



WESTMONT PHARMACEUTICALS,  
INCORPORATED,

*Opposer,*

IPC No. 14-2010-00300

Opposition to:

- versus -

Appln. Serial No. 4-2010-005801

Date Filed: 31 May 2010

TM: "AMPIC"

2 WORLD TRADERS SUBIC, INC.,

*Respondent-Applicant.*

Decision No. 2012- 30

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## DECISION

WESTMONT PHARMACEUTICALS, INC. ("Opposer")<sup>1</sup> filed on 08 December 2010 an opposition to Trademark Application Serial No. 4-2010-005801. The application, filed by 2 WORLD TRADERS SUBIC, INC.<sup>2</sup>, covers the mark "AMPIC" for use on "*pharmaceutical preparation*" under Class 5 of the International Classification of Goods.<sup>3</sup> The Opposer alleges among other things, the following:

"1. The trademark 'AMPIC' so resembles 'AMPICIN' trademark owned by Opposer, registered with this Honorable Office prior to the publication for opposition of the mark 'AMPIC'. The trademark 'AMPIC', 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 'AMPIC' is applied for the same class of goods as that of trademark 'AMPICIN', i.e. Class (5);

"2. The registration of the trademark 'AMPIC' 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', which provides, in part, that a mark cannot be registered if it: x x x

Under the above-quoted provision, any mark which is similar to a 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.

"3. Respondent's use and registration of the trademark 'AMPIC' will diminish the distinctiveness and dilute the goodwill of Opposer's trademark 'AMPICIN'."

The Opposer's evidence consists of a print-out of the "IPO E-Gazette" with releasing date of 08 Nov. 2008 containing the list trademark applications published for opposition including the Respondent-Applicant's application, copies of Cert. of Reg. No. 36627 and Cert. of Renewal of Reg. No. 36627, Affidavits of Use for the mark "AMPICIN", sample of product label bearing the mark "AMPICIN", and a copy of the Cert. of Product Registration

<sup>1</sup> A corporation duly organized and existing under the laws of the Philippines, with principal office located at 4<sup>th</sup> Flor Bonavenutre Plaza, Ortigas Avenue, Greenhills, San Juan City.

<sup>2</sup> A domestic corporation with principal office address at Unit 3 Anglo Asia Bldg., Commitment St., Subic Bay Industrial Park, Freeport Zone, Olongapo City

<sup>3</sup> The Nice Classification is a classification of goods and services for the purpose of registering trademark and services marks, based on the multilateral treaty administered by the World Intellectual Property Organization. The treaty is called the Nice Agreement concerning the International Classification of Goods and Services for the purpose of the Registration of marks cancelled in 1957.

issued by the Bureau of Food and Drugs for the mark/brand "AMPICIN".<sup>4</sup>

Despite due notice, the Respondent-Applicant did not file its Answer to the opposition. Hence, the instant case was deemed submitted for decision.

The essence of trademark registration is to give protection to the owners of the trademarks. The function of a trademark is to point out distinctly the origin or ownership of the goods to which it is applied; to secure to him who has been instrumental in bringing into the market a superior article of merchandise; the fruit of the industry and skill; to assure to 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.<sup>5</sup> Thus, Sec. 123.1 (d) of R.A. 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 of if it nearly resembles such mark as to be likely to deceive or cause confusion.

Records show that the time the Respondent-Applicant filed its trademark application on 31 May 2010, the Opposer has an existing registration for the mark "AMPICIN" under Reg. No. 36627, issued on 09 Feb. 1987, and which was subsequently renewed on 09 Feb. 2007. The registration covers pharmaceutical product under Class 5, specifically, "*bactericidal broad-spectrum penicillin.*"

This Bureau noticed that the goods covered by the Respondent-Applicant is simply designated or indicated as "*pharmaceutical preparation*" under Class 5. Without such particularity, the use of the Respondent-Applicant's mark would turn out to be flexible such that it could be attached to any pharmaceutical products under Class 5 regardless of composition, form, or purpose, including those that are covered by the Opposer's mark. The Respondent-Applicant's goods therefore should be considered as similar or closely related to the Opposer's.

Corollarily, a scrutiny of the competing marks leads this Bureau to conclude that these marks are confusingly similar. The marks are almost identical even if the last two (2) letters in the Opposer's mark are absent in the Respondent-Applicant's. The Respondent-Applicant's mark can be considered as a colorable imitation of the Opposer's mark as it looks and sound like the abbreviated form of "AMPICIN". In fact, the likelihood of deception or confusion is amplified once the Respondent-Applicant attaches or uses the mark on anti-bacterial medicines or preparations.

It is stressed that the conclusion (of similarity) created by the use of the same word as the primary element in a trademark is not counteracted by the addition of another term. By analogy, confusion cannot also be avoided by merely dropping, adding or changing one of the letters of a registered mark.<sup>6</sup> Confusing similarity exists when there is such a close or ingenuous imitation as to be calculated to deceive ordinary persons, or such resemblance to

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<sup>4</sup> Annex "A" to "H" of the Verified Oposition.

<sup>5</sup> *Pribhdas J. Mirpuri vs. Court of Appeals*, G.R. No. 114508, 19 Nov. 1999

<sup>6</sup> Reference: *Continental Connector Corp. v. Continental Specialties Corp.*, 207 USPQ.

the original as to deceive ordinary purchaser as to cause him to purchase the one supposing it to be the other<sup>7</sup>. The copycat need not copy the entire mark, but it is enough that he takes one feature which the average buyer is likely to remember.<sup>8</sup> Consumers may assume that the Respondent-Applicant's mark is just a variation of the Opposer's, or the products to which the marks are attached came from just one source or manufacturer, or the sources or manufacturers are connected or associated with one another.


The field from which a person may select a trademark is practically unlimited. As in all cases of colorable imitation, the answered riddle is why, of the millions of terms and combination of letters and available, the Respondent-Applicant had come up with a mark identical or so clearly similar to another's mark if there was no intent to take advantage of the goodwill generated by the other mark<sup>9</sup>.

Accordingly, this Bureau finds that the Respondent-applicant's trademark application is proscribed by Sec. 123.1 (d) of the IP Code.

WHEREFORE, premises considered, the opposition is hereby SUSTAINED. Let the filewrapper of Trademark Application Serial No 4-2010-005801 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 17 February 2012.

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



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<sup>7</sup> See *Societe des Produits Nestle, S.A. v. Court of Appeals*, G.R. No. 112012, 04 April 2001.

<sup>8</sup> Ref. Nims, *The Law of Unfair Competition and Trademarks*, 4<sup>th</sup> Ed. Vol. 2, pp. 678-679.

<sup>9</sup> *American Wire and Cable Co. v. Director of Patents et. al* (SCRA 544), G.R. No. L-26557, 18 Feb. 1970