



NOVARTIS AG,  
Opposer,

-versus-

CARELS PHARMACEUTICALS, INC.,  
Respondent- Applicant.

x-----x

IPC No. 14-2010-00004  
Opposition to:  
Appln. Serial No. 4-2009-005034  
Filing Date: 22 May 2009  
TM: "NEUROVIT"

### NOTICE OF DECISION

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#### GREETINGS:

Please be informed that Decision No. 2014 - 147 dated May 30, 2014 (copy enclosed) was promulgated in the above entitled case.

Taguig City, May 30, 2014.

For the Director:

  
Atty. EDWIN DANILO A. DATING  
Director III  
Bureau of Legal Affairs



**NOVARTIS AG,**  
*Opposer,*

- versus -

**CARELS PHARMACEUTICALS, INC.,**  
*Respondent-Applicant.*

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**IPC No. 14-2010-00004**

Appln. Serial No. 4-2009-005034

Filing Date: 22 May 2009

Trademark: "NEUROVIT"

*Decision No. 2014-147*

### DECISION

NOVARTIS AG,<sup>1</sup> filed an opposition to Trademark Application Serial No. 4-2009-005034. The application, filed by CARELS PHARMACEUTICALS, INC. (Respondent-Applicant)<sup>2</sup>, covers the mark "NEUROVIT" for use on "multivitamins preparations" under class 05 of the International Classification of Goods and Services<sup>3</sup>.

The Opposer interposes the following grounds for opposition:

"6. The trademark NEUROVIT being applied for by respondent-applicant is confusingly similar to opposer's trademark NEUROSIG, as to be likely, when applies to or used in connection with the goods of respondent-applicant, to cause confusion, mistake and deception on the part of the purchasing public.

"7. The registration of the trademark NEUROVIT in the name of respondent-applicant will violate Section 123.1, subparagraph (d) of Republic act No. 8293, otherwise known as the Intellectual Property Code of the Philippines.

"8. The registration and use by respondent-applicant of the trademark NEUROVIT will diminish the distinctiveness and dilute the goodwill of opposer's trademark NEUROSIG.

"9. The registration of the trademark NEUROVIT in the name of respondent-applicant is contrary to other provisions of the Intellectual Property Code of the Philippines."

According to the Opposer:

"I. Respondent-applicant's mark NEUROVIT, being applied for registration, is confusingly similar to opposer's registered mark NEUROSIG, as to be likely when applied to or used in connection with the goods of respondent-applicant, to cause confusion, mistake and deception on the part of the purchasing public.

"II. The good covered by respondent-applicant's mark NEUROVIT are similar, related to and competing with the goods of opposer's registered mark NEUROSIG such that respondent-applicant's use of its mark will most likely cause confusion in the minds of the purchasing public.

<sup>1</sup> A corporation duly organized and existing under the laws of Switzerland, with business address at 4002 Basel, Switzerland.

<sup>2</sup> A domestic corporation with address at Unit 1402 Centerpoint Building, Garnet Street, Pasig City.

<sup>3</sup> The Nice Classification of goods and services is for registering trademark and service marks, based on a Multilateral treaty administered by the WIPO, called the Nice Agreement Concerning the International Classification of Goods and Services for Registration of Marks concluded in 1957.

III. Opposer, being the owner and registrant of the mark NEUROSIG in the Philippines, has superior and exclusive rights over said mark and other marks similar thereto, to the exclusion of any third party.”

The Opposers’ evidence consists of the following:

1. Exhibit “A” - Certificate of Registration for the trademark NEUROSIG;
2. Exhibit “B” - Joint Affidavit-Testimony of Marcus Glodbach and Andrea Felberneir; and,
3. Exhibits “C” - “C-3” - Pages from Novartis AG’s Annual Report for the year 2008.

The Respondent-Applicant filed its Verified Answer on 08 June 2010 alleging among other things the following:

“1. Respondent-applicant’s mark NEUROVIT, being applied for registration, is not confusingly similar to the Opposer’s Registered Mark. Hence, there is no basis for Opposer’s claim that Respondent-Applicant’s Mark, when applied or used in connection with its goods, is likely to cause confusion, mistake and deception on the part of the purchasing public.

“2. Opposer Novartis cannot claim superior and exclusive rights over marks which also carry the name ‘Neuro’ to the exclusion of any third party considering that several trademarks also with the name ‘Neuro’ with similar goods and owned by other companies have also been registered with the Intellectual Property Office.

The Respondent-Applicant’s evidence consists of the following:

1. Exhibit “1” – “1-d” - Application for Registration of Neurovit;
2. Exhibit “2” - Affidavit of Dr. Oscar T. Cabahug;
3. Exhibit “3” - Registration of Neurobion;
4. Exhibit “4” - Registration of Neuro-B’s;
5. Exhibit “5” - Registration of Neurofenac;
6. Exhibit “6” - Registration of Neurobexol; and,
7. Exhibit “7” - Registration of Neurosmart Sprinkles and Star Device.

Should the Respondent-Applicant be allowed to register the trademark NEUROVIT?

The instant opposition is anchored on Section 123.1 paragraph (d) of the IP Code which 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.

The records and evidence show that at the time the Respondent-Applicant filed its trademark application on 22 May 2009, the Opposer has already a pending application for the trademark “NEUROSIG”. The Opposer filed the application on 19 December 2008 and was issued registration on 31 May 2009 (Registration No. 4-2008-015376). This registration covers ‘Pharmaceutical, veterinary and sanitary preparations, dietetic substances adapted for medical use, food for babies, plasters, materials for

dressings, material for stopping teeth, dental wax under class 5. Hence, the competing marks are used on related goods.

Nevertheless, it is unlikely that the coexistence of the marks will cause confusion, much less deception, among the public. The competing marks are reproduced as follows:

**NEUROSIG**

**NEUROVIT**

Opposer's mark

Respondent-Applicant's mark

Both marks start with the prefix or term "NEURO". "NEURO" is defined as indicating a nerve or a nervous system<sup>4</sup>. It appears in this instant case that it cannot be appropriated because it is not a distinctive trademark for a medicine or pharmaceutical product as the word NEURO, taken singly or in combining form to mean nerve or nervous system, is closely associated to medicines or the medical field. A trademark for medicine that begins with the word NEURO is a suggestive mark, and is therefore a weak mark. The mark or brand name itself gives away or tells the consumers the goods or services, and/or the kind, nature, use of purpose thereof.

This Bureau takes cognizance via judicial notice of the Trademark Registry which shows that NEURO is commonly used as a prefix or component of trademarks used on pharmaceutical products. These marks include NEURO PATCH (Registration No. 42009003843); EVER NEURO PHARMA (Registration No. 42009011695); EVER NEURO PHARMA & DESIGN (Registration No. 42009012268); NEURO-PATCH (Registration No. 42009008311); PRO-NEURO (Registration No. 42007006995); NEURO B'S (Registration No. 42005008783); and EBEWE NEURO PHARMA (Registration No. 42009003554)<sup>5</sup>.

Succinctly, what will set apart or distinguish two trademarks that both contain NEURO and used on similar goods are letters and/or syllables that follow or accompany the said affix trademarks. In this instant case, Respondent-Applicant's mark ends with the letters or syllables "VIT" which are different, visually and aurally, from "SIG" in the Opposer's mark.

Moreover, taking into account that the only similarity between the competing marks is the two syllables NEU and RO, sustaining the instant opposition would have the unintended effect of giving the Opposer the exclusive right to use NEURO, which evidently and sufficiently describes the pharmaceutical goods involved.

<sup>4</sup> The Free Dictionary by Farlex, available at <http://www.thefreedictionary.com/neuro-> (last accessed 06 May 2014).

<sup>5</sup> IPOPHEL Trademarks Database, available at <http://www.wipo.int/branddb/ph/en/> (last accessed 29 May 2014).

**WHEREFORE**, premises considered, the instant opposition is hereby **DISMISSED**. Let the filewrapper of Trademark Application Serial No. 4-2009-005034 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

**SO ORDERED.**

Taguig City, 30 May 2014.

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