



UNITED LABORATORIES, INC.,
Opposer,

-versus-

ALDRTZ CORPORATION,
Respondent-Applicant.

X-----X

} IPC No. 14-2008-00348
}
} Opposition to:
} Appln. Serial 4-2008-002870
} Date filed: 11 March 2008
} TM: "Energo Always on the
} Go! Ostrich Logo"

NOTICE OF DECISION

OCHAVE & ESCALONA

Counsel for Opposer
66 United Street, Mandaluyong City
Metro Manila

**SIGUION REYNA MONTECILLO
& ONGSIAKO**

Counsel for Respondent-Applicant
4th and 6th Flrs., Citibank Center
8741 Paseo de Roxas, Makati City

GREETINGS:

Please be informed that Decision No. 2012 - 64 dated April 13, 2012 (copy enclosed) was promulgated in the above entitled case.

Taguig City, April 13, 2012.

For the Director:

Catherine Socorro O. Estrada

Atty. CATHERINE SOCORRO O. ESTRADA
Hearing Officer, BLA



UNITED LABORATORIES, INC.,	}	IPC No. 14-2008-00348
Opposer,	}	Opposition to:
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	}	Appln. Ser. No. 4-2008-002870
- versus -	}	Date Filed: 11 March 2008
	}	
	}	Trademark: Energo Always
ALDRTZ CORPORATION,	}	On The Go! Ostrich Logo
Respondent-Applicant.	}	
x-----x		Decision No. 2012 - <u>64</u>

DECISION

UNAM BRANDS (BVI), LTD.¹ ("Opposer") filed on 11 December 2008 a Verified Opposition to Trademark Application No. 4-2008-002870. The application, filed by ALDRTZ CORPORATION² ("Respondent-Applicant"), covers the mark **ENERGO ALWAYS ON THE GO! OSTRICH LOGO** for use on "*food supplement – capsule, syrup, energy drink and powder label, streamers/posters*" under Class 05 of the International Classification of Goods³.

Subsequently, UNAM BRANDS (BVI), LTD. was substituted by UNITED LABORATORIES, INC.⁴ as Opposer in this case by virtue of the Assignment of Registered Trademark executed by and between the parties.⁵

The Opposer alleges the following:

"1. The trademark **ENERGO** so resembles the trademark **ENERVON-C** ("**ENERVON**"), owned by Opposer. The trademark **ENERGO**, which is owned by Respondent, will likely cause confusion, mistake and deception on the part of the purchasing public, most especially that the opposed trademark **ENERGO** is applied for the same class and good as that of trademark **ENERVON**, i.e. Class 5.

"2. The registration of the trademark **ENERGO** in the name of the Respondent will violate Sec. 123 of Republic Act No. 8293, otherwise known as the Intellectual Property Code of the Philippines, which provides, in part, that a mark cannot be registered if it:

" x x x

Under the above-quoted provision, any mark which is similar to a

- 1 A corporation duly organized and existing under the laws of Hongkong with principal office located at 7th Floor Chiu Lung Building, 25 Chiu Lung St., Central Hongkong.
- 2 A domestic corporation with principal address at 23 Alijis-Murcia Road, Bacolod City, Negros Occidental, Philippines.
- 3 The Nice Classification is a classification of goods and services for the purpose of registering trademarks and service marks, based on a multilateral 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 the Registration of Marks concluded in 1957.
- 4 A corporation duly organized and existing under the laws of the Republic of the Philippines with principal office located at No. 66 United Street, Mandaluyong City.
- 5 Order No. 2010-967 dated 06 April 2010.

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.

"3. Respondent's use and registration of the trademark ENERGO will diminish the distinctiveness and dilute the goodwill of Opposer's trademark ENERVON."


The Opposer's evidence consists of the following:

1. Annex "A" - Print out of Trademarks Published for Opposition released on 12 September 2008;
2. Annex "B" - Copy of the Certificate of Registration for the trademark ENERVON;
3. Annex "C" - Copy of the Assignment of Registered Trademark executed between United American Pharmaceuticals, Inc. and Unam Brands (BVI) Ltd.;
4. Annex "D" - Copy of the Affidavit of Use filed on 12 September 1979;
5. Annex "E" - Copy of the Affidavit of Use filed on 12 July 1994;
6. Annex "G" - Copy of the Affidavit of Use filed on 08 July 1999;
7. Annex "H" - Copy of the Affidavit of Use filed on 16 July 2004;
8. Annex "I" - Sample product label bearing the trademark ENERVON;
9. Annex "J" - Copy of Certification and sales performance issued by Intercontinental Marketing Services (IMS);
10. Annex "K" - Copy of the Certificate of Product Registration issued by the BFAD for the mark ENERVON.

The Respondent-Applicant filed its Verified Answer on 02 June 2009, specifically denying the material allegations in the Notice of Opposition and likewise set forth, among other things, the following defenses:

"a. Respondent-Applicant is the owner by prior registration, adoption and use of the mark ENERGO-ALWAYS ON THE GO! OSTRICH LOGO and its derivative marks.

"b. The active advertisement and promotion of the ENERGO-ALWAYS ON THE GO! OSTRICH LOGO has created substantial goodwill in said mark in favor of Respondent-Applicant, which entitles it to secure




its registration and ensure its protection.

"c. Respondent-Applicant's ENERGO-ALWAYS ON THE GO! OSTRICH LOGO marks are not confusingly similar to Opposer's ENERVON-C mark."

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

1. Exhibit "1" - Certified copy of Philippine Certificate of Registration No. 4-2002-004205;
2. Exhibit "2" - Copy of the trademark application details of Application No. 4-2008-002870 printed from the IPOPHL website;
3. Exhibit "3" - Copy of the trademark application details of Application No. 4-2008-014849 printed from the IPOPHL website;
4. Exhibit "4" - Copy of the trademark application details of Application No. 4-2008-010500 printed from the IPOPHL website;
5. Exhibit "5" - Sample product label bearing the ENERGO-ALWAYS ON THE GO! OSTRICH LOGO mark;
6. Exhibit "6" - Affidavit of Mr. Gilbert Geolingo, Product Manager of Respondent-Applicant;
7. Exhibit "6-a" - List of Places of Distribution of Respondent-Applicant's energy drink bearing the ENERGO ALWAYS ON THE GO! OSTRICH LOGO mark;
8. Exhibit "6-b" - Sample of the campaign jingle for the ENERGO energy drink product contained in the dvd-rom;
9. Exhibits "6-c" to "6-h" - Copies of the published endorsements of the ENERGO Energy Drink product and other newspaper articles;
10. Exhibit "7" - Copy of the trademark details for Opposer's ENERVON-C mark printed from the IPO website;
11. Exhibits "8", "9" and "10" - Copies of the trademark details of the marks KUKU BIMA ENER-G, ENER-Z AND ENER-C printed from the IPO website, respectively; and
12. Exhibit "11" - Print out from the Respondent-Applicant's www.aldrtz.com website.

Thereafter, the case was set for preliminary conference and the same was terminated on 29 July 2010.



Should the Respondent-Applicant's trademark application be allowed?

The Opposer anchors its case on Sec. 123.1 (d) of the IP Code provides that 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.

In this regard, records and evidence show that at the time the Respondent-Applicant filed its trademark application in 2008, the Opposer, specifically its predecessors-in-interest, already has an existing trademark registration for ENERVON-C used on *"high-potency therapeutic vitamin formula containing essential Vitamin B Complex plus Vitamin C"*. The goods on which the competing marks are used therefore are similar or closely related.

But are the competing marks identical or closely resemble each other that confusion or deception is likely to occur?

The first two syllables of the Respondent-Applicant's mark – forming the prefix "ENER" - are the same with the Opposer's. Considering that the marks are used on vitamins or food supplement, "ENER" is obviously derived from the word "energy" and thus, is not really unique if used as a trademark or as part of a trademark for food or pharmaceutical products. Indeed, "ENER" is clearly suggestive as to the kinds of goods a mark with "ENER" as a component is attached to. What would make such trademark distinctive are the suffixes or appendages to the prefix "ENER" and/or the devices, if any.

Succinctly, the last syllable in the Opposer's mark "VON-C" is different from the last syllable in the Respondent-Applicant's mark "GO". The dash and the letter "C" in the Opposer's mark, which is part and parcel of the registered trademark and the Respondent-Applicant's ostrich logo make a fine distinction between the contending marks as to sound and appearance such that confusion or deception is unlikely to occur. There is a remote possibility for a consumer to assume or conclude that there is a connection between the parties solely because both marks start with the syllable "ENER" since, as we discussed above, "ENER" is merely suggestive of the word energy.

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.⁶

Clearly, the Respondent-Applicant satisfied this function test.

WHEREFORE, premises considered, the instant opposition is hereby **DENIED**. Let the filewrapper of Trademark Application No. 4-2008-002870 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 13 April 2012.


Atty. **NATHANIEL S. AREVALO**

Director IV
Bureau of Legal Affairs 