



THERAPHARMA, INC.,
Opposer,

-versus-

ARDOL B.V.,
Respondent – Applicant.

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} **IPC No. 14-2013-00329**
} Opposition to:
} Appln. Serial No. 4-2012-00008316
} Date filed: 10 July 2012
} **TM: "LIANOL"**
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}
}

NOTICE OF DECISION

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Mandaluyong City

PATENTPROSE
Respondent-Applicant's Agent
1013-A EDSA, Veterans' Village
Project 7, Quezon City

GREETINGS:

Please be informed that Decision No. 2014 - 35 dated February 03, 2014 (copy enclosed) was promulgated in the above entitled case.

Taguig City, February 03, 2014.

For the Director:

Edwin Danilo A. Dating
Atty. EDWIN DANILLO A. DATING
Director III
Bureau of Legal Affairs



THERAPHARMA, INC.,	}	IPC No. 14-2013-00329
Opposer,	}	Opposition to:
	}	
- versus -	}	Application No. 4-2012-00008316
	}	Date Filed: 10 July 2012
ARDOL B. V.,	}	
Respondent-Applicant.	}	Trademark: LIANOL
x-----x	x	Decision No. 2014 - <u>35</u>

DECISION

THERAPHARMA, INC.¹ ("Opposer") filed on 05 August 2013 a Verified Notice of Opposition to Trademark Application No. 4-2012-00008316. The application, filed by ARDOL B. V.² ("Respondent-Applicant"), covers the mark LIANOL for use on "*pharmaceutical and veterinary preparations; hygienical products for veterinary purposes; nutritional additives for medical or veterinary purposes; dietetic substances for medical or veterinary purposes; medicinal additives for foodstuffs for animals; preparations for destroying vermin; fungicides, herbicides; nutritional additives for animals; non-medicinal additives for foodstuffs for animals*" under Class 5 of the International Classification of goods³.

The Opposer alleges the following:

"7. The mark LIANOL applied for by Respondent-Applicant so resembles the trademark LLANOL owned by Opposer and duly registered with this Honorable Bureau prior to the publication of the application for the mark LIANOL.

"8. The mark LIANOL will likely cause confusion, mistake and deception on the part of the purchasing public, most especially considering that the opposed mark LIANOL is applied for the same class and goods as that of Opposer's trademark LLANOL, *i. e.* Class 05 of the International Classification of Goods for pharmaceutical preparations.

"9. The registration of the mark LIANOL in the name of the Respondent-Applicant will violate Sec. 123.1 (d) of the IP Code, which provides, in part, that a mark cannot be registered if it:

(d) is identical with a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date, in respect of:

- (i) the same goods or services; or
- (ii) closely related goods or services; or

1 A domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with office address at 3rd Floor, Bonaventure Plaza, Greenhills, San Juan, Metro Manila, Philippines.

2 Appears to be a foreign corporation, with office address at Handelsweg 7, 6114 BR, Susteren, Netherlands.

3 Nice Classification is a classification of goods and services for the purpose of registering trademarks and service marks, based on a multilateral administered by the World Intellectual Property Organization. This treaty is called the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks concluded in 1957.

(iii) if it nearly resembles such a mark as to be likely to deceive or cause confusion; (Emphasis supplied)

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.

"10. Respondent-Applicant's use and registration of the mark LIANOL will diminish the distinctiveness of Opposer's trademark LLANOL."

To support its opposition, the Opposer submitted the following pieces of evidence:

1. Copy of the pertinent page of the IPO e-Gazette bearing publication date of 08 July 2013;
2. Certified true copy of Registration No. 20420 for the trademark LLANOL issued on 19 October 1973;
3. Certified true copies of Affidavits of Use;
4. Sample product label bearing the trademark LLANOL;
5. Certified true copy of the Certification and sales performance issued by IMS Health Philippines, Inc.; and
6. Certified true copy of the Certificate of Product Registration issued by FDA for the trademark LLANOL.⁴

This Bureau issued a Notice to Answer and served a copy thereof upon the Respondent-Applicant on 27 August 2013. The Respondent-Applicant, however, did not file its Verified Answer. Thus, this Bureau issued Order No. 2014-001 dated 03 January 2014 declaring the Respondent-Applicant in default and submitting the case for decision on the basis of the opposition, affidavit of witness and documentary or object evidence submitted by the Opposer.

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

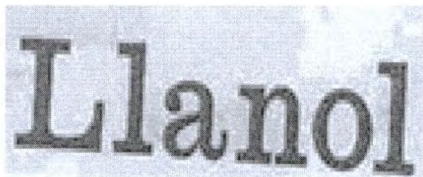
The essence of trademark registration is to give protection to the owners of trademarks. The function of a trademark is to point out distinctly the origin or ownership of the goods to which it is affixed; to secure to him who has been instrumental in bringing into the market a superior article of merchandise, 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 product.⁵ Thus, Section 123.1 (d) of R. A. No. 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

⁴ Exhibits "A" to "F", inclusive.

⁵ See *Pribhdas J. Mirpuri v. Court of Appeals*, G. R. No. 114508, 19 Nov. 1999.

respect of the same goods or services or closely related goods or services, or if it nearly resembles such a mark as to be likely to deceive or cause confusion.

But do the marks, as shown below, resemble each other that confusion, or even deception, is likely to occur?



Opposer's Mark



Respondent-Applicant's Mark

The marks are similar in terms of appearance and sound. They both consist of six (6) letters and two (2) syllables. The first syllable in the Opposer's "Lla" although differs with the Respondent-Applicant's "Lia" with respect to the second letter are still aurally the same since they give the same sounding effect when pronounced. The similarity however, is insufficient to conclude that confusion among the consumers is likely to occur.

The records show that while at the time the Respondent-Applicant filed its trademark application for LIANOL on 10 July 2012, the Opposer has long been issued a certificate of trademark registration (No. 20420) for LLANOL as early as 19 October 1973, the goods or products covered by each mark are different from each other. The Opposer's trademark registration covers "*allopurinol, an antihyperuricemic agent*" while the Respondent-Applicant's is for use on "*pharmaceutical and veterinary preparations; hygienical products for veterinary purposes; nutritional additives for medical or veterinary purposes; dietetic substances for medical or veterinary purposes; medicinal additives for foodstuffs for animals; preparations for destroying vermin; fungicides, herbicides; nutritional additives for animals; non-medicinal additives for foodstuffs for animals*". As indicated in the sample product label⁶ submitted by Opposer, its mark is intended for the management of patients with signs and symptoms of primary and secondary gout, among other illnesses. The Respondent-Applicant's mark, however, is for veterinary preparations and purposes. Clearly, the goods carried by the competing marks are different as to purpose, composition and descriptive properties.

While it is true that the likelihood of confusion would subsist not only on the purchaser's perception of goods but on the origins thereof as held by the Supreme Court:⁷

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 he was purchasing the other. In which case, defendant's goods are then bought as the plaintiff's and the poorer quality of

⁶ Exhibit "D".

⁷ *Converse Rubber Corporation v. Universal Rubber Products, Inc., et al.*, G.R. No. L-27906, 08 Jan. 1987.



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.

In the instant case, whether we look at the goods or origin thereof, there is no possibility of confusion considering that they are primarily sold or course through different channels of trade. One can hardly find veterinary medicines or products in the drug stores intended for human consumption. Corollarily, establishments dealing with veterinary medicines or products make it clear and conspicuous that the goods are for animal consumption.

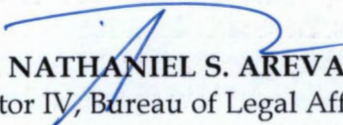
In the case of *Esso Standard Eastern, Inc. v. Court of Appeals and United Cigarette Corporation*⁸, the Supreme Court has ruled that:

"In the situation before Us, the goods are obviously different from each other with absolutely no iota of similitude. They are so foreign to each other as to make it unlikely that the purchasers would think that petitioner is the manufacturer of respondent's goods. The mere fact that one person has adopted and used a trademark on his goods does not prevent the adoption and use of the same trademark by others on unrelated articles of a different kind."

WHEREFORE, premises considered, the opposition is hereby **DISMISSED**. Let the filewrapper of Trademark Application Serial No. 4-2012-00008316 be returned, together with a copy of this Decision, to the Bureau of Trademarks (BOT) for information and appropriate action.

SO ORDERED.

Taguig City, 03 February 2014.


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