

**KEMISTAR CORPORATION,**  
*Opposer,*

**-versus-**

**ALTACROP PROTECTION CORPORATION,**  
*Respondent-Applicant.*

X-----X

}	<b>IPC No. 14-2013-00449</b>
}	Opposition to:
}	
}	Appln. Serial No. 4-2011-00011764
}	Date Filed: 30 September 2011
}	
}	<b>TM: SHELTER TRUSTED</b>
}	<b>SHELL-BLEND 2, 4-D</b>

**NOTICE OF DECISION**

**ATTY. CHITO DIMACULANGAN**  
*Counsel for Opposer*  
Suite 2016 Cityland 10 Tower One  
6815 N. Ayala Avenue, Makati City


**FELICILDA & ASSOCIATES LAW OFFICES**  
*Counsel for Respondent- Applicant*  
Unit 1902-A Philippine Stock Exchange (PSE)  
Center-East Tower, Exchange Road  
Ortigas Center, Pasig City

**GREETINGS:**

Please be informed that Decision No. 2017 - 130 dated 18 April 2017 (copy enclosed) was promulgated in the above entitled case.

Pursuant to Section 2, Rule 9 of the IPOPHL 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, 19 April 2017.

  
**MARILYN F. RETUAL**  
IPRS IV  
Bureau of Legal Affairs

**KEMISTAR CORPORATION,**  
Opposer,

-versus-

**ALTACROP PROTECTION CORPORATION,**  
Respondent-Applicant.

} **IPC NO. 14-2013-00449**

} Opposition to:

} Appln. No. 4-2011-00011764

} Date filed: 30 September 2011

}

} Trademark: "SHELTER

} **TRUSTED SHELL- BLEND**

} **2,4-D"**

x-----x} Decision No. 2017- *130*

### DECISION

KEMISTAR CORPORATION, (Opposer)<sup>1</sup> filed an opposition to Trademark Application No. 4-2011-00011764. The application, in the name of ALTACROP PROTECTION CORPORATION (Respondent-Applicant)<sup>2</sup>, covers the mark "SHELTER, TRUSTED SHELL-BLEND 2, 4-D", for use on "fertilizers" under Class 1 and "insecticides, fungicides, and molluscicides, herbicide-pre-emergent herbicide of excellent control of commonly occurring broadleaf weeds, grasses and edges in transplanted and direct seeded rice" under Class 5 of the International Classification of Goods<sup>3</sup>.

The Opposer cites the likelihood of confusion, fraud in procuring the registration and bad faith as grounds for the opposition. The Opposer also states that the Respondent-Applicant's mark is purely informational and not a source indicator. It alleges, among other things, that:

"4. Opposer is and has been engaged in the manufacture, production and sale in commerce of agrochemicals since 1994;

"5. Agrochemical (or agrichemical), a contraction of agricultural chemical, is a generic term for the various chemical products used in agriculture. In most cases, agrochemical refers to the broad range of insecticides, herbicides and fungicides, but it may also include synthetic fertilizers, hormones and other chemical growth agents, and concentrated stores of raw animal manure;

<sup>1</sup> A domestic corporation duly organized and existing under Philippine laws with address at Unit C, 2<sup>nd</sup> Floor Marinel Building, No. 29 Flamingo Street, New Marikina Subdivision, Marikina City 1801

<sup>2</sup> A domestic corporation duly organized and existing under Philippine laws with business address at Unit 403 Marcelita Building, 2560 National Highway, Brgy. Real, Calamba, Laguna

<sup>3</sup> 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.

"6. On 17 December 2004, opposer lodged an application with the Bureau of Trademarks to register the wordmark SHELL 2, 4-D ESTER for goods falling under International Class 5 namely, herbicide for the control of sedges and broadleaf weeds in rice, corn and sugarcane. The said application was docketed as Application No. 4-2004-011937;

"7. Opposer started using in earnest the trademark SHELL 2, 4-D ESTER on 3 January 2005. The nationwide, extensive and widespread sale of products bearing the SHELL 2, 4-D ESTER trademark attracted attention and gained notice not only from consumers but also from companies engaged in the marketing and sale of pesticide products who saw a big potential of success and profit on the product;

"8. On 28 June 2006, opposer applied for the registration of the mark SHELL 2, 4-D ESTER & Logo, under Application No. 4-2006-006921, which is a composite trademark consisting of the words, numbers and letter SHELL 2,4-D ESTER in block capitals and the logo of the geometric patterns, design of growing leaves and pictures of plants and bushes. xxx

"9. On 15 February 2007, opposer was issued Certificate of Registration No. 4-2004-011937 for the wordmark SHELL 2, 4-D ESTER. Similarly, on 21 May 2007, the composite trademark SHELL 2, 4-D ESTER & LOGO was registered in the name of the opposer under Certificate of Registration No. 4-2006-006921;

"10. Opposer is also the owner of record of Certificate of Registration No. 4-2007-008098 for the mark SHELTER 2,4-D in respect of herbicides for the control of sedges and broadleaf weeds in rice, corn and sugarcane in International Class 5. Opposer's SHELTER 2,4-D mark has a date of registration of 28 April 2008, a filing date of 27 July 2007 and a date of first use of 8 March 2001, all of which antedates the dates of registration, filing of the application and constructive first use of respondent-applicant's trademark;

"11. Opposer acquired the rights, goodwill, title and interests to the trademark SHELTER 2, 4-D from its original owner, Carmelito V. Roy, pursuant to an Assignment of Mark dated 24 October 2011;

"12. Opposer and its predecessors-in-interest have used the SHELL, SHELTER and logo trademarks in commerce and have acquired a considerable and valuable goodwill and wide-scale recognition for its trademarks. The public has come to associate the opposer's trademarks with oppose and opposer's herbicides and related goods. Opposer's trademarks have acquired distinctiveness;

"13. Opposer's registrations are prima facie proof of ownership and use of the mark from the original date of filing of the application and of the exclusive right to use the registered mark in commerce;

"14. In so far as respondent-applicant uses the words SHELL and SHELTER, its supposed trademark is identical to the registered SHELTER TRUSTED SHELL -BLEND 2, 4-D trademarks of the opposer and is likely, when applied to the intended goods to cause confusion or to cause mistake or to deceive;

"15. Respondent-applicant has appropriated the opposer's trademark SHELL, SHELTER and the term 2, 4-D in its entirety, and has varied from opposer's mark by mere addition of descriptive and laudatory words TRUSTED and BLENDED;

"16. Consumers hearing the respondent-applicant's mark will likely confuse it with the opposer's SHELL and SHELTER trademarks;

"17. Consumers encountering the respondent-applicant's mark and goods are likely to believe that such goods originate from or are licensed, or are authorized or sponsored by the oppose, in view of the wide-scale fame of the opposer's marks and the indistinguishable differences between opposer's marks and respondent-applicant's mark and the same goods being associated with the respondent-applicant's and opposer's mark;

"18. Respondent-applicant's use of the words SHELL and SHELTER in the opposed trademark makes highly similar commercial impression to opposer's SHELL and SHELTER trademarks due to its virtually identical sound, meaning and appearance. The overall commercial impression of respondent-applicant's trademark, when applied to the same or similar goods, would cause confusion, mistake and deception. xxx

"21. Opposer will be injured and damaged by the granting to applicant of a registration for the supposed trademark SHELTER, TRUSTED SHELL-BLEND 2, 4-D because such mark when applied to the identified goods:

- a) Is likely to cause confusion, to cause mistake or deceive;
- b) Falsely suggests a connection with oppose;
- c) Will damage opposer's valuable goodwill in its SHELL and SHELTER marks. xxx

"23. The opposed mark does not function as a trademark;

"24. In particular, the phrase TRUSTED SHELL-BLEND 2,4-D simply imparts information about a significant characteristic of the goods, no more no less.

"25. To the unbiased observer, the phrase TRUSTED SHELL-BLEND 2,4-D is more likely to be perceived as a source indicator for the goods the respondent-applicant intends to use it on.

"26. Further, respondent-applicant is not entitled to appropriate the slogan to itself and thereby attempt to prevent competitors from using it to promote their own herbicides and/or pesticides.

"27. All told, the opposed mark is plainly unregistrable.xxx

"31. Respondent-applicant has not acquired a lawful right of ownership in the SHELTER trademark;

"32. If respondent-applicant has advised the Bureau of Trademarks of its status, registration would have been refused;

"33. Clearly, respondent-applicant procured approval of its application for registration by fraud on the Bureau of Trademarks;

"34. It is also apt to underscore that a vital part and parcel of the respondent-applicant's supposed trademark is the term 2,4-D, which is a generic term and as such does not add distinctiveness to the opposed mark.

"35. The term '2, 4-D' is actually 2-4-Dichlorophenoxyacetic acid which is common systematic pesticide/herbicide used in control of broadleaf weeds. It is the most widely used herbicide in the world;

"36. Opposer will be injured and damaged by the granting of to respondent-applicant of a registration for the mark SHELTER, TRUSTED SHELL-BLEND 2, 4-D because such mark, when applied to the identified goods:

a)will adversely and cause serious damage to the financial viability and capability of opposer to continue its crop production business, and,

b)such registration would grant to respondent-applicant *prima facie* evidence of the exclusive right to use the supposed trademark SHELTER, TRUSTED SHELL-BLEND 2, 4-D in conjunction with respondent-applicant's goods and such use would cause irreparable harm to the opposer; and, xxx

"39. In March 2005, respondent-applicant approached opposer with a proposal to use the trademark SHELL 2, 4-D ESTER for a fee. The initial proposal of respondent-applicant was followed by intense negotiations that culminated into a Memorandum of Agreement being entered into by the herein parties on 23 May 2005;

"38. Under the said Memorandum of Agreement, opposer gave respondent-applicant the right to use the trademark SHELL 2, 4-D ESTER for three consecutive years from the date of the signing of the Memorandum of Agreement. For its part, the respondent-applicant will pay the opposer the sum of US\$8,000.00 for the first year, US\$9,000.00 for the second year and US\$10,000.00 for the final year of the contract for the right to use the SHELL 2, 4-D ESTER trademark; xxx

"45. Soon after the termination of the Memorandum of Agreement took effect on 1 July 2010, Altacrop commenced filing of applications to register the following trademarks that so resembles and are colorably imitative of opposer's SHELL and its logo marks, viz:

1. McShell- App. No. 4-2010-007337- Filing Date 7 July 2010
2. Shelter 2,4-D Ester- App. No. 4-2010-007510-Filing Date 9 July 2010
3. Switch Label Mark-App. No. 4-2010-008084-Filing Date 23 July 2010
4. Torch Label Mark-App. No. 4-2010-008083-Filing Date 23 July 2010
5. Swipe Label Mark-App. No. 4-2010-008082-Filing Date 23 July 2010
6. Sparrow Label Mark- App. No. 4-2010-008081-Filing Date 23 July 2010
7. Seleck Label Mark-App. 4-2010-008080-Filing Date 23 July 2010
8. Evict Label Mark-App. No. 4-2010-008078- Filing Date 23 July 2010
9. CropGuard Label Mark-App. No. 4-2010-008077-Filing Date 23 July 2010

"45. The sinister efforts of the respondent-applicant and its sister company ShellHome Chemicals Incorporated to destabilize and undermine the business of opposer did not cease with the barrage trademark filings it made in July of 2010 because on 20 March 2012 to be exact, respondent-applicant filed an application to register the trademark MaxShell & Device for fertilizers in International Class 1 and herbicides in International Class 5. Opposer has since seasonably opposed the registration of the trademark MaxShell & Device under Inter Partes Case No. 14-2012-00373.

"46. Similarly, opposer thwarted the attempt of ShellHome Chemicals, Incorporated, the sister company of the respondent-applicant to register the trademark ShellHome & Device for fertilizers in International Class 1 and herbicides in International Class 5 by seasonably lodging a notice of opposition to the same under Inter Partes Case No. 14-2012-00037 and the trademark EON, ORIGINAL SHELL-RECIPE 2, 4-D, the registration of which was similarly opposed by opposer under Inter Partes Case No. 14-2013-00150.

"49. Without doubt, respondent-applicant's application to register S SHELTER, TRUSTED SHELL-BLEND 2, 4-D as a trademark is nothing but its latest caper in a series of Machiavellian and disingenuous ploys and sinister schemes contrived, concocted, cooked up by respondent-applicant

and its sister company ShellHome Chemicals Incorporated to serve no other purpose but to limit, diminish, dilute, invalidate or destroy opposer's rights to its registered trademarks SHELL and SHELTER.xxx"

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

1. Affidavit –Direct Testimony of Mr. Jose DJ. Cruz dated 6 January 2014;
2. Certified true copy of Amended Articles of Incorporation and By-laws of Respondent-Assignee Kemistar Corporation issued by the Securities and Exchange Commission dated 14 February 2012;
3. Certified true copy of Articles of Incorporation of Altacrop Protection Corporation issued by the Securities and Exchange Commission dated 19 March 2010;
4. Memorandum of Agreement dated 23 May 2005 between Altacrop Protection Corporation and Kemistar Corporation;
5. Label of SHELL 2, 4-D ESTER and Logo;
6. Copy of Certificate of Registration No. 4-2004-011937 for the mark "SHELL 2, 4-D ESTER" issued on 15 February 2007 to Kemistar Corporation;
7. Certified true copy of Certificate of Registration No. 4-2006-006921 for the mark "SHELL 2, 4-D ESTER AND LOGO issued on 21 May 2007;
8. Addendum to Memorandum of Agreement dated December 2007 between Altacrop Protection Corporation and Kemistar Corporation;
9. Letter to Altacrop Protection Corporation dated 9 June 2010;
10. Letter to Altacrop Protection Corporation dated 2 August 2010;
11. Letter addressed to the counsel of Kemistar Corporation dated 20 September 2010;
12. Copy of Certificate of Registration No. 4-2007-008098 for the mark "SHELTER 2, 4-D" issued on 28 April 2008 in the name of Kemistar Corporation;
13. Copy of Declaration of Actual Use dated 27 January 2011; and
14. Respondent-Applicant's Label of Shelter 2, 4-D<sup>4</sup>

The Respondent-Applicant filed its Answer on 16 April 2014, alleging among other things, the following affirmative allegations and defenses:

"7. The subject application -SHELTER, TRUSTED SHELL-BLEND 2, 4-D- is a reiteration, simulation and in a sense a derivation i.e. 'derivative mark' from Respondent's existing trademark -SHELTER 2, 4-D AMINE trademark shown below:

SHELTER 2, 4-D AMINE under  
Certificate of Registration No. 4-2007-010899 shown below:

---

<sup>4</sup> Exhibits "A" to "M" inclusive of submarkings

**SHELTER 2,4-D**  
AMINE

"9. In line with the current branding and marketing practices of any commercial venture expanding its business, a corporation such as Respondent herein, would devise, adopt and appropriate a reiteration, simulation or derivation of a previously registered mark (SHELTER 2, 4-D AMINE) to create a derivative mark or a submark, herein SHELTER, TRUSTED SHELL-BLEND 2, 4-D/SHELTER MARK and apply the same on another range of products and/or sub-products, in this case, a new set of fertilizers, herbicides, insecticides, fungicides and molluscides.

"10. The trademark SHELTER 2, 4-D AMINE is registered for Class 5 (herbicides) and has actual commercial use since 2007. Good patronage of SHELTER 2, 4-D AMINE herbicide products prompted the Respondent Altacrop protection Corp. to launch another range of fertilizer, herbicides, insecticides, fungicides and molluscicides products under the SHELTER, TRUSTED SHELL-BLEND 2, 4-D trademark.

"11. The sound and pronunciation of the SHELTER , TRUSTED SHELL-BLEND 2, 4-D is simply derived, simulated, replicated and/or taken from the SHELTER 2, 4-D AMINE, a previously registered trademark under the name of the Respondent itself.

"12. SHELTER 2, 4-D AMINE is also a current and live trademark with the Bureau of Trademarks which this Honorable Office can take judicial notice of.

"13. The SHELTER , TRUSTED SHELL-BLEND 2, 4-D trademark and the products covered by the same- fertilizers, herbicides, insecticides, fungicides, and molluscicides- are therefore, but a natural, normal and customary consequence of an expanding product line and consequently, increasing trademark portfolio of any thriving business such as the Respondent.xxx

"15. In fact, the Registrability Report of herein trademark application attached as marked herein as 'Exhibit '4') which cited another 'Shelter' trademark of Opposer Kemistar Corporation was easily overcome upon citation of a previous live, current and existing trademark of Respondent Altacrop, to wit: SHELTER 2, 4-D AMINE under Certificate of Registration No. 4-2007-010899. xxx

"30. The SHELTER word mark (from SHELTER , TRUSTED SHELL-BLEND 2, 4-D) is clearly different in sound, pronunciation,

AH



spelling even in definition or connotation as against Opposer's Shell mark. By definition or connotation, Shell and Shelter have different meanings or reference. 'Shell' is commonly defined by dictionaries as 'a hard outer covering' i.e. a nutshell, the shell of a tortoise seashell'. On the other hand, 'SHELTER' when applied to fertilizers and herbicides, fungicides and molluscicides is a word/mark meant to represent a 'place that gives protection from the weather or safety from danger'.

"31. As the brand or mark for Respondent's fertilizers and herbicides products, the latter -SHELTER- provides protection and safety against unwanted pests, weeds, crop diseases in a farmer's land or lot, hence, the distinctive mark 'SHELTER'.xxx

"39. As with all its existing trademark registrations and applications, the design, text and conceptualization of the mark SHELTER , TRUSTED SHELL-BLEND 2, 4-D is Respondent's own to the exclusion of any other party.

"40. For all its fertilizers, herbicides, insecticides, fungicides and molluscicides products, the production is undertaken by Respondent's Toll Manufacturer- Aghem Manufacturing Corporation (Agchem) located at 102 Progress Avenue corner Merit Drive, Carlmeray Industrial Park 1, Canlubang, Calamba City, Laguna.

"41. It must be emphasized that Agchem as Respondent's Toll Manufacturer, produces Respondent's fertilizers, herbicides, insecticides, fungicides and molluscicides products, for and on behalf of Respondent Altacrop under the latter's control and supervision.

"42. The modern business term for this is outsourcing which (for the information of the Opposer) is an arrangement in which one company provides services for another company that could also be or usually have been provided in-house. Attached and marked as Exhibit '7' is a Certification (Original) from AgChem Manufacturing Corporation re the Tolling/Outsourcing agreement of Respondent Altacrop.

"43. All fertilizers, herbicides, insecticides, fungicides and molluscicides products under the name of Respondent are the latter's own without any ownership claim on the part of its toll manufacturer, thus it is malicious, irresponsible and depraved on the part of the Opposer to suggest without any basis that Respondent is procuring trademark registrations with the Bureau of Trademark by means of fraud and bad faith.

"44. Respondent has laboriously applied/acquired all its trademark registrations with the Bureau of Trademarks legally and above board under the rules and regulations of the Bureau and will continue to do so re all its other trademark applications.

"45. A generic or descriptive word may be part of a composite mark or trade name. That does not make the generic or descriptive word necessarily non-generic or non-descriptive. For this reason, the use of a generic word which forms part of a trademark or trade name is always subject to the limitation that the registrant does not acquire the exclusive right to the descriptive or generic term or word.xxx"

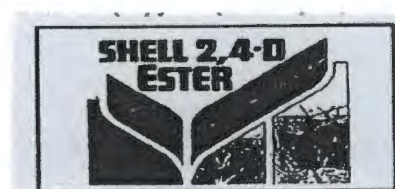
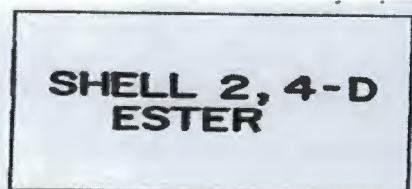
To support its Answer, the Respondent-Applicant submitted as evidence the following:

1. Affidavit of Wendell T. Garcia dated 31 March 2014;
2. Certified true copy of Trademark Registration No. 4-2007-010899 for the mark "SHELTER 2, 4-D AMINE" issued to Altacrop Protection Corporation on 23 March 2009;
3. Sample label of "SHELTER 2, 4-D AMINE";
4. Registrability Report issued by the Bureau of Trademarks dated 21 November 2011;
5. Sample label of "SHELTER 2, 4-D AMINE";
6. Notice of Allowance dated 2 August 2013;
7. Copy of Decision No. 2013-109 dated 20 June 2013 in IPC No. 14-2010-00244;
8. Certification from Aghem Manufacturing Corporation dated 2 April 2014; and
9. Letter of Kemistar Corporation to Fertilizer & Pesticide Authority dated 23 February 2005<sup>5</sup>

The Preliminary Conference was held and terminated on 9 July 2014 wherein the parties were directed to file their position papers. The Opposer and Respondent-Applicant filed their position papers on 21 July 2014 and 22 July 2014, respectively.

The subject marks are depicted below:

Opposer's marks



Respondent-Applicant's marks

<sup>5</sup> Exhibits "1" to "8"

SHELTER , Trusted Shell-Blend 2, 4-D

**SHELTER 2,4-D**  
AMINE

Records show that the Opposer was issued Certificate of Registration No. 4-2004-011937<sup>6</sup> for the mark "SHELL 2, 4-D ESTER" on 15 February 2007 and Certificate of Registration No. 4-2006-006921<sup>7</sup> for the mark "SHELL 2, 4-D ESTER AND LOGO" on 21 May 2007. The Respondent –Applicant secured Registration No. 4-2007-010899 for its SHELTER 2, 4-D AMINE trademark 23 March 2009<sup>8</sup>.

The Bureau takes judicial notice, that in IPC No. 14-2011-00555, which involve the same parties, this Bureau granted ALTACROP PROTECTION CORPORATION's (herein Respondent-Applicant) Petition to Cancel KEMISTAR CORPORATION's (herein Opposer) Reg. No. 4-2007-008098. Decision No. 2015-119 promulgated on 26 June 2015, ALTACROP PROTECTION CORPORATION was declared owner of the SHELTER 2, 4-D mark, to wit:

"In the instant case, the Petitioner proved that it is the originator and owner of the mark SHELTER 2, 4-D. The Petitioner submitted a correspondence received from the Fertilizer and Pesticide Authority under the Department of Agriculture dated 7 December 2006 regarding the Petitioner's status of application for pesticide registration<sup>9</sup>. In said letter, the Fertilizer and Pesticide Authority, approved the brand name SHELTER 2,4-D. On 16 September 2011, it issued a certification<sup>10</sup> that Mr. Carmelito Roy, the Respondent-registrant's assignor/predecessor-in-interest, had no license to distribute or sell "SHELTER 2, 4-D"; "AMINE". In this regard, the Petitioner cites Section 9 of Presidential Decree No. 1144<sup>11</sup>, which states, to wit:

Section 9. Registration and Licensing. No pesticides, fertilizer or other agricultural chemical shall be exported, imported or manufactured, formulated, stored, distributed, sold or offered for sale, transported, delivered for transportation or used unless it has been duly registered with the FPA or covered by a numbered provisional permit issued by FPA for use in accordance with the conditions stipulated in the permit.xxx

No person shall engage in the business of exporting, importing, manufacturing, formulating, distributing, supplying, repacking, storing, commercially applying, selling, marketing of any pesticides, fertilizer and other agricultural chemicals except under a license issued by the FPA.

<sup>6</sup> Exhibit "F"

<sup>7</sup> Exhibit "G"

<sup>8</sup> Exhibit "2"

<sup>9</sup> Exhibit "I"

<sup>10</sup> Exhibit "J"

<sup>11</sup> "Creating the Fertilizer and Pesticide Authority and Abolishing the Fertilizer Industry Authority", 30 May 1977

In addition, the Petitioner submitted sales invoices<sup>12</sup> clearly indicating the mark "SHELTER 2,4-D AMINE" proving that it commercially sold the products bearing the mark in the years 2007 and 2008, the earliest sales invoice dated 17 January 2007<sup>13</sup>, earlier than the Respondent-Registrant's filing date. As such, having established earlier use and ownership of the mark SHELTER 2, 4-D AMINE, the Petitioner would be damaged by Respondent-Registrant's continued registration of the mark, SHELTER 2, 4-D. xxx"


Anent the Opposer's argument that SHELTER 2, 4-D is similar to SHELL 2, 4-D ESTER, this Bureau finds that the differences between the marks are sufficient to distinguish one from the other, thus avoiding the likelihood of confusion. The alpha numeric code "2, 4-D" is irrelevant as this is descriptive or indicative of the active ingredients of the products. Succinctly, SHELL is monosyllabic, while SHELTER is composed of two syllables. The syllable "TER" has rendered the word SHELTER, visual and aural properties that are so distinct from the word SHELL. It is improbable for a consumer to believe that SHELTER 2, 4-D is the same product under the mark SHELL 2, 4-D. The concept or idea of SHELTER is different from SHELL. SHELL is defined as a "hard, rigid usually largely calcareous covering or support of an animal"<sup>14</sup>, while SHELTER means "something that gives protection, such as a building or a tent or the protection provided."<sup>15</sup>

Lastly, generic or descriptive terms are not registrable as trademarks. However, when common words are used in an arbitrary sense, these words can be valid trademarks. At any rate, the word "TRUSTED" has been disclaimed by the Respondent-Applicant, which means it does seek exclusive proprietary rights over the said word. As regards to the word "SHELTER", the Respondent-Applicant has sufficiently proven that it is the originator and user of the mark.

**WHEREFORE**, premises considered, the instant Notice of Opposition of Trademark Application No. 4-2011-00011764 is hereby **DISMISSED**. Let the filewrapper of the 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, 18 APR 2017

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

<sup>12</sup>Exhibit "L" with submarkings

<sup>13</sup>Exhibit "L", "L"-1

<sup>14</sup> [www.merriam-webster.com/dictionary/shell](http://www.merriam-webster.com/dictionary/shell)

<sup>15</sup> [dictionary.cambridge.org/us/dictionary/english/shelter](http://dictionary.cambridge.org/us/dictionary/english/shelter)