

DELALANDE, S.A.,
Opposer,

INTER PARTES CASE NO. 2094
Opposition to:

- versus -

Trademark: PLENDIL

AKTIEBOLAGET ASTRA,
X-----X

DECISION NO. 89-84 (TM)

DECISION

On November 20, 1987 DELALANDE, S.A. filed an Unverified Notice of Opposition against the registration of the trademark "PLENDIL" used on pharmaceutical preparations for internal use for treatment of cardio-vascular diseases, applied for by AKTIEBOLAGET ASTRA on October 15, 1986 under Application Serial No. 601229 published in the October 29, 1987 issue of the Philippine Star and posted at the BPTTT Bulletin Board on November 5, 1987.

Opposer is a Societe Anonyme organized and existing under the laws of France with principal business address at 32 Hue Henri Regnault, Courbevoie (Hauts-de-Seine), France; while Respondent-Applicant is a Swedish Pharmaceutical Industry of Kvarnbergagatan 16, S-151 85 Sodertalje, Sweden.

The grounds alleged in the verified opposition submitted on March 14, 1988 are:

1. The Opposer is the owner-registrant of the trademark "BRENDIL" having been first to adopt and use the same in actual trade and commerce for goods under international Class No. 5.
2. The trademark "BRENDIL" for goods falling under international Class No. 5 was registered in France on 16 July 1981 under Registration No. 1.175.205.
3. Opposer applied for trademark registration in this jurisdiction for the mark "BRENDIL" on 15 January 1982 under Application Serial No. 47189 and was granted Philippine Trademark Certificate of Registration No. 35296 on 13 February 1988 for the goods falling under the aforesaid international class.
4. The trademark "BRENDIL" which the Opposer has created and adopted is well-known in the Philippines and throughout the world for their good quality and high reputation.

In its Answer, Respondent-Applicant denied the material allegations in the opposition and alleged as special and affirmative defenses the following:

5. Respondent-Applicant is a reputable pharmaceutical company and one of the biggest in the business not only in Sweden, but in the international community.
6. Respondent-Applicant's mark 'PLENDIL' was registered in Sweden, its Home Country, on 5 September 1986 under Registration No. 202 594. The mark 'PLENDIL' likewise enjoys trademark protection in several other countries, xxx.

7. Respondent-Applicant's trademark has been in continuous use worldwide since the time of its adoption, hence, the same has gained tremendous goodwill for the Respondent-Applicant xxx.
8. xxx, Respondent-Applicant's trademark will not and cannot cause confusion and deception to the buying public inasmuch as a medical prescription is required for the purchase of the medicine bearing said mark.
9. Furthermore, as they appear in their respective labels, the contending word marks are clearly distinctive of each other, not only in their spelling but also in their overall label presentation.

Issues joined, the Pre-Trial Conference was scheduled to August 4, 1988. After several postponements, the Pre-Trial of the case was terminated on November 29, 1988.

On April 25, 1989 Opposer began presenting its evidence consisting of the Affidavit-Testimony of its foreign witness E. Lafforgue and the marking of its documents (Exhibits "A" to "J"). Respondent-Applicant submitted on June 5, 1989 its Cross Written Interrogatories for transmission to witness E. Lafforgue to answer before the Philippine Consul General or his duly authorized representative in Paris, France.

On August 31, 1989 Opposer filed a Motion to withdraw "its opposition to Application Serial No. 60129 for 'PLENDIL' xxx."

WHEREFORE, herein Notice of Opposition is DISMISSED for having been withdrawn. Application Serial No. 60129 for the trademark "PLENDIL" is GIVEN DUE COURSE.

Let the records of the case be forwarded to the Application, Issuance & Publication Division for appropriate action in accordance with this Decision.

SO ORDERED.

Makati, Metro Manila, October 27, 1989.

IGNACIO S. SAPALO
Director