

UNITED AMERICAN PHARMACEUTICALS,
INC.

Opposer,
-versus-

PHARMA AG, INC.

Respondent-Applicant.

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IPC No. 14-2009-000293

Opposition to:
Reg. No. 4-2008-710028
Date Issued: 25 Nov 2008
TM: "CEDEN"

Decision No. 2011- 42

DECISION

United American Pharmaceuticals, Inc. ("Opposer"), a corporation duly organized and existing under the laws of the Philippines with principal office located at 750 Shaw Boulevard, Mandaluyong City, filed on 21 December 2009 an opposition to Trademark Application No. 4-2008-710028. The application, filed by Pharma AG, Inc., ("Respondent-Applicant"), a domestic corporation with principal office address at No. 10 3rd St., Happy Valley, V-Rama Avenue, Cebu City, covers the mark "CEDEN" for use on pharmaceuticals product "sodium ascorbate used for treatment and prevention of Vitamin C deficiency" under class 5 of the International Classification of goods.

The Opposer alleges the following:

- "1. The trademark 'CEDEN' so resembles 'ZEGEN' trademark owned by Opposer, which was applied for registration with this Honorable Office prior to the application of the mark 'CEDEN'. The trademark 'CEDEN', which is owned by Respondent, will likely cause confusion, mistake and deception on the part of the purchasing public, most especially considering that the opposed trademark 'CEDEN' is applied for the same class of goods as that of trademark 'ZEGEN', i.e. Class (5).
- "2. The registration of the trademark 'CEDEN' in the name of the Respondent will violate Sec 123 of Republic Act No. 8293, otherwise known as the 'Intellectual Property Code of the Philippines,
- "3. Respondent's use and registration of the trademark 'CEDEN' will diminish the distinctiveness of Opposer's trademark 'ZEGEN'.

The Opposer submitted as evidence, among other things, copy of the Notice of Allowance of the said party's trademark registration filed on 09 August 2001 for the mark ZEGEN, copy of the sworn Declaration of Actual Use of the mark ZEGEN filed with the Intellectual Property Office of the Philippines, copy of the Certificate of Product Registration issued by the Bureau of Food and Drugs for the brand ZEGEN, and a sample label.

This Bureau issued a Notice to Answer and served a copy thereof upon the Respondent-Applicant on 26 April 2010. However, the Respondent-Applicant did not file its Answer. Hence, under Rule 2, section 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 'CEDEN'?

It is emphasized that the essence of trademark registration is to give protection to the owners of trademarks. The function of the 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.

In this regard 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.

Records show that at the time the Respondent-Applicant filed its trademark application on 21 January 2008, the Opposer has already an existing trademark application for the mark ZEGEN, filed on 9 August 2001. This Bureau noticed, however, that while both marks are used on pharmaceuticals products or goods under class 05, the products are not similar. But even if these are to be considered as closely related, confusion or mistake is unlikely to occur.

The competing marks, CEDEN and ZEGEN are obviously not identical. They have different spellings with the letters "C" and "D" in the Respondent-Applicant's mark easily distinguishable from letters "Z" and "G" in the Opposer's. While there may be similarity in the sounds created when the marks are pronounced, this Bureau finds this not sufficient as basis to conclude that it is likely for the consumers to be confused or commit mistake.

The records and evidence, particularly the sample label, show that ZEGEN is a brand or trademark for an anti-bacterial drug, which can only be dispensed through a physician's prescription. Sound, therefore, would not be a factor because the pharmacist or sales clerk has to read the prescription. Accordingly, if in block letters, ZEGEN is definitely visually different from CEDEN. It is also unlikely for the patient, pharmacist or sales clerk to commit mistake in buying or dispensing the right product even if the prescription is written in the long hand because the strokes in writing the letters "Z" and "G" in ZEGEN render the entire mark a visual character that is already distinct from CEDEN, to wit:

1. The definite "tails" resulting from the downward strokes in writing the letters "Z" and /or "G", and
2. In instances wherein the letter "Z" is not written with tails, the second or middle stroke cut cross diagonally from right to left and downwards.

In contrast, writing the letters "C" and "D" does not produce the "tails". Also, writing the letter "C" requires a curving stroke from left to right forming an outward bulge or salient, while the letter "D" has an upward stroke. These features cast on the letters "C" and "D" visual characters that make them easily distinguishable from the letters "Z" and "G", respectively. Below are samples of the subject marks in long hand showing how distinct one from the other:

Accordingly, in conclusion, this Bureau finds the competing marks not confusingly similar.

WHEREFORE, premises considered, the instant opposition to Trademark Application Serial No. 4-2008-710028 is hereby DISMISSED. Let the filewrapper of the subject trademark application be returned, together with a copy of this Decision, to the Bureau of Trademarks for information appropriate action.

SO ORDERED.

Makati City, 26 April 2011.