

SANOFI-AVENTIS,
Opposer,

- versus-

RANBAXY LABORATORIES LIMITED,
2009

Respondent-Applicant.

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IPC NO. 14-2009-000249
Case Filed on: 20 October 2009

Opposition to:
App. Serial No. 4-2009-500084
Date Filed: 23 February

TM: "IRBESAR"

Decision No. 2010-33

DECISION

SANOFI-AVENTIS ("Opposer"), a corporation organized and existing under the laws of France with principal address at 174 Avenue De France, 75013, Paris, France filed an opposition to Trademark Application Serial No. 4-2009-500084.¹ The application filed by RANBAXY LABORATORIES LIMITED ("Respondent-Applicant"), a corporation organized and existing under the laws of India, with principal office address at 19 Nehru Place, New Delhi 110019, India, covers the mark "IRBESAR" for use on "pharmaceutical and medicinal preparations for human and veterinary use" under Class 05 of the International Classification of Goods.²

The Opposer alleges the following:

"STATEMENT OF FACTS

"4. On 23 February 2009, the Respondent-Applicant lodged with this Honorable Office, Trademark Application No. 4-2009-500084 for IRBESAR in Class 05, specifically for "pharmaceutical and medicinal preparations for human and veterinary use".

"5. The Opposer discovered and developed the pharmaceutical substance 'IRBESARTAN' which is an antihypertensive drug.

"6. In 1995, 'IRBESARTAN' was adopted as an International Nonproprietary Name (INN) by the World Health Organization (WHO). An INN is a word used to identify a pharmaceutical substance and is a word intended for use in pharmacopoeias, labeling, product information, advertising and other promotional material, drug regulation and scientific literature. In layman's terms, an INN is the generic term for a particular drug or pharmaceutical preparation or active ingredient thereof. As an INN, 'IRBESARTAN' is globally recognized and is public property.

"7. 'IRBESARTAN' is being marketed, sold and distributed worldwide by the Opposer including in the Philippines, using the trademarks APROVEL and COAPPROVEL. x x x

"GROUNDS IN SUPPORT OF THE OPPOSITION

"8. The Respondent-Applicant's IRBESAR mark should not be registered by this Honorable Office because its registration is contrary to law, existing rules and jurisprudence and further, will cause damage to the Opposer, the medical and pharmaceutical industry and most importantly, will ultimately pose a serious danger to the health and safety of the general public.

"9. Section 123 (g) of the Intellectual Property Code provides:

¹ The application was published in the Intellectual Property E-Gazette on 22 June 2009

² The Nice Classification is a classification of goods and services for the purpose of registering trademarks and service marks based on a multilateral treaty administered by the World Intellectual Property Organization. This treaty is called the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of Registration of Marks concluded in 1957.

Sec.123. Registrability -123.1. A mark cannot be registered if it:

x x x

'(g) Is likely to mislead the public, particularly as to the nature, quality, characteristics or geographical origin of the goods and services;

x x x

"10. Likewise, in 1950, the WHO's World Health Assembly of which the Philippines is a member, adopted a resolution that initiated the INN system. The INN system:

- a. Was established to provide a standard by which pharmaceutical substances or active pharmaceutical ingredient can be uniformly" identified;
- b. Allows for the clear identification, safe prescription and dispensing of medicines to patients;
- c. Facilitates the discourse and sharing of information and research of health professionals and scientists worldwide on the same;
- d. Is public property, nonproprietary and may not be appropriated in whole or in part and thus an INN is generic;
- e. Prohibits the use of an INN, its common stem or a name derived from an INN in a trademark used on pharmaceutical products;
- f. Has led to the situation whereby the majority of pharmaceutical substances used in medical practice are designated by an INN;
- g. Shows the relationship of substances belonging to a group of pharmacologically related substances by the use of the common stem; and
- h. Is being followed by the member states of the WHO and the world's leading pharmaceutical companies.

"10.1. Consistent with the above-mentioned fundamental principles of the INN system, another resolution was adopted by the same body which pertinently provides that each member state is obligated to:

1. Enact rules and regulations, as necessary, to ensure that international nonproprietary names (or the equivalent nationally approved generic names) used in the labeling and advertising of pharmaceutical products are always displayed prominently;
2. Encourage manufacturers to rely on their corporate name and the international nonproprietary names, rather than on trademarks, to promote and market multi-sourced products introduced after patent expiration; and
3. To develop policy guidelines on the use and protection of international nonproprietary names, and to discourage the use of names derived from INNs and particularly names including established INN stems as trademarks.

"10.2. Consequently, an INN, a derivative of an INN or common stem thereof, should not be registered as a trademark. The purpose of this prohibition is explained by the WHO in this wise:

To avoid confusion, which could jeopardize the safety of patients, trademarks cannot be derived from INN and, in particular, must not include their common stems. x x x the selection of further names within a series will be seriously hindered by the use of a common stem in brand-name.

“11. The Respondent-Applicant’s IRBESAR mark cannot be registered as a trademark because it is confusingly similar to the INN ‘IRBESARTAN’, which under the INN system, is a generic term that is used to identify a pharmaceutical substance or active ingredient by a unique name that is globally recognized and is a public property. x x x

“12. Furthermore, the Respondent-Applicant’s IRBESAR mark essentially adopts a substantial part of the common stem SARTAN used by medical practitioners, pharmacist or any one dealing with pharmaceutical products to recognize that a substance belongs to a particular group of substances having the same pharmacological activity. x x x

“13. The mark IRBESAR is composed of the letters I, R, B, E, S, A, R, a seeming arbitrary aggrupation of various letters of the alphabet. However, upon further examination, it can be gleaned that the Respondent-Applicant IRBESAR mark is confusingly similar to the INN or generic name ‘IRBESARTAN’, both visually and phonetically.

“13.1. All the letters in the Respondent-Applicant’s word mark from part of the INN ‘IRBESARTAN’. In fact, all the seven (7) letters in Respondent-Applicant’s IRBESAR mark constitutes the first seven (7) letters of the INN or generic name ‘IRBESARTAN’.

“13.2. The last three letters of the Respondent-Applicant IRBESAR mark, namely, the letters S, A, and R, consist of a substantial part of the common stem -SARTAN of the INN system.

“13.3. Moreover, it bears emphasizing that the INN ‘IRBESARTAN’ and the Respondent-Applicant’s IRBESAR mark are both used for pharmaceutical products.

“14. The registration of Respondent-Applicant’s IRBESAR mark which is confusingly similar to the INN ‘IRBESARTAN’ will inevitably cause disastrous effects on the health of the general public who would be tricked into believing that what they are purchasing is the generic ‘IRBESARTAN’ pharmaceutical product but is in fact, the Respondent-Applicant’s IRBESAR.

“15. The registration of the Respondent-Applicant’s IRBESAR mark will not only hamper the orderly development of the INN system but its registration will also give the Respondent-Applicant, as an owner of a registered mark, the unbridled license to enjoin the use of the INN ‘IRBESARTAN’ and/or stem -SARTAN or words or marks similar to its IRBESAR mark by all third parties, including those entitled to use the term ‘IRBESARTAN’ in medical research, clinical documentation, advertising, labeling, product information and drug regulation, among others. The Respondent-Applicant will virtually have the monopoly over the term ‘IRBESARTAN’ and other word identifiers akin to its IRBESAR mark.

“16. Moreover, the registration of the IRBESAR will create a dangerous precedent since this will embolden unscrupulous individuals who can and will use the Respondent-Applicant’s case as an example and as a basis to seek the registration of marks which are generic and/or confusingly similar to an INN/generic name for a pharmaceutical substance and/or marks which appropriate the common stems of the INN system, worse, altogether seek the registration of the INN *in toto* for their pharmaceutical preparations.

“17. The Philippines, as a member state of WHO, is expected to abide by and comply in good faith with WHO guidelines, policies, conventions, resolutions and agreements, such as the afore-mentioned World Health Assembly Resolutions, whether or not said guidelines or policies are embodied in our municipal law.

“18. For this Honorable Office, therefore, to register the Respondent-Applicant’s mark IRBESAR, a mark which is confusingly similar to an INN or generic name for a pharmaceutical substance, would open the door to the registration of non-distinctive or generic mark, including INNs, its derivatives and common stems thereof, in clear contravention not only of the Philippine law but as well as the international law which is part and parcel of the law of our land.”

The Opposer presented the following pieces of evidence:

1. Exhibit “A” - Special Power of Attorney executed by Joelle Sanit-Hugot in favor of Cesar C. Cruz & Partners Law Offices;
2. Exhibit “B” - Certified copy of Certificate of Registration No. 4-1996108527 for the mark APROVEL for Class 5;
3. Exhibit “C” -Certified copy of Certificate of Registration No. 4-1999-08254 for the mark COAPROVEL for Class 5;
4. Exhibits “D” and “D-1” -Certificate of Product Registration No. DE 001076 and DE 001077 for IRBESARTAN under the brand APROVEL;
5. Exhibits “E” and “E-1” -Certificate of Product Registration No. DF 002472 and DF2473 for IRBESARTAN/ HYDROCHLOROTHIAZIDE under the brand COAPROVEL;
6. Exhibit “F” - Copy of excerpts from the WHO’s “International Nonproprietary Names (INN) for Pharmaceutical Substances”
7. Exhibit “G” - Copy of the excerpts of the WHO’s “The use of stems in the selection of International Nonproprietary Names (INN) for pharmaceutical substances (2006”;
8. Exhibit “H” - Legalized Affidavit of Ms. Joelle Sanit-Hugot; and
9. Exhibit “I” - Affidavit of Ms. Gloria L. Menano.³

This Bureau issued on 17 November 2009 a Notice to Answer and served a copy thereof upon the Respondent-Applicant on 24 November 2009. The Respondent-Applicant filed several Motions for Extension to File Answer which were granted by this Bureau. On 16 March 2010, the Respondent-Applicant filed its Answer alleging the following:

“The registration of the ‘IRBESAR’ mark is in consonance with law, rules and jurisprudence. ‘IRBESAR’ is a registrable mark.

“23. Contrary to the Opposer’s claim, the registration of the ‘IRBESAR’ mark is in accordance with law, rules and jurisprudence. As quoted in the opposition, Sec 123.1 (g) of the Intellectual Property Code (‘IP Code’) only prohibits the registration of the marks that are ‘likely to mislead the public, particularly as to the nature, quality, characteristics or geographical origin of goods or services’. ‘IRBESAR’ does not qualify as such mark.

“24. The Opposer anchor its claim that the ‘IRBESAR’ mark is unregistrable under Sec. 123.1 (g) of the IP Code on the ground that the term ‘IRBESAR’ appears similar to ‘IRBESARTAN’, an INN adopted by the World Health Organization (‘WHO’). Said claim is

³ Marked as Annexes “A” to “I” by Opposer instead of Exhibits “A” to “I” as required by the Inter Partes Rules and Regulations

baseless considering that it is common practice in the pharmaceutical industry to adopt trademarks for medicinal products that bear some similarity to the corresponding INNs.

“25. In an article by Darani Vachanavuttivong on the Managing Intellectual Property website, it was stated, to wit:

When creating trademarks, pharmaceutical companies often choose words that are similar to the generic names of the International Nonproprietary Name (INN) system administered by the World Health Organization (WHO). These marks frequently incorporate the first or last syllables of the relevant INN.

“26. Arguably, the logic behind this practice is to facilitate the dispensation of medicines. The practice provides for an easier system of classification and identification of drugs containing the INN compound involved. Common syllables provide a common method of clustering the INN and the various brand name drugs for the convenience of the medical and pharmaceutical professionals, as well as the general public.

“27. For instance, medicine patches containing the INN compound ‘ESTRADIOL’ are being marketed under the following brand names: ‘ESTALIS’, ‘ESTRACOMB’, ‘ESTRADERM’, ‘ESTRADOT’ and ‘ESTROGEL’. Since the brand names contain letters or syllables that are also present in the INN, it is easier to identify and group the brand name drugs.

“28. Therefore, contrary to Opposer’s view, the registration of the ‘IRBESAR’ mark does not go against Sec. 123.1. (g) of the IP Code, which prohibits the registration of the marks that are likely to mislead the public. In fact, the registration of ‘IRBESAR’ will actually aid the public in identifying the medicinal product, to which the mark is attached, as those belonging to the group of brand name medicines containing the compound ‘IRBESARTAN’.

“29. It is significant to note that when Respondent-Applicant filed an application for registration of ‘IRBESAR’ mark as a word mark with this Honorable Office, the Bureau of Trademarks immediately allowed the trademark application for publication in the Official Gazette or E-Gazette. The Respondent-Applicant never received any Official Action from the examiner rejecting the trademark application on the ground that the mark is generic, descriptive or confusingly similar to another mark. It can be deduced that the Bureau of Trademarks considered ‘IRBESAR’ as a distinctive mark capable of registration. The Bureau of Trademarks must have perceived that the registration of the ‘IRBESAR’ mark is in consonance with the law, rules and jurisprudence.

“The ‘IRBESAR’ mark is registrable as a trademark and is not confusingly similar to the INN ‘IRBESARTAN’.

“30. ‘IRBESARTAN’ is a pharmaceutical compound belonging to the ‘-SARTAN’ or ‘SARTAN’ family. ‘SARTANS’ are group of pharmaceuticals that are mainly used for treating hypertension, kidney damage due to diabetes and congestive heart failure. Aside from ‘IRBESARTAN’, the ‘SARTAN’ family is comprised of ‘LOSARTAN’, ‘CANDESARTAN’, ‘VALSARTAN’, ‘TELMISARTAN’, ‘EPROSARTAN’ and ‘OLMESARTAN’.

“31. Clearly, the pharmaceutical compound ‘IRBESARTAN’ is chiefly identified through the stem, ‘SARTAN’. The mark ‘IRBESAR’ cannot be mistaken for the INN ‘IRBESARTAN’ precisely because ‘IRBESAR’ is lacking the essential stem that associates the compound with the ‘SARTAN’ family.

“32. An attempt to prove confusing similarity will be hard-pressed in this case. The Supreme Court in a long line of cases, has consistently and categorically declared that in a case involving ethical and/or prescription drugs, as is the case before us, the likelihood of confusion is remote.

“33. In buying medicine, the average purchaser needs to be equipped with the doctor’s prescription, and which prescription still needs to be verified by the pharmacist. It is this meticulous procedure that ensures that a ‘generic’ ‘IRBESARTAN’ drug is not mistaken for the brand name drug ‘IRBESAR’ and vice versa. The process of buying medicine is not the same as the process of buying, for instance, daily household items that are placed side-by-side in store shelves. In the latter instance, likelihood of confusion between similarly marked articles is highly possible. Such danger is not present in the purchase of medicines, which are carefully vended through pharmacies. Therefore, likelihood of confusion is improbable in this case.

“Respondent-Applicant’s act of appropriating the syllable ‘SAR’ from the stem ‘SARTAN’ is valid and sanctioned by existing practice in the pharmaceutical industry. The syllable ‘SAR’ in the ‘IRBESAR’ mark does not render such mark unregistrable.

“34. The Opposer takes exception to the Respondent-Applicant’s use of the syllable ‘SAR’ in the ‘IRBESAR’ trademark that the latter seeks to register. The Opposer states that ‘the letters S, A, and R consist of a substantial part of the common stem -SARTAN of the INN system’.

“35. As earlier mentioned, the incorporation in medicine trademarks of syllables from INNs is a standard practice in the pharmaceutical industry. Trade names of drugs belonging to the ‘SARTAN’ family commonly carry syllables of the ‘SARTAN’ INN. For instance, trademarks of medicine containing the ‘OLMESARTAN’ compound include ‘OLMETEC’ and ‘OLVANCE’. For those containing the ‘TELMISARTAN’ compound, ‘TELMA’, ‘TELEACT’, ‘TELMINORM’ and ‘NORMISAAR’ are among the trademarks that are being marketed today. The brand name ‘ATACANO’ contains the compound ‘CANOESARTAN’.

“36. Even beyond the ‘SARTAN’ family of medicines, brand names of drugs incorporate syllables derived from INNs. The following are examples of such brand names with their corresponding INNs. ‘BOTOX’ for ‘BOTULINUM TOXIN’, ‘CELEBREX’ for the INN ‘CELECOXIB’, ‘OEPO-TESTOSTERONE’ for the INN ‘TESTOSTERONE’, ‘HYDREA’ for the INN ‘HYDROXYUREA’, ‘PANTOLOC’ for ‘PANTOPRAZOLE’, ‘RITUXAN’ for the INN ‘RITUXIMAB’, ‘VANCONCIN’ for the INN ‘VANCOMYCIN’ and ‘NUTROPIN’ for the INN ‘SOMATROPIN’.

“37. Hence, there is nothing objectionable and unusual about the fact that the mark ‘IRBESAR’ has the syllable ‘SAR’ in it. It is a valid act that is sanctioned by existing practice in the pharmaceutical industry. Such does not render ‘IRBESAR’ mark unregistrable.

“38. It is also important to note that the word ‘SARTAN’ is registered as a trademark with the Intellectual Property Office (IPO) of the Philippines since 2008. It is registered under the name of AAA Pharma, Inc., a pharmaceutical company. x x x If this Honorable Office did not see any legal obstacle in registering the trademark “SARTAN”, then all the more reason that it should not find anything objectionable in the registration of the trademark ‘IRBESAR’, which only includes a single syllable of the former trademark.”

Respondent-Applicant’s evidence consists of the following:

1. Exhibit “1” - Certified copy of Trademark Application No. 4-2009-50084 for the mark IRBESAR;
2. Exhibit “2” - Certified copy of the Notice of Allowance for opposition of the mark IRBESAR;
3. Exhibit “3” - Copy of the Certificate of Registration No. 4-2007-013556 for the mark SARTAN; and

4. Exhibit "3" - Authenticated copy of Special Power of Attorney executed by Rajbeer S. Sachdeva in favor of Bengzon Negre Untalan Intellectual Property Attorneys.⁴

The Opposer filed a Reply on 26 March 2010. After the Preliminary Conference, this Bureau issued on 21 May 2010 Order No. 2010-600 directing the parties to submit their respective position papers. The Respondent-Applicant filed its Position Paper on 02 June 2010 while Opposer did so on 04 June 2010.

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

The essence of trademark registration is to give protection to the owner of the trademarks. The function of a trademark is to point out distinctly the origin or ownership of the article to which it is affixed, to secure to him, who has been instrumental in bringing into a 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 products.⁵

The Opposer anchors its case on Sec. 123.1 (g) of Republic Act No. 8293, otherwise known as the Intellectual Property Code of the Philippines ("IP Code") which provides:

Sec.123. Registrability -123.1. A mark cannot be registered if it:

x x x

(g) Is likely to mislead the public, particularly as to the nature, quality, characteristics or geographical origin of the goods and services;

x x x

Also, Section 123.1, pars. (h) and (i) of the IP Code also provides that a mark cannot be registered if it:

(h) Consists exclusively of signs that are generic for the goods or services that they seek to identify;

(i) Consists exclusively of signs or indications that may serve in trade to designate the kind, quality, quantity, intended purpose, value, geographical origin, time or production of the goods or rendering of the services, or other characteristics of the goods or services.

This Bureau finds merit in the Opposer's argument that the Respondent-Applicant's mark should not be registered because it is confusingly similar to, and is a virtual replication of the INN "IRBESARTAN", which is the generic term for a drug mainly used for treating hypertension.

In *Societe Des Produits Nestle, et al. v. Court of Appeals*⁶ the Supreme Court had the occasion to explain what constitutes a generic or descriptive mark, to wit:

"Generic marks are common words that describe an entire class of goods or services. Generic terms are those which constitute 'the common descriptive name of an article or substance,' or comprise the 'genus of which the particular product is a species,' or are 'commonly used as the name or description of a kind of goods,' or 'imply reference to every member of a genus and the exclusion of individuating

4 Marked as Annexes "A", "B", "C" and "D" by Respondent instead of Exhibit "1" to "4" as required by the Inter Partes Rules and Regulations.

5 *Pribhdas J. Mirpuri v. Court of Appeals*, G.R. No. 114508, 19 November 1999, citing *Etepha v. Director of Patents*, 16 SCRA 495.

6 *Societe Des Produits Nestle, et al. vs. Court of Appeals*. G.R. No. 112012. 4 April 2001.

characters,' or 'refer to the basic nature of the wares or services provided rather than to the more idiosyncratic characteristics of a particular product,' and are not legally protectable. On the other hand, a term is descriptive and therefore invalid as a trademark if, as understood in its normal and natural sense, it 'forthwith conveys the characteristics, functions, qualities or ingredients of a product to one who has never seen it and does not know what it is,' or 'if it forthwith conveys an immediate idea of the ingredients, qualities or characteristics of the goods,' or if it clearly denotes what goods or services are provided in such a way that the consumer does not have to exercise powers of perception or imagination."

And, in *Asia Brewery, Inc. v. Court of Appeals, et al.*⁷, the Supreme Court explained the reason why generic terms should not be registered as trademarks, to wit:

"A word or a combination of words which is merely descriptive of an article of trade, or of its composition, characteristics, or qualities, cannot be appropriated and protected as a trademark to the exclusion of its use by others . . . inasmuch as all persons have an equal right to produce and vend similar articles, they also have the right to describe them properly and to use any appropriate language or words for that purpose, and no person can appropriate to himself exclusively any word or expression, properly descriptive of the article, its qualities, ingredients or characteristics, and thus limit other persons in the use of language appropriate to the description of their manufactures, the right to the use of such language being common to all. This rule excluding descriptive terms has also been held to apply to trade-names. As to whether words employed fall within this prohibition, it is said that the true test is not whether they are exhaustively descriptive of the article designated, but whether in themselves, and as they are commonly used by those who understand their meaning, they are reasonably indicative and descriptive of the thing intended. If they are thus descriptive, and not arbitrary, they cannot be appropriated from general use and become the exclusive property of anyone. (52 Am. Jur. 542-543.)"

Aptly, a generic name of a product can never function as a trademark. It is regarded by law as free for all to use. As such the registration of generic or purely descriptive marks is proscribed because they are the usual way of designating the relevant goods or services or their characteristics. A generic or purely descriptive term is the name of the product or service itself which is the very antithesis of a mark and cannot function as a mark to identify and distinguish the goods or services of one seller.⁸

"IRBESARTAN" is an international nonproprietary name ("INN") or generic name for anti-hypertensive drugs. It belongs to the common stem family -SARTAN which is an "angiotensin II receptor antagonists, antihypertensive (non peptidic)". The INN is needed for the clear identification, safe prescription and dispensing of medicines, and for communication and exchange of information among health professionals. INNs can be used freely because they are in the public domain.⁹ Thus, considering that INN is a public domain, no person may exclusively appropriate the same to himself to the exclusion of others.

The mark "IRBESAR" mark is obviously derived and copied from the generic name or INN "IRBESARTAN". What the Respondent-Applicant did is merely to drop "tan" from IRBESARTAN. There is no ingenuity or creativity that would give the mark a character that is distinct from the generic term. The mark IRBESAR would not point or indicate a specific source or manufacturer of the product. IRBESAR would not be remembered by the consumers as a brand. What IRBESAR tells the consumer is the generic drug or product. In fact, the Opposer itself stated that "the registration of 'IRBESAR' will actually aid the public in identifying the

7 G.R. No. 103543, 05 July 1993, citing *Ong Ai Cui v. Director of Patents*, 96 Phil. 673,675 [1955].

8 *J. Thomas McCarthy*, Trademarks and Unfair Competition, Vol. I, 1973 Ed.. p. 405.

9 See Exhibit "G" of Opposer, "The use of stems in the selection of International Non-proprietary Names (INN) for pharmaceutical substances."

medicinal product, to which the mark is attached, as those belonging to the group of brand name medicines containing the compound 'IRBESARTAN'."¹⁰

As correctly pointed out by Opposer:

"15. The registration of the Respondent-Applicant's IRBESAR mark will not only 'hamper the orderly development of the INN system but its registration will also give the Respondent-Applicant, as an owner of a registered mark, the unbridled license to enjoin the use of the INN 'IRBESARTAN' and/or stem -SARTAN or words or marks similar to its IRBESAR mark by all third parties, including those entitled to use the term 'IRBESARTAN' in medical research, clinical documentation, advertising, labeling, product information and drug regulation, among others. The Respondent-Applicant will virtually have the monopoly over the term 'IRBESARTAN' and other word identifiers akin to its IRBESAR mark."¹¹

Indeed, to allow registration of the "IRBESAR" mark would grant the Respondent-Applicant the exclusive right to use this mark and can prevent others from using the generic name "IRBESARTAN" on the ground of confusing similarity with IRBESAR. A trademark registration is imbued with public interest and adoption of marks that may cause confusion to generic names particularly in the field of pharmaceutical products, cannot be countenanced. It is to the interest of the public that a registered mark should clearly distinguish the goods or services of an enterprise.¹²

This Bureau also finds the argument of Respondent-Applicant that the likelihood of confusion is remote because the drugs involved are ethical or prescriptive drug, untenable and irrelevant, since what is in issue is whether the mark is generic.

WHEREFORE, premises considered the instant opposition to Trademark Application Serial No. 4-2009-500084 is hereby SUSTAINED. Let the filewrapper of Trademark Application Serial No. 4-2009-500084 be returned together with a copy of this DECISION to the Bureau of Trademarks (BOT) for appropriate action

SO ORDERED.

Makati City, 29 June 2010.

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

¹⁰ See Respondent-Applicant's ANSWER, par. 28 and POSITION PAPER. par. 12.

¹¹ See Verified Notice of Opposition, p. 8.

¹² IP Code, Sec. 121.1.