



UNITED LABORATORIES, INC.,
Opposer,

-versus-

UNIHEALTH SYSTEMS PHILIPPINES, INC.,
Respondent -Applicant.

X-----X

IPC No. 14-2012-00522

Opposition to:

Appln. Serial No. 4-2012-000611

Date filed: 17 January 2012

TM: "UNIHEALTH-
BAYPOINTE"

NOTICE OF DECISION

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GREETINGS:

Please be informed that Decision No. 2014 - 202 dated August 06, 2014 (copy enclosed) was promulgated in the above entitled case.

Taguig City, August 06, 2014.

For the Director:


Atty. EDWIN DANILO A. DATING
Director III
Bureau of Legal Affairs



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UNIHEALTH SYSTEMS PHILIPPINES, INC.,
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IPC No. 14-2012-00522

Opposition to Trademark

Application No. 4-2012-000611

Date Filed: 17 January 2012

Trademark: **"UNIHEALTH-
BAYPOINTE"**

Decision No. 2014- 202

DECISION

United Laboratories, Inc.¹ ("Opposer") filed an opposition to Trademark Application Serial No. 4-2012-000611. The contested application, filed by Unihealth Systems Philippines, Inc.² ("Respondent-Applicant"), covers the mark "UNIHEALTH-BAYPOINTE" for use on "*medical services*" under Class 44 of the International Classification of Goods³.

According to the Opposer, it is engaged in marketing and sale of a wide range of pharmaceutical products. It contends that the Respondent-Applicant's mark "UNIHEALTH" so resembles its own trademark "UNITED HEALTH" in appearance and in sound that they can easily be confused especially that the marks are applied for closely related goods. It asserts that the Respondent-Applicant's use of the "UNIHEALTH" mark will take unfair advantage of, dilute and diminish the distinctive character and reputation of its own mark as well as cause potential damage as a result of inability to control the quality of the products/services put on the market by the Respondent-Applicant under the mark "UNIHEALTH."

In support of its opposition, the Opposer submitted the following as evidence:

1. pertinent pages of the Intellectual Property office of the Philippines (IPOP HL) E-Gazette publishing Respondent-Applicant's mark for opposition;

¹ A corporation organized and existing under the laws of the Philippines with principal business address at 66 United Street, Mandaluyong City, Philippines.

² A domestic corporation with principal business address at 86 Doña Ines Street, Alabang Hills Village, Muntinlupa City, Philippines.

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

2. certified true copy of the Acknowledgement issued by the IPOPHL acknowledging the receipt of trademark application for the mark "UNITED HEALTH" on 24 October 2011; and,
3. certified true copy of the Notice of Allowance allowing the publication of "UNITED HEALTH" in the IPO E-Gazette.⁴

For its part, the Respondent-Applicant vehemently denies that the competing marks are confusing similar. It asserts aside from "UNI" and "HEALTH", the competing marks have overwhelming differences. In addition, it insists that while the Opposer is a pharmaceutical company, its applied mark "UNIHEALTH-BAYPOINTE" is being used to identify Unihealth-Baypointe Hospital and Medical Center (UBHMC) which is currently operated as tertiary hospital with a Department of Health (DOH) authorized one hundred (100) bed capacity offering twenty four (24) hours quality, medical, surgical, diagnostic and therapeutic services.

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

1. copy of the Acknowledgment issued by the IPOPHL acknowledging receipt of trademark application of "UNIHEALTH-BAYPOINTE";
2. copy of the Notice of Allowance for publication of the same mark;
3. copy of the pertinent pages of the IPO E-Gazette publishing its mark;
4. copy of the trademark application filed by Respondent-Applicant; and,
5. copy of the advertisement published in the Philippine Star on 03 December 2012.⁵

The Preliminary Conference was officially terminated on 22 October 2013. The parties were then directed to submit their respective position papers within ten days therefrom. After which, the case was submitted for decision.

The primordial issue to be resolved is whether Respondent-Applicant's mark "UNIHEALTH-BAYPOINTE" should be allowed.

The instant opposition is anchored on Section 123.1 (d) of Republic Act No. 8293, otherwise known as the Intellectual Property Code ("IP 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 priority date, in respect of the same goods or services or closely related goods or services or if it nearly resembles such mark as to be likely to deceive or cause confusion.

⁴ Marked as Exhibits "A" to "C", inclusive.

⁵ Marked as Exhibits "1" to "5".

Records reveal that the Opposer filed its application for registration of the mark "UNITED HEALTH" on 24 October 2011. On the other hand, Respondent-Applicant sought registration of its mark "UNIHEALTH-BAYPOINTE" only on 17 January 2012. Clearly, it was the Opposer who filed the earlier application.

To determine whether the competing marks are confusingly similar, the two are reproduced below for comparison:

UNITED HEALTH

Opposer's mark



Respondent-Applicant's mark

Immediately apparent is the use of the term "HEALTH" in both marks. As the word "HEALTH" is descriptive of the goods and/or services the competing marks pertain, it cannot be subject of exclusive appropriation. The so-called descriptive terms, which may be used to describe the product adequately, cannot be monopolized by a single user and are available to all. It is only natural that the trade will prefer those marks which bear some reference to the article itself.⁶ Now what will determine whether the marks are confusingly similar are the words and/or device adjunct thereto.

In the instant case, the common word "HEALTH" in Opposer's mark is preceded by "UNITED" while that of the Respondent-Applicant's by "UNI". The words "UNITED" and "UNI" are confusingly similar as they are almost similarly spelled and pronounced. In addition, since "UNITED" is defined as "to be one" while "UNI" means "one", the competing marks creates or will create the same impression on the purchasing public. Thus, the addition of the suffix "BAYPOINTE" and surrounding device in Respondent-Applicant's mark pales in significance. Confusion cannot be avoided by merely adding, removing or changing some letters of a registered mark. Confusing similarity exists when there is such a close or ingenuous imitation as to be calculated to deceive ordinary persons, or such resemblance to the original as to deceive ordinary purchased as to cause him to purchase the one supposing it to be the other.⁷

⁶ Ong Ai Gui vs. Director of Philippines Patent Office, G.R. No. L-6235, 28 March 1955.

⁷ Societe des Produits Nestle, S.A. vs. Court of Appeals, GR No. 112012, 04 April 2001.

Moreover, it is settled that the likelihood of confusion would not extend not only as to the purchaser's perception of the goods but likewise on its origin. Callman notes two types of confusion. The first is the *confusion of goods* "in which event the ordinarily prudent purchaser would be induced to purchase one product in the belief that he was purchasing the other." In which case, "defendant's goods are then bought as the plaintiff's, and the poorer quality of the former reflects adversely on the plaintiff's reputation." The other is the *confusion of business*. "Here though the goods of the parties are different, the defendant's product is such as might reasonably be assumed to originate with the plaintiff, and the public would then be deceived either into that belief or into the belief that there is some connection between the plaintiff and defendant which, in fact, does not exist."⁸

Noteworthy, the Opposer and Respondent-Applicant's goods and/or services similarly pertain to the health services, albeit differently classed. Therefore, it will be highly likely that the consumers will be confused, mistaken and/or deceived that the products and/or services of the Opposer are affiliated to, sponsored by or in any way connected to the Respondent-Applicant, and/or vice-versa. Furthermore, even assuming that the consumers will not be deceived or confused as to the labels, it is probable that they will have a mistaken notion that the Opposer merely expanded business. Aptly, in the case of **Societes des Produits Nestle, S.A. vs. Martin T. Dy, Jr.**⁹, the Supreme Court held that:

"It has been time and again reiterated by the Supreme Court that the registered trademark owner may use his mark on the same or similar products, in different segments of the market, and at different price levels depending on variations of the products for specific segments of the market. The Court has recognized that the registered trademark owner enjoys protection in product and market areas that are the normal potential expansion of his business."

Finally, it is emphasized that the essence of trademark registration is to give protection to the owners of trademarks. 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.¹⁰ Respondent-Applicant's trademark fell short in meeting this function.

⁸ Societe des Produits Nestle, S.A. vs. Dy, G.R. No. 1772276, 08 August 2010.

⁹ G.R. No. 172276, August 8, 2010.

¹⁰ Pribhdas J. Mirpuri vs. Court of Appeals, G.R. No. 114508, 19 November 1999.

Accordingly, this Bureau finds and concludes that the Respondent-Applicant's trademark application is proscribed by Sec. 123.1(d) of the IP Code.

WHEREFORE, premises considered, the instant opposition is hereby **SUSTAINED**. Let the filewrapper of Trademark Application Serial No. 4-2012-000611 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 06 August 2014.



ATTY. NATHANIEL S. AREVALO
Director IV
Bureau of Legal Affairs