



RANBAXY LABORATORIES LIMITED,  
Opposer,

-versus-

WESTMONT PHARMACEUTICALS INC.,  
Respondent-Applicant.

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}  
} IPC No. 14-2011-00342  
} Opposition to:  
} Appln. Serial No. 4-2010-013696  
} Date Filed: 17 December 2010  
} TM: "IRBEZAN"  
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}  
}  
}

### NOTICE OF DECISION

**BENGZON NEGRE UNTALAN**  
**Intellectual Property Attorneys**  
Counsel for Opposer  
2<sup>nd</sup> Floor, SEDDCO Building  
Rada corner Legaspi Streets  
Legaspi Village, Makati City

**OCHAVE & ESCALONA**  
Counsel for Respondent-Applicant  
66 United Street  
Mandaluyong City

#### GREETINGS:

Please be informed that Decision No. 2013 - 29 dated February 06, 2013 ( copy enclosed) was promulgated in the above entitled case.

Taguig City, February 06, 2013.

For the Director:

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



**RANBAXY LABORATORIES LIMITED,**  
*Opposer,*

**IPC No. 14-2011-00342**  
Case Filed : 24 August 2011

-versus-

Opposition to:  
Appln. Serial No.: 4-2010-013696  
Date Filed : 17 December 2010

**WESTMONT PHARMACEUTICALS,**  
**INC.,**  
*Respondent.*

**TM: "IRBEZAN"**

X-----X

**Decision No. 2013-** 29

### DECISION

RANBAXY LABORATORIES LIMITED ("Opposer")<sup>1</sup> filed on 24 August 2011 an opposition to Trademark Application Serial No. 4-2010-013696. The application, filed by WESTMONT PHARMACEUTICALS, INC. ("Respondent-Applicant")<sup>2</sup>, covers the mark "IRBEZAN" for use on "pharmaceutical preparation for hypertension" under Class 5<sup>3</sup>. The Opposer alleges that its mark "IRBESAR HCT" which has an earlier filing date in respect to the same goods is confusingly similar to Respondent-Applicant's mark "IRBEZAN". To support its opposition, the Opposer submitted among other things, certified true copy of its Trademark Application Serial No. 4-2010-500588 for the mark IRBESAR HCT<sup>4</sup>.

This Bureau issued a Notice to Answer and served a copy thereof upon the Respondent-Applicant which was duly received on 05 October 2011. However, no answer was filed. Accordingly, the case is considered submitted for decision based on the opposition and the evidence submitted by the Opposer.

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") 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 Opposer cites its Trademark Application Serial No. 4-2010-500588 which was filed on 27 April 2010. However, in **IPC No. 14-2011-00141** entitled **WESTMONT PHARMACEUTICALS, INC. v. RANBAXY LABORATORIES, LTD.**, this Bureau sustained the opposition to **Trademark Application Serial No. 4-2010-500588**. In the decision, this Bureau

<sup>1</sup> A foreign corporation, with business address at 19 Nehru Place, New Delhi 110019, India and corporate office at Plot 90, Sector 32, Gurgaon, Haryana, India.

<sup>2</sup> With given address at 4<sup>th</sup> Floor Bonaventure Plaza Bldg., Ortigas Avenue, Greenhills, San Juan 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 concluded in 1957.

<sup>4</sup> Exhibit "B".

cited its previous ruling in **IPC No. 14-2009-00249** which was affirmed by the Director General in his decision in **Appeal No. 14-2010-0042** dated 17 December 2012, to wit:

“As correctly pointed out by the Appellee (Sanofi-Aventis):

- 3.1. All the letters in the Respondent-Applicant’s mark IRBESAR form part of the INN ‘IRBESARTAN’. In fact, all the seven (7) letters in the Respondent-Applicant’s IRBESAR mark constitute the first seven (7) letters of the INN or generic name ‘IRBESARTAN’.
- 3.2. The last three (3) letters of the Respondent-Applicant’s IRBESAR mark, namely, the letters S, A and R, consist of a substantial part of the common stem – SARTAN of the INN system.
- 3.3. It bears stressing that the INN ‘IRBESARTAN’ and the Respondent-Applicant’s mark IRBESAR are both used on pharmaceutical products, the former being the generic name of the latter.”

With this Bureau sustaining the opposition to and thus “rejecting” Trademark Application Serial No. 4-2010-500588, the instant opposition case against Trademark Application Serial No. 4-2010-013696 has no more legal leg to stand on.

Significantly, while IRBESAR has been ruled to be a generic term, and therefore, unregistrable, this Bureau deems it otherwise with respect to the mark IRBEZAN. Its spelling is no longer identical to the generic term IRBESAR. It now assumes distinctive properties albeit it is registrable as a suggestive mark only.

**WHEREFORE**, premises considered, the instant opposition is hereby **DISMISSED**. Let the filewrapper of Trademark Application Serial No. 4-2010-013696 be returned, together with a copy of this Decision, to the Bureau of Trademark for information and appropriate action.

**SO ORDERED.**

Taguig City, 06 February 2013.

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