

THERAPHARMA, INC.,
Opposer,
-versus-

IPC No. 14-2009-004635

Oppositions to TM
Application No. 4-2009 -004635
Date Filed: 12 May 2009
Trademark: CARVEDIA

DAEWOONG PHARMA PHILIPPINES, INC.,
Respondent-Applicant.
x-----x

Decision No. 2011-25

DECISION

THERAPHARMA, INC. ("Opposer"), a domestic corporation duly organized and existing under the laws of the Philippines, with business address at 3rd floor Bonaventure Plaza, Ortigas Avenue, Greenhills, San Juan City, filed on 18 January 2010 an oppositions to Trademark Application Serial No. 4-2009-004635. The application, filed by DAEWOONG PHARMA PHILIPPINES, INC. ("Respondent-Applicant"), also a domestic corporation with principal address at Unit 1602 Prestige Tower, Emerald Avenue, Ortigas Center, Pasig City, seeks the registrations of the mark "CARVEDIA" for use on "anti-hypertensive pharmaceutical preparations" falling under class 5 of the International Classification of goods.

The Opposer alleges the following:

"1. The mark 'CARVEDIA' owned by Respondent-Applicant so resembles the trademark 'CARVID' owned by the Opposer and duly registered with this honorable Bureau prior to the publication for opposition of the mark 'CARVEDIA'.

"2. The mark 'CARVEDIA' will likely cause confusion, mistake and deception on the part of the purchasing public, most especially considering that the opposed mark 'CARVEDIA' is applied for the same class of goods as that of Opposer's mark 'CARVID', i.e. Class 05 of the International Classification of goods for Anti-Hypertensive Pharmaceutical Preparation.

"3. The registration of the mark 'CARVEDIA' in the name of the Respondent-Applicant will violate Sec. 123 of the IP Code, which provide in part x x x

Under the above quoted provision, any mark which is similar to registered mark, shall be denied registration in respect of similar or related goods or if the mark applied for nearly resembles a registered mark that confusion or deception in the mind of the purchasers will likely result."

The Opposer's evidence consists of the following:

1. Exhibits "A" to "A-1"- Copies of the pertinent pages of the IPO E-Gazette;
2. Exhibits "B"- Certified true copy of the Cert. of Reg. No. 4-2006-008727; and
3. Exhibits "C"- Copy of the Cert. of Product Reg. issued by the Bureau of Food and Drugs for the trademark CARVID.

This Bureau issued a Notice to Answer and served a copy thereof upon the Respondent-Applicant on 13 May 2010. However, the Respondent-Applicant did not file its answer. Hence, under Rule 2 Sec. 11 of the Regulations on the Prates Proceedings, the case is now deemed submitted for decision on the basis of the opposition and evidence submitted by the Opposer.

Should the Respondent-Applicant allowed to register the mark CARVEDIA?

It is emphasized that the fundamental principle and legal bases of trademark registration is that owner of the trademark has the right to register it. The essence of trademark registration is to give protection to the ownership of trademarks. The function of the trademark is to point out distinctly the origin or owner ship of the goods to which it is affixed; to secure to him, who has been instrumental in bringing into the market a superior article or 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 a sale of an inferior and different article as his product.

Records show that at the time the Respondent-Applicant filed its trademark application on 12 May 2009, the Opposer has an existing registration for the mark CARVID under Reg. No. 4-2006-008727. The Opposer’s trademark registration covers “pharmaceutical preparation blocker/anti-hypertensive”, goods or pharmaceutical products that are similar and/or closely related to the Respondent-Applicant’s.

The question is: Are the competing mark, as shown below, identical or similar, or resemble each other that confusion or deception is likely to occur?

CARVEDIA	CARVID
Respondent-Applicant’s mark	Opposer’s mark

The part of the Respondent-Applicant’s mark that immediately draws the eyes is the one formed by the letters “C”, “A”, “R”, “V”, “E”, and “D”, in that order. This part of the Respondent-Applicant’s mark - “CARVED” - is practically identical with the opposer’s mark CARVID. Also, the Respondent-Applicant’s mark when pronounced sounds like “kar-vee-dee-ah”. The stress is on the first three syllables which collectively, almost indistinguishable from the sound created when pronouncing the Opposer’s mark. That confusion, mistake or even deception is likely accentuated by the fact that the Respondent-Applicant’s mark is used or will be used on goods or products that are similar and/or closely related to the Opposer’s.

Aptly, the determinative factor in a contest involving registration of trademark is not whether the challenged mark would actually cause confusion or deception of the purchasers but whether the use of such mark would likely cause confusion or mistake on the part of the buying public. In short, to constitute an infringement of an existing trademark patent and warrant a denial of an application of 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 purpose of the law, that the similarity between the two labels is such that there is possibility or like likelihood of the older brand mistaking the new brand for it.

It is emphasized that the law on trademarks and trade names is based on the principle of business integrity and common justice. This law, both in letter and spirit is laid upon the premise that, while it encourages fair trade in every way and aims to foster, and not to hamper competition, no one especially a trader, is justified in damaging or jeopardizing others business by fraud, deceit, trickery or unfair methods of any sort. This necessarily precludes the trading by one dealer upon the good name and reputation built by another. A “boundless” choice of words, phrases and symbols is available to one who wishes a trademark sufficient unto itself to distinguish his products from those of others. When, however, there is no reasonable explanation for the defendant’s choice of such a mark thought the field for his selection was so broad, the inference is inevitable that it was chosen deliberately to deceive.⁶ The ultimate ratio in cases of grave doubt is the rule that as between new comer who by confusion has nothing to lose and everything to gain and one who by honest dealing has already achieved favor with the public, any doubt should be resolved against the newcomer in as much as the field from which he can select a desirable trademark to indicate to indicate the origin of his product is obviously a large one.⁷

WHEREFORE, premises considered, the instant opposition is hereby SUSTAINED. Let the file wrapper of Trademark Application Serial No. 4-2009-004635 be returned, together with a copy of this Decision, to the Bureau of Trademarks For information and appropriate action.

SO ORDERED.

Makati City. 10 March 2011.

NATHANIEL S. AREVALO
Director, Bureau of Legal Affairs
Intellectual Property Office