

**PEDIATRICA, INC.,**  
*Opposer,*

**-versus-**

**WERT PHILIPPINES, INC.,**  
*Respondent-Applicant.*

}  
}  
}  
}  
}  
}  
}  
}

**IPC No. 14-2015-00400**  
Opposition to:  
  
Appln. Serial No. 4-2015-00004117  
Date Filed: 17 April 2015  
  
**TM: NUTRI 10 PLUS**

X-----X

**NOTICE OF DECISION**

**OCHAVE & ESCALONA**  
*Counsel for Opposer*  
No. 66 United Street,  
Mandaluyong City

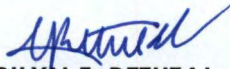
**NORBERTO S. GONZALES & ASSOCIATES**  
*Counsel for Respondent- Applicant*  
2302 Antel Global Corporate Center  
Julia Vargas Avenue, Ortigas Center  
Pasig City

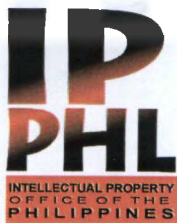
**GREETINGS:**

Please be informed that Decision No. 2017 - 121 dated 17 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, 18 April 2017.

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



**PEDIATRICA, INC.,**  
*Opposer,*

IPC No. 14-2015-00400  
Opposition to:

- versus -

Appln. No. 4-2015-00004117  
Date Filed: 17 April 2015  
Trademark: "NUTRI 10 PLUS"

**WERT PHILIPPINES, INC.,**  
*Respondent-Applicant.*

Decision No. 2017 - 121

X ----- X

### DECISION

PEDIATRICA, INC. ("Opposer")<sup>1</sup>, filed an opposition to Trademark Application Serial No. 4-2015-00004117. The application, filed by WERT PHILIPPINES, INC. ("Respondent-Applicant")<sup>2</sup>, covers the mark "NUTRI 10 PLUS" for use on goods under class 05<sup>3</sup> namely: "*pharmaceutical products - multivitamins.*"

The Opposer alleges the following grounds for opposition:

"7. The mark 'NUTRI 10 PLUS' filed by Respondent-Applicant so resembles the trademark 'NUTRILIN' owned by Opposer and duly registered with the IPO prior to the publication for opposition of the mark 'NUTRI 10 PLUS'.

"8. The mark 'NUTRI 10 PLUS' will likely cause confusion, mistake and deception on the part of the purchasing public, most especially considering that the opposed trademark 'NUTRI 10 PLUS' is applied for the same class and goods as that of Opposer's trademark 'NUTRILIN', i.e. Class 05 as Vitamin preparations.

"9. The registration of the mark 'NUTRI 10 PLUS' in the name of the Respondent-Applicant will violate Sec. 123 of the IP Code.

"10. Under the above-quoted provision, any mark, which is similar to a registered mark, shall be denied registration in respect of similar or related goods or if the mark applied for nearly resembles a registered mark that confusion or deception in the mind of the purchasers will likely result."

<sup>1</sup> A domestic corporation duly organized and existing under the laws of the Philippines, with office address at 3rd Floor, Bonaventure Plaza, Ortigas Avenue, Greenhills, San Juan City, Philippines.  
<sup>2</sup> A domestic corporation with office address at Suite 307 Grace Bldg., Ortigas Ave., Greenhills, San Juan City, Philippines.  
<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 Opposer's evidence consists of the following:

1. Pertinent pages of the IPO E-Gazette;
2. Certified true copy (Ctc) of Certificate of Registration No. 18566 for the trademark NUTRILIN;
3. Ctc of Renewal of Registration No. 4/1971/00018566 for NUTRILIN;
4. Ctc of the Affidavits of Use for NUTRILIN;
5. Sample product label bearing the trademark NUTRILIN;
6. Certification and sales performance by Intercontinental Marketing Services, including the brand NUTRILIN; and,
7. Ctc of Certificate of Product Registration issued by the BFAD for the trademark NUTRILIN;

On 13 October 2015, Respondent-Applicant filed its Answer alleging, among others, the following:

"27. The product of respondent-applicant Wert is a multivitamin that is classified under Class 5 of the Nice Classification under pharmaceuticals.

"28. It was initially manufactured by Sydenham Laboratories, Inc. and first registered with the Food and Drug Authority (FDA) on 15 August 2003 with Registration No. FR-42709. The product was branded 'NUTRI 10' because it contains ten (10) active ingredients namely: Vitamin A, Vitamin D3, Vitamin B1, Vitamin B2, Vitamin B3, Vitamin B6, Vitamin B12, Vitamin C, Lysine, and Taurine.

"29. Wert transferred the manufacture of the multi-vitamin to Novagen Pharmaceuticals Company Inc. and registered with the FDA on 19 June 2008 under Registration No. FR-72390. The new product was branded 'NUTRI 10 PLUS' to reflect its reformulation with the addition of other active ingredients like Vitamin E, Zinc, and CGF/Chlorella Growth Factor.

"30. On 6 August 2008, Wert applied for and the Intellectual Property Office ('IPO') approved the trademark 'NUTRI 10' with Application No. 4-2008-009475. However, Wert failed to file the required Declaration of Actual Use.

"31. Wert submitted a new application for the mark 'NUTRI 10' with Application No. 4-2011-011436 on 22 September 2011, but was opposed by Pediatrica. The trademark application for this mark is still pending before the IPO.

"32. On 17 April 2015, Wert filed an application for its new mark 'NUTIR 10 PLUS' with Application No. 4-2015-004117. Unfortunately, herein opposer Pediatrica again opposed the application.

"33. Respondent Wert submits the following arguments against the opposition of Pediatrica:

a. Wert's mark 'NUTRI 10 PLUS' is NOT identical nor confusingly similar to Pediatrica's mark 'NUTRILIN'.

b. The supposed and alleged dominant feature of Pediatrica's mark 'NUTRILIN', that is, the term 'NUTRI', is a weak mark in itself."

The Respondent-Applicant's evidence consists of the following:

1. Affidavit of the President of Wert Philippines Inc., Mr. Ludwig L. Ong;
2. Copy of Verified Notice of Opposition to Trademark Application No. 4-2011-011436; and,

3. Sample packaging of NUTRI 10 PLUS;

The preliminary conference was held and terminated on 28 April 2016<sup>4</sup>. The Opposer and the Respondent-Applicant submitted their position papers on 06 and 05 May 2016, respectively. Hence, this decision.

Should the Respondent-Applicant be allowed to register the trademark NUTRI 10?

The instant opposition is anchored on Section 123.1 paragraph (d) of R.A. No. 8293, also known as the Intellectual Property Code which provides that a mark cannot be registered if it is identical with a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date, in respect of the same goods or services or closely related goods or services if it nearly resembles such mark as to be likely to deceive or cause confusion.

Records show that at the time Respondent-Applicant filed its trademark application on 17 April 2015 for the subject mark NUTRI 10 PLUS, the Opposer has obtained registration for its trademark "NUTRILIN" as early as 29 March 1973 with Registration No. 18566<sup>5</sup>. The registration covers "essential vitamins plus iron specific for infants needs". However, an examination of the Intellectual Property Office's Trademark Database show that Respondent-Applicant was issued Registration No. 4-2015-012456 for another trademark "NUTRI10PLUS" covering the same goods as the subject application on 01 September 2016<sup>6</sup>.

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

**Nutrilin**

Opposer's Trademark

**NUTRI 10 PLUS**

Respondent-Applicant's Trademark

What appears common in the foregoing marks are the syllables "NU" and "TRI" which obviously forms the word "NUTRI", contracted the word "NUTRITION" or its derivative words. What is left with the Opposer's mark is the suffix "LIN"; and the Respondent-Applicant's "10 PLUS" appended to the word "NUTRI". Thus, the aural and visual examination of the above-illustrated marks convey a distinct composition and appearance.

Moreover, this Bureau cannot sustain the instant opposition on the basis of the similarity of the word "NUTRI" alone. To do so would have the effect of giving the Opposer the exclusive right to use the word "NUTRI". In fact, a perusal of the trademark database of this Office shows registered trademarks

<sup>4</sup> Minutes of Hearing dated 28 April 2016.

<sup>5</sup> Exhibit "B" of Opposer.

<sup>6</sup> IPPhil Philippine Trademark Database, available at <http://www.wipo.int/branddb/ph/en/> (last accessed 17 April 2017).

belonging to different owners which contains the word "NUTRI" in its trademark and covers goods or includes class 5 in its list of goods or services. Among the registered marks are the following: *NUTRI L* (Reg. No. 4-2016-011568 dated 29 December 2016); *LOCK NUTRI* (Reg. No. 1235376 dated 10 June 2016); *NUTRI-Z* (Reg. No. 42011010620 dated 23 August 2012); *NUTRI CARE* (Reg. No. 42005006619 dated 25 April 2007); and, *NUTRI-AID* (Reg. No. 42006001218 dated 12 February 2007)<sup>7</sup>.

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.<sup>8</sup> This Bureau finds the Respondent-Applicant's mark consistent with this function.

**WHEREFORE**, premises considered, the instant Opposition to Trademark Application No. 4-2015-00004117 is hereby **DISMISSED**. Let the file wrapper of subject trademark application be returned, together with a copy of the Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City.

17 APR 2017



Atty. GINALYN S. BADIOLA, LL.M.  
Adjudication Officer, Bureau of Legal Affairs

---

<sup>7</sup> Id.

<sup>8</sup> Pribhdas J. Mirpuri v. Court of Appeals, G.R. No. 114508, 19 Nov. 1999.