



INTELLECTUAL PROPERTY  
OFFICE OF THE PHILIPPINES

**TOPIGS NORSVIN IP B.V.,**  
*Opposer,*

**-versus-**

**GENE TRANSFER PRIME GENETICS CENTER, INC.,**  
*Respondent-Applicant.*

X-----X

**IPC No. 14-2016-00215**  
Opposition to:

Appln. Serial No. 4-2015-003026  
Date Filed: 19 March 2015

**TM: TOPPIC GENETICS**

**NOTICE OF DECISION**

**JDF LAW**

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5<sup>th</sup> Avenue corner 25<sup>th</sup> Street,  
Bonifacio Global City, Taguig City

**GENE TRANSFER PRIME GENETICS CENTER, INC.**

*Respondent-Applicant*  
Purok 10, Biao Tienda Ula Tugbok  
Davao City, Davao Del Sur

**RODELYN A. BITOON**

*Respondent-Applicant's Agent*  
#27 Don Pedro Street, Kapalaran Subd.,  
Brgy. Holy Spirit, Quezon City

**GREETINGS:**

Please be informed that Decision No. 2018 - 97 dated 24 May 2018(copy enclosed) was promulgated in the above entitled case.

Pursuant to Section 2, Rule 9 of the IPOP HL 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, 24 May 2018.

**MARILYN F. RETUAL**  
IPRS IV

Bureau of Legal Affairs



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IPC No. 14-2016-00215

Opposition to Trademark  
Application No. 4-2015-003026  
Date Issued: 19 March 2015

Trademark: **"TOPPIC GENETICS"**

Decision No. 2018- 97

### DECISION

Topigs Norsvin IP B.V.<sup>1</sup> ("Opposer") filed an opposition to Trademark Application Serial No. 4-2015-003026. The contested application, filed by Gene Transfer Prime Genetics Center, Inc.<sup>2</sup> ("Respondent-Applicant"), covers the mark "TOPPIC GENETICS" for use on "*live animals*" all under Class 31 of the International Classification of Goods.<sup>3</sup>

The Opposer claims to be the owner of the mark "TOPIGS", which it registered in the Philippines and abroad. It avers that it has caused the extensive promotion, advertising, sale and marketing of its products. According to the Opposer, the Respondent-Applicant's applied mark "TOPPIC GENETICS" is confusingly similar to its own "TOPIGS" for the following reasons:<sup>4</sup>

"a. Both marks have two syllables, to wit: TO-PIGS for opposer's mark and TOP-PIC for respondent-applicant's mark.

b. Although both marks contain design element, it is the word element of the mark which catches the eye of the purchasers. Moreover, it is also the word element of the mark that is pronounced by the purchaser. The design associated by each mark is not sufficient to distinguish each from each other.

c. Hence, the dominant element in respondent-applicant's mark is the word TOPPIC, which is confusingly similar with the registered mark TOPIGS of opposer's mark.

d. Due to the identity of the dominant element in respondent-applicant's mark and opposer's mark, they are practically identical and confusingly similar with each other in terms of appearance, spelling, pronunciation and sound."

<sup>1</sup> A corporation with business address at Helvoirtseweg 227, 5263 Lt Vught Netherlands..

<sup>2</sup> With known address at Purok 10, Biao Tienda Ula Tugbok Davao City.

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

<sup>4</sup> See Verified Opposition, p. 8.

In support of its Opposition, the Opposer submitted the following:<sup>5</sup>

1. copy of the trademark registration of "TOPIGS";
2. copies of the grant of protection and/or details from the Romarin website showing that the "TOPIGS" mark has been granted protection in Spain, Hungary, Japan, Korea and with European Union;
3. copies of its advertisements; and
4. affidavit-testimony of its Chief Executive Officer, Belard Marinus Bejil.

A Notice to Answer was issued and served upon the Respondent-Applicant and its agent on record. Despite service on the latter, no Answer was filed. Thus, the Respondent-Applicant is considered in default and the case is deemed submitted for resolution.

Records reveal that at the time Respondent-Applicant filed its application for registration of the contested mark on 19 May 2015, the Opposer already has existing registrations for the mark "TOPIGS" under Certificate of Registration No. 4-200-002344 issued on 19 December 2005.

But are the contending marks, as hereafter reproduced, confusingly similar?



*Opposer's marks*



*Respondent-Applicant's mark*

Both marks appropriate both start with "TO-PI". Although the Respondent-Applicant uses two letter "P's", the pronunciation is still the same. Thus, it appears that the Respondent-Applicant, in arriving at the applied mark, merely substituted the ending letter "G" in the Opposer's registered mark for the letters "IC". As they are spelled almost similarly, they also reverberate the same sound when pronounced. Also, the addition of the word "GENETICS" and the phrase "HOG BREEDER AND GENE TRANSFER PRIME GENETICS CENTER, INC." do not remove the likelihood of confusion. The terms "GENETICS", "HOG BREEDER" and "GENE TRANSFER" are merely generic and/or descriptive. The prevalent feature of the subject mark is "TOPPIC" as this is what catches the attention of a prospective

<sup>5</sup> Marked as Exhibits "A" to "J", inclusive.

buyer. What is more, the competing trademarks both use swirl designs before the respective word marks.

Succinctly, confusion cannot be avoided by merely adding, removing or changing some letters of a registered mark. Confusing similarity exists when there is such a close or ingenuous imitation as to be calculated to deceive ordinary persons, or such resemblance to the original as to deceive ordinary purchased as to cause him to purchase the one supposing it to be the other.<sup>6</sup>

Moreover, the competing marks both pertain to "*living animals*" under Class 31. Thus, it is highly probable that the purchasers would be led to believe that Respondent-Applicant's mark is a mere variation of Opposer's mark. Withal, the protection of trademarks as intellectual property is intended not only to preserve the goodwill and reputation of the business established on the goods bearing the mark through actual use over a period of time, but also to safeguard the public as consumers against confusion on these goods.<sup>7</sup>

Furthermore, the likelihood of confusion would not extend not only as to the purchaser's perception of the goods but likewise on its origin. 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 the belief that there is some connection between the plaintiff and defendant which, in fact, does not exist."<sup>8</sup>

Finally, it is emphasized that 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>9</sup> Based on the above discussion, the Respondent-Applicant's trademark fell short in meeting this function. The latter was given ample opportunity to defend his trademark application but Respondent-Applicant failed to do so.

<sup>6</sup> Societe des Produits Nestle, S.A. vs. Court of Appeals, GR No. 112012, 04 April 2001.

<sup>7</sup> Skechers, USA, Inc. vs. Inter Pacific Industrial Trading Corp., G.R. No. 164321, 23 March 2011.

<sup>8</sup> Societe des Produits Nestle, S.A. vs. Dy, G.R. No. 1772276, 08 August 2010.

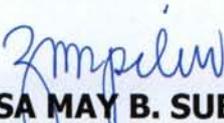
<sup>9</sup> Pribhdas J. Mirpuri vs. Court of Appeals, G.R. No. 114508, 19 November 1999.

Accordingly, this Bureau finds and concludes that the Respondent-Applicant's trademark application is proscribed by Sec. 123.1(d) of the IP Code, which provides that a mark cannot be registered if it is identical with a registered mark belonging to a different proprietor with an earlier filing or priority date, with respect to the same or closely related goods or services, or has a near resemblance to such mark as to likely deceive or cause confusion.<sup>10</sup>

**WHEREFORE**, premises considered, the instant opposition is hereby **SUSTAINED**. Let the filewrapper of Trademark Application Serial No. 4-2015-003026 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

**SO ORDERED.**

Taguig City, 24 MAY 2018

  
**ATTY. Z'SA MAY B. SUBEJANO-PE LIM**  
Adjudication Officer  
Bureau of Legal Affairs

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<sup>10</sup> Great White Shark Enterprises vs. Danilo M. Caralde, Jr., G.R. No. 192294, 21 November 2012.