

SANOFI- AVENTIS,
Opposer,

-versus-

IRENEO T. CHUATOCO
Respondent-Applicant.

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IPC No. 14-2009-00257
Opposition to:

Appln. No. 4-2009-001301
Filing Date: 09 February 2009

Trademark: ANGIVAS
Decision No. 2011-36

DECISION
BASED ON COMPROMISE AGREEMENT

SANOFI- AVENTIS (“Opposer”), a corporation organized and existing under the laws of France with principal business address at 174, Avenue de France, 75013 Paris, France, filed on 03 November 2009 an Opposition to Trademark Application No. 4-2009-001301. The trademark application filed by IRENEO CHUATOCO (“Respondent-Applicant”), with an address at #25 Kabignayan St., Tatalon, Quezon City, covers the mark ANGIVAS for use on pharmaceutical preparations, namely: “calcium channel blocker, cardio vascular drugs, anti-hypertensive/anti-anginal drugs (amlodopine besilate)” under Class 5 of the International Classification of goods.

The Opposer alleges the following:

1. Under existing law, rules and jurisprudence, the mark ANGIVAS should not be registered by this Honorable Office because the registration of the mark subject of this Opposition is contrary to Section 123.1 (d) of the Intellectual Property Code, which prohibits the Registration of a mark that :

x x x

- 2 The Respondent-Applicant’s mark ANGIVAS is confusingly similar to the Opposer’s mark, in that:
 - 2.1 Both are purely word marks.
 - 2.2 Both marks consist of three syllables.
 - 2.3 The second syllable is exactly the same, that is, ‘GI’.
 - 2.4 The last syllable is exactly the same, that is ‘VAS’.
 - 2.5 Both marks end with ‘GIVAS’.
 - 2.6 Both marks are used in the same Class of goods, i.e., Class 5.
 - 2.7 Both marks will be used on identical products, i.e. cardiovascular drugs.
- 3 The simultaneous use in Philippine commerce of the Respondent-Applicant’s mark ANGIVAS, a mark that is confusingly similar to the Opposer’s REGIVAS mark for pharmaceutical products identical to the Opposer’s pharmaceutical product, i.e. cardiovascular drug, will inevitably sow confusion, mistake or deception on the Philippine public as to the source of the respective pharmaceutical products and will falsely suggest a trade connection between the Opposer and the Respondent-Applicant and the respective products, when in fact, none exists.

4. The Opposer, being owner of the mark REGIVAS and the prior registrant of the said mark is entitled to prevent the unauthorized registration and used by third parties any mark confusingly similar to its registered REGIVAS mark as provided in Section 147.1 of the Intellectual Property Code, to wit: xxx

The Opposers evidence consist of the following:

1. Annex "A" – Authenticated Special Power of Attorney executed by the Opposer in favor of Cesar C. Cruz and Partner Law Offices;
2. Annex "B" – Copy of Certificate of Registration No. 4-2008-003654 for the Trademark REGIVAS;
3. Annex "C" – Copies of some Registration Certificates for the mark REGIVAS obtained by the Opposer in other countries; and
4. Annex "D" - Affidavit of Joelle Sanit-Hugot. Senior Director Trademark of Sanofi- Aventis,

This Bureau issued a notice to Answer and served a copy thereof upon the Respondent –Applicant on 10 February 2010. However, the Respondent-Applicant did not file his Answer. Hence, under Rule 2, Sec. 11 of the Regulations on Inter Partes Proceedings, as amended, the case was deemed submitted for Decision on the basis of the Opposition and evidence submitted by the Opposer.

Should the Respondent-Applicant be allowed to register the mark ANGIVAS?

It is emphasize 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. Thus, Sec. 123.1 (d) of Rep. Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code"), provides that a mark cannot be registered if it is identical with a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date, in respect of the same goods or services or closely related goods or services or if it nearly resembles such mark as to be likely to deceive or cause confusion.

In this regard, an opposition proceeding is basically a review of the trademark application in question, succinctly, to determine whether or not the requirements under the law and rules for registration are met. On this, this Bureau may and should take cognizance by way of judicial notice of the entries and information contained in the Trademark Registry and other records of the Intellectual Property of the Philippines.

The records show that t the time the Respondent-Applicant filed his trademark application on 09 February 2009, the Opposer has already existing trademark registrations for the mark REGIVAS, to wit:

1. No. 4-2008-003654, issued on 04 August 2008, covering "pharmaceutical products" under Class 5, and;
2. No. 4-2005-003944, issued on 29 October 2007, covering "pharmaceutical products", namely cardiovascular products, also under Class 5.

The products covered by the Opposer's registrations are similar or closely related to those indicated in the Respondent-Applicant's trademark application.

Comparing the competing marks, this Bureau finds that in both, the feature or part that draws the eyes and the ears is the combination of the second and the third syllables – “GIVAS”. That the competing marks cover or are used on similar or closely related pharmaceutical products practically cancels out the difference in the marks’ respective first syllables. 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 person, or such resemblance to the original as to deceive ordinary purchases as to cause him to purchase the one supposing it to be the order,

Aptly, to constitute an infringement of an existing trademark patent and warrant a denial of an application for registration 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. Corollarily, the law does not require actual confusion, it being sufficient that confusion is likely to occur. The likelihood of confusion would then subsist not only on the public’s perception of services but on the origin thereof as held by the Supreme Court, Also the consumers are likely to think that there is a connection between the parties’ respective businesses and goods or there is only one originator or provider thereof, An undue and unfair advantage therefore is acquired by one party as consumers would likely equate the quality of its products with that of the other.

Accordingly, this Bureau finds that the Respondent-Applicant’s trademark application is proscribed by Sec. 123.1 (d) of the IP Code,

It is stressed that the Respondent-Applicant was duly notified and given an opportunity to defend his trademark application. However, he chose not to have this case to be resolved on the basis of the opposition and evidence by the Opposer.

WHEREFORE, premises considered, the opposition is hereby SUSTAINED. Let the filewrapper of the Trademark Application Serial No. 4-2009-01501, together with a copy of this DECISION, be returned to the Bureau of Trademark (BOT) for information and appropriate action.

SO ORDERED.

Makati City, 31 March 2011.