VITASOY INTERNATIONAL HOLDINGS LIMITED, *Petitioner,*	}	**IPC No. 14-2010-00057** Petition for Cancellation of:
-versus-	}	Reg. No. 4-2006-012377 Date Issued: 26 March 2007
MALAYSIA DAIRY INDUSTRIES PTE. LTD., *Respondent-Registrant.*	}	**TM: VITAGEN (series)**

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NOTICE OF DECISION

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GREETINGS:

Please be informed that Decision No. 2016 - 520 dated 23 December 2016 (copy enclosed) was promulgated in the above entitled case.

Pursuant to Section 2, Rule 9 of the IPOPHL 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, 06 January 2017.

MARILYN F. RETUTAL
IPRS IV
Bureau of Legal Affairs

VITASOY INTERNATIONAL HOLDINGS LIMITED, Petitioner,	}**IPC NO. 11-2010-00057** }Petition for Cancellation : }Registration No. 4-2006-012377 } Date Issued: 26 March 2007
-versus-	}
MALAYSIA DAIRY INDUSTRIES PTE. LTD., Respondent-Registrant.	}Trademark: **"VITAGEN (series)"**
x----------x	}Decision No. 2016- 520

DECISION

VITAGEN INTERNATIONAL HOLDINGS LIMITED, (Petitioner)[1] filed a Petition for Cancellation of Trademark Registration No. 4-2006-012377. The Registration, in the name of MALAYSIA DAIRY INDUSTRIES, PTE LTD., (Respondent-Registrant)[2], covers the mark "VITAGEN", for use on "Meat, fish, poultry and game, meat extracts, preserved, dried and cooked fruits and vegetables, jellies, jams, fruit sauces, eggs, milk, milk and dairy products, edible oils and fats in class 29 " under Class 29 and "beers, mineral and aerated waters and other non-alcoholic drinks, fruit drinks and fruit juices, syrups and other preparations for making beverages" under class 32 of the International Classification of Goods[3].

The Petitioner anchors the petition on the following grounds:

"A. Registration No. 4-2005-012377 for the mark VITAGEN was obtained fraudulently or contrary to Section 123(d) of the IP Code (8293);

"B. Registration No. 4-2005-012377 for the mark VITAGEN was obtained fraudulently or contrary to Section 123(e) of the IP Code (8293);

"C. Registration No. 4-2005-012377 for the mark VITAGEN is contrary to Section 165.2 of the IP Code considering that the marks 'VITA' and 'VITASOY' is the corporate or trade name of Petitioner;

"D. Registration No. 4-2005-012377 for the mark VITAGEN should have been deemed withdrawn for filing a fraudulent Declaration of Actual Use (DAU), hence, the continuing registration of said mark is contrary to the provisions of the IP Code."

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[1] A corporation duly organized and existing under the laws of HongKong with principal address at 1 Kin Wong Street, Tuen Mun, New Territories, Hongkong

[2] A corporation organized under the laws of Singapore with address at 2 Davidson Road, Singapore, 36994

[3] The Nice Classification of Goods and Services is for registering trademarks and service marks based on multilateral treaty administered by the WIPO, called the Nice Agreement Concerning the International Classification of Goods and Services for Registration of Marks concluded in 1957.

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Petitioner alleges, among other things, the following:

"Petitioner is the prior user and applicant of the mark 'VITA' which is the dominant element of Respondent-Registrant's 'VITAGEN' mark.

"3.1 Petitioner has the following trademark registrations and applications in the Philippines for the trademarks 'VITA' and 'VITASOY' and its variants, which have earlier filing dates than Respondent-Registrant's, xxx

"3.2 As clearly shown, the foregoing five (5) registrations and applications of Petitioner's trademarks 'VITA' and 'VITASOY' and its variants have filing dates much earlier than Respondent-Registrant's 'VITAGEN' trademark application filing date of December 16, 2005. Considering that the dominant element of Respondent-Registrant's mark is 'VITA', which is the trademark of Petitioner, the mark 'VITAGEN' should not have been allowed registration since it is contrary to Section 123 (d), 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 filing date or priority date in respect of: (i) the same goods or services, (ii) closely related goods or services, or if it nearly resembles such a mark as to be likely to deceive or cause confusion.

"3.3 Petitioner introduced herein 'VITA' and 'VIYASOY' branded products (collectively known as 'VITASOY' products) in 1996 through Sunshine Trading LTD and thereafter, or since 1998 up to present, Fly Ace Corporation became the exclusive distributor of Petitioner's products. xxx

"Respondent-Registrant's 'VITAGEN' mark is confusingly similar with Petitioner's 'VITA' and 'VITASOY' trademarks.

"3.4 A comparison of the tradename 'VITASOY' of Petitioner and 'VITAGEN' of Respondent-Registrant, indeed shows confusing similarity. Both marks contain Petitioner's mark 'VITA' filed in 1992, and the mark 'VITAGEN' the suffix 'soy' was merely substituted with the suffix 'gen'. Furthermore, the font and style of the mark 'VITAGEN' are not so distinctive as to differentiate it from Petitioner's 'VITASOY' mark. Xxx

"3.5 The Bureau of Legal Affairs of the IPO has previously sustained oppositions wherein the subject mark has adopted the same prefix or suffix as the mark of the Opposer, such as in the following instances:

"3.5.1 In the case of Pfeizer Products, Inc. v. Elmer C. Tendero xxx

"3.5.2 In the case of Sanofi-Aventis Deutschland GMBH ('Sanofi') v. Suhitas Pharmaceuticals Inc. xxx

"3.5.3 In the case of Ngo Yet Te v. Johnson and Johnson xxx

"3.6 The BLA has ruled in favor of Petitioner declaring that the following marks are confusingly similar to Petitioner's trademarks 'VITA' and 'VITASOY', in the following cases: xxx

"Petitioner's 'VITA' and 'VITASOY' marks are internationally well-known marks in accordance with the criteria set forth in Rule 102 of the Trademark Regulations under the IP Code

"3.7. The registration and continued use of the mark 'VITAGEN' for goods under Classes 29 & 32 in the name of Respondent-Registrant will cause grave and irreparable injury and damage to Petitioner as prior owner of the 'VITA' and 'VITASOY' marks which are internationally well-known, having met the criteria in Rule 102 of the Trademark Rules. Xxx

"3.10 As stated by Ah-Hing Tong, Company Secretary of Petitioner, early as 1976, Petitioner began the manufacture of 'VITA' branded products covering fruit juices, juice drinks, tea drinks, dairy milk, distilled water and soya based beverages. Petitioner obtained and continues to secure registration for its 'VITA' trademark in many countries all over the world. xxx

"3.18 Petitioner's 'VITA' mark has acquired immense and valuable goodwill as a result of the sales generated by the products bearing the 'VITA' mark, as well as the superior quality of goods bearing said marks. Worldwide sales for 'VITA' products from 2002 to 2006 have amounted to US $ 909 million xxx

"3.19 Petitioner's 'VITA' trademark has likewise acquired immense and valuable goodwill as a result of the enormous sums of money spent in advertising and promoting 'VITA' products. Worldwide expenditures for advertising and promotions for the years 2001 to 2006 have reached US $ 56 million. Xxx

"3.20 Showing also the fame and well-knownness of Petitioner's 'VITA' and 'VITASOY' marks is its presence in the internet.xxx

"3.22 xxx Hence, considering that the mark VITAGEN covered by Registration No. 4-2005-012377 contains the 'VITA' trademark and dominant element of the mark 'VITASOY' which comprises the tradename of herein Petitioner, the registration of the mark 'VITAGEN' is contrary to Section 165.2 of the IP Code and should not be allowed by the IPPhil.

"3.23 The records of the IPPhil for Registration No. 4-2005-012377 for the mark 'VITAGEN' show that a notarized Declaration of Actual Use (DAU) was filed on December 15, 2008. xxx

"3.27 Clearly, Respondent-Registrant committed fraud in the execution and submission of a false DAU, to keep its Registration No. 04-2005-012377 for the mark 'VITAGEN' active, which is contrary to the provisions of the IP Code. The false statements are indicated in the following:

"3.27.1 Stating that the mark is in use in the Philippines by directing as its outlet the website of the Respondent-Registrant www.vitagen.com.sg with address in Singapore, when a consumer in the Philippines cannot transct online thru this website.

"3.27.2 Attaching to the DAU an alleged proof of shipment to the Philippines of 'VITAGEN CONDENSADA' when it cannot sell said products in the Philippines for failure to secure a BFAD Registration. The registration is mandatory for imported products in accordance with BFAD rules which has for its objective the health and welfare of the Philippine consumers, young and old alike.

"3.27.3 Falsely claiming that the VITAGEN mark has actual use for goods in Classes 29 and 32, when only VITAGEN CONDENSADA which is classified in Class 29 is supported by its documents.

"3.27.4 More importantly, claiming use of the mark 'VITAGEN' when it is prohibited from selling products without the required BFAD registration. xxx"

To support its petition, the Petitioner submitted as evidence the following:

1. Special Power of Attorney;
2. Certified copies of trademark registrations and applications for the marks "VITA" and "VITASOY";
3. Affidavit-Direct Testimony of Ellen Cochango;
4. Affidavit-Direct Testimony of Julie Ang;
5. Affidavit-Direct Testimony of Ms. Ah Hing Tong;
6. Affidavit-Direct Testimony of John Shek Hung Lau;
7. List of registrations and applications of the mark "VITA" and "VITASOY" worldwide;
8. Sample sales invoices to Fly Ace Corporation;
9. Sample advertising and promotion of "VITA" products in the Philippines;
10. Copies of four *Inter Partes* Cases ("IPC");
11. Certification of Atty. Princess Luren Aguas;
12. Photocopy of the Declaration of Actual Use of "VITAGEN"
13. Certification of Virginia Francia C. Laboy;
14. Affidavit of Norberto C. Ingente[4]

[4] Exhibits "A" to "K" with submarkings

The Respondent-Registrant filed its Answer on 15 July 2010, alleging among others, the following defenses:

"14. Respondent-Registrant Malaysia Dairy Industries Pte. Ltd. Began in 1963 as a joint venture between the family of Thio Keng Poon and the Australian Dairy Products Board. Five years later, Malaysian Industries ('MDI') became a locally-owned entity after the Thio family bought over the Australian interest in the company.

"15. MDI's first product was sweetened condensed milk, sold in 1963.

"16. The market quickly embraced the product and demand soon rose. From sweetened condensed milk came evaporated milk came evaporated milk in 1970, which was added to the line of products. A year later, instant and regular full cream milk powder were added. Another milk product, pasteurized milk followed in 1974.

"17. Malaysia Milk Sdn, Bhd, a wholly owned subsidiary of Respondent-Registrant, was set up to manufacture for the large Malaysian market. Established in 1969 to meet the growing demands for milk products in Malaysia. It had its own factory and office in Petaling Jaya, Malaysia, and started operations in 1977 with the introduction of its first innovative product, a cultured milk drink called VITAGEN.

"18. As the line of milk products became a success, Respondent-Registrant branched out into fruit juice drinks in 1977. xxx

"19. Today, Respondent-Registrant manufactures as many as 21 various product lines. xxx

Origin, successful sale and goodwill of its VITAGEN trademark and goods.

"27. In 1977, understanding that a healthy digestive system is the key to helping Singaporeans lead a long and healthy life, Respondent-Registrant introduced VITAGEN.- the first cultured milk in Singapore before other brands of cultured milk drink.

"28. Every bottle of VITAGEN contains billions of live probiotics cultures, which are good bacteria that aid digestion. These probiotics can withstand stomach's gastric juice and bile and reach the intestines alive to fight harmful bacteria, hence help to maintain a desirable balance of beneficial bacteria in the digestive system.

"29. VITAGEN has been sold in Singapore, Malaysia, Batam (Indonesia), Brunei and Australia.

"30. The success and recognition in the industry enjoyed by Respondent-Registrant is clear. Hence, not only is Respondent-Registrant's use of a VITAGEN trademark founded in historical use, but its mark and name have also been firmly established and have a renowned as those of a market leader in the industry. Respondent-Registrant has neither sought nor even needed to ride on the reputation or commercial goodwill of others.

"31. To maintain the goodwill and fame of the VITAGEN trademark, Respondent-Registrant has advertised the same in numerous media such as magazines, newspapers and websites. It has invested approximately Singapore dollars 2.2 million in the year 2009 to advertise and promote its VITAGEN trademark in Singapore alone.

"32. Respondent-Registrant maintains the websites www.vitagen.com.sg, www.mdi.com.sg, and www.mmsb.com.my where the product VITAGEN is found.

"33. Respondent-Registrant has already gained notoriety in Singapore and Malaysia as well as other parts of the world. It is therefore not surprising that the leading search engine 'Google' generated 42,000 hits for the search key 'VITAGEN'.

"34. Internet articles featuring the mark 'VITAGEN' include the following: xxx

"35. Respondent-Registrant 'VITAGEN' has also been featured in publications, advertising and promotional materials. xxx

"36. 'VITAGEN' is a mark that serves to distinguish Respondent-Registrant's business and as such, it has obtained the right to register 'VITAGEN' as Respondent-Registrant's trademark in several jurisdictions worldwide. Below is a listing of trademark registrations and applications for the mark 'VITAGEN' in other countries. xxx

"37. In the Philippines, Respondent-Registrant has filed the following trademark applications:

a.	Trademark	: VITAGEN (SERIES)
	Registration No.	: 42005-12377
	Date Filed	: 12/16/2005
	Issued	: 03/26/2007
	Classes	: 29 & 32
b.	Trademark	: VITAGEN (SERIES)
	Registration No.	: 42002004995
	Date Filed	: 6/19/2002
	Issued	: 03/20/2005

	Classes	: 32 & 29
c.	Trademark	: VITAGEN & BOTTLE DESIGN
	Application No.	: 42005012376
	Date Filed	: 12/16/2005
	Classes	: 29 & 32
d.	Trademark	: VITAGEN & BOTTLE DEVICE
	Application No.	: 41998009367
	Date Filed	: 12/24/1998
	Classes	: 29 & 32

"First defense: The VITASOY trademarks of Petitioner are specific only to soya and soya bean based products, and not on any other goods, such as cultured milk drinks of Respondent-Registrant.

"40. Petitioner seeks the cancellation of the registration for VITAGEN as a trademark on the ground that it is confusingly similar to its registered 'VITASOY' trademarks.

"41. However, it must be noted that the scope of trademark protection accorded to a registered trademark is limited to the goods specified in the certificate of registration. xxx

"42. Hence, if another uses the same trademark as registered on goods other than those specified in the certificate, then the law ordains that the registrant will not be able to stop such a use because for said use on other goods, the law is clear that the registrant has no exclusive ownership over its registered mark.

"43. In the instant case, the rule well applies because there is no question that a careful reading of all five (5) certificates of registration cited by Opposer for its VITASOY & FIVE LEAF LOGO and VITASOY trademarks cover food products, will easily reveal that these trademarks are only specific to soya and soya bean based. Indeed, in each of said certificates, the food specified therein are consistently qualified by the description stated in the first part of the description's 'soya bean based'.

"44. On the other hand, the VITAGEN of Respondent-Registrant is clearly not soya or soya bean based product, but cultured milk product Respondent-Registrant is not using VITAGEN on any soya or soy bean based product since it is not in the market for producing soya or soya bean based drinks.

"45. Hence, because of the self limitation imposed by Petitioner on its certificates of trademark registration that the VITASOY trademarks are specific only to soya bean based products, then by virtue of the legal command in canon, it is precluded from contesting the use of VITAGEN

by Respondent-Registrant on goods that are not soya bean based products, such as cultured milk food under the VITAGEN brand. Xxx

"Second Defense: Cultured milk products are not related or similar or competing with soya based products. xxx

"51. First, although both are food products, there is no question that soya products on one hand, and cultured milk products on the other hand, are completely different from other in the essential characteristics and purpose. xxx

"61. Second, true it is that both goods are under the same classification, namely, foodstuff, but this does not automatically lead to a finding that there is similarity in goods or services as to cause likelihood of confusion to the relevant consumers.

"Third Defense: At the outset, the contending trademarks VITASOY and VITAGEN, are themselves not confusingly similar.

"64. Applying these rules in the instant case, then the following conclusions are easily reached:

a. It does not matter if the letters V-I-T-A found in VITASOY is also used in VITAGEN. As shown above, similarity in spelling and pronunciation is without weight under the Holistic Test. Xxx

b. The packaging of VITASOY is completely different from that of VITAGEN, as seen below and therefore, there can be no confusing similarity that can arise:

c. Other factors also confirm that confusing similarity between VITASOY and VITAGEN is negated.

i. The nature of VITAGEN product is different from VITASOY: the former is cultured milk to help in digestion, while the other is simply a soya product.
ii. The market segment for VITAGEN products is for cultured milk for good digestion. This is not the same market segment for soya products.
iii. VITAGEN caters to purchasers intent on buying cultured milk to help in digestion, and hence they will always ignore VITASOY products, which to them is clearly not a cultured milk product but a soya product.
iv. Such purchasers of VITAGEN, wanting good digestion, will mull over the product to be bought, and in this case, the purchaser will deliberately seek out VITAGEN products. He will not concern himself with soya products under VITASOY as he is educated

enough to know that only cultured milk carry probiotics for good digestion, which is not present in soya products.

v. The meaning of VITASOY is purely drinks made from soya beans. It therefore cannot be given meaning that will include cultured milk containing probiotics for good digestion. Xxx

"72. And a portion of a mark is 'weak' if such portion is descriptive, highly suggestive, or is in common use by many other sellers in the market, as pointed out by McCarthy, citing Colgate-Palmolive v. Carter Wallace, Inc. and Knapp-Monarch Co. v. Polvoron Products,Inc.

"73. VITA is decisively a weak portion of the mark because it is used by numerous other parties. The database of the Intellectual Property Office shows that VITA has seen countless registration in favor of various parties, thus: xxx

"75. As a result, it remains that SOY would now be dominant element in VITASOY, not VITA, which is a weak portion, and surely, this SOY portion cannot by any stretch of the imagination be considered as confusingly similar to VITAGEN, or vice versa.

"Fourth Defense: The prior BLA decisions upholding Petitioner's rights to VITA in the outset, the contending trademarks VITASOY, carry little weight. Xxx

"79. But against these four (4) cases can be cited the more than one hundred (100) registrations issued by the IPO, listed in Paragraph 75 covering marks using the VITA element to different entities and individuals.

"80. These nearly one hundred certificates of registrations for the VITA portion issued to various and numerous sellers and producers, is overwhelming proof that there can be no one who can claim exclusive ownership over the VITA portion, including the Petitioner. xxx

"Fifth Defense. Respondent-Registrant is not riding on the goodwill or reputation of Petitioner.

"Sixth Defense. Respondent-Registrant is the true owner of the trademark 'VITAGEN'.

"87. Petitioner makes issue of the fact that it is filed its marks 'VITA' and 'VITASOY' ahead of Respondent-Registrant's VITAGEN.

"88. But as amply demonstrated above, VITASOY and VITAGEN are not confusingly similar under both the Holistic and Dominancy Test, and for the reason also that the goods on which the marks are used are not related.

"89. What is more, it is clear as daylight also that even if both marks use the VITA element, VITA is a commonplace mark used by myriads of sellers in the market and as such, no one, and this includes Petitioner, can claim exclusive ownership over this VITA portion. xxx

"Seventh Defense. VITASOY does not qualify for protection under the well-known provision of Section 123 (e) and (f) of RA 8293 or under Article 6bis of the Paris Convention. xxx"

To support its defense, the Respondent-Registrant submitted as evidence the following:

1. Affidavit of Alfred Lim Jee Long dated 6 July 2010;
2. Copies of publications of featuring "VITAGEN" mark;
3. Certified copies of international trademark applications and registrations for the mark "VITAGEN";
4. Affidavit of Amando Aumento, Jr. dated 15 July 2010;
5. Special Power of Attorney;
6. Printed pages of Respondent-Registrant's website www.vitagen.com.sg, www.mdi.com.sg and www.mmsb.com.my; and
7. Printed page of IPO database of trademark registration/application for "VITAGEN".[5]

The Preliminary Conference was held on 8 September 2011, where the parties were directed to submit their position papers. The Petitioner and Respondent-Registrant submitted their position papers both on 22 September 2011.

Should the Respondent-Registrant's VITAGEN (series) mark be cancelled?

Section 151 of the IP Code provides:

Section 151. Cancellation – 151.1. A petition to cancel a registration of a mark under this Act may be filed with the Bureau of Legal Affairs by any person who believes that he is or will be damaged by the registration of a mark under this Act as follows:

(a) Within five (5) years from the date of registration of the mark under this Act.
(b) At any time if the registered mark becomes the generic name for the goods or services or a portion thereof, for which it is registered or has been abandoned, or its registration obtained fraudulently, or contrary to the provisions of this Act, or if the registered mark is used by, or with the permission of the registrant so as to misrepresent the source of the goods or services or in connection with which the mark is used.

Records show that Respondent-Registrant registered the mark "VITAGEN (SERIES)" under Registration No. 4-2006-12377 on 26 March 2007. The goods covered by the Respondent-Registrant's trademark registration are under Classes 29, namely:

[5] Exhibits "A" to 'H"

"Meat, fish, poultry and game, meat extracts, preserved, dried and cooked fruits and vegetables, jellies, jams, fruit sauces, eggs, milk, milk and dairy products, edible oils and fats in class 29" and under Class 32, namely: "beers, mineral and aerated waters and other non-alcoholic drinks, fruit drinks and fruit juices, syrups and other preparations for making beverages". On the other hand, Petitioner's registrations[6] for the mark VITASOY was obtained in 4 May 2009 for goods under Class 29, namely: "soya bean milk in liquid and solid form, soya bean based food products and all kinds of food products and ingredients thereof" and Class 32, namely: "soya bean based carbonated and non-carbonated non-alcoholic drinks and beverages, syrups, powders, extracts and concentrates for making carbonated and non-carbonated non-alcoholic beverages, juices of all kinds, softdrinks". Petitioner's VITASOY & FIVE LEAF LOGO mark was registered on 5 November 2007 for goods under Class 29, namely: "soy milk, milk drinks and tofu soya bean milk.. " and Class 32, namely: "soya bean based carbonated and non-carbonated non-alcoholic drinks".

Do the competing marks depicted below, resemble each other such that confusion, even deception, is likely to occur?

VITASOY	VITAGEN *Vitagen*
Petitioner's mark	Respondent-Registrant's mark

The marks are similar with respect to the first two syllables ("VITA"). In this regard, the word "VITA" in Latin, means "Life".[7] Taking into account the goods involved, the word "VITA" or the marks are suggestive marks. As pointed out by the Respondent-Registrant, the prefix "VITA" is so commonplace and as such has become a weak mark. The Supreme Court in Philippine Refining Co. Inc. v. Ng Sam[8] held: "*Being a generic and common term, its appropriation as a trademark, albeit in a fanciful manner in that it bears no relation to the product it identifies, is valid. However, the degree of exclusiveness accorded to each user is closely restricted.*" As observed, the IPO trademark database is replete with marks bearing the word "VITA" joined with other distinct words to form unique trademarks in a variety of Nice classification of goods/services, which to name a few, includes in particular goods classified in Classes 32 and 29 namely: MC VITA[9]; VITA ZEST[10]; Z-VITA[11]; DOLCE VITA[12]; and VITA KING[13]. These marks are owned by various entities, namely: Manila Golden Archers Group, Inc., Zesto Corporation, Pedia Pharma, Asia Brewery, Inc, and Gentro Philippines, Inc. It is not uncommon that registered owners of drinks or goods add,

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[6] Exhibit "B"
[7] https://en.oxforddictionaries.com/definition/vita
[8] .GR. No. L-26676 July 30, 1982
[7] G R. 120900 July 20, 2000
[9] Reg./App. No. 42016003371
[10] Reg./App. No. 42015004701
[11] Reg./App. No. 420150917
[12] Reg./App. No. 4-2009-012352
[13] Reg./App. No.42008002834

substitute letters, play on the syllables "VITA" to create their distinct brand name. Moreover, the suffices of the marks are totally different, SOY and GEN, both visually and phonetically. Thus, the marks are not confusingly similar. More importantly, the records show that the Respondent-Registrant has proved prior registration and ownership of the mark VITAGEN (SERIES). It has originated, used, promoted and advertised the mark VITAGEN.[14] The contemporaneous use of both marks will not result to a likelihood of confusion.

In addition, the Bureau notes that the goods themselves, even if classified under the same Class 29 and 32 have different characteristics and properties that make them different from one another. Petitioner's mark VITASOY are used on soya and soya bean-based drinks as seen from its registration[15] and websites[16]. On the other hand, Respondent-Registrant's VITAGEN mark, is used for cultured milk as seen from its website[17] and as testified to by its witness.[18] Thus, a consumer intent to buy soy based products will not purchase cultured milk. Besides, as earlier discussed, the marks are distinguishable from each other, visually and aurally, therefore, buyers will not be confused.

WHEREFORE, premises considered, the instant Petition for cancellation of Trademark Registration No. 4-2006-012377 is hereby **DISMISSED.** Let the filewrapper of the subject trademark be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 23 DEC 2016

ATTY. ADORACION U. ZARE, LL.M.
Adjudication Officer
Bureau of Legal Affairs

[14] Exhibits "A"; "B"; "G""
[15] Exhibit "B"
[16] Exhibit "H"
[17] Exhibit "F"- "G"
[18] Exhibit "A"