



THERAPHARMA, INC.,
Opposer,

- versus -

DKSH INTERNATIONAL AG,
Respondent-Applicant.

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IPC No. 14-2010-00322
Opposition to:

Appln. Ser. No. 4-2010-001429
Date Filed: 09 February 2010

Trademark: **COMBIZYM**
Decision No. 2012 - 60

DECISION

THERAPHARMA, INC.¹ ("Opposer") filed on 20 December 2010 a Verified Opposition to Trademark Application No. 4-2010-001429. The application, filed by DKSH INTERNATIONAL AG² ("Respondent-Applicant"), covers the mark COMBIZYM used for goods under Class 5³, particularly, "*pharmaceutical preparations for the treatment of digestive disorders*". The subject trademark application was published in the "IPO E-Gazette" on 26 October 2010.

The Opposer alleges, among other things, the following:

"1. The mark COMBIZYM owned by Respondent-Applicant so resembles the trademark COMBIZAR owned by Opposer, which was applied for registration with this Honorable Bureau prior to the application of the mark COMBIZYM.

"2. The mark COMBIZYM will likely cause confusion, mistake and deception on the part of the purchasing public, most especially considering that the opposed mark COMBIZYM is applied for the same class of goods as that of Opposer's trademark COMBIZAR, i.e. Class 05 of the International Classification as pharmaceutical preparations.

"3. The registration of the mark COMBIZYM in the name of the Respondent-Applicant will violate Sec. 123 (d) of the IP Code."

The Opposer's evidence consists of the following:

1. Exhibits "A" to "A-1" - Copies of the pertinent pages of the IPO E-Gazette showing Trademarks Published for Opposition as of 26 October 2010;
2. Exhibit "B" - Copy of the Acknowledgement issued by the IPO;

1 A domestic corporation duly organized and existing under the laws of the Philippines, with principal business address at 3rd Floor, Bonaventure Plaza, Ortigas Avenue, Greenhills, San Juan City, Philippines.
2 A foreign corporation, with business address at Wiesenstrasse 8, 8034 Zurich, Switzerland.
3 Nice Classification is a classification of goods and services for the purpose of registering trademarks and service marks, based on a multilateral 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 the Registration of Marks concluded in 1957.

3. Exhibit "C" - Copy of the Notice of Allowance and Payment of Publication Fee dated 13 October 2005;
4. Exhibit "D" - Copy of the Declaration of Actual Use;
5. Exhibit "E" - Sample packaging material of the Opposer's mark COMBIZAR;
6. Exhibit "F" - Certification issued by IMS Health Philippines, Inc. dated 04 November 2010;
7. Exhibit "G" - Copy of Certificate of Product Registration.

This Bureau issued a Notice to Answer and served a copy thereof upon the Respondent-Applicant on 10 February 2011. The Respondent-Applicant, however, did not file an Answer despite the extensions of time given. Therefore, pursuant to Section 11 of Office Order No. 79, as amended, this case is now deemed submitted for decision on the basis of the opposition, the affidavits of witnesses and the documentary evidence submitted by the Opposer.


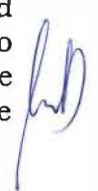
Should the Respondent-Applicant's trademark application be allowed?

Sec. 123.1 (d) of Republic 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 a mark as to be likely to deceive or cause confusion.

The records show that at the time the Respondent-Applicant filed its trademark application on 09 February 2010, the Opposer has a prior trademark application for COMBIZAR filed as early as 09 December 2004. Now, the question is: Are the competing marks confusingly similar?

After a judicious evaluation of the records, evidence and arguments set forth by the parties, this Bureau finds that confusion or deception is unlikely to occur in this instance.


The only similarity between the competing marks is the prefix "COMBI". In this regard, this Bureau noticed that in the Trademark Registry, the contents of which this Bureau can take cognizance of via judicial notice, there are several trademarks registered or applied for registration that consist of the word, or contain the prefix or suffix "COMBI". "COMBI" therefore as a mark or as a part thereof is not unique. "COMBI" is obviously derived from the word "combination" or "combined", hence, is suggestive as to the goods or products to which the mark is attached to. For pharmaceutical products or drugs, the prefix "COMBI" is utilized as part of the brand or trademark to indicate that the product is a combination of drugs or medications.



In this regard, the pharmaceutical product or drug bearing the brand or trademark COMBIZAR is different from the product under the brand or trademark COMBIZYM. COMBIZAR is a brand or trademark for a drug used for the treatment of hypertension while COMBIZYM-branded drug is used for the treatment of digestive disorders. Considering that confusion or mistake is likely to happen at the point of sale, or dispensation in the case of drugs or medicines, committing or occurrence of error in this instance is remote. Therapeutic drugs are dispensed through physician's prescription and sold by pharmacies. Doctors and pharmacists are highly knowledgeable and trained professionals and are aware of the multitude of COMBI-prefixed or suffixed brands or trademarks for pharmaceutical products.

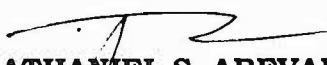
Corollarily, because "COMBI" as part of brand or mark for pharmaceutical products is common, not unique to the Opposer, it is unlikely for the consumers to assume or conclude that the brands or marks or the parties themselves are associated or connected to each other. And because the parties' products are different from one another, neither would there be the danger of the consumers thinking that the Respondent-Applicant's mark is just a variation of the Opposer.

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.⁴ This Bureau finds that the Respondent-Applicant's mark serves this purpose.

WHEREFORE, premises considered, the instant Opposition to Trademark Application No. 4-2010-001429 is hereby **DENIED**. Let the filewrapper of the subject trademark application be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action. 

SO ORDERED.

Taguig City, 30 March 2012.


Atty. NATHANIEL S. AREVALO
Director IV
Bureau of Legal Affairs

⁴ *Pribhdas J. Mirpuri v. Court of Appeals*, G. R. No. 114508, 19 November 1999, citing *Etepha v. Director of Patents, supra, Gabriel v. Perez*, 55 SCRA 406 (1974). See also Article 15, par. (1), Art. 16, par. (1), of the Trade Related Aspects of Intellectual Property (TRIPS Agreement).