VITASOY INTERNATIONAL HOLDINGS LTD., *Opposer,*	}	**IPC No. 14-2008-00210**
	}	Opposition to:
	}	Appln. Serial No. 4-2007-010700
-versus-	}	Date Filed: 16 May 2007
UNIVERSAL ROBINA CORPORATION, *Respondent-Applicant.*	}	**TM: VITALITE**

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NOTICE OF DECISION

HECHANOVA BUGAY VILCHEZ & ANDAYA-RACADIO
Counsel for Opposer
GF Salustiana D. Ty Tower,
104 Paseo de Roxas Ave., Makati City

BOLOS & REYES-BELTRAN LAW OFFICES
Counsel for Respondent- Applicant
40th Floor, Robinsons-Equitable Tower
ADB Avenue corner Poveda Road,
Ortigas Center, Pasig City

GREETINGS:

Please be informed that Decision No. 2017 - 210 dated 16 June 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, 16 June 2017.

MARILYN F. RETUTAL
IPRS IV
Bureau of Legal Affairs

VITASOY INTERNATIONAL HOLDINGS LTD.,
Opposer,

- versus -

UNIVERSAL ROBINA CORP,
Respondent-Applicant.

IPC NO. 14 – 2008 - 00210

Opposition to:

Appln Serial No. 42007010700

TM: "VITALITE"

DECISION NO. 2017 - 210

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D E C I S I O N

VITASOY INTERNATIONAL HOLDINGS LTD. (Opposer)[1], filed an Opposition to Trademark Application Serial No. 4-2007-010700. The application filed, by UNIVERSAL ROBINA CORP. (Respondent-Applicant)[2], covers the mark "VITALITE" for *"beverage consist of water, with and without vitamins; essence water; energy water"* under Class 32 of the International Classification of Goods.[3]

The Opposer based its Opposition on the following grounds:

1. Opposer is the prior adopter, user and true owner of the trademarks VITA, VITASOY and their variants in the Philippines and elsewhere around the world.

2. Respondent-Applicant's mark VITALITE is confusingly similar to Opposer's well-known trademarks VITA, VITASOY, and their variants.

3. Being confusingly similar, the registration of the mark VITALITE should not be allowed, because Opposer is the prior applicant of the mark VITA, VITASOY and their variants, and the owner of the registered trademarks

[1] A corporation organized under the laws of Hong Kong with business address at1 Kin Wong Street, Tuen Mun, New Territories, Hong kong.
[2] A domestic corporation with address at 110 E. Rodriguez Jr. Avenue, Libis, Quezon City.
[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.

VITA (Chinese Characters) and VITASOY & FIVE LEAF LOGO in the Philippines.

4. Opposer's trademarks VITA, VITASOY, and their variants, are internationally well-known.

5. Since Opposer's trademarks VITA, VITASOY and their variants are internationally well-known, they are entitled to protection against confusingly similar marks covering similar or related goods.

To support its Opposition, the Opposer submitted the following as evidence:

Exhibit "A" to "A-4" – Special Power of Attorney;

Exhibit "B" to "B-2" – Certified True Copies of Certificates of Registration of the Opposer's Trademark;

Exhibit "C" to "C-3" – Copies of the Pending Trademark Applications of the Opposer;

Exhibit "D" to "D-196" – Affidavit of Ah-Hing Tong including attachments;

Exhibit "E" to "E-46" – Print out from the Opposer's Website;

Exhibit "F" to "F-267" – Second Affidavit of Ah-Hing Tong including attachments;

This Bureau issued a Notice to Answer on 10 October 2008 and served a copy thereof to the Respondent-Applicant on 23 October 2008. On 24 November 2008, Respondent-Applicant filed a Motion for Extension of Time To File Answer, which was granted by this Bureau in an Order dated 2 December 2008. On 5 January 2009, a Second Motion for Extension of Time to File Answer was filed by Respondent-Applicant and granted in an Order dated 12 January 2009. On 22 January 2009, Respondent filed a Final Motion for Extension of Time to File Answer which was also granted by this Bureau in an Order dated 29 January 2009. However, the Respondent-Applicant still failed to file an Answer.

On 2 April 2009, the Opposer filed a Motion to Declare Respondent in Default. In view thereof, an Order dated 28 April 2009 was issued declaring the Respondent-Applicant in default. Consequently, the instant case was submitted for Decision.

The issue to be resolved in this case is whether the Respondent-Applicant should be allowed to register the trademark "VITALITE."

The Opposition is anchored on Section 123.1 pars. (d), (e), (f) and (g) of Republic Act No. 8293, also known as, the Intellectual Property Code of the Philippines ("IP Code") which provide, as follows:

> 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;
>
> (e) Is identical with, or confusingly similar to, or constitutes a translation of a mark which is considered by the competent authority of the Philippines to be well-known internationally and in the Philippines, whether or not it is registered here, as being already the mark of a person other than the applicant for registration, and used for identical or similar goods or services: Provided, That in determining whether a mark is well-known, account shall be taken of the knowledge of the relevant sector of the public, rather than of the public at large, including knowledge in the Philippines which has been obtained as a result of the promotion of the mark;
>
> (f) Is identical with, or confusingly similar to, or constitutes a translation of a mark considered well-known in accordance with the preceding paragraph, which is registered in the Philippines with respect to goods or services which are not similar to those with respect to which registration is applied for: Provided, that use of the mark in relation to those goods or services would indicate a connection between those goods or services, and the owner of the registered mark: Provided further, That the interests of the owner of the registered mark are likely to be damaged by such use;
>
> (g) Is likely to mislead the public, particularly as to the nature, quality, characteristics of geographical origin of the goods or services;
>
> x x x

The records in the instant case show that when the Respondent – Applicant filed its trademark application on 16 May 2007, the Opposer already has a prior trademark registrations and applications for the marks: "VITA (Chinese Characters)" with Registration No. 61652, "VITASOY & FIVE LEAF LOGO" with Registration No. 42005008310, "VITA" with Application No. 4-1992-80836, "VITASOY" with Application No. 4-1992-080837," VITASOY (Chinese Characters)" with Application No 41992080835, and "VITASOY & FIVE LEAF LOGO" with Application No. 42005008310.

Also, records show that the prior registered and applied trademarks of the Opposer cover a number of goods, including *soya bean based carbonated and non-carbonated non-alcoholic drinks and beverages, syrup powders, extracts and concentrates for making carbonated and non carbonated non-alcoholic beverages, juices, softdrinks* under Class 32 of the Nice Classification of Goods and Services.

The contending marks are depicted below for examination and comparison:

VITA

Vitasoy VITASOY

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VITALITE

Opposer's Marks

Respondent-Applicant's Mark

Upon careful examination of the competing trademarks and the evidence submitted by the Opposer, this Office finds merit to the contentions of the Opposer that the Respondent-Applicant's mark VITALITE is confusingly similar with the trademarks of the Opposer. The dominant feature of the above trademarks excluding the mark with the chinese characters is the word VITA. It is the most distinguishing feature that will draw the eyes and ears of the buying public. It is the distinctive word that will be remembered by the consumers.

Moreover, public confusion or even deception is very likely because the goods or products covered by the competing trademarks are similar and/or closely related goods. The products subject of the applied trademark of the Respondent-Applicant are also beverages under Class 32 of the Nice Classification of Goods and Services, which are also the same products covered by the Opposer's mark.

In addition, there is also a high probability that the goods of the Respondent-Applicant may be confused by the public with the goods of the Opposer or the public maybe mistaken or deceived, in assuming that the Respondent-Applicant's goods originated from the Opposer or there is a connection between the two parties and/or the goods.

Succinctly, the field from which a person may select a trademark is practically unlimited. As in all other cases of colorable imitation, the

unanswered riddle is why, of the millions of terms and combination of design available, the Respondent-Applicant had to come up with a mark identical or so closely similar to another's mark if there was no intent to take advantage of the goodwill generated by the other mark.[4]

Time and again, it has been held in our jurisdiction that the law does not require that the competing trademarks must be so identical as to produce actual error or mistake. It would be sufficient, for purposes of the law that the similarity between the two labels is such that there is a possibility or likelihood of the purchaser of the older brand mistaking the newer brand for it.[5] Corollarily, the law does not require actual confusion, it being sufficient that confusion is likely to occur.[6] The likelihood of confusion would subsist not only on the purchaser's perception of goods but on the origins thereof as held by the Supreme Court:[7]

> 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 belief that there is some connection between the plaintiff and defendant which, in fact does not exist.

WHEREFORE, premises considered, the instant Opposition to Trademark Application Serial No. 42007010700 is hereby **SUSTAINED.** Let the filewrapper of Trademark Application Serial No. 42007010700 be returned together with a copy of this Decision to the Bureau of Trademarks (BOT) for appropriate action.

SO ORDERED.

Taguig City, 16 JUN 2017

Atty. Leonardo Oliver Limbo
Adjudication Officer
Bureau of Legal Affairs

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[4] American Wire & Cable Company vs. Dir. Of Patent , G.R. No. L-26557, February 18, 1970.
[5] American Wire & Cable Co. vs. Director of Patents, et. al., G.R. No. L-26557, February 18, 1970
[6] Philips Export B.V. et. al. vs. Court of Appeals, et. al., G.R. No. 96161, February 21, 1992
[7] Converse Rubber Corporation vs. Universal Rubber-Products, Inc. et. al. G.R. No. L27906, January 8, 1987