

UNITED LABORATORIES, INC.,  
Opposer,

-versus-

JESUS RYAN A. ACUZAR,  
Respondent- Applicant.

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} IPC No. 14-2015-00567  
}  
} Opposition to:  
} Appln. Serial No. 4-2014-006718  
} Date Filed: 28 May 2014  
} TM: "ENERKIDS+"  
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### NOTICE OF DECISION

#### OCHAVE & ESCALONA

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Mandaluyong City

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#### GREETINGS:

Please be informed that Decision No. 2017 - 145 dated April 27, 2017 (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, May 02, 2017.

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

Republic of the Philippines  
INTELLECTUAL PROPERTY OFFICE

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UNITED LABORATORIES, INC.,  
Opposer,

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JESUS RYAN A. ACUZAR,  
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IPC NO. 14-2015-00567

Opposition to:  
Appln. Ser. No. 4-2014-006718  
Filing Date: 28 May 2014  
Trademark: ENERKIDS+

Decision No. 2017 - 145

### DECISION

UNITED LABORATORIES, INC.<sup>1</sup> ("Opposer") filed an Opposition to Trademark Application Serial No. 4-2014-006718. The application, filed by JESUS RYAN A. ACUZAR<sup>2</sup> ("Respondent-Applicant") covers the mark **ENERKIDS+** for use on "*pharmaceutical, veterinary and sanitary preparations; dietetic substances adapted for medical use, food for babies; plasters, materials for dressings; material for stopping teeth, dental wax; disinfectants; preparations for destroying vermin; fungicides, herbicides*" under Class 5 of the International Classification of goods<sup>3</sup>.

The Opposer alleges the following:

#### "GROUNDS FOR OPPOSITION

x x x

"7. The mark 'ENERKIDS+' filed by Respondent-Applicant so resembles the trademark 'ENERVON- C' owned by Opposer and duly registered with the Honorable Bureau prior to the publication for opposition of the mark 'ENERKIDS+'.

"8. The mark 'ENERKIDS+' will likely cause confusion, mistake and deception on the part of the purchasing public, most especially considering that the opposed mark 'ENERKIDS+' is applied for the same class of goods as that of the Opposer's trademark 'ENERVON-C', i.e., Class 05 of the International Classification of Goods as pharmaceutical preparations.

"9. The registration of the 'ENERKIDS+' in the name of the Respondent-Applicant will violate Sec. 123 of the IP Code, which provides, in part, that a mark cannot be registered if it:

x x x

Under the above-quoted provision, any mark which is similar to a registered mark shall be denied registration in respect of similar or related goods or if the mark

<sup>1</sup> A corporation duly organized and existing under the laws of the Philippines with principal office located at No. 66 United Street, Mandaluyong City.

<sup>2</sup> A Filipino citizen with address at Plaridel Street, District 4, Brgy. Solano, Nueva Vizcaya.

<sup>3</sup> The Nice Classification is a classification of goods and services for the purpose of registering trademark and service 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.

applied for nearly resembles a registered mark that confusion or deception in the mind of the purchasers will likely result.

The Opposer's evidence consists of the following:

1. Certified copy of Certificate of Reg. No. 14854 for the trademark "ENERVON-C" issued on 16 June 1969;
2. Certified copy of the Assignment of Registered Trademark executed on 21 September 2005 between United American Pharmaceuticals, Inc. and UNAM Brands (BVI) Ltd. for the trademark "ENERVON-C";
3. Certified copy of the Assignment of Registered Trademark executed on 23 February 2009 between UNAM Brands (BVI) Ltd. and United Laboratories, Inc. for the trademark "ENERVON-C";
4. Certified copy of Certificate of Renewal Reg. No. 014854 for the trademark "ENERVON-C";
5. Actual packaging sample for ENERVON Multi-vitamins;
6. Certification issued by the Intercontinental Marketing Services (IMS) and sales performance; and
7. Certificate of Product Registration No. DR-XY25769 issued by the Food and Drug Administration for ENERVON.

This Bureau issued on 13 January 2016 a Notice to Answer and served to the Respondent-Applicant on 25 January 2016. On 22 February 2016, Respondent-Applicant filed the Verified Answer alleging, among others, that its ENERKIDS+ mark is not confusingly similar to Opposer's ENERVON-C mark. According to Respondent-Applicant, while it is true that the four first letters of their respective marks are similar, the other letters are different such that "VON-C" cannot be mistaken with "KIDS+" as they have different letters, characters and pronunciation. Also, Respondent-Applicant posits that there are glaring differences in the manner that the marks are presented.

Respondent-Applicant's evidence consists of the following:

1. Special Power of Attorney; and
2. Printout of Respondent-Applicant's ENERKIDS+ mark.

Pursuant to Office Order No. 154, s. 2010, the case was referred to the Alternative Dispute Resolution ("ADR") for mediation on 01 March 2016. However, the parties failed to settle their disputes. On 06 September 2016, the preliminary conference was terminated and the parties were directed to submit position papers. On 19 September 2016, the parties submitted their respective Position Papers.

Should the Respondent-Applicant be allowed to register the mark ENERKIDS+?

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.<sup>4</sup>

Sec. 123.1 (d) of R.A. No. 8293 otherwise known as the "Intellectual Property Code of the Philippines" ( IP Code), as amended, provides:

SECTION 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;

A perusal of the records of this will show that at the time Respondent-Applicant filed its application for registration of its mark ENERKIDS+ on 28 May 2014, Opposer already has an existing registration for the mark ENERVON-C issued way back in 16 June 1969. As such, pursuant to Section 138 of the IP Code, being a holder of a certificate of registration, such "certificate of registration is a prima facie evidence of the registrant's ownership of the mark, and of the exclusive right to use the same in connection with the goods or services specified in the certificate and those that are related thereto."

As to the goods, Opposer's ENERVON-C mark is used on "*a high-potency therapeutic vitamin formula containing essential Vitamin B Complex plus Vitamin C*" under Class 5 while that of Respondent-Applicant's ENERKIDS+ mark is used for "*pharmaceutical, veterinary and sanitary preparations; dietetic substances adapted for medical use, food for babies; plasters, materials for dressings; material for stopping teeth, dental wax; disinfectants; preparations for destroying vermin; fungicides, herbicides*" under Class 5 also. It appears therefore that the goods of Respondent-Applicant may cover those that are similar and/or closely related to Opposer's.

But, are the competing marks, shown below, resemble each other such that confusion or even deception is likely to occur?

**ENERVON-C**

Opposer's Mark

**Enerkids+**

Respondent-Applicant's Mark

<sup>4</sup>See *Pribhdas J. Mirpuri v. Court of Appeals*, G. R. No. 114508, 19 Nov. 1999.



Opposer's mark is a word mark that contains the word "ENERVON" and a letter "C" written in plain upper case letters. On the other hand, Respondent-Applicant's mark is a composite mark which contains of the word "ENERKIDS" with a plus (+) sign written inside a yellow rectangle with the letter "E" being written in uppercase letters while the rest of the letters in lower case. The only similarity between the competing marks is the first four letters comprising the first two syllables "ENER". Opposer's mark is used on vitamins, as such, "ENER" is obviously derived from the word "energy". Thus, "ENER" alone is not unique as a mark or as a component of a mark for the subject goods. It clearly suggests as to the kinds of goods a mark with "ENER" as a component is attached to. What would make a composite mark with "ENER" distinctive would be the prefixes, suffixes or appendages to it, such as "YON" in "ENERYON". Thus, the combination of ENER and KIDS+ to make the mark ENERKIDS+ makes it distinctive and distinguishable from Opposer's mark ENERVON-C. Accordingly, the likelihood of confusion between Opposer's and Respondent-Applicant's marks is remote.

Further, this Bureau in several occasions has already ruled on various opposition cases filed by Opposer involving its mark ENERVON-C mark. In IPC Case No. 14-2010-00327<sup>5</sup>, this Bureau ruled:

The only similarity between the competing marks is the first four letters comprising the first two syllables "ENER". Considering that the marks are used on vitamins, "ENER" is obviously derived from the word "energy". In fact, the Opposer, in connection to the mark "ENERYON-C", has adopted the tagline "more energy, more happy": Thus, "ENER" alone is not unique as a mark or as a component of a mark for the subject goods. "ENER" is clearly suggestive as to the kinds of goods a mark with "ENER" as a component is attached to. What would make a composite mark with "ENER" distinctive would be the prefixes, suffixes or appendages to it, such as "YON" in "ENERYON".

Succinctly, the last syllable in the Respondent-Applicant's mark - "SEL" - rendered the mark a character that is clearly and glaringly distinct from the Opposer's mark such that product confusion, mistake or deception is unlikely to occur. Neither is confusion of business likely. It is a remote possibility for a consumer to assume or conclude that there is a connection between the parties solely because the Respondent-Applicant's mark starts with the letters or syllables "ENER". As discussed above, "ENER" is not unique as a mark or as a component of a mark used for goods that connotes "energy". Because of the nature of the goods involve, consumers tend to be more prudent in their purchases.

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

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<sup>5</sup> <http://onlineservices.ipophil.gov.ph/ipcaselibrary/main.html> <last accessed 4/27/2017>

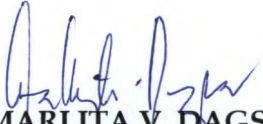
and different article as his product." The Respondent-Applicant's mark is consistent with this function.

Accordingly, in this Bureau cannot sustain the instant opposition.

WHEREFORE, premises considered, the instant opposition is hereby **DISMISSED**. Let the filewrapper of Trademark Application Serial No. 4-2014-006718, together with a copy of this Decision, be returned to the Bureau of Trademarks for information and appropriate action.

**SO ORDERED.**

Taguig City, 27 APR 2017.

  
**MARLITA V. DAGSA**  
Adjudication Officer  
Bureau of Legal Affairs