

**MEDCHOICE PHARMA, INC.,**  
*Opposer,*

**-versus-**

**BLUE SKY TRADING CO. INC.,**  
*Respondent-Applicant.*

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**IPC No. 14-2012-00416**  
Opposition to:  
Appl. Serial No. 4-2012-001993  
Date Filed: 17 February 2012

**TM: MEDICHOICE**

X-----X

**NOTICE OF DECISION**

**BENGZON NEGRE UNTALAN**  
*Counsel for Opposer*  
2<sup>nd</sup> Floor, SEDCCO Building  
Rada corner Legaspi Streets,  
Legaspi Village, Makati City

**PELAEZ GREGORIO GREGORIO & LIM**  
*Counsel for Respondent- Applicant*  
6<sup>th</sup> Floor, Padilla Building,  
F. Ortigas Road, Ortigas Center,  
Pasig City

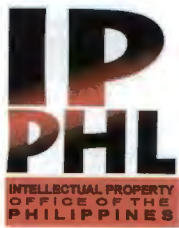
**GREETINGS:**

Please be informed that Decision No. 2016 - 510 dated 23 December 2016 (copy enclosed) was promulgated in the above entitled case.

Pursuant to Section 2, Rule 9 of the IPOPHEL 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, 05 January 2017.

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



MEDCHOICE PHARMA, INC.,  
*Opposer,*  
 -versus-  
 BLUE SKY TRADING CO. INC.,  
*Respondent-Applicant.*  
 x-----x

IPC No. 14-2012-00416  
 Opposition to:  
 Application No. 4-2012-001993  
 Date Filed: 17 February 2012  
 Trademark: "MEDICHOICE"  
 Decision No. 2016- 510

**DECISION**

MEDCHOICE PHARMA, INC.<sup>1</sup> ("Opposer") filed an opposition to Trademark Application Serial No. 4-2012-001993. The application, filed by Blue Sky Trading Co. Inc.<sup>2</sup> ("Respondent-Applicant"), covers the mark "MEDICHOICE" for use on "gauze bandage" under Class 05 and "surgical gloves, bandages, abdominal pads, abdominal pads with x-ray detectable; absorbent gauze balls; absorbent gauze balls with x-ray detectable; blood lancet; cherry and peanut rolled sponges; cherry and peanut rolled sponges with x-ray detectable; face mask; first aid dressing; cotton filled gauze; gauze sponges; gauze sponges with x-ray detectable; elastic bandage; tracheostomy gauze sponges; visceral pack; visceral pack with x-ray detectable; non woven sponges; rubber catheter; nelaton rubber catheter; surgical gloves; examination gloves; hypodermic glass syringe; absorbent gauze; cotton tip applicator; umbilical cord; duodenum tubing; medical feeding tube; nasal oxygen cannulae; suction catheter with finger tip control and oxygen catheter" under Class 10 of the International Classification of Goods and Services.<sup>3</sup>

The Opposer alleges:

x x x  
 "DISCUSSION

"8. Section 123.1 (d) of Republic Act No. 8293 ('the IP Code') states 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 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.

"9. In determining the likelihood of confusion, the following factors are considered: [a] the resemblance between the trademarks; [b] the similarity of the goods to

<sup>1</sup>A corporation organized and existing under the laws of the Republic of the Philippines, with office address at Unit 1001, 88 Corporate Center, Sedenon corner Valero Streets, Salcedo Village, Makati City, Metro Manila.

<sup>2</sup>A domestic corporation with business address at 416 Dasmariñas Street, Binondo, Manila, Philippines.

<sup>3</sup>The Nice Classification is a classification of goods and services for the purpose of registering trademark 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 Purposes of the Registration of Marks concluded in 1957.

which the trademarks are attached; [c] the likely effect on the purchaser and [d] the registrant's express or implied consent and other fair and equitable considerations.

"10. MEDICHOICE nearly resembles the Opposer's registered trademark, MEDCHOICE, and when used for closely related goods or services, the resemblance will likely deceive or cause confusion, particularly as to the source and affiliation of the goods. Hence, the trademark registration of MEDICHOICE for goods under Class 05 and Class 10 must be refused in accordance with Section 123.1 (d) of the IP Code.

"11. In determining the issue of confusing similarity, the Court takes into account the aural effect of the letters contained in the marks. MEDICHOICE and the Opposer's trademark, MEDCHOICE, have aural/phonetic and visual similarities. In fact, Respondent-Applicant's MEDICHOICE mark appropriates the entire MEDCHOICE word. The insertion of the letter 'i' between Med and Choice syllables is too insignificant to reduce the aural and visual similarities between MEDICHOICE and MEDCHOICE.

"12. There is virtually no difference in the pronunciations of both MEDCHOICE and MEDICHOICE. The phonetic similarity of the marks may become the basis of finding a confusing similarity. Marks may sound the same to the ear, even though they may be readily distinguishable to the eye. Similarity of sound may be particularly important when the goods are of the type frequently purchased by verbal order. In *Amigo Manufacturing, Inc. vs. Cluett Peabody Co., Inc.*, the marks 'Gold Top' and 'Gold Toe' were found to be confusingly similar based on the *idem sonans* rule.

"13. Visually, MEDICHOICE and MEDCHOICE are likewise extremely similar. The likelihood of confusion should be determined by viewing the two marks in question as they would appear to the ordinary purchaser of the product involved. Thus, based on the following side-by-side comparison, it can readily be seen that MEDCHOICE and MEDICHOICE are similar:

x x x

"14. Respondent-Applicant's mark copies the terms Med and Choice, which are dominant portion of the MEDCHOICE logo. The terms Med and Medi are shortened forms of the word Medical, hence, the visual and commercial impressions of MEDICHOICE and MEDCHOICE are basically the same. There is no doubt that the ordinary purchaser will assume that the goods bearing the MEDICHOICE mark are related to MEDCHOICE.

"15. While both marks are not necessarily identical, this should not prevent a finding of likelihood of confusion. Exact duplication or imitation is not required. The question is whether the use of the marks involved is likely to cause confusion or mistake in the mind of the public or to deceive consumers. When there are small differences between the marks, the differences may be *de minimis* when compared to the similarities.

"16. In any case, the wealth of jurisprudence has leaned towards the adoption of the Dominancy Test in determining confusing similarity. The dominance test focuses on the similarity of the main, prevalent or essential features of the competing trademarks that might cause confusion. Under the dominance test, courts give greater weight to the similarity of the appearance of the product arising from the adoption of the dominant features of the registered mark, disregarding minor differences. Courts will consider more the aural and visual impressions created by the marks in the public mind, giving little weight to factors like prices, quality, sales outlets and market segments.



"17. In Prosource International, Inc. vs. Horphag Research Management SA, the mark PCO-GENOL was found to be confusingly similar to the PYCNOGENOL. Likewise, in Dermaline, Inc. vs. Myra Pharmaceuticals, Inc., the mark DERMALINE DERMALINE, INC. was held to be confusingly similar to DERMALIN even though the marks covered goods and services belonging to different classes. Also, in McDonald's Corporation vs. Macjoy Corporation, the Court declared that respondent's mark MACJOY is confusingly similar to McDONALD's. Recently, in Societe Des Produits vs. Martin Dy, Jr., the Court held that the mark NANNY is confusingly similar to NAN based on the dominancy test.

"18. There is no question that the term MEDCHOICE is the dominant portion of the Opposer's registered trademarks. Being the dominant portion of a registered trademark, the term MEDCHOICE and any of its derivatives must be protected from other confusingly similar marks that do not belong to the Opposer. As shown above, the mark sought to be registered is confusingly similar to this dominant portion, hence, MEDICHOICE must not be registered as a trademark.

"19. The Opposer's MEDCHOICE trademark is registered for Class 35 services mainly for the selling, distribution and trading of pharmaceutical products. Meanwhile, Respondent-Applicant's MEDICHOICE mark is sought to be registered for related goods under Class 05 and Class 10. Considering that both marks are similar and these goods flow through the same trade channels where the Opposer has a business presence, the likelihood that the ordinary purchasers will associate goods bearing the MEDICHOICE mark to those of the Opposer's.

"20. While it is admitted that the mark is sought to be registered for a different class and the goods and services are not exactly identical, this fact should not preclude a finding that MEDICHOICE is confusingly similar to MEDCHOICE and, thus, should not be registered pursuant to Section 123.1 (d) of the IP Code. Section 144.2 of the IP Code expressly states that goods or services may not be considered as being similar or dissimilar to each other on the ground that, in any registration or application by the Office, they appear in different classes of the Nice Classification.

"21. The MEDCHOICE trademark is the housemark that identifies and distinguishes the pharmaceutical business of and products manufactured and distributed by the Opposer. The said trademark flows through the same trade channels in the medical and pharmaceutical industries where the surgical and medical goods bearing Respondent-Applicant's MEDICHOICE mark are also made available.

"22. The Opposer's business and products and Respondent-Applicant's goods, while not in direct competition, are closely related and, thus, confusion as to the source and affiliation will still likely result. Non-competing goods may be those which, though they are not in actual competition, are so related to each other that it can reasonably be assumed that they originate from one manufacturer, in which case, confusion of business can arise out of the use of similar marks. Thus, the registration of a similar trademark for different goods or services but will likely result in the confusion of business is still proscribed under Section 123.1 (d).

"23. In Dermaline, Inc. vs. Myra Pharmaceuticals, Inc., the DERMALINE mark was not allowed registration for being similar to the registered DERMALIN trademark notwithstanding that the goods and services belonged to different classes

because it was held that 'it does not eradicate the possibility of mistake on the part of the purchasing public to associate the former with the latter, especially considering that both classifications pertain to treatments for the skin.'

"24. Indeed, the registered trademark owner may use its 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 is cognizant that the registered trademark owner enjoys protection in product and market areas that are the normal potential expansion of his business.

"25. MEDCHOICE is the Opposer's corporate and/or trade name. While its juridical name is MEDCHOICE PHARMA, INC., the Opposer and its products are more popularly known in the medical and pharmaceutical industries and by its consumers as MEDCHOICE. A certified machine copy of the Certificate of Incorporation of MEDCHOICE issued by Securities and Exchange Commission is attached hereto as Exhibit 'E'.

"26. The Opposer's corporate name must be protected, even prior to or without registration, against any unlawful act committed by third parties. In particular, under Section 165.2 (b) of the IP Code, Respondent-Applicant's use of MEDCHOICE, whether as a trade name or a mark or collective mark, or any such use of a trade name similar to MEDCHOICE, likely to mislead the public, is deemed unlawful.

"27. In any case, the Opposer has the prior trademark registration and use over the MEDCHOICE mark. In 2011, MEDCHOICE sought the registration of its corporate name in the Intellectual Property Office. On 03 May 2012, Certificate of Trademark Registration No. 42011501920 was issued to the company for the MEDCHOICE LOGO (See Exhibit 'C').

"28. MEDCHOICE PHARMA, INC. was established in 2004 to engage in the business of providing technical and management advise to physicians, dentists, nurses, pharmacists, hospitals, pharmacies and similar healthcare professionals and establishments. MEDCHOICE is a specialized pharmaceutical trading company marketing its own line of specialty prescription medicines in the Philippines. A copy of the Affidavit of Atty. Ambrosio V. Padilla III, which details the history, use and registration of the MEDCHOICE trademark, is hereto attached as Exhibit 'F'.

"29. MEDCHOICE has been licensed to trade and distribute the following pharmaceutical brands: AKIDIN, RISDIN, PRODIN, ZOLODIN, TAPDIN, NEOMERDIN, EUGLODIN, GLUDIN, SOLADIN. These brands are marketed under the MEDCHOICE corporate name (See Exhibit 'F').

"30. MEDCHOICE also engages in advertising to promote its pharmaceutical products by printing and handing out brochures, corporate giveaways, and stationery to increase awareness of on its pharmaceutical products. MEDCHOICE also participates regularly in medical conventions where trade show booths are visited frequently by medical doctors, professionals and pharmacists. Samples of promotional materials bearing the MEDCHOICE trademark are attached as Exhibits 'G,' 'G-1,' 'G-2,' 'G-3,' AND 'G-4.'

"31. Since its incorporation in 2004, the company has seen a steady increase in the sales of its pharmaceutical products. In 2011, it raked in sales in the amount of Php

111,970,859.33. In the years 2005 to 2010, the brand posted increased sales in the amounts of Php 223,127,9776.30 (See Exhibit 'F').

"32. The MEDCHOICE corporate name has already established business goodwill and reputation that must be protected from other brands or marks that are confusingly similar. Likewise, it must be protected from the unlawful use of similar trademarks liable to deceive the medical and pharmaceutical circles or the public in general as to the source and affiliation of the goods and services identified by confusingly similar trademarks.

The Opposer's evidence consists of the Special Power of Attorney executed by Atty. Ambrosio V. Padilla III, the Opposer's Chief Executive Officer, in favor of BNU dated 07 affidavit of Suyen's General Manager, Mr. Jude W. Ong dated 29 March 2011; the Secretary's Certificate authorizing Atty. Ambrosio V. Padilla or Michael S. Vasallo to execute the SPA and Verification and Certification of Non-Forum Shopping; copy of Trademark Registration No. 4-2011-501920; copy of Trademark Application No. 4-2012-001993; copy of the Certificate of Incorporation of MEDCHOICE issued by Securities and Exchange Commission; copy of the Affidavit of Atty. Ambrosio V. Padilla III, which details the history, use and registration of the MEDCHOICE trademark; and samples of promotional materials bearing the MEDCHOICE trademark.<sup>4</sup>

This Bureau issued a Notice to Answer and served a copy thereof upon Respondent-Applicant, on 11 October 2012. Said Respondent-Applicant, however, did not file an Answer.

This Bureau issued a Notice to Answer and served a copy thereof upon Respondent-Applicant on 11 October 2012. Respondent-Applicant filed its Answer on 09 November 2012.

Respondent-Applicant avers that MEDICHOICE was the first to exist than MEDCHOICE. The mark "MEDICHOICE" was already used by the Respondent-Applicant as early as 1982. That Opposer merely existed on January 15, 2004 when it was incorporated with the Securities and Exchange Commission. Documentary evidence will show that the mark "MEDICHOICE" (1982) was the first to be registered with the Bureau of Patents, Trademarks and Technology Transfer, several years ahead of the Opposer's "MEDCHOICE: (2004) . As per record, Trademark Registration No. 38235 for the mark "MEDICHOICE" was issued on 24 February 1988.

According to Respondent-Applicant, MEDICHOICE products were already in the market prior to the incorporation of the Opposer in 2004 and before the mark MEDCHOICE was registered with the Intellectual Property Office in 2012. To prove use thereof, Respondent-Applicant submitted, among others, a sample package bearing the trademark "MEDICHOICE" and a copy of the purchase/Job Order of the Bicol

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<sup>4</sup>Marked as Exhibits "A" to "G", inclusive.



Medical Center, Naga City dated 30 June 1997 for the following Medichoic products: autoclave tape, elastic bandage and gauze bandage.

The Respondent-Applicant evidence consists of the Secretary's Certificate appointing the Law Firm of Pelaez Gregorio Gregorio & Lim and/or any of its lawyers as Attorney/s-in-Fact of Blue Sky Trading Co., Inc. to appear and represent said Corporation in this opposition; a copy of Trademark Registration No. 38235 for the mark MEDICHOICE issued on 24 February 1988; a copy of Trademark Registration No. 4-2000-001330 for the mark MEDICHOICE issued on 10 February 2005; a sample copy of MEDICHOICE package for Gauze Sponges; a sample package of surgical gloves bearing the trademark "MEDICHOICE"; a copy of Purchase/Job Order of the Bicol Medical Center, Naga City dated 30 June 1997; a copy of Sales Invoice No. 113832 dated 25 August 1997 issued by Blue Sky Trading Co. Inc.; a copy of Purchase/Job Order for the purchase of Medichoic absorbent gauze and Medichoic iodine antiseptic solution issued by Bicol Medical Center on 12 August 1997; copy of Sales Invoice with number 113835 dated 25 August 1997 issued by Respondent-Applicant; copy of Purchase Order issued by Veterans Memorial Medical Center on 19 March 1999 for the purchase of Medichoic blood lancet; copy of Sales Invoice No. 126788 dated 30 April 1999 issued by Respondent-Applicant; copies of Sales Invoice Nos. 130679 dated 15 November 1999 and 130688 dated 19 November 1999 and the Purchase Order issued by the Philippine Orthopedic Center for the purchase of 250 doz. of MEDICHOICE elastic bandage; copy of Purchase Order dated 24 January 2000 issued by East Avenue Medical Center for the purchase of 12 rls. of MEDICHOICE absorbent gauze; copy of Sales Invoice No. 132128 dated 1 February 2000; and the affidavit of Linda Tantiansu, Vice President of Blue Sky Trading Co., Inc..<sup>5</sup>

Should the Respondent-Applicant be allowed to register the trademark MEDICHOICE?

The Opposer anchors its opposition on the following provisions of Republic Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code"):

Sec. 123.Registrability. - 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;"

<sup>5</sup>Marked as Exhibits "1" to "17", inclusive.

165.2. (b) In particular, any subsequent use of the trade name by a third party, whether as a trade name or a mark or collective mark, or any such use of a similar trade name or mark, likely to mislead the public, shall be deemed unlawful.

A comparison of the competing marks reproduced below:

**MedChoice**  
Pharma

**MEDICHOICE**

Opposer's trademark

Respondent-Applicant's mark

shows that confusion is likely to occur. This Bureau noticed that the pharmaceutical products/services covered by the marks are related. Designated as MEDICHOICE, Respondent-Applicant's pharmaceutical products are "gauze bandage" under Class 05 and "surgical gloves, bandages, abdominal pads, abdominal pads with x-ray detectable; absorbent gauze balls; absorbent gauze balls with x-ray detectable; blood lancet; cherry and peanut rolled sponges; cherry and peanut rolled sponges with x-ray detectable; face mask; first aid dressing; cotton filled gauze; gauze sponges; gauze sponges with x-ray detectable; elastic bandage; tracheostomy gauze sponges; visceral pack; visceral pack with x-ray detectable; non woven sponges; rubber catheter; nelaton rubber catheter; surgical gloves; examination gloves; hypodermic glass syringe; absorbent gauze; cotton tip applicator; umbilical cord; duodenum tubing; medical feeding tube; nasal oxygen cannulae; suction catheter with finger tip control and oxygen catheter" under Class 10. Opposer's services covered under MEDCHOICE LOGO include "pharmaceutical generic drug trading pharmaceutical, develop and market a wide range of prescription health medicines or generic drug products covering several therapeutic categories; selling and distribution of drugs and medicines" under Class 35. Confusion is likely in this instance because of the close resemblance between the marks, MEDCHOICE vs. MEDICHOICE. Likewise, it could result to mistake with respect to perception because the marks sound so similar. Under the idem sonans rule, the following trademarks were held confusingly similar in sound: "BIG MAC" and "BIG MAK"<sup>6</sup>, "SAPOLIN" and "LUSOLIN"<sup>7</sup>, "CELDURA" and "CORDURA"<sup>8</sup>, "GOLD DUST" and "GOLD DROP". The Supreme Court ruled that similarity of sound is sufficient ground to rule that two marks are confusingly similar, to wit:

Two letters of "SALONPAS" are missing in "LIONPAS": the first letter a and the letter s. Be that as it may, when the two words are pronounced, the sound effects are confusingly similar. And where goods are advertised over the radio, similarity in sound is of especial

<sup>6</sup> *MacDonalds Corp, et. al v. L. C. Big Mak Burger*, G.R. No. L-143993, 18 August 2004.

<sup>7</sup> *Sapolin Co. v. Balmaceda and Germann & Co*, 67 Phil, 705.

<sup>8</sup> *Co Tiong SA v. Director of Patents*, G.R. No. L- 5378, 24 May 1954; *Celanes Corporation of America vs. E. I. Du Pont de Nemours & Co.* (1946), 154 F. 2d 146 148.)



significance...."SALONPAS" and "LIONPAS", when spoken, sound very much alike. Similarity of sound is sufficient ground for this Court to rule that the two marks are confusingly similar when applied to merchandise of the same descriptive properties.<sup>9</sup>

However, Respondent-Applicant claims that it has prior right over Opposer despite the earlier application filed by Opposer for its mark MEDCHOICE LOGO. Thus, it is necessary to determine who between Opposer and Respondent-Applicant has prior right.

Records show that at the time the Opposer filed its trademark application on 21 December 2011 for the mark MEDCHOICE, the Respondent-Applicant had previously filed applications for registration of the mark MEDICHOICE and was issued Trademark Registration No. 38235 on 24 February 1988 and Reg. No. 4-2000-001330 on 10 February 2005. Due to Respondent-Applicant's failure to file the required Affidavit of Use in February 2011, Respondent-Applicant filed for re-registration of the mark MEDICHOICE on 17 February 2012 bearing Application Serial No. 4-2012-001993, now subject of this opposition.

In *E.Y. Industrial Sales, Inc. et Al. v. Shendar Electricity and Machinery Co. Ltd.*<sup>10</sup>, the Supreme Court held:

Sec. 134 of the IP Code provides that any person who believes that he would be damaged by the registration of a mark xxx may file an opposition to the application. The term any person encompasses the true owner of a mark, the prior continuous user.

Notably, the Court has ruled that the prior and continuous use of a mark may even overcome the presumptive ownership of the registrant and be held as the owner of the mark. As aptly stated by the Court in *Shangri-la International Hotel Management, Ltd v. Developers Group of Companies, Inc.*:

Registration, without more, does not confer upon the registrant an absolute right to the registered mark. The certificate of registration is merely a prima facie proof that the registrant is the owner of the registered mark or trade name. Evidence of prior and continuous use of the mark or trade name by another can overcome the presumptive ownership of the registrant and may very well entitle the former to be declared owner in an appropriate case.

xxx

Ownership of a mark or trade name may be acquired not necessarily by registration but by adoption and use in trade or commerce. As between actual use of a mark without registration, and registration of the mark without actual use thereof, the former prevails over the latter. For a rule widely accepted and firmly entrenched, because it has come down through the years, is that actual use in commerce or business is a pre-requisite to the acquisition of the right of ownership.

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<sup>9</sup> *Marvex Commerical Co., Inc. v. Petra Hawpia & Co., et. al.*, G.R. No. L-19297, 22 Dec. 1966.

<sup>10</sup> *G.R. No. 184850. October 20, 2010*

By itself, registration is not a mode of acquiring ownership. When the applicant is not the owner of the trademark being applied for, he has no right to apply for registration of the same. Registration merely creates a prima facie presumption of the validity of the registration, of the registrant's ownership of the trademark and of the exclusive right to the use thereof. Such presumption, just like the presumptive regularity in the performance of official functions, is rebuttable and must give way to evidence to the contrary.

Registration of a mark is based on ownership. While Republic Act No. 8293 espouses the first-to-file-rule as stated under Sec. 123.1 (d), which means that, the registration of a mark is prevented with the filing of an earlier application for registration. This must not, however, be interpreted to mean that ownership should be based upon an earlier filing of an application for registration of a mark, proof of prior and continuous use is necessary to establish ownership of mark. Such ownership constitutes evidence to oppose the registration of a mark.

In this case, although Respondent-Applicant's registration was cancelled for failure of Respondent-Applicant to file the Affidavit of Use, Respondent-Applicant continued to use the mark and did not abandon its rights over the mark MEDICHOICE. Generally, abandonment means the complete, absolute or total relinquishment or surrender of one's property or right, or the voluntary giving up or non-enjoyment of such property or right for a period of time which results in the forfeiture or loss thereof. It requires the concurrence of the intention to abandon it and some overt acts from which it may be inferred not to claim it anymore.<sup>11</sup> To work abandonment, the disuse must be permanent and not ephemeral; it must be intentional and voluntary, and not involuntary or even compulsory. There must be a thorough ongoing discontinuance of any trade-mark use of the mark in question.<sup>12</sup> Applying the said concept to ownership or registration of trademarks, in order for a trademark registration to be considered as abandoned, the owner/registant must relinquish or voluntarily surrender its rights over the trademark. There was no overt act from which it can be inferred that Respondent-Applicant abandoned its right over the mark MEDICHOICE. In fact, to ensure continuity of its registration and to prove that Respondent-Applicant Blue Sky Trading Co., Inc. is the prior user of the trademark MEDICHOICE in the concept of an owner, Respondent-Applicant filed an application for registration of the mark MEDICHOICE in February 22, 2000 and February 17, 2012 bearing Application Nos. 4-2000-001330 and 4-2012-001993 respectively. Hence, Respondent-Applicant's re-application or re-registration of the mark MEDICHOICE plus the continued use by Respondent-Applicant of its mark since 1982, Respondent-Applicant has prior right than Opposer.

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<sup>11</sup> *Agpalo, Ruben E., Legal Words and Phrases, 1997 Ed., page 1.*

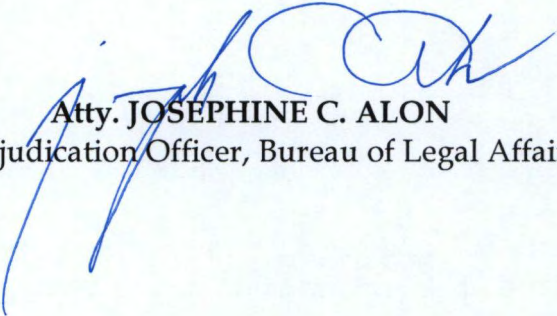
<sup>12</sup> *Philippine Nut Industry vs. Standard Brands, Incorporated, Et. al., G.R. No. L-23035. July 31, 1975 citing Callman, Unfair Competition and Trademark, 2nd Ed., p. 1341)*



WHEREFORE, premises considered, the instant Opposition is hereby DISMISSED. Let the filewrapper of Trademark Application Serial No. 4-2012-001993 together with a copy of this Decision be returned to the Bureau of Trademarks (BOT) for information and appropriate action.

SO ORDERED.

Taguig City, 23 DEC 2016.



Atty. JOSEPHINE C. ALON  
Adjudication Officer, Bureau of Legal Affairs