

THE SUNRIDER CORPORATION (dba SUNRIDER INTERNATIONAL,
Opposer,

-versus-

MEDIRICH PHARMA DISTRIBUTION CORP.,
Respondent-Applicant.

IPC No. 14-2015-00511

Opposition to:
 Appln. Serial No. 4-2015-007711
 Date Filed: 13 July 2015

TM: SINUPLUS

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NOTICE OF DECISION

HECHANOVA BUGAY VILCHEZ & ANDAYA-RACADIO
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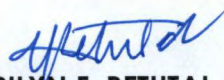
MEDIRICH PHARMA DISTRIBUTION CORP.
c/o GRACE A. PEPITO
Respondent- Applicant
 Room 208 J. Borromeo Building
 F. Ramos corner Arlington Pond Sts.,
 Cebu City, Cebu

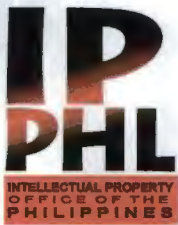
GREETINGS:

Please be informed that Decision No. 2016 - 507 dated 23 December 2016 (copy enclosed) was promulgated in the above entitled case.

Pursuant to Section 2, Rule 9 of the IPOPHEL Memorandum Circular No. 16-007 series of 2016, any party may appeal the decision to the Director of the Bureau of Legal Affairs within ten (10) days after receipt of the decision together with the payment of applicable fees.

Taguig City, 05 January 2017.


MARILYN F. RETUAL
 IPRS IV
 Bureau of Legal Affairs



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MEDIRICH PHARMA
DISTRIBUTION CORPORATION,
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} **IPC NO. 14-2015-00511**
} Opposition to:
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} **Appln. Ser. No. 4-2015-007711**
} **Date Filed: 13 July 2015**
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} **Trademark: "SINUPLUS"**
}
}
} **Decision No. 2016- 507**

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DECISION

THE SUNRIDER CORPORATION (dba SUNRIDER INTERNATIONAL), (Opposer)¹ filed an opposition to Trademark Application Serial No. 4-2015-007711. The application, filed by MEDIRICH PHARMA DISTRIBUTION CORPORATION (Respondent-Applicant)², covers the mark "SINUPLUS", for use on "Pharmaceutical product (DECONGESTANT/ANTI-HISTAMINE)" under Class 5 of the International Classification of Goods³.

The Opposer anchors its opposition on the following grounds:

"5. On 13 July 2015, Respondent-Applicant filed an application for registration of the mark 'SINUPLUS' for the goods 'Pharmaceutical product (DECONGESTANT/ANTI-HISTAMINE)' in Class 5. The registration of the mark SINUPLUS in the name of Respondent-Applicant will patently violate and contravene the provisions of Section 123.1 (d), (e), and (f) of the IP Code, as amended, considering that said mark is confusingly similar to Opposer's internationally well-known trademark 'NUPLUS' as to be likely to cause, confusion, mistake, or deceive the purchasers thereof as to the origin of the goods.

"6. The registration of the mark 'SINUPLUS' in the name of the Respondent-Applicant will cause grave and irreparable injury and damage

¹ A corporation duly organized and existing under laws of Utah, United States of America with address at 1625 Abalone Avenue, Torrance, California 90501.

² A domestic corporation with address at Rm 208 J. Borromeo Bldg., F. Ramos Cor. Arlington Pond St. Cebu City

³ The Nice Classification of Goods and Services is for registering trademarks and service marks based on 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.

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to the Opposer for which reason it opposes said application based on the grounds set forth hereunder:

- a. Opposer is the prior adopter, user, and true owner of the mark 'NUPLUS' in the Philippines and elsewhere around the world;
- b. Registration of the mark SINUPLUS in the name of Respondent-Applicant patently violates and contravenes the provisions of Section 123.1 (d), (e), and (f) of the IP Code, as amended, because said mark is confusingly similar to the well-known mark NUPLUS, owned and used by herein Opposer;
- c. The SINUPLUS mark being applied for registration by Respondent-Applicant is confusingly similar to Opposer's NUPLUS mark applying the *Idem sonans* rule.
- d. The goods covered by Opposer's well-known NUPLUS trademark and Respondent-Applicant's SINUPLUS mark fall under Class 05 of the Nice Classification. As such related goods, the registration of the latter would give rise to confusion of business.
- e. Opposer's NUPLUS mark is internationally well-known entitled to protection under the provisions of the IP Code and Article 6bis of the Paris Convention; and
- f. The registration and use of the trademark SINUPLUS by Respondent-Applicant, which is confusingly similar to Opposer's NUPLUS will diminish the distinctiveness and dilute the goodwill of Opposer's NUPLUS mark.
- g. Respondent-Applicant's 'SINUPLUS' mark was obviously derived from the term 'SINUS' and thus, is considered descriptive of the goods 'DECONGESTANT/ANTI-HISTAMINE' it covers."

To support its opposition, the Opposer submitted as evidence the following:

1. Special Power of Attorney;
2. Affidavit-Direct testimony of Mrs. Oi-Lin Chen;
3. Affidavit-Direct testimony of Atty. Joy Marie Gabor-Tolentino; and
4. Print-out of pages from IPO Website relative to trademark application ⁴

This Bureau served upon the Respondent-Registrant a "Notice to Answer" on 3 February 2016. The Respondent-Registrant, however did not file an Answer. The Bureau issued an Order of default on 8 August 2016.

⁴ Exhibits "A" to "D" inclusive of submarkings

Should the Respondent-Applicant be allowed to register the trademark SINUPLUS?

Records show that at the time Respondent-Applicant applied for registration of the mark "SINUPLUS" the Opposer already registered the mark "NUPLUS" under Registration Nos. 4-1997-119342 and 4-1997-119343. The goods covered by the Opposer's trademark registration are under Class 05, namely "nutritional supplements in powder and concentrate form" and "concentrates used in preparation of drinks" under Class 32.

But do the competing marks, depicted below resemble each other such that confusion, even deception, is likely to occur?

Opposer's mark

Respondent-Applicant's mark

NUPLUS

SINUPLUS

Scrutinizing the composition of the trademarks involved in this case, it is observed that all literal elements of Opposer's mark, N-U-P-L-U-S are contained in Respondent-Applicant's mark, differing only in the presence of the letters SI as its prefix. The addition of the prefix "SI" is negligible because as seen from their presentation in block style, the marks are visually alike, and when pronounced, the sound is similar.

Under Sec. 123 (d) of Republic Act No. 8293 otherwise known as Intellectual Property Code (or "IP Code"), the law provides that:

Sec. 123. Registrability- 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
 - (iii) if it nearly resembles such a mark as to be likely to deceive or cause confusion

Respondent-Applicant's mark SINUPLUS nearly resembles the mark NUPUS by mere observation of the commercial impressions of both marks. Visually and aurally the marks are confusingly similar. Although it may be argued that the goods the parties, under Class 05, are of a different nature, Opposer's goods are nutritional supplements in powder and concentrate form while Respondent-Applicant's goods are decongestant/antihistamine, it is still a likely possibility that consumers might think that the goods originate from the same source given the close resemblance between the marks.

Confusion of goods is evident where the litigants are actually in competition; but confusion of business may arise between non-competing interests as well.⁵

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.

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

- (a) the business (and its location) to which the goods belong
- (b) the class of product to which the goods belong
- (c) the product's quality, quantity, or size, including the nature of the package, wrapper or container
- (d) the nature and cost of the articles
- (e) the descriptive properties, physical attributes or essential characteristics with reference to their form, composition, texture or quality
- (f) the purpose of the goods
- (g) whether the article is bought for immediate consumption, that is, day-to-day household items
- (h) the fields of manufacture
- (i) the conditions under which the article is usually purchased and
- (j) the channels of trade through which the goods flow, how they are distributed, marketed, displayed and sold.

Succinctly, because the Respondent-Applicant uses its mark on goods that are closely related to the Opposer's it is likely that the consumers will have the impression that these goods originate from a single source or origin. The confusion or mistake would subsist not only 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.⁶

WHEREFORE, premises considered, the instant Opposition to Trademark Application No. 4-2015-007711 is hereby **SUSTAINED**. Let the filer wrapper of the

⁵ *Mighty Corporation v. E.J. Gallo and Andresons Group, Inc.*, G.R. No. 154342, July 4, 2014

⁶ *Converse Rubber Corp. v. Universal Rubber Products, Inc., et. al.*, G. R. No. L-27906, 08 January 1987.

subject trademark be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 23 DEC 2016



Atty. ADORACION U. ZARE, LL.M.
Adjudication Officer
Bureau of Legal Affairs