

**UNITED LIFE SCIENCE PTY. LTD.,**  
*Opposer,*

**-versus-**

**MA. LILIA FLOR R. MURALLA,**  
*Respondent-Applicant.*

X-----X

}	<b>IPC No. 14-2013-00461</b>
}	Opposition to:
}	Appln. Serial No. 4-2013-000781
}	Date Filed: 27 January 2013
}	
}	
}	<b>TM: FIBER-C</b>

**NOTICE OF DECISION**

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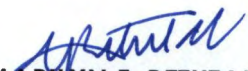
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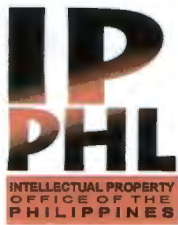
**GREETINGS:**

Please be informed that Decision No. 2017 - 206 dated 07 June 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, 07 June 2017.

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



UNITED LIFE SCIENCE PTY.  
LTD,

IPC NO. 14 – 2013 – 00461

Opposer,

- versus -

Opposition to:  
TM Application No. 4-2013-000781  
TM: "FIBER-C"

MA. LILIA FLOR R.  
MURALLA,

DECISION NO. 2017 - 206

Respondent -Applicant.

x-----x

### DECISION

United Life Science Pty. Ltd., (Opposer)<sup>1</sup> filed an Opposition to Trademark Application No. 4201300000781. The application filed by Ma. Lilia Flor R. Muralla (Respondent-Applicant)<sup>2</sup>, covers the mark "FIBER C", for use on "*Supplement namely, Vitamin C*" covered under Class 5 of the International Classification of Goods.<sup>3</sup>

The Opposer based its Opposition on the following grounds:

1. The mark "FIBER-C" applied for by Respondent-Applicant so resembles the trademark "FIBERCLEAR" owned by Opposer and duly registered with this Honorable Bureau prior to the publication of the application for the mark "FIBER-C"
2. The mark "FIBER-C" will likely cause confusion, mistake and deception on the part of the purchasing public, most especially considering that the opposed mark "FIBER-C" is applied for the same class and goods as that of Opposer's trademark "FIBERCLEAR."
3. The registration of the mark "FIBER-C" in the name of the Respondent-Applicant will violate Sec 123.1 (d) of the IP Code.

<sup>1</sup> A corporation organized and existing under the laws of the State of Utah, United States of America (U.S.A.) with principal address at 280 West 10200 South Sandy Utah 84070, U.S.A.

<sup>2</sup> A natural person with address at 149 Congressional Avenue, Project 8, Quezon City

<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.

Republic of the Philippines  
INTELLECTUAL PROPERTY OFFICE

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4. Respondent-Applicant's use and registration of the mark will diminish the distinctiveness of Opposer's trademark "FIBERCLEAR."

The Petitioner submitted the following evidence:

Exhibit "A" – Copy of the pertinent page of the IPO E-Gazette; and  
Exhibit "B" – Certified True Copy of the Certificate of Registration No. 4-2012-00010155 for the trademark FIBERCLEAR.

This Bureau issued a Notice to Answer dated 10 December 2013 and served to Respondent-Applicant on 13 December 2013.

On 14 March 2014, Respondent-Applicant filed its Verified Answer denying all the material allegations of the Opposition. The Respondent-Applicant further alleged that:

1. Opposer has no legal capacity to sue and institute and prosecute the verified notices of Opposition;
2. Opposer has no cause of action since there is no confusing similarity between the Respondent-Applicant's trademark "FIBER-C" with a distinctive rectangular design in color and the Opposer's "FIBERCLEAR" mark;
3. Opposer's claim that the Respondent-Applicant's use and registration of "FIBER-C" with a distinctive rectangular design in color would undermine the distinctive character or reputation of, and cause potential damage to "FIBERCLEAR" is bereft of any factual and legal basis; and
4. Relevant consumers would not be misled and deceived into believing that Respondent-Applicant's products using "FIBER-C" with distinctive rectangular design in color are sourced from or have originated from the Opposer.

The Respondent-Applicant submitted the following evidence:

Exhibit "1" – Joint Affidavit-Testimony of Ms. Ma Lilia Flor R. Muralla and Mr. Arnold Resma Anduyan;  
Exhibit "2" – copy of the license to Operate issued by the Food and Drugs Administration;  
Exhibit "3" – Copy of the "Fiber -C" Brochure / Leaflet (Horizontal Orientation);  
Exhibit "4" – Copy of the "Fiber -C" Brochure / Leaflet (Vertical Orientation);  
Exhibit "5" – Copy of "Fiber-C" Bottle Label (Horizontal Orientation);  
Exhibit "6" – Copy of "Fiber-C" Bottle Label (Close Up view);  
Exhibit "7" – Copy of "Fiber-C" Bottle Label with ION mark (Close Up View);

Exhibit "8" – Copy of "Fiber-C" Bottle Label with ION mark (Close Up Back View);

Exhibit "9" - Copy of "Fiber-C" Bottle Label with ION mark (Close Up Front View);

Exhibit "10" – Display Cabinet (Close Up View); and

Exhibit "11" – Display Cabinet (Normal View)

The basic issue to be resolved in this case is whether the trademark "FIBER-C" covered by Trademark Application No. 4-2012-00000781 should be allowed for registration.

The Opposition is anchored on Section 123.1 par. (d) of Republic Act No. 8293, also known as, the Intellectual Property Code of the Philippines ("IP Code"), to wit ,

123.1. A mark cannot be registered if it:

x x x

(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;

x x x

The Opposer argues that applying the dominancy test, it can be concluded that the Respondent's "FIBER – C" mark resembles Opposer's trademark "FIBERCLEAR" and it will likely cause confusion, mistake, and deception on the part of the purchasing public. It further argues that registration of "FIBER-C" will undermine the distinctive character or reputation of the Opposer's trademark.

The Respondent, on her part, argues that "Fiber-C" is a coined and arbitrary word in stylized elongated and bold white letters enclosed in a rectangle design in orange and yellow colors. She contends that the mark should be viewed and appreciated as "FIBER-C" with a distinctive rectangular design in color. She further argues that the pronunciation of the Respondent-Applicant's trademark "FIBER-C" with a distinctive design is not similar to "FIBERCLEAR." Respondent also refutes the Opposer's argument that the mark FIBER-C would undermine the distinctive character or reputation of the Opposer for having no factual and legal basis. Finally, Respondent argues that consumers would not be misled and deceived into believing that the products using "FIBER-C" with a distinctive rectangular design in color are sourced from or have originated from the Opposer.

The competing marks are reproduced below for comparison:



**FIBERCLEAR**

Respondent-Applicant's  
Trademark

Opposer's Trademark

Upon examination of the two competing trademarks and the evidence submitted by the parties, this Office finds that the registration by the respondent-applicant of the mark "FIBER-C" is unlikely to cause confusion or indicate any connection between the respondent-applicant's goods and that of the opposer's product.

While the two trademarks have similar letters, the differences in the composition and pronunciation of the two marks are very apparent and significant from both the visual and auditory standpoints. Contrary to the argument of the Opposer, this Bureau finds that the dominant feature of the Opposer's mark is the whole word "FIBERCLEAR" and not any part thereof. The said dominant feature is distinct and noticeably different from the composite mark "FIBER-C."

Moreover, unlike ordinary consumer goods, pharmaceutical or nutritional products belong to a different class of goods and their dispensation are highly regulated by the government. Also, consumers are very circumspective in buying these pharmaceutical and nutritional products. Thus, the probability that the consumers or the pharmacists will commit the mistake of interchanging the respondent-applicant's product with that of the Opposer's is close to nil.

Our Supreme Court thus held that confusing similarity should be determined on the basis of visual, aural, connotative comparisons and overall impressions engendered by the marks in controversy as they are encountered in the realities of the marketplace.<sup>4</sup> In this case, there is no confusing similarity between the two trademarks.

Aptly, it is emphasized that the function of a trademark is to point out distinctly the origin or ownership of the goods to which it is applied; 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

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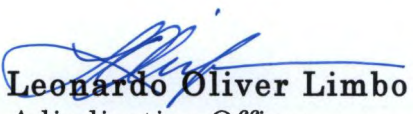
<sup>4</sup> Societe Des Produits Nestle, S.A. v. Court of Appeals, G.R. No. 11012, 4 April 2001

and sale of an inferior and different article as his product.<sup>5</sup> This Bureau finds that respondent-applicant mark is consistent with the above stated function and should be allowed to be registered.

**WHEREFORE**, premises considered, the instant opposition to Trademark Application Serial No. 42013000781 is hereby **DISMISSED**. Let the filewrapper of Trademark Application Serial No. 42013000781 be returned together with a copy of this Decision to the Bureau of Trademarks (BOT) for appropriate action.

**SO ORDERED.**

Taguig City, 07 JUN 2017

  
Atty. **Leonardo Oliver Limbo**  
Adjudication Officer  
Bureau of Legal Affairs

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<sup>5</sup> Pribhdas J. Mirpuri vs. Court of Appeals, G.R. No. 114508, November 19, 1999