

BIERSDORF AG,
Opposer,

-versus-

UNILEVER N.V.,
Respondent- Applicant.

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IPC No. 14-2013-00222
Opposition to:
Appln. Serial No. 4-2012-013398
Date Filed: 05 November 2012
TM: STRESS CONTROL

NOTICE OF DECISION

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Taguig City 1634

GREETINGS:

Please be informed that Decision No. 2017 - 146 dated April 27, 2017 (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, May 02, 2017.


MARILYN F. RETUAL
IPRS IV
Bureau of Legal Affairs

BIERSDORF AG,	}	IPC NO. 14-2013-00222
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-versus-	}	Appln. Serial No. 4-2012-013398
	}	Date Filed: 05 November 2012
UNILEVER N.V.,	}	TM: "STRESS CONTROL"
Respondent.	}	
x-----x		Decision No. 2017- <u>146</u>

DECISION

BIERSDORF AG¹ ("Opposer") filed a Trademark Opposition to Application Serial No. 4-2012-013398. The application filed by UNILEVER N.V.² ("Respondent-Applicant"), covers the mark "STRESS CONTROL" for use on "*soaps; perfumery, essential oils, cosmetics; colognes, eau de toilette, perfume body sprays; oils, creams and lotions for the skin; shaving foam, shaving gel, pre-shaving and after-shaving lotions; talcum powder; preparations for the bath and shower; hair lotions; shampoo and conditioner; hair styling products; dentifrices; non-medicated mouthwashes; deodorants; anti-perspirants for personal use; non-medicated toilet preparations*" under Class 03 of the International Classification of Goods.³

Opposer alleges that Respondent-Applicant's STRESS CONTROL is confusingly similar to its registered mark STRESS PROTECT under TM Registration No. 4-2012-003120 and hence, cannot be granted registration under Section 123.1 (d) of the Intellectual Property Code (IP Code). Further, Opposer posits that if Respondent-Applicant's mark is allowed registration, it will diminish the distinctiveness and dilute the goodwill, fame and notoriety of Opposer's STRESS PROTECT, and allow Respondent-Applicant to unfairly profit commercially from said goodwill, fame and notoriety to the damage and prejudice of the Opposer which is contrary to Section 168.1 of the IP Code.

On 16 August 2013, this Bureau issued a Notice to Answer and personally served it to Respondent-Applicant's counsel on 28 August 2013. After several motions for extension of time to file answer, Respondent-Applicant filed its Answer on 09 December 2013. In its Answer, Respondent-Applicant alleges that it is one of the world's biggest company and sells a variety of products in more than 190 countries and has a portfolio of more than 400 brands. According to Respondent-Applicant, the mark STRESS CONTROL is one of the latest innovation to join the REXONA product line and to protect its goodwill it has applied for registration of the mark. Respondent also claims that it has registered its STRESS CONTROL mark in other parts of the globe.

¹A foreign corporation organized and existing under the laws of Germany with address at Unnastrasse 48, 20253 Hamburg, , Germany (DE)

²A foreign corporation organized and existing under the laws of The Netherlands with address at Weena 455, Rotterdam 3013 AL, Netherlands.

³The Nice Classification is a classification of goods and services for the purpose of registering trademarks and service marks based on a multilateral treaty administered by the World Intellectual Property Organization. This treaty is called the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of Registration of Marks concluded in 1957.



Pursuant to Office Order No. 154, s. 2010, the case was referred to the Alternative Dispute Resolution ("ADR") for mediation on 08 January 2014. However, the parties failed to settle their dispute. On 24 March 2014, the preliminary conference was terminated and the parties were directed to submit position papers. On 14 April 2014, the parties submitted their respective Position Papers.

On 15 February 2017, Opposer filed a Manifestation informing this Bureau that Respondent-Applicant filed the Declaration of Actual Use and prayed that the dismissal of the opposition.

Section 145 of R.A. No. 8293, otherwise known as the Intellectual Property Code of the Philippines (IP Code), provides:

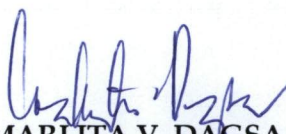
Section 145. *Duration.* — a certificate of registration shall remain in force for ten (10) years: *Provided, That the registrant shall file a declaration of actual use and evidence to that effect, or shall show valid reasons based on the existence of obstacles to such use, as prescribed by the regulations, within one (1) year from the fifth anniversary of the date of registration of the mark. Otherwise, the mark shall be removed from the Register of the Office.* [Underlining supplied]

Upon inquiry from the Bureau of Trademarks, it was confirmed that as of date, no declaration of actual use was indeed filed by Respondent-Applicant. Accordingly, with the non-filing of the Respondent with DAU, Respondent is deemed to have abandoned its trademark STRESS CONTROL. As such, there is no more reason nor basis to proceed with the case as there is no more trademark to oppose.

WHEREFORE, premises considered, the instant Opposition is hereby **DISMISSED**. Let the filewrapper of Trademark Registration No. 4-2012-013398 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 27 APR 2017.


MARLITA V. DAGOSA
Adjudication Officer
Bureau of Legal Affairs