

**NSE PRODUCTS INC.,**  
Petitioner,

**-versus-**

**HEALTH HARMONY INC.,**  
Respondent-Registrant.

X-----X

**IPC No. 14-2014-00353**  
Cancellation of:  
Registration No. 4-2013-004903  
Date Issued: 10 October 2013  
TM: "VITA MEAL"

### NOTICE OF DECISION

**VERALAW**  
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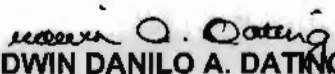
**HEALTH HARMONY INC.**  
Respondent-Registrant  
Tao Corporate Center  
2291 Chino Roces Avenue  
Makati City

#### GREETINGS:

Please be informed that Decision No. 2015 - 271 dated December 01, 2015 (copy enclosed) was promulgated in the above entitled case.

Taguig City, December 01, 2015.

For the Director:

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

**NSE PRODUCTS INC.,**  
Petitioner,

- versus -

**HEALTH HARMONY INC.,**  
Respondent-Registrant.  
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**IPC No. 14-2014-00353**  
Cancellation of:

Reg. No.: 4-2013-004903  
Date Issued: 10 October 2013  
Trademark: "VITA MEAL"

Decision No. 2015 - 271

### DECISION

NSE PRODUCTS INC. ("Petitioner"),<sup>1</sup> filed a petition for cancellation of Trademark Registration No. 4-2013-004903. The registration, issued to HEALTH HARMONY INC. (Respondent-Registrant)<sup>2</sup>, covers the mark "VITA MEAL" for use on goods under classes<sup>3</sup> 5 namely: *vitamin-enriched powdered rice flavoring*; and 16 namely: *paper, cardboard and goods made from these materials, not included in other classes; printed matter; bookbinding material; photographs; stationery; plastic materials for packaging (not included in other classes)*.

The Petitioner alleges that it purchased in 2002 First Harvest, a manufacturer of dehydrated food products. It decided then to name First Harvest's manufactured products 'VITAMEAL' as it contains the necessary vitamins, minerals, carbohydrates, protein and fat. Thereafter, Petitioner filed several trademark applications for 'VITAMEAL' worldwide in countries like the United States of America, Taiwan, Hong Kong, Macao, Malaysia, New Zealand, Japan, Singapore and the Philippines. The brand 'VITAMEAL' has been sold mostly as donations to help feed people in underdeveloped countries. The Petitioner, through its 'Nourish the Children program', has provided more than Three Hundred Million (300,000,000) meals to malnourished children around the world. According to the Petitioner, after the onslaught of Typhoon Haiyan in the Philippines, it ran a donation drive, through The Force of Good Foundation and in partnership with Feed The Children Philippines (FTCP), to provide nutritious meals in the form of 'VITAMEAL' bags in various affected areas including Cebu, Samar, Iloilo and Leyte. A total of 210,000 'VITAMEAL' bags were distributed during the drive, for a total of more than 6 million meals. The donation drive has also brought worldwide publicity, and has been featured in several blog cites. The Petitioner received the 'Bravo!' Award for Humanitarian Leadership from Direct Selling News for its Nourish The Children Initiative in 2012. The substantial sales worldwide of the brand 'VITAMEAL' was a result of Petitioner's aggressive marketing and promotional strategies. The growing success of the brand 'VITAMEAL' resulted in substantial sales worldwide. In the Philippines alone, the total amount of yearly sales since 2003 has reached USD 1,608,475.00.

<sup>1</sup> A corporation duly organized and existing under and by virtue of the laws of the United States of America, with principal office at 75 West Center Street, Provo, Utah, United States of America.

<sup>2</sup> A corporation duly organized and existing under Philippine laws with office address at Tao Corporate Center, 2291 Don Chino Roces Avenue, Makati City.

<sup>3</sup> The Nice Classification of goods and services is for registering trademark and service marks, based on a 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.

The Petitioner further alleges that the mark 'VITAMEAL' is an internationally well-known mark that must be afforded protection under prevailing laws and jurisprudence. It argues that the registration of the mark 'VITA MEAL' in favor of Respondent-Registrant would be contrary to the provisions of the Intellectual Property Code considering that the mark sought to be registered is identical to the well-known mark 'VITAMEAL' owned by Petitioner.

The Petitioner's evidence consists of the following:

1. Special Power of Attorney dated 01 July 2014;
2. Verification and Certification against Forum Shopping;
3. Affidavit of Mr. Blaine Knight;
4. Amended and Restated Articles of Incorporation of First Harvest International, LLC;
5. Corporate Data Sheet Report;
6. Copies of VITAMEAL brochures;
7. Certificate of Registration issued by the Trademarks Registry of Hong Kong;
8. Certificate of Registration issued by the Intellectual Property Corporation of Malaysia;
9. Certificate of Registration issued by the Intellectual Property Office of the Philippines;
10. Certificate of Registration and Certificate of Subsequent Proprietorship issued by the
11. Registry of Trademarks of Singapore;
12. Nourish The Children brochure;
13. Company's Global Quarterly Report for Q4;
14. Nourish The Children Initiative brochure; and,
15. Details on the yearly sales;

This Bureau issued and served upon the Respondent-Applicant a Notice to Answer on 27 August 2014. Respondent-Applicant however, did not file an answer. Thus, in Order No. 2015-365, Respondent-Applicant is hereby declared in default, and this instant case is deemed submitted for decision.<sup>4</sup>

Should Respondent-Registrant's trademark VITA MEAL be cancelled?

It is emphasized that the essence of trademark registration is to give protection to the owners of trademarks. 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 out into the market a superior 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>5</sup>

Section 151.1 Republic Act No. 8293, also known as the Intellectual Property Code ("IP Code") provides:

x x x A petition to cancel a registration of a mark under this Act may be filed with the Bureau of Legal Affairs by any person who believes that he is or will be damaged by the registration of a mark under this Act as follows:

x x x

(b) At any time, if the registered mark becomes generic name for thee goods or services, or a portion thereof, for which it is registered, or has been abandoned, or its registration

<sup>4</sup> Dated 06 March 2015.

<sup>5</sup> Pribhdas J. Mirpuri v. Court of Appeals, G.R. No. 114508, 19 Nov. 1999. See also Article 15, par. (1), Art. 16, par. 91 of the Trade-related Aspect of Intellectual Property (TRIPS Agreement).

was obtained fraudulently or contrary to the provisions of this Act, or if the registered mark is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used. x x x

In relation, Sec. 123.1 (d) of the IP Code provides:

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;

Records show that Petitioner has Certificate of Registration No. 4-2003-002405 for the mark VITAMEAL dated 03 September 2006.<sup>6</sup> Petitioner has also various foreign registrations of its mark VITAMEAL, including Hong Kong, Malaysia and Singapore.<sup>7</sup> The Respondent-Registrant, on the other hand, filed its application for the registration of the mark VITA MEAL on 29 April 2013, and was issued Certificate of Registration No. 4-2013-004903 on 10 October 2013<sup>8</sup>, the subject matter of this instant petition.

The competing marks are hereby reproduced below for comparison:

**VITAMEAL**

Petitioner's Mark

**Vita Meal**

Respondent-Registrant's Mark

Obviously, the contending marks are practically identical even if the Respondent-Registrant separated the word "VITA" from "MEAL".

Moreover, the competing marks are used on goods that are related to each other, and which cater to same cluster of purchasers and flow on the same channels of trade. Petitioner's VITAMEAL covers classes 29 for food products namely, partially prepared and packaged mixtures of soups and entrees containing preserved, cooked and dehydrated meats, vegetables and/or soy proteins; and 30 for food products, namely prepared and packaged mixtures and entrees consisting primarily of flour, rice or other grains; prepared and packaged mixtures and entrees consisting primarily of bread and cereals. Comparing these to the goods covered by Respondent-Registrant's VITA MEAL, they are deemed related because they are both nourishing substance taken into the body to provide energy. Thus, it is likely that the consumers will have the impression that these goods or products originate from a single source or origin.

<sup>6</sup> Annex "F" of Exhibit "C" of Petitioner.

<sup>7</sup> Annexes "D", "E", and "G-1" & "G-2" of Exhibit "C" of Petitioner.

<sup>8</sup> File wrapper records.

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:<sup>9</sup>

Callman notes two types of confusion. 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. Hence, 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 which, in fact does not exist.

The public interest, therefore, requires that the 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 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>10</sup>

Thus, to allow the continued registration of Respondent-Registrant is to cause confusion to the public of the presence of identical marks on goods that are covered by Petitioner's mark or goods closely related thereto, it will also deprive the true and actual owner of the mark. The Petitioner proved that the Respondent-Registrant was not the actual owner and user of the subject mark long before the filing of the said mark. The Petitioner has never abandoned the use of the mark as shown by its continuous and actual use of the mark VITAMEAL on its business.

In contrast, Respondent-Registrant despite the opportunity given, failed to explain how it arrived at using the mark "VITA MEAL" as it failed to file its Answer to the opposition. The Petitioner's mark "VITAMEAL" is unique and highly distinctive with respect to the goods it is attached with.

Succinctly, the field from which a person may select a trademark is practically unlimited. As in all other cases of colorable imitations, the unanswered riddle is why, of the million of terms and combination of letters and designs available, the Respondent-Registrant had to come up with a mark identical or so closely similar to another's mark if there was no intent to take advantage of the goodwill generated by the other mark.<sup>11</sup>

The intellectual property system was established to recognize creativity and give incentives to innovations. Similarly, the trademark registration system seeks to reward entrepreneurs and individuals who through their own innovations were able to distinguish their goods or services by a visible sign that distinctly points out the origin and ownership of such goods or services.

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<sup>9</sup> Converse Rubber Corporation v. Universal Rubber Products Inc., et al., G.R. No. L-27906, 08 Jan. 1987.

<sup>10</sup> Pribhdas J. Mirpuri v. Court of Appeals, G.R. No. 114508, 19 Nov. 1999.

<sup>11</sup> American Wire & Cable Company v. Director of Patents, G.R. No. L-26557, 18 February 1970.

**WHEREFORE**, premises considered, the instant Petition for Cancellation of Trademark Registration No. 4-2013-004903 is hereby **GRANTED**. 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, 01 December 2015.

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