



INTELLECTUAL PROPERTY
OFFICE OF THE PHILIPPINES

CROWN PACIFIC BIOTECHNOLOGY PTE. LTD., }
Opposer, }

-versus-

MEDETHIX INC., }
Respondent-Applicant. }

X-----X

IPC No. 14-2014-00304

Opposition to:

Appln. Ser. No. 4-2013-005568

Date Filed: 15 May 2013

TM: NUTRIMIN SN 5

NOTICE OF DECISION

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Director/MEDETHIX INC.

Respondent-Applicant

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Pioneer Street, Mandaluyong City

GREETINGS:

Please be informed that Decision No. 2017 - 390 dated 29 November 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, 11 December 2017.

MARILYN F. RETUTAL

IPRS IV

Bureau of Legal Affairs



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}IPC NO. 14-2014-0000304
}Opposition to:
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}Appln. Ser. No. 4-2013-005568
}Date Filed: 15 May 2013
}Trademark: **NUTRIMIN SN 5**
}
}Decision No. 2017- **390**

DECISION

CROWN PACIFIC BIOTECHNOLOGY PTE. LTD., (Opposer)¹ filed an opposition to Trademark Application Serial No. 4-2013-005568. The application, filed by MEDETHIX, INC. (Respondent-Applicant)², covers the mark "NUTRIMIN SN 5", for use on "Finished Pharmaceutical Products (Amino Acids & Multivitamins)" under Class 5 of the International Classification of Goods³.

The Opposer alleges, among other things, the following as grounds for its opposition:

"6. Respondent-Applicant's trademark application for the mark 'NUTRIMIN SN 5' covers goods covers goods under Class 5 specifically 'Finished Pharmaceutical Product (Amino Acids & Multivitamins)'. It is in the same class of goods as the Opposer's NUTRIMIN products and both are in the pharmaceutical business.

"7. A table of the Opposer's and Respondent-Applicant's marks are displayed below in juxtaposition for easy reference:

NUTRIMIN	NUTRIMIN
Owner: Crown Pacific Biotechnology Pte. Ltd.	Owner: Medethix, Inc.
Registration No. 42001007757	Application No. 4-2013-05568
NutriMin	NUTRIMIN SN 5

¹ A company duly organized and existing under the laws of Singapore with address at 38 Penjuru Lane, Singapore

² A domestic corporation with address at 506 5th Floor RFM Corporate Center, Pioneer Street, Mandaluyong 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.

<p>Class 05 Preparations Consisting of Mixtures of Vitamins and Minerals For Use As An Additive To Food For Consumption By Animals Feed Additives (Medicated)</p> <p>Class 31 Non-Medicated Preparations Consisting of Mixtures of Vitamins And Minerals For Use As Additives To Food For Consumption By Animals , Animal Feed Additives (Non-Medicated)</p>	<p>Class 05 Finished Pharmaceutical Product (Amino Acids & Multivitamins)</p>
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“8. The registration of the mark 'NUTRIMIN SN 5' in the name of the Respondent-Applicant contravenes and violates Section 123.1 (d) and (g) of the IP Code, as amended, because the said mark is confusingly similar to Opposer's trade mark 'NUTRIMIN', which is owned, used and not abandoned by the Opposer as to be likely when applied to or used in connection with the goods of Respondent-Applicant cause confusion or mistake, and deceive the purchasers thereof as to origin of the goods.

“9. The registration of the mark 'NUTRIMIN SN 5' for goods and services under class 5 in the name of Respondent-Applicant will cause grave and irreparable injury and damage to the Opposer for which reason it opposes the application based on the grounds set forth hereunder.

“10. The Company is the leading premix manufacturer in Asia Pacific region, and is a wholly owned company of Charoen Pokphand (CP Group), which is the world's largest feed manufacturer. CP Group manufactures approximately 16.5 million metric tons ('MT') of industrial feed products per year in about 150 feed plants located in several countries.

“11. As shown in the Affidavit - Direct Testimony of Opposer's witness, Zhu Zeyuan, Opposer achieved many industrial firsts in the Asia Pacific Region through the employment of the latest technologies in feed production. Its premix plant was constructed in July 2001 and completed in November 2002, and has a production capacity of 4,000 MT of premixes per month. Currently, it produces an average of 1,000 MT with peak production of 1,300 MT, thereby making it the biggest premix manufacturer in the region. Its production system is fully computerized and automated. It is the only premix plant in Asia that has a completely integrated bar coding system, and uses a sophisticated system to guarantee full surveillance of its operations beginning right from when

the materials are received and stored until the finished products are shipped to the customers, for the main purpose of ensuring production of the highest quality products in the livestock industry. With the foregoing system in place, 100% traceability is achieved from finished product to individual raw materials.

"12. Fully embracing the feed to food concept, the Company was recognized as a HACCP-certified company by PSB Singapore (member of the internationally renowned certification network IONET) in 2004. Further, in January 2005, the Company attained ISO 9001:2000 certification from the same world distinguished certifying body.

"13. The Company owns the well-known mark NUTRIMIN and its variants, covering the goods mineral premix swine, poultry and aquaculture, to wit:

- (a) NUTRIMIN SM 318 for swine mineral premix;
- (b) NUTRIMIN PM 518 for poultry mineral premix; and
- (c) NUTRIMIN FM 801 for fish mineral premix.

"14. To date, Opposer has obtained registrations for its mark 'NUTRIMIN' and its variants in several countries xxx

15. Opposer maintains a website <http://www.crownpacificbio.com> where information about its products can be viewed and easily accessed worldwide. xxx

"16. The above clearly shows that Opposer is the owner and prior user of the trademark 'NUTRIMIN', hence, Respondent-Applicant cannot appropriate it as its own.

"17. Respondent-Applicant's trademark 'NUTRIMIN SN5' is confusingly similar with Opposer's trademark 'NUTRIMIN' for which Opposer has already obtained earlier registrations in other territories as far back as the year 2004. xxx

"18. The fact that Respondent-Applicant has added the term 'SN 5' is of no significance, particularly, when Opposer's own use of its mark carries other symbols to identify the use of its product bearing the 'NUTRIMIN' mark, to wit:

- (a) NUTRIMIN SM 318 for swine mineral premix;
- (b) NUTRIMIN PM 518 for poultry mineral premix; and
- (c) NUTRIMIN FM 801 for fish mineral premix.

Clearly, Respondent-Applicant has even copied the system of product identification of herein Opposer. xxx

"20. Opposer's goods and those of Respondent-Applicant are identical or closely related. Opposer's goods consisting of vitamins and minerals and Respondent-Applicant's goods relating to amino acids and multi-vitamins are all considered nutrients. The six main groups of nutrients of both humans and animals are carbohydrates, fats, proteins, vitamins, minerals and water. Amino acids are the building block of protein. Having such identity in the trademark itself, and covering identical or closely related goods and services, the registration of Respondent-Applicant's mark 'NUTRIMIN' is in violation of Section 123.1 (d) and (g) of the IP Code, which is clear in prohibiting the registration of identical trademarks already owned by a different proprietor, as to likely cause confusion, or likely to mislead the public as to the nature, quality or characteristics of the goods or services.xxx

"26. Opposer's NUTRIMIN trademark is internationally well-known having met the criteria under Rule 102 of the Rules and Regulations on Trademarks, Service Marks, Tradenames and Marked or Stamped Containers. xxx

"29. The identicalness of Respondent-Applicant's mark with the Opposer's own well-known NUTRIMIN trademark can only lead to the conclusion that Respondent-Applicant intends to ride on the popularity of Opposer, thereby causing the Opposer to incur monetary losses, and suffer the dilution of its NUTRIMIN trademark.

"30. Opposer will be damaged by the registration of the mark 'NUTRIMIN SN 5' considering that Opposer's well-known NUTRIMIN trademark has already obtained goodwill and consumer recognition throughout the world. For what other purpose would the Respondent-Applicant choose the exact name 'NUTRIMIN', of all possible names and terms, to identify his goods which are undeniably identical to Opposer's own products? xxx

"31. Thus, Respondent-Applicant's application to register the mark NUTRIMIN must be denied, in accordance with Sections 123.1 (e), (f) and (g) of the IP Code. xxx"

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

1. Legalized and authenticated Special Power of Attorney dated 2 September 2014;
2. Legalized and authenticated Affidavit of Zhu Zeyuan dated 28 August 2015;
and
3. Affidavit of Janesa P. Calugay dated 15 September 2014.⁴

⁴ Exhibits "A" to "C" with submarkings

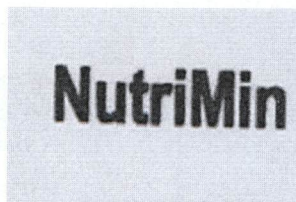
This Bureau served upon the Respondent-Applicant a "Notice to Answer" on 9 September 2014. The Respondent-Applicant, however, did not file an Answer.

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

Records show that at the time Respondent-Applicant applied for registration of the mark "NUTRIMIN" the Opposer already registered the mark "NutriMin" under Registration No. 4-2005-000847 issued on 9 October 2006⁵. The goods covered by the Opposer's trademark registration are also under Class 5 for "preparations consisting of mixtures of vitamins and minerals for use as additive to food for consumption by animals, animal feed additives (medicated) and Class 31 for "non-medicated preparations consisting of mixtures of vitamins and minerals for use as additives to food for consumption by animals, animal feed additives (non-medicated)".

The question is: Are the competing marks identical or closely resembling each other such that confusion or mistake is likely to occur?

The competing marks are reproduced below:



Opposer's mark



Respondent-Applicant's mark

The marks are identical in spelling and pronunciation, differing in lettering, wherein Opposer uses small case except for the letters "N" and "M". In addition, the Respondent-Applicant adds the letters "SN" and number 5. Taking into account that the Respondent-Applicant's goods are for human consumption while Opposer's goods are additive/feeds for animal consumption, there is no likelihood of confusion.

It is basic in trademark law that the same mark can be used on different types of goods. The Supreme Court in *Philippine Refining Co. Inc. v. Ng Sam*⁶ held:

A rudimentary precept in trademark protection is that "the right to a trademark is a limited one, in the sense that others may use the same mark on unrelated goods." Thus, as pronounced by the United States Supreme Court in the case of *American Foundries vs. Robertson*, "the mere fact that one person has adopted and used a trademark on his goods does not prevent the adoption and use of the same trademark by others on articles of a different description."

⁵ Exhibit "B"

⁶ GR. No. L-26676 July 30, 1982

⁷ G R. 120900 July 20, 2000

Such restricted right over a trademark is likewise reflected in our Trademark law. Under Section 4(d) of the law, registration of a trademark which so resembles another already registered or in use should be denied, where to allow such registration could likely result in confusion, mistake or deception to the consumers. Conversely, where no confusion is likely to arise, as in this case, registration of a similar or even Identical mark may be allowed.

The Supreme Court in the case of Canon Kabushiki Kaisha v. Court of Appeals and NSR Rubber Corporation⁷ held:

Here, the products involved are so unrelated that the public will not be misled that there is the slightest nexus between petitioner and the goods of private respondent.

In cases of confusion of business or origin, the question that usually arises is whether the respective goods or services of the senior user and the junior user are so related as to likely cause confusion of business or origin, and thereby render the trademark or tradenames confusingly similar. Goods are related when they belong to the same class or have the same descriptive properties; when they possess the same physical attributes or essential characteristics with reference to their form, composition, texture or quality. They may also be related because they serve the same purpose or are sold in grocery stores.

Thus, in *Esso Standard Eastern, Inc. vs. Court of Appeals*, this Court ruled that the petroleum products on which the petitioner therein used the trademark ESSO, and the product of respondent, cigarettes are "so foreign to each other as to make it unlikely that purchasers would think that petitioner is the manufacturer of respondent's goods" Moreover, the fact that the goods involved therein flow through different channels of trade highlighted their dissimilarity, a factor explained in this wise:

"The products of each party move along and are disposed through different channels of distribution. The (petitioner's) products are distributed principally through gasoline service and lubrication stations, automotive shops and hardware stores. On the other hand, the (respondent's) cigarettes are sold in sari-sari stores, grocery store, and other small distributor outlets. (Respondent's) cigarettes are even peddled in the streets while (petitioner's) 'gasul' burners are not. Finally, there is a marked distinction between oil and tobacco, as well as between petroleum and cigarettes. Evidently, in kind and nature the products of (respondent) and of (petitioner) are poles apart."

Undoubtedly, the paints, chemical products, toner and dyestuff of petitioner that carry the trademark CANON are unrelated to sandals, the product of private respondent.

In the instant case, although the products of both parties fall under Class 05, the Opposer's mark is applied on animal feeds or vitamins and minerals used as additives for food to be consumed by animals (medicated and non-medicated) while the Respondent-Applicant uses its mark on amino acids and multivitamins for human consumption. Since the goods are diverse, unrelated and non-competing, the channels of distribution of the products are not the same. There is no chance that the public will be mistaken or confused when buying the goods because they are not diverse and cater to different consumers.

WHEREFORE, premises considered, the instant Opposition to Trademark Application No. 4-2013-005568 is hereby **DISMISSED**. Let the filewrapper of the

⁷ G.R. No. 120900, 20 July 2000

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, **29 NOV 2017**



ATTY. ADORACION U. ZARE, LL.M.

Adjudication Officer
Bureau of Legal Affairs