THERAPHARMA, INC.,	}	IPC No. 14-2010-00101
Opposer,	}	Opposition to:
	}	Appln. Serial No. 4-2009-009431
	}	Date filed: 18 September 2009
-versus-	}	TM: "AVONEX"
	}	
	}	
BIOGEN IDEC MA INC.,	}	
Respondent- Applicant.	}	

x---x

NOTICE OF DECISION

OCHAVE & ESCALONA
Counsel for Opposer
66 United Street
Mandaluyong City

SYCIP SALAZAR HERNANDEZ &
GATMAITAN LAW OFFICES
Counsel for Respondent-Applicant
SSHG Law Center
105 Paseo de Roxas
Makati City

GREETINGS:

Please be informed that Decision No. 2013 - _2||_ dated October 30, 2013 (copy enclosed) was promulgated in the above entitled case.

Taguig City, October 30, 2013.

For the Director:

edwin Q. Dating

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

THERAPHARMA, INC.,
    Opposer,

  - Versus -

BIOGEN IDEC MA INC.,
    Respondent-Applicant.
x--x

IPC No. 14-2010-00101
Opposition to:

Appln. Serial No. 4-2009-009431
(Filing Date: 18 September 2009)
TM: "AVONEX"

Decision No. 2013-_211_

DECISION

THERAPHARMA, INC. ("Opposer")[1] filed an opposition to Trademark Application Serial No. 4-2009-009431. The application, filed by BIOGEN IDEC MA INC. ("Respondent-Applicant")[2], covers the mark "AVONEX" for use on *"pharmaceutical preparations for use in the treatment of neurologic disorders"* under Class 5 of the International Classification of Goods or Services.[3]

The Opposer alleges, among other things, that the mark AVONEX so resembles its mark "AVAMAX". According to the Opposer, it applied for the registration of the mark AVAMAX ahead of the Respondent-Applicant's for AVONEX. The Opposer thus, contends that the registration of the mark AVONEX in favor of the Respondent-Applicant will violate Sec. 123.(d) of Rep. Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code"). The Opposer also alleges that the Respondent-Applicant's use and registration of AVONEX will diminish the distinctiveness of the mark AVAMAX.

To support its opposition, the Opposer submitted as evidence:

1. printout of the "IPO E-Gazette", with releasing date of 22 March 2010, publishing for opposition trademark applications including the Respondent-Applicant's, and

2. documents relating to the mark AVAMAX, particularly, sample product label, sales data, and copy of the certificate of product registration issued by the Bureau of Food and Drugs.[4]

This Bureau issued a Notice to Answer and served a copy thereof upon the Respondent-Applicant on 17 June 2010. In spite of the extensions of the period to file Answer granted to the Respondent-Applicant, the said party failed to file an Answer.

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1 A corporation duly organized and existing under the laws of Philippines located at Bonaventure Plaza, Ortigas Avenue, Greenhills, San Juan City, Metro Manila.
2 A foreign corporation with principal office address at 14 Cambridge Center, Cambridge, MA, U.S.A.
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.
4 Marked as Annexes "A" to "K".

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Republic of the Philippines
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Should the Respondent-Applicant be allowed to register the mark AVONEX?

Sec. 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 nearly resemble such mark as to be likely to deceive or cause confusion.

This Bureau noticed that the Opposer did not submit documentary evidence regarding its allegation that its application for the registration of the mark AVAMAX preceded the filing of the Respondent-Applicant's application. Nevertheless, this Bureau can take cognizance of the contents of the Trademark Registry and other records of the Intellectual Property Office of the Philippines via judicial notice.

In this regard, the Trademark Registry shows that the Opposer filed the application for the registration of the mark AVAMAX on 04 March 2009, more than six months ahead of the Respondent-Applicant's. However, this Bureau finds that it is unlikely that the co-existence of the contending marks will cause confusion, much less deception, among the public.

Both marks start with the letters "AV" and end with the letter "X. However, the letters between "AV" and "X" conferred upon the Respondent-Applicant's mark visual and aural properties sufficient to distinguish it from the Opposer's, and thus, diffusing the likelihood of confusion, much less, deception. The curves/bulges of the letter "O" and the single vertical pillar intersecting with three perpendicular lines of the letter "E" are contrast with the two triangular "A" sandwiching the letter "M".

Also, the ears can easily tell that the sound created by the syllables "VONEX" - "vo-neks", is different from that of produced by the syllables "VAMAX", that is, "va-maks", where the letter "A" is pronounced as "a" in the word "apple".

WHEREFORE, premises considered, the instant opposition is hereby **DISMISSED**. Let the filewrapper of Trademark Application Serial No. 4-2009-009431 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 30 October 2013.

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