THE SUNRIDER CORPORATION d.b.a. Sunrider International, Opposer,	}	**IPC No. 14-2011-00022** Opposition to: Application No. 4-2010-500759 Date filed: 3 June 2010 **TM: "REVITALITE"**
-versus-	}	
RANBAXY LABORATORIES LIMITED, Respondent-Applicant.	}	

x----------x

NOTICE OF DECISION

HECHANOVA BUGAY & VILCHEZ
Counsel for the Opposer
G/F Chemphil Building
851 Antonio Arnaiz Avenue
Makati City

BENGZON NEGRE UNTALAN
Intellectual Property Attorneys
Counsel for Respondent-Applicant
Second Floor SEDCCO Building
Rada corner Legazpi Streets
Legaspi Village, Makati City

GREETINGS:

Please be informed that Decision No. 2015 - 225 dated October 22, 2015 (copy enclosed) was promulgated in the above entitled case.

Taguig City, October 22, 2015.

For the Director:

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

THE SUNRIDER CORPORATION d.b.a. Sunrider International,
Opposer,

-versus-

RANBAXY LABORATORIES LIMITED,
Respondent-Applicant.
x ---------- x

IPC No. 14-2011-00022

Opposition to Trademark
Application No. 4-2010-500759
Date Filed: 03 June 2010
Trademark: **"REVITALITE"**

Decision No. 2015-225

DECISION

The Sunrider Corporation d.b.a. Sunrider International[1] ("Opposer") filed an opposition to Trademark Application Serial No. 4-2010-500759. The contested application, filed by Ranbaxy Laboratories Limited[2] ("Respondent-Applicant"), covers the mark "REVITALITE" for use on *"pharmaceutical and medicinal preparations for human and veterinary use"* under Class 05 of the International Classification of Goods[3].

The Opposer anchors its opposition on Section 123.1 subparagraphs (d), (e), (f) and (g) of Republic Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code"). According to the Opposer, it is a privately owned direct sales company founded in 1982 by Doctors Tei Fu and Oi-Lin Chen that manufactures health, beauty, food and household products in four manufacturing plants locates in United States of America (USA), China, Taiwan and Singapore. It conducts business in forty-two (43) countries and operates offices in twenty-two (22) countries. It registered its mark "VITALITE" in the Philippines as early as 12 December 1997 for goods under Classes 05, 29 and 30. Its products Vitalite Action Caps and Vitataste were first introduced in the country in 1998 and are registered with the Food and Drug Administration (FDA). It also manufactures and sells its health and beauty products worldwide. It thus contends that "VITALITE" and "REVITALITE" are confusingly similar.

In support of its Opposition, the Opposer submitted the following as evidence: [4]

1. affidavit of Oi Lin Chen;
2. certified true copy of Registration No. 4-1997-119363;

[1] A corporation duly organized and existing under the laws of the United States of America, with business address at 1652 Abalone Avenue, Torrance 90501, California, USA.
[2] A foreign corporation with business address at Plot No. 90, Sector 32, Gurgaon, Haryana, India.
[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.
[4] Marked as Exhibits "B" to "E", inclusive.

3. affidavit of Atty. Chrissie Ann L. Barredo; and
4. affidavit of Antonio M. Palacios.

The Respondent-Applicant filed its Answer on 24 August 2011 alleging its company was incorporated in 1961 and has grown to be India's largest pharmaceutical company. It denies that there is confusing similarity between the marks "VITALITE" and "REVITALITE" as the latter is prefixed with the syllable "RE" and that the two marks involve different kinds of goods.

The Respondent-Applicant's evidence consists of the certified true copy of Trademark Application No. 4-2010-500759 and Notice of Allowance for the mark "REVITALITE".[5]

The issue to be resolved is whether the mark "REVITALITE" should be allowed registration.

Records reveal that the Opposer registered its mark "VITALITE" as early as 12 December 1997 under Certificate of Registration No. 4-1988-067618. On the other hand, the Respondent-Applicant filed its application for the contested mark "REVITALITE" only on 03 June 2010.

The question is whether the competing marks, as shown below, are confusingly similar:

VITALITE	REVITALITE
Opposer's mark	*Respondent-Applicant's mark*

The Respondent-Applicant's mark is almost identical to the Opposer's. The prefix "RE" in the Respondent-Applicant's mark notwithstanding, they are still confusingly similar as "REVITALITE" connotes "to vitalite again". 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.[6]

Succinctly, since the Respondent-Applicant uses or intends to use "REVITALITE" on pharmaceutical and medicinal preparations for human and veterinary use, the same is broad enough to include food and nutritional supplements covered by the Opposer's registration. It is also highly probable that

[5] Marked as Exhibits "1" and "2".
[6] Societe des Produits Nestle,S.A. vs. Court of Appeals, GR No. 112012, 04 April 2001.

the purchasers will be led to believe that Respondent-Applicant's mark is a mere variation of Opposer's mark. Withal, the protection of trademarks as intellectual property is intended not only to preserve the goodwill and reputation of the business established on the goods bearing the mark through actual use over a period of time, but also to safeguard the public as consumers against confusion on these goods.

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."[7]

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.[8] Respondent-Applicant's trademark fell short in meeting this function.

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. 4-2010-500759 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 22 October 2015.

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

[7] Societe des Produits Nestle, S.A. vs. Dy, G.R. No. 1772276, 08 August 2010.
[8] Pribhdas J. Mirpuri vs. Court of Appeals, G.R. No. 114508, 19 November 1999.