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Opposer,

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IPC No. 14-2014-00157
Opposition to:
Application No. 4-2013-014947
Date Filed: 16 December 2013
TM: "POWERHEAL"

-versus-

PHILMICO ANIMAL NUTRITION CORP.,
Respondent - Applicant.

X-----X

NOTICE OF DECISION

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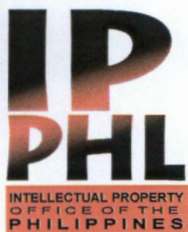
GREETINGS:

Please be informed that Decision No. 2016 - 104 dated April 07, 2016 (copy enclosed) was promulgated in the above entitled case.

Taguig City, April 07, 2016.

For the Director:


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



UNAHCO, INC.,
Opposer,

-versus-

IPC No. 14-2014-00157

Opposition to Trademark
Application No. 4-2013-014947
Date Filed: 16 December 2013
Trademark: "**POWERHEAL**"

PHILMICO ANIMAL NUTRITION CORP.,
Respondent-Applicant.

x ----- x Decision No. 2016- 104

DECISION

Unahco, Inc.¹ ("Opposer") filed an opposition to Trademark Application Serial No. 4-2013-014947. The contested application, filed by Philmico Animal Nutrition Corp.² ("Respondent-Applicant"), covers the mark "POWERHEAL" for use on "*veterinary preparations*" and "*agriculture, animal feeds*" under Class 05 and 31 of the International Classification of Goods³.

The Opposer alleges that it is engaged in the wide variety of veterinary feeds and preparations, agricultural and related products. It claims to be the owner of the mark "POWERFEEDS", which is registered under Certificate of Registration No. 4-2012-009688 issued on 07 February 2013. It contends that the Respondent-Applicant's mark "POWERHEAL" so resembles its own registered mark and should not be allowed registration. In support of the Opposition, the Opposers submitted the printout of the pertinent pages of the IPO E-Gazette publishing the mark "POWERHEAL" and Certificate of Registration No. 4-2012-009688.⁴

The Respondent-Applicant filed its Answer on 04 July 2014 alleging, among others, that it has been engaged in the production and innovation of new varieties of animal feeds products since 1997. According to the Respondent-Applicant, it conceptualized "POWERHEAL" in July 2013 after a systematic and rigorous "Product Development" process. It initially considered four names for its new brand, namely, "POWERCURE", "POWEERAID", "POWERVET" and "POWERHEAL". After conducting a "brand name" test, it chose "POWERHEAL" and endorsed the same to its legal team for registration.

¹ A domestic corporation with office address at 17 Sheridan Street, Mandaluyong City.

² A domestic corporation with business address at Aboitiz Corporate Center, Gov. Manuel A. Cuenco Avenue, Kasambagan, Cebu.

³The Nice Classification is a classification of goods and services for the purpose of registering trademark and services marks, based on the 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 Purpose of the Registration of Marks concluded in 1957.

⁴ Marked as Exhibits "A" to "B", inclusive.

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The Respondent-Applicant asserts that the Opposer's products are not known in the market as "POWERFEEDS" but as "THUNDERBIRD". It claims that "POWERFEEDS" appear only in three of the Opposer's products, namely: Thunderbird Baby Stag Booster, Thunderbird Stag Developer and Thunderbird Highlander Maintenance Pellets. It avers that its own game fowl feeds products are known in the market as "SALTO". It thus contends that their respective products are made distinct by the brand names, "SALTO" and "THUNDERBIRD", which accompany them. Moreover, the Respondent-Applicant states that it also maintain a specialized game fowl feeds product that goes by the duly registered mark "POWERMIX". Furthermore, it maintains that the competing marks are distinct and distinguishable from each other and points out other marks that use the word "POWER". The Respondent-Applicant's evidence consists of the:⁵

1. Joint Judicial Affidavit of Rodolfo Abelardo B. Ablazo and Oscy D. Balangiao;
2. copy of its Certificate of Filing of Amended Articles of Incorporation;
3. copy of its trademark application for "POWERHEAL";
4. copy of the Notice of Allowance of "POWERHEAL";
5. pertinent pages of its website showing packaging of "SALTO" products; and
6. copy of Certificate of Registration No. 4-2011-006860 for "POWERMIX".

Pursuant to Office Order No. 154, s. 2010, the Hearing Officer referred the case to mediation. This Bureau's Alternative Dispute Resolution Services, however, submitted a report that the parties refused to mediate. Accordingly, a Preliminary Conference was conducted on 17 February 2015. Upon termination thereof on the same day, the Hearing Officer directed the parties to submit their respective position papers. Both parties filed their position papers on 27 February 2014 and the case is then deemed submitted for resolution.

The issue to be resolved is whether the Respondent-Applicant's mark "POWERHEAL" should be registered.

Section 123.1 (d) of R.A. No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code") provides that:

"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

⁵ Marked as Exhibits "1" to "6", inclusive.

(iii) If it nearly resembles such a mark as to be likely to deceive or cause confusion; x x x"

Records reveal that at the time the Respondent-Applicant filed an application for registration of the contested mark on 16 December 2013, the Opposer already has valid and existing registration of the mark "POWERFEEDS", which was issued on 07 February 2013 for use on "feeds for gamefowls" under Class 31.

The Opposers' prior registrations notwithstanding, this Bureau sees no cogent reason to deny the Respondent-Applicant the registration of the mark "POWERHEAL". The marks are depicted below:

POWERFEEDS

Opposers' mark

POWERHEAL

Respondent-Applicant's mark

The word "POWER" is the feature that is common to the marks. The word "POWER", however, is commonly used in Class 31. In fact, the Trademark Registry shows that there are other registered marks belonging to different proprietors that use the same word. These marks include "POWER", "POWERBULLETS" and "ACI KNIGHTS GAME FOWL POWER FEEDS PROTECTADO NA, SIGURADO PA", under Certificates of Registration Nos. 4-2010-013017, 4-2004-008840 and 4-2015-500182, respectively, all of which cover animal feeds products. Noteworthy, the Respondent-Applicant is the registered owner of the mark "POWERMIX" issued on 13 January 2011, earlier than the Opposer's registration.

What will then identify whether the marks are confusing are the words and/or device surrounding the common term "POWER". In this case, the word "FEEDS" in the Opposer's mark is easily distinguishable from "HEAL" in the Respondent-Applicant's. Even in respect of aural and conceptual projection, mistake is remote to occur. The term "FEEDS" refer to animal food while "HEAL" connotes treatment from a condition.

Finally, 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 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.⁶ In this case, the Respondent-Applicant's mark sufficiently met this function.

WHEREFORE, premises considered, the instant Opposition to Trademark Application No. 4-2013-014947 is hereby **DISMISSED**. 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, 07 April 2016.


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

⁶ Pribhdas J. Mirpuri vs. Court of Appeals, G.R. No. 114508, 19 November 1999.