 'NATRA Q10' incapable of registration in the face of the registered mark 'NATRAVOX' and registered corporate name 'NATRAPHARM'.

"34. Furthermore, even if it is conceded that the Q10 in 'NATRA Q10' provide a source of dissimilarity, this instance of dissimilarity will still be ignored because the contending marks are used on the related and similar goods.

"35. As held in Heirs of Crisanta Y. Gabriel-Almoradie vs. CA, et al., where the contending marks have differences in some of their parts, they will nevertheless be ruled as confusing similar by the sheer weight of the fact that the contending marks will be used on related goods.

"36. The subject application covers goods in Class 5 - food supplements in liquid capsules while Opposer is in the pharmaceutical industry and its 'NATRAVOX' trademark covers goods in Class 3 - pharmaceutical preparations namely, antibiotics. Being closely related products, the goods of both parties are therefore found in the same channels of trade.

"37. Such similarity, will likely cause mistake, confusion or deception upon the relevant consumers who may be lead into thinking that the source of the goods for both trademark are one and the same, or, that the goods of Respondent-Applicant is sponsored by Opposer herein.

"38. Even assuming for the sake of argument that the contending goods are different, the difference have to be ignored under the principle enunciated in a case [Sterling Products International Inc., vs. Fabenfabrikeken Bayer Aktiengesellschaft, vs. Allied Manufacturing and Trading Co., Inc., G.R. No. L-19906], where the Philippine Supreme Court declared that:

x x x

"39. Opposer has been using 'NATRAPHARM' as its corporate or company name since 1990. Opposer has likewise caused the registration of its corporate name with the Securities and Exchange Commission. 'NATRAPHARM' is legally protected under Section 165 of the IP Code.

"40. The Supreme Court of the Philippines has already recognized the protection that must be given to one's company name. In Philips Export B.V. et. al. vs. Court of Appeals (206 SCRA 457) the Supreme Court held that:

x x x

"41. Without doubt, the perceived connection between Respondent-Applicant's products bearing the mark 'NATRA Q10' will result in the whittling away of Opposer's goodwill and the dilution of the distinctiveness of its 'NATRAVOX'.

"42. Trademark dilution is defined in the case of Levi Strauss vs. Clinton Apparelle (G.R. No. 138900, September 20, 2005) as follows:

x x x

"43. In fine, the 'NATRA Q10' of Respondent-Applicant for 'food supplements in liquid capsules' can not be allowed registration because it is a confusingly similar copy of the known and registered trademark 'NATRAVOX' which is also used for related goods and Opposer's registered trade name 'NATRAPHARM' which is also known in the pharmaceutical industry and market.

"44. Supporting Affidavits are concurrently submitted herewith pursuant to the Rules.

The Opposer's evidence consists of the affidavit of Christina Ravelo; a copy of the Articles of Incorporation of Natrapharm, Inc.; minutes of the special meeting of the board of directors; actual printout of the [www.natrapharm.com](http://www.natrapharm.com) website; a copy of Certificate of Trademark Registration No. 4-2003-001856 for 'NATRAVOX' under the name of Opposer; copies of BFAD registrations for 'NATRAVOX'; actual brochures, flyers and marketing materials; actual list of some of marketing events and gatherings and the corresponding dates when held; actual photographs taken during marketing events and gatherings of Natrapharm, Inc.; actual programs of the "2<sup>nd</sup> National Convention and 3<sup>rd</sup> Annual Meeting of the Philippine Society of Newborn Medicine" held on February 1 to 3, 2009 and the "15<sup>th</sup> Annual Convention of the Community Pediatrics Society of the Philippines" held on June 3 to 4, 2008; attendance sheet of Forum 2 in "The 45<sup>th</sup> Annual Convention of the Philippine Pediatric Society, Inc. held on April 14-16, 2008 which event was likewise sponsored by the Opposer; receipts and sales invoice showing the sale of Opposer's products including 'NATRAVOX'; and copy of Opposer's Audited Financial Statements.<sup>4</sup>

This Bureau issued a Notice to Answer and sent a copy thereof upon Respondent-Applicant on 29 May 2009. The Respondent-Applicant filed their Answer on 01 July 2009 and avers the following:

x x x

"SPECIAL AND AFFIRMATIVE DEFENSES

"3. Opposer's reliance in the case of Levi Strauss vs. Clinton Apparelle is misleading, as in fact the Supreme Court in that very controversy has denied the Petition because the Petitioners in that case failed to support their claim that there was trademark dilution. The only similarity of the above stated case and the instant case is the fact that no evidence whatsoever was presented to support and prove their claim that there was trademark dilution. The Supreme Court has this to say in the Levi Strauss case, and we quote:

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



"4. It is very important to note that the NATRAVOX trademark registration certificates in the Philippines expressly state that they cover antibiotics only, without any evidence or indication that registrant NATRAPHARM, INC. expanded or intended to expand its business to food supplements, the kind of business NATRACARE, INC. is venturing into;

"5. Thus, by strict application of Section 20 of the Trademark Law, NATRAPHARM'S exclusive right to use the NATRAVOX trademark should be limited to antibiotics, the only products indicated in its registration certificates. This strict statutory limitation on the exclusive right to use trademark was amply clarified in the ruling in Faberge, Inc. vs. Intermediate Appellate Court:

"6. It is worth to note that the Opposer and Respondent-Applicant are not using the same trade name or trademarks. The product NATRAVOX of the Opposer and NATRA Q10 of the Respondent-Applicant can be easily distinguished considering that the appearance of their products and the target consumers can be easily identified, including the company that produced the same;

"7. A crucial issue in any trademark infringement case is the likelihood of confusion, mistake or deceit as to the identity, source or origin of the goods or identity of the business as a consequence of using a certain mark. Likelihood of confusion is admittedly a relative term, to be determined rigidly according to the particular (and sometimes peculiar) circumstances of each case. Thus, in trademark cases, more than in other kinds of litigation, precedents must be studied in the light of each particular case.

"8. There are two types of confusion in trademark infringement. The first is 'confusion of goods' when an otherwise prudent purchaser is induced to purchase one product in the belief that he is purchasing another, in which case defendant's goods are then bought as the plaintiff's and its poor quality reflects badly on the plaintiff's reputation. The other is 'confusion of business' wherein the goods of the parties are different but the defendant's product can reasonably (though mistakenly) be assumed to originate from the plaintiff, thus deceiving the public into believing that there is some connection between the plaintiff and defendant which, in fact, does not exist. In determining the likelihood of confusion, the Court must consider: [a] the resemblance between the trademarks' [b] the similarity of the goods to which the trademarks are attached; [c] the likely effect on the purchaser and [d] the registrant's express or implied consent and other fair and equitable considerations.

"6. Opposer and Respondent-Applicant use 'NATRAVOX' and 'NATRA Q10' in the labels of their respective products. But, as held in the following cases, the use of an identical mark does not, by itself, lead to a legal conclusion that there is trademark infringement:

x x x

"7. Whether a trademark causes confusion and is likely to deceive the public hinges on 'colorable imitation' which has been defined as 'such similarity in form, content, words, sound, meaning, special arrangement or general appearance of the trademark or tradename in their overall presentation or in their essential

and substantive and distinctive parts as would likely mislead or confuse persons in the ordinary course of purchasing the genuine article’.

“8. Jurisprudence has developed two tests in determining similarity and likelihood of confusion in trademark resemblance:

“9. The Dominancy Test focuses on the similarity of the prevalent features of the competing trademarks which might cause confusion or deception, and thus infringement. x x x

“10. On the other hand, the Holistic Test requires that the entirety of the marks in question be considered in resolving confusing similarity. x x x

“11. In comparing the resemblance or colorable imitation of marks, various factors have been considered, such as the dominant color, style, size, form, meaning of letters, words, designs and emblems used, x x x

“12. Applying the Dominancy and Holistic Tests, we find that the dominant feature of the NATRAVOX trademark is the device of dark blue-green colored, 8-letter word ‘Natravox’ outlined in white below the word ‘Co-amoxiclav’ using Times New Roman as its font selection. Below the trademark ‘Natravox’ is the word ‘Antibacterial’ and three (3) colored shading compose of sky blue, yellow and dark green. The said device is given prominence in ‘Natravox’ trademark in terms of size and location on the labels.

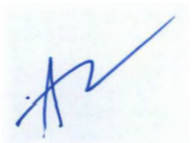
“13. On the other hand, the dominant feature on NATRA Q10 trademark is the device of orange colored, also 8-letter word ‘Natra Q10’ but with a space between the letter ‘a’ and ‘Q’ outlined in fading light green using ‘ARIAL’ as its font selection. Below the trademark ‘Natra Q10’ is the words ‘Coenzyme Q10’ in pink color, together with the name of the company ‘NATRAcare’ in green and pink color and the words ‘Dietary Supplement’ also in pink colors.

“14. By virtue of these glaring differences, consumers or would be consumers will never experience confusion, mistake or deceit as to the identity, source or origin of the goods or identity of the business as a consequence of using the marks ‘Natravox’ and ‘Natra Q10’ x x x

“15. Confusion of goods is evident where the litigant are actually in competition; but confusion of business may arise between non-competing interests as well.

“16. Thus, apart from the strict application of Section 20 of the Trademark Law and Article 6bis of the Paris Convention which proscribe trademark infringement not only of goods specified in the certificate of registration but also of identical or similar goods, we have also uniformly recognized and applied the modern concept of ‘related goods.’ Simply stated, when goods are so related that the public may be, or is actually, deceived and misled that they come from the same market or manufacturer, trademark infringement occurs.

“17. Non-competing goods may be those which, though they are not in actual competition, are so related to each other that it can reasonably be assumed that they originate from one manufacturer, in which case, confusion of business





can arise out of the use of similar marks. They may also be those which, being entirely unrelated, cannot be assumed to have a common source; hence, there is no confusion of business, even though similar marks are used. Thus, there is no trademark infringement if the public does not expect the plaintiff to make or sell the same class of goods as those made or sold by the defendant.

"18. In resolving whether goods are related, several factors come into play:

x x x

"19. The wisdom of this approach is its recognition that each trademark infringement case presents its own unique set of facts. No single factor is preeminent, nor can the presence or absence of one determine, without analysis of the others, the outcome of an infringement suit. Rather, the court is required to sift the evidence relevant to each of the criteria. This requires that the entire panoply of elements constituting the relevant factual landscape be comprehensively examined. It is weighing and balancing process. With reference to this ultimate question, and from a balancing of the determinations reached on all of the factors, a conclusion is reached whether the parties have a right to the relief sought.

"20. A very important circumstance though is whether there exists likelihood that an appreciable number of ordinarily prudent purchasers will be misled, or simply confused, as to the source of the goods in question. x x x

"21. Applying these legal precepts to the present case, Respondent-Applicant's use of the 'Natra Q10' trademark as a food supplement is not likely to cause confusion or mistake, or to deceive the 'ordinarily intelligent buyer' because of the packaging of the product and the appearance therein is distinguishable from the product of the Opposer, which is 'Natravox', as to the identity of the goods, their source and origin, or identity of the business of Opposer and Respondent-Applicant.

"22. Obviously, antibiotics in one hand, and food supplements in the other are not identical or competing products. Neither do they belong to the same class of goods. NATRAPHARM'S antibiotics fall under Class 3 and Respondent-Applicant's food supplements fall under Class 5. x x x

"23. Nonetheless, we are mindful that product classification alone cannot serve as the decisive factor in the resolution of whether products are related goods. Emphasis should be on the similarity of the products involved and not on the arbitrary classification or general description of their properties or characteristics. But the mere fact that one person has adopted and used a particular trademark for his goods does not prevent the adoption and use of the same trademark by others on articles of a different description.

"24. We find premises patently insufficient and too arbitrary to support the legal conclusion that antibiotics in one hand, AND food supplements on the other are related products within the contemplation of the Trademark law and the Paris Convention. x x x

"25. Accordingly, the U.S. patent office and courts have consistently held that the mere fact that goods are sold in one store under the same roof does not automatically mean that buyers are likely to be confused as to the goods'

respective sources, connections or sponsorships. The fact that different products are available in the same store is an insufficient standard, in and of itself, to warrant a finding of likelihood of confusion.

"26. In this regard, the Supreme Court has adopted the Director of Patents' finding in Philippine Refining Co., Inc. vs. Ng Sam and the Director of Patents: x x

"27. The same is true in the present case. Antibiotics in one hand, AND food supplements on the other are non-competing and are totally unrelated products not likely to cause confusion vis-à-vis the goods or the business of the Opposer and Respondent-Applicant.

"28. 'Natravox' antibiotics in one hand, are packaged differently and are mainly utilized for treatment of infections and are not for day-to-day consumptions but only when the same are prescribed by doctors, while 'Natra Q10' food supplements on the other are packed and utilized primarily for day-to-day consumptions even without the need of doctors' prescription. There is a whale of a difference between their intended use, descriptive properties, physical attributes or essential characteristics like form, composition, texture and quality.

"29. Further, consideration should be taken into account the case of IDV North America, Inc. and R & A Bailey Co. Limited vs. S & M Brands, Inc.: x x x

"30. In conclusion, Opposer's position is untenable under all tests applied by the Supreme Court. Opposer's contentions are only products of a wild imagination and at the very least highly speculative.

The Respondent-Applicant's evidence consists of the affidavit of Bernardo Atienza; a copy of the Certificate of Incorporation of NATRACARE, INC.; a copy of the License to Operate as Food Distributor from the Bureau of Foods and Drugs; a copy of the Certificate of Registration of 'NATRACARE AND DEVICE'; a copy of the Certificate of Registration of "LIVE HEALTHY NATURALLY"; and, the Natracare profile.<sup>5</sup>

On 20 July 2009, Opposer filed a Reply to Respondent-Applicant's Answer and on 17 August 2009, Respondent-Applicant filed a Rejoinder.

On 04 July 2011, the Preliminary Conference was terminated. Parties submitted their respective position papers. Thereafter, the case was deemed submitted for resolution.

Should the Respondent-Applicant be allowed to register the trademark NATRA Q10?

The Opposer anchors its opposition on Sections 123.1, paragraphs (d), (g) Section 147 and Section 165.2 of Republic Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code"), to wit:

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<sup>5</sup> Marked as Exhibits "1" and "6".

Sec. 123. Registrability. - 123.1. A mark cannot be registered if it:

x x x

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

Sec. 147. *Rights Conferred.* - 147.1. The owner of a registered mark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs or containers for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use, of an identical sign for identical goods or services, a likelihood of confusion shall be presumed.

147.2. The exclusive right of the owner of the well-known mark defined in Subsection 123.1 (e) which is registered in the Philippines, shall extend to goods and services which are not similar to those in respect of which the mark is registered: *Provided,* That use of that mark in relation to those 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.

165.2. (a) Notwithstanding any laws or regulations providing for any obligation to register trade names, such names shall be protected, even prior to or without registration, against any unlawful act committed by third parties.

(b) In particular, any subsequent use of the trade name by a third party, whether as a trade name or a mark or collective mark, or any such use of a similar trade name or mark, likely to mislead the public, shall be deemed unlawful.

Records show that the Opposer filed a trademark application for NATRAVOX on 27 February 2003 which covers pharmaceutical preparations namely, antibiotics under Class 05. The application matured into a registration and a Certificate of Registration No. 42003001856 was issued on 24 February 2005. On the other hand, the Respondent-Applicant filed the contested trademark application on 23 February 2007.

Hence, the question, does NATRAVOX resemble NATRA Q10 such that confusion or deception is likely to occur? The marks are shown below:

**NATRAVOX**

**Natra Q10**

Opposer's trademark

Respondent-Applicant's mark

This Bureau noticed that the products covered by the mark NATRA Q10 are food supplements in liquid capsules under Class 05. Opposer's products covered under NATRAVOX, on the other hand, are pharmaceutical preparations, namely, antibiotics. This notwithstanding, confusion is likely in this instance because of the close resemblance between the marks and that the goods belong to Class 05. The defining and distinctive feature in both marks is the word or syllable NATRA. NATRA is not an ordinary word, but an invented one. Hence, it is very easy for one to assume that there is a connection between the two marks. It is likely that a consumer who wishes to buy food supplements and is confronted with the mark NATRA Q10, will think or assume that the mark or brand is just a variation of or is affiliated with the Opposer's trademark NATRAVOX and tradename NATRAPHARM, INC.

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>6</sup> (Emphasis supplied)

Accordingly, this Bureau finds that the registration of NATRA Q10 for food supplements in liquid capsules under Class 05 is proscribed by Sec. 123.1, par. (d) (iii) of the IP Code, to wit:

Sec. 123. Registrability. – 123.1. A mark cannot be registered if it:

x x x

- (e) 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;"

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<sup>6</sup> *Converse Rubber Corp. v. Universal Rubber Products, Inc. et. al.*, G.R. No. L-27906, 08 Jan. 1987.

WHEREFORE, premises considered, the instant Opposition to Trademark Application No. 4-2007-001925 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, 10 December 2015.

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