PT DEXA MEDICA, Opposer, **-versus-** **DAEWONG PHARMA PHILIPPINES INCORPORATED,** Respondent-Applicant.	}	**IPC No. 14-2012-00504** Opposition to: Appln. Serial No. 4-2012-008513 Filing Date: 13 July 2012 **TM: "CARDIOL"**

NOTICE OF DECISION

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DAEWONG PHARMA PHILIPPINES INC.,
Respondent-Applicant
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Julia Vargas Street corner Meralco Avenue
Ortigas Center, Pasig City

GREETINGS:

Please be informed that Decision No. 2013 - 206 dated October 22, 2013 (copy enclosed) was promulgated in the above entitled case.

Taguig City, October 22, 2013.

For the Director:

Atty. PAUSI U. SAPAK
Hearing Officer
Bureau of Legal Affairs

PT DEXA MEDICA,
Opposer,

-versus-

DAEWONG PHARMA PHILIPPINES INCORPORATED,
Respondent-Applicant.
x----------x

IPC No. 14-2012-00504

Appln. Serial No. : 4-2012-008513
(Filing Date: 13 July 2012)

TM: "CARDIOL"

Decision No. 2013- 206

DECISION

PT DEXA MEDICA ("Opposer")[1] filed an opposition to Trademark Application Serial No. 4-2012-008513. The application, filed by DAEWONG PHARMA PHILIPPINES, INC. ("Respondent-Applicant")[2], covers the mark "CARDIOL" for use on *"beta-blockers pharmaceutical preparation"* under Class 5 of the International Classification of Goods and Services[3].

The opposition is anchored on Sec. 123.1(d) of Rep. Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code"). According to the Opposer CARDIOL is confusingly similar to the trademark "CARDILOL" used on *"pharmaceutical products whose active ingredient is antihypertensive"* under Class 5. CARDILOL is registered in the Philippines on 05 April 2012 (Reg. No. 4-2011-012124) in favor of the Opposer. In support of its opposition, Opposer submitted the following as evidence:

1. Exhibit "A" – certified true copy of license to transact business in the Philippines issued by the Securities and Exchange Commission in favor of the Opposer, dated 16 April 2004;
2. Exhibit "B" – certified true copy of Certificate of Reg. No. 4-2011-012124 for the mark CARDIOL;
3. Exhibits "C" and "D" – sample of product packaging bearing the mark CARDILOL;
4. Exhibit "E" – copy of commercial document (purchase order), dated 19 January 2012, involving products bearing, among others, the mark CARDILOL;
5. Exhibits "F" and "G" – certified true copies of Certificate of Product Registration issued by the Food and Drugs Administration (FDA) for pharmaceutical products bearing the mark CARDILOL; and

[1] A foreign corporation duly organized and existing under the laws of the Republic of Indonesia with principal address at Jalan Jenderal Bambang Utoyo 138, Palembang 30115, Indonesia.
[2] A domestic corporation existing under the laws of the Republic of the Philippines with office address at Unit 2811, One Corporate Center, Julia Vargas Street corner Meralco Avenue, Ortigas Center, Pasig City.
[3] 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 concluded in 1957.

6. Exhibit "H" – certification issued by the Opposer, dated 04 January 2013, stating among other things that it has authorized "GRECIO MED PHILIPPINES, INC." to register in the FDA and to commercialize products bearing the mark CARDILOL.

This Bureau issued a Notice to Answer and served a copy thereof upon the Respondent-Applicant on 08 February 2013. However, the Respondent-Applicant did not file an answer.

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

It is emphasized that 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 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 products.[4]

Thus, Section 123.1 (d) of the 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 is 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 13 July 2012, the Opposer has already an existing trademark registration for the mark CARDILOL. The Opposer's registration covers pharmaceutical products dealing with heart-related ailments or diseases. These products/goods are therefore similar and/or closely related to those indicated in the Respondent-Applicant's trademark application. A "beta blocker" is a "drug that helps prevent heart attacks by lowering high blood pressure[5].

But, are the competing marks, as shown below, resemble each other such that confusion, even deception is likely to occur?

CARDILOL	CARDIOL
Opposer's Mark	Respondent-Applicant's Mark

The only difference between the marks is the letter "L" situated between the letters "I" and "O" in the Opposer's mark. The distinction is of no consequence. The competing marks almost look and sound identical, and the Respondent-Applicant will use or uses CARDIOL on goods that are similar and/or closely related to those bearing the mark CARDILOL. There is a likelihood of the consumers confusing the mark CARDIOL for CARDILOL, or assuming that one is

[4] Pribhdas J. Mirpuri v. Court of Appeals, G.R. No. 114509, 19 November 1999
[5] Ref.: See http://www.merriam-webster.com/dictionary/beta-blocker

just a variation of the other. The likelihood of confusion would even subsists not only on the purchaser's perception of the goods but on the origin thereof as held by the Supreme Court:[6]

> Callman notes two types of confusion. The first is the confusion of goods in which event the ordinarily prudent purchaser would be induced to purchase one product in the belief that was purchasing the other. In which case, defendant's goods are then bought as the plaintiff's and the poorer quality of the former reflects adversely on the plaintiff's reputation. The other is the confusion of business. Here, though the goods of the parties are different, the defendant's product is such as might reasonably be assumed to originate with the plaintiff and the public would then be deceived either into that belief or into belief that there is some connection between the plaintiff and defendant which, in fact does not exist.

It is highly improbable for another person to come up with an identical or nearly identical mark for use on the same or related goods purely by coincidence. The field from which a person may select a trademark is practically unlimited. As in all cases of colorable imitation, the unanswered riddle is why, of the millions of terms and combinations of letters are available, the Respondent-Applicant had come up with a mark identical or so closely similar to another's mark if there was no intent to take advantage of the goodwill generated by the other mark[7].

Thus, this Bureau finds the instant opposition meritorious. Accordingly, the Respondent-Applicant's trademark application is proscribed under Sec. 123.1 (d) of the IP Code.

WHEREFORE, premises considered the instant opposition is hereby **SUSTAINED**. Let the filewrapper of Trademark Application Serial No. 4-2012-008513 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 22 October 2013.

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

[6] Converse Rubber Corp. v. Universal Rubber Products, Inc. et.al. G.R. No. L-27906, 08 Jan. 1987.
[7] American Wire and Cable Co. v. Director of Patents, et.al. (SCRA 544) G.R. No. L-26557, 18 Feb. 1970.