UNAHCO, INC.,	}	**IPC No. 14-2014-00133**
Opposer,	}	Opposition to:
	}	Appln. Serial No. 4-2013-503698
-versus-	}	Date Filed: 11 December 2013
	}	
	}	
VAST AGRO SOLUTIONS INCORPORATED,	}	**TM: VEGATON**
Respondent-Applicant.	}	

x----------x

NOTICE OF DECISION

OCHAVE & ESCALONA
Counsel for Opposer
No. 66 United Street,
Mandaluyong City

VAST AGRO SOLUTIONS INCORPORATED
Respondent- Applicant
Sta. Rita Industrial Park
San Jose, Pili
Camarines Sur 4418

GREETINGS:

Please be informed that Decision No. 2017 - 264 dated 28 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, 29 June 2017.

MARILYN F. RETUTAL
IPRS IV
Bureau of Legal Affairs

UNAHCO, INC.,

Opposer,

- versus -

VAST AGRO SOLUTIONS INCORPORATED,

Respondent-Applicant.

IPC NO. 14 – 2014 – 00133

Opposition to:
Trademark Application Serial No. 42013503698

TM: "VEGATON"

DECISION NO. 2017 - 264

x----------x

D E C I S I O N

UNAHCO, INC. (Opposer)[1] filed an Opposition to Trademark Application Serial No. 4-2013-503689. The trademark application filed by VAST AGRO SOLUTIONS INCORPORATED (Respondent-Applicant)[2], covers the mark VEGATON for *"pesticides"* under Class 5 of the International Classification of Goods and Services[3].

The Opposer based its Opposition on the following grounds:

1. The mark "VEGATON" owned by Respondent-Applicant so resembles the trademark "VIGOTON" owned by Opposer and duly registered with the IPO prior to the publication for opposition of the mark "VEGATON" and thus, will likely cause confusion mistake and deception on the part of the purchasing public.

2. The registration of the mark "VEGATON" in the name of the Respondent-Applicant will violate Sec 123 of the IP Code.

The Opposer's pertinent allegations in its Opposition are quoted as follows:

> 9. Opposer is the owner of the trademark "VIGOTON". Opposer is engaged in the marketing, sale and distribution of a wide range of veterinary feeds and preparations, agricultural and related products.

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[1] A domestic corporation with Office Address at 17 Sheridan Street Mandaluyong City, Philippines.
[2] A domestic corporation with business address at Sta Rita Industrial Park, San Jose, Pili Camarines Sur, 4418, Philippines.
[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.

9.1. The trademark application for the trademark "VIGOTON" was filed with the IPO on 11 June 1998 by Opposer (formerly known as Univet Agricultural Products, Inc.) and was approved for registration on 1 August 2002 to be valid for a period of ten (10) years, or until 1 August 2012. x x x

9.2. On 31 July 2012, prior to the expiration of the registration, Opposer filed a *Petition for Renewal of Registration* of the trademark "VIGOTON" with the IPO. x x x

10. The trademark"VIGOTON" has been used in commerce in the Philippines. Opposer (formerly known as Univet Agricultural Products, Inc.) has filed a *Declaration of Actual Use* and *Affidavit of Use* pursuant to the requirement of the law. x x x

11. By virtue of the foregoing, there is no doubt that Opposer has acquired an exclusive ownership over the trademark "VIGOTON" to the exclusion of all others. x x x

12. The registration of Respondent-Applicant's mark "VIGOTON" will be contrary to Section 123.1 (d) of the IP Code .**"VEGATON" is confusingly similar to Opposer's trademark "VIGOTON".**
x x x

12.1.6. Thus, applying the dominancy test in the instant case, it can be readily concluded that the mark"VEGATON" owned by Respondent-Applicant so resembles Opposer's trademark "VIGOTON" that it will likely cause confusion, mistake and deception on the part of the purchasing public.

12.1.6.1. Respondent-Applicant's mark **"VEGATON"** appears and sounds almost the same as **"VIGOTON**.

12.1.6.2. The first and third letters and the last three letters in Respondent-Applicant's mark **"VEGATON"** are the exactly the same with the first and third letters and the last three letters Opposer's trademark **"VIGOTON.**

12.1.6.3. Both marks are composed of seven letters **"V-E-G-A-T-0-N"** and **"V-I-G-O-T-O-N".**

12.1.6.4. Both marks are composed of three syllables **"/VE/-/GA/-/TON/" and "/VI-/GO/-/TON/".**

12.1.7. Clearly, Respondent-Applicant's mark"VEGATON" adopted the dominant features of the Opposer's trademark "VIGOTON".
x x x

12.2. Opposer's trademark "VIGOTON" and Respondent Applicant's mark "VEGATON" are practically identical marks in sound and appearance that they leave the same commercial impression upon the public. x x x

13. To allow Respondent-Applicant to continue to market its products bearing the mark "VEGATON" undermines Opposer's right to its trademark

"VIGOTON". As the lawful owner of the trademark "VIGOTON", Opposer is entitled to prevent the Respondent-Applicant from using a confusingly similar mark in the course of trade where such would likely mislead the public. x x x

14. Further, the fact that Respondent-Applicant seeks to have its mark "VEGATON" registered in the same class (Nice Classification 05) as Opposer's trademark "VIGOTON" will undoubtedly add to the likelihood of confusion among the purchasers of these two goods.

15. By virtue of Opposer's prior and continued use of the trademark "VIGOTON", the same has established valuable goodwill to the consumers and the general public as well. The registration and use of Respondent-Applicant's confusingly similar mark "VEGATON" on its goods will enable the latter to obtain benefit from Opposer's reputation and goodwill and will tend to deceive and/or confuse the public into believing that Respondent-Applicant is in any way connected with Opposer. x x x

16. The registration and use of Respondent-Applicant's confusingly similar mark "VEGATON" will enable the latter to obtain benefit from Opposer's reputation and goodwill and will tend to deceive and/or confuse the public into believing that Respondent-Applicant is in any way connected with Opposer. x x x

17. Clearly, the scope of protection accorded to trademark owners includes not only confusion of goods but also confusion of origin. As in this case, besides from the confusion of goods already discussed, there is undoubtedly also a confusion of the origin of the goods covered by the marks of Respondent-Applicant and Opposer, which should not be allowed. x x x

18. Respondent-Applicant's use of the mark "VEGATON" in relation to any of the goods covered by the opposed application will take unfair advantage of, dilute and diminish the distinctive character or reputation of Opposer's trademark "VIGOTON". Potential damage to Opposer will be caused as a result of its inability to control the quality of the products put on the market by Respondent-Applicant under the mark "VEGATON".

19. Thus, Opposer's interests are likely to be damaged by the registration and use of the Respondent-Applicant of the mark "VEGATON". The denial of the application subject of this opposition is authorized under the IP Code. x x x

In support of its Opposition, the Opposer submitted the following evidence:

Exhibit "A" – Certificate of Filing of Amended Articles of Incorporation of Unahco, Inc.;
Exhibit "B" – Copy of the page in IPO E-Gazette;
Exhibit "C" – Certified True Copy of Certificate of Registration No. 4-1998-04249;
Exhibit "D" – Petition for Renewal of Registration;
Exhibit "E" – Declaration of Actual Use; and
Exhibit "F" – Affidavit of Use;

This Bureau served a Notice to Answer to the Respondent-Applicant on 10 April 2014. However, the Respondent-Applicant did not file an Answer to the Opposition. In view of the failure to file an Answer, an Order dated 3 August 2015 was issued declaring the Respondent-Applicant in default. Consequently, the instant case was deemed submitted for decision

The basic issue to resolve in the instant case is whether Respondent-Applicant's trademark "VEGATON" should be allowed for registration.

The contending trademarks are reproduced below for comparison:

Opposer's Trademark

Respondent – Applicant's Trademark

Upon examination of the competing trademarks and the evidence submitted by the Opposer, this Bureau finds the Opposition meritorious.

A simple perusal of the contending marks reveals that five (5) out of the seven (7) letters of the trademarks are the same, namely, "V", "G", "T", "O"and "N". Moreover, this bureau agrees with the contention of the Opposer that the competing marks appears and sounds almost the same. The Opposer's and the Respondent's marks both have three syllables with similar sounding effect – *VI-GO-TON vis-a-vis VE-GA-TON.*

Our jurisprudence has been consistent that trademarks with *idem sonans* or similarities of sounds are sufficient ground to constitute confusing similarity in trademarks.[4] The Court has ruled that the following words: Duraflex and Dynaflex;[5] Lusolin and Sapolin;[6] Salonpas and Lionpas;[7] and Celdura and Cordura[8] are confusingly similar. Our Supreme Court, citing Unfair Competition and Trade Marks, 1947, vol. 1 by Harry Nims, recognized the confusing similarities in sounds of the following trademarks: "Gold Dust" and "Gold Drop"; "Jantzen" and "Jazz-Sea"; "Silver Flash" and "Supper-Flash"; "Cascarete" and Celborite"; "Celluloid and Cellonite"; "Chartreuse" and "Charseurs"; "Cutex" and "Cuticlean"; "Hebe" and "Meje"; "Kotex" and Fermetex"; and "Zuso" and "HooHoo."[9]

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[4] Marvex Commercial Co., Inc. vs. Petra Hawpia and Co, G.R. No. L-19297, 22 December 1966
[5] American Wire & Cable Company vs. Director of Patents and Central Banahaw Industries, G.R. L-26557 18 Fenruary 1970
[6] Sapolin Co. vs. Balmaceda, 67 Phil 795
[7] Marvex Commercial Co., Inc. vs. Petra Hawpa and Co, G.R. No. L-19297, 22 December 1966
[8] Co Tiong vs. Director of Patents, 95 Phil 1
[9] Marvex Commercial Co., Inc. vs. Petra Hawpia and Co, G.R. No. L-19297, 22 December 1966

Definitely, the close resemblance, phonetically and visually, of the two trademarks would create a similar impression on the buying public and would result to confusion on the part of the consumers. The said confusion would further be heightened by the fact that the products subject of the trademarks are closely related goods. The Opposer's goods involve veterinary preparations while that of the Respondent-Applicant are also formulations for eradicating pest organisms.

Our intellectual property 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.[10]

In the instant case, the Opposer has sufficiently proven that it is the prior adopter and registrant of the mark "VIGOTON" which is confusingly similar to "VEGATON" marks being applied by Respondent-Applicant. In fact, the Opposer has first applied its trademark as early as 1998 or almost fifteen (15) years before the Respondent-Applicant.

Succinctly, the field from which a person may select a trademark is practically unlimited and as in all other cases of colorable imitation, the unanswered riddle is why, of the millions of terms and combination of design available, respondent-applicants 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.[11]

WHEREFORE, premises considered, the instant Opposition to Trademark Application Serial No. 42013503689 is hereby **SUSTAINED.** Let the filewrapper of Trademark Application Serial No. 42013503689 be returned together with a copy of this Decision to the Bureau of Trademarks (BOT) for appropriate action.

SO ORDERED.

Taguig City, 28 JUN 2017

Atty. Leonardo Oliver Limbo
Adjudication Officer
Bureau of Legal Affairs

[10] American Wire & Cable Co. vs. Director of Patents, et. al., G.R. No. L-26557, February 18, 1970
[11] American Wire & Cable Company vs. Dir. Of Patent , G.R. No. L-26557, February 18, 1970.