THE PROCTER & GAMBLE COMPANY, Opposer, **-versus-** **CHEMPLAST INTERNATIONAL CORP.,** Respondent- Applicant.	}	**IPC No. 14-2014-00413** Opposition to: Appln. Serial No. 4-2013-007602 Date Filed: 28 June 2013 **TM: "PROFLEX TREEBAG"**

NOTICE OF DECISION

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GREETINGS:

Please be informed that Decision No. 2016 - 239 dated June 30, 2016 (copy enclosed) was promulgated in the above entitled case.

Taguig City, July 01, 2016.

For the Director:

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

THE PROCTER & GAMBLE COMPANY,
Opposer,

-versus-

CHEMPLAST INTERNATIONAL CORP.,
Respondent-Applicant.
x----------x

IPC No. 14-2013-00413

Opposition to:
Appln. Serial No. 4-2013-007602
Date Filed: 28 June 2013

Trademark: **"PROFLEX TREEBAG"**

Decision No. 2016- 239

DECISION

The Procter & Gamble Company, [1] ("Opposer") filed an opposition to Trademark Application Serial No. 4-2013-007602. The application, filed by Chemplast International Corporation ("Respondent-Applicant") [2], covers the mark "PROFLEX TREEBAG" for use on *"pharmaceutical and veterinary preparations, sanitary preparations for medical purposes, dietetic food and substances adapted for medical or veterinary use, food for babies, dietary supplements for humans and animals, plasters, materials for dressings for stopping teeth, dental wax, disinfectants, preparations for destroying vermin, fungicides, herbicides"* under Class 05 of the International Classification of goods and services[3].

The Opposer anchors its opposition on Section 123.1 (d) of R.A. No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code"). It alleges, among others, that it is the owner and prior applicant of the mark "PRO-FLEX" in connection with oral care products under Classes 03 and 21. It asserts that that the Respondent-Applicant's mark is confusingly similar to that of its own registered marks because:[4]

> "8.1. The dominant element in the Respondent-Applicant's mark is the word PROFLEX, which is identical to the Opposer's trademark. It is settled jurisprudence that identity or similarity in the dominant features of two (2) competing marks will cause mistake or confusion in the minds of the relevant sector of the purchasing public.
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> 8.2. The dominant feature in the Respondent-Applicant's mark is identical in sound and appearance to the Opposer's earlier mark. The purchasing public will

[1] A corporation duly organized and existing under the laws of Ohio, United States of America (USA) with business address at One Procter & Gamble Plaza, Cincinnati, Ohio 45202, USA.
[2] With known address at 5401 West Kennedy Blvd., #751 Tampa, Florida, USA.
[3] The Nice Classification is a classification of goods and services for the purpose of registering trademarks and service marks based on a 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] See Verified Opposition, p. 5.

therefore easily mistake the Respondent-Applicant's goods offered under the mark PROFLEX TREEBAG for the goods of the Opposer bearing the PRO-FLEX mark."

According to the Opposer, the likelihood of confusion or mistake is further enhanced since the goods for which the Respondent-Applicant's mark is applied, i.e. materials for dressings for stopping teeth and dental wax in Class 05 is closely related to the goods covered by its own mark. In support of its opposition, the Opposer submitted the affidavit of Tara M. Rosnell, with annexes[5].

A Notice to Answer was issued and served upon the Respondent-Applicant on 22 January 2014. The latter, however, did not file its Answer. Thus, on 12 May 2014, the Hearing Officer issued Order No. 2014-638 declaring the Respondent-Applicant in default and the case submitted for decision.

The issue to be resolved is whether the Respondent-Applicant's mark "PROFLEX TREEBAG" should be allowed registration.

Section 123.1 (d) of the IP Code provides that:

"123.1. 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; xxx"

Records reveal that the Opposer filed an application for registration of the mark "PRO-FLEX" on 27 June 2011. On the other hand, the Respondent-Applicant filed the contested application only on 28 June 2013.

But are the marks, as shown below, confusingly similar?

PRO-FLEX	**PROFLEX TREEBAG**
Opposer's marks	*Respondent-Applicant's mark*

Both marks appropriate the word "PROFLEX". That the Opposer's mark includes a hyphen in between the words "PRO" and "FLEX", the competing marks remain visually and aurally similar. The addition of the word "TREEBAG" in the Respondent-Applicant's mark also failed to eradicate the possibility of confusion,

[5] Marked as Exhibits "C" to "D", inclusive.

mistake and/or deception. After all, 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, the Respondent-Applicant will use or uses the mark "PROFLEX TREEBAG" to goods that are similar and/or closely related to that of Opposer's previously applied mark, any slight differences in presentation will not diminish the likelihood of the occurrence of confusion, mistake and/or deception. The Opposer's application covers *"toothpaste; dentrifices; mouthwashes; toothpowder; dental rinse; tartar removing materials; teeth polish material; non-medicated oral rinse, preparations for the care and hygiene of the mouth, teeth, throat, gums and buccal activity; rinsing preparations to prevent tartar and caries; tooth cleaning preparation; tooth care preparations; cleansing powders; tartar coloring tablets"* and *"brushes for cleaning teeth and gums, carrying case for toothbrushes, mouth rinsing mugs, toothbrushes; electric toothbrushes; dental floss; toothpaste dispensers; polishing apparatus and machines for household purposes; toothpicks; replacement brush heads for toothbrushes; dental floss holders; inter-dental brushes, electric-operated toothbrushes, battery-operated toothbrushes, materials prepared for brush making; (non-electrical instruments and material included in this class, all for cleaning purposes); parts and fittings in this class for the aforesaid goods; holders and dental dispenser, cloths for cleaning; soap dispensers"* which are closely related, if not similar, to *"materials for dressings for stopping teeth, dental wax"* in which the Respondent-Applicant's uses its mark.

Therefore, it is highly probable that 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.[7] It would appear that as a consequence of this discourse, there still remains hanging in mid-air the unanswered puzzle as to why an aspiring commercial enterprise, given the infinite choices available to it of names for the intend product, would select a trademark or tradename which somewhat resembles an existing emblem that had established goodwill.[8]

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

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[6] Societe des Produits Nestle,S.A. vs. Court of Appeals, GR No. 112012, 04 April 2001.
[7] Skechers, USA, Inc. vs. Inter Pacific Industrial Trading Corp., G.R. No. 164321, 23 March 2011.
[8] Faberge, Inc. vs. The Intermediate Appellate Court, G.R. No. 71189, 04 November 1992.

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."[9]

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] Based on the above discussion, Respondent-Applicant's trademark fell short in meeting this function. The latter was given ample opportunity to defend its trademark application but Respondent-Applicant did not bother to do so.

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. 4-2013-007602 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 30 JUN 2016

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

[9] Societe des Produits Nestle, S.A. vs. Dy, G.R. No. 172276, 08 August 2010.
[10] Pribhdas J. Mirpuri vs. Court of Appeals, G.R. No. 114508, 19 November 1999.