



**THERAPHARMA, INC.,**  
Opposer,

**-versus-**

**SANOFI,**  
Respondent –Applicant.

} **IPC No. 14-2012-00431**  
} **Opposition to:**  
} **Appln. Serial No. 4-2012-006685**  
} **Filing Date: 04 June 2012**  
} **TM: "APROVASC"**

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### NOTICE OF DECISION

**OCHAVE & ESCALONA**  
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#### GREETINGS:

Please be informed that Decision No. 2014 - 83 dated March 26, 2014 (copy enclosed) was promulgated in the above entitled case.

Taguig City, March 26, 2014.

For the Director:

*Edwin A. Datang*  
**Atty. EDWIN DANILO A. DATANG**  
Director III  
Bureau of Legal Affairs



<b>THERAPHARMA, INC.,</b> <i>Opposer,</i>	}	<b>IPC No. 14-2012-00431</b>
	}	Opposition to:
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<i>-versus-</i>	}	Appln. Serial No. 4-2012-006685
	}	Date Filed: 04 June 2012
	}	
<b>SANOFI,</b>	}	<b>TM: APROVASC</b>
<i>Respondent-Applicant.</i>	}	
x-----x		<b>Decision No. 2014- <u>83</u></b>

**DECISION**

THERAPHARMA, INC. (“Opposer”)<sup>1</sup> filed an opposition to Trademark Application Serial No. 4-2012-006685. The application, filed by SANOFI (“Respondent-Applicant”)<sup>2</sup>, covers the mark “APROVASC” for use on “cardiovascular preparations” under Class 5 of International Classification of Goods and Services.<sup>3</sup>

The Opposer anchors its opposition on the ground that the registration of the mark “APROVASC” in favor of the Respondent-Applicant is contrary to the provision of Section 123.1 paragraph (d) of Republic Act No. 8293, also known as the Intellectual Property Code of the Philippines (“IP Code”) which prohibit the registration of a mark that:

- (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
  - (iii) if it nearly resembles such a mark as to be likely to deceive or cause confusion.

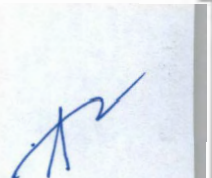
To support its opposition, the Opposer submitted in evidence the following:

1. Exhibits “A” to “A-1” – copies of the pertinent pages of the IPO E-Gazette;
2. Exhibit “B” – certified true copies of the Certificate of Registration No. 4-2006-000470 for the trademark “AMVASC”;
3. Exhibits “C” to “C-1” – certified true copies of the Declaration of Actual Use;

<sup>1</sup> A domestic corporation duly organized and existing under the laws of the Philippines, with office address at 3<sup>rd</sup> Floor, Bonaventure Plaza, Ortigas Avenue, Greenhills, San Juan City, Philippines.

<sup>2</sup> A foreign corporation with office address at 174 Avenue De France, 75013 Paris, France.

<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.



4. Exhibit "D" – sample product label bearing the trademark "AMVASC" actually used in Commerce; and
5. Exhibit "E" – certified true copies of the Certificate of Product Registration for "AMVASC".

On 18 December 2012, the Respondent-Applicant filed its verified answer admitting some of the allegations of the opposition and denying all the material allegations thereof and further argues that its mark is distinct and different from the Opposer's mark. In support of its trademark application subject of the instant opposition, the Respondent-Applicant submitted in evidence the following:

1. Exhibit "1" – authenticated notarized affidavit of Joelle Sanit-Hugot; and
2. Annex "A" – summary of the trademark applications filed and registrations in many countries worldwide for the mark "APROVASC".

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

The records and evidence shows that at the time the Respondent-Applicant filed its trademark application on 04 June 2012, the Opposer has already an existing trademark registration for the mark "AMVASC" bearing Reg. No. 4-2006-000470, date of registration 19 March 2007. This registration covers "medicinal preparations for the treatment of hypertension, chronic stable angina and myocardial ischemia due to vasospastic angina" under Class 5 of the International Classification of Goods and Services, hence the competing marks are used on similar or closely related goods.

But, are the two marks as shown below, identical or confusingly similar and/or the co-existence of the competing marks will cause confusion, deception among the public?

The competing marks are reproduced below for comparison and scrutiny:

**Amvasc**

*Opposer's Mark*

**APROVASC**

*Respondent-Applicant's Mark*

This Bureau finds that the competing marks are not confusingly similar. The Opposer's mark consists only of two (2) syllables, while the Respondent-Applicant's mark consists of three (3) syllables. The Opposer's mark has the prefix "AM" which is aurally and visually its dominant feature. On the other hand, the Respondent-Applicant's mark has the prefix "AP" and "RO" which is not in any way identical or similar to the Opposer's "AM" both in terms of composition, spelling and pronunciation as well. This distinction makes the two marks distinguishable from each other as to visual presentation as well as to composition. It is often, the first part of a mark which is likely to be impressed upon the mind of a purchaser and remembered. The first word prefix or syllables in a mark is always the dominant part. In sum, the two marks are obviously not identical and/or confusingly similar to each other. The only similarity between the marks is



the suffix "VASC" which means vascular or containing vessels that carry or circulate fluids, such as blood, lymph or sap, through the body of an animal or plant.<sup>4</sup>

In this regards, there are plenty of registered trademarks with the Intellectual Property Office containing the word "VASC" either suffix or prefix for goods under Class 5 of the International Classification of Goods and Services, such as the following:

1.	Cadvasc	Class 5	9.	Norvasc	Class 5
2.	Provasc	Class 5	10.	Improvasc	Class 5
3.	Dailyvasc	Class 5	11.	Combivasc	Class 5
4.	Medivasc	Class 5	12.	Sigmavasc	Class 5
5.	Lodivasc	Class 5	13.	Cadivasc	Class 5
6.	Biovasc	Class 5	14.	Cardiovasc	Class 5
7.	Monovasc	Class 5	15.	Amvasc	Class 5
8.	Hartvasc	Class	16.	Lovasc	Class 5

Records further show that the Respondent-Applicant's mark has been registered in numerous countries of the world for goods under Class 5 of the International Classification of Goods and Services.<sup>5</sup>


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.<sup>6</sup> This Bureau finds that the Respondent-Applicant's mark satisfies this function.

In conclusion, therefore, this Bureau finds that the Respondent-Applicant's trademark application is not proscribed by Sec. 123.1 paragraph (d) of Republic Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code").

**WHEREFORE**, premises considered the instant opposition is hereby **DISMISSED**. Let the filer wrapper of Trademark Application Serial No. 4-2012-006685 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

**SO ORDERED.**

Taguig City, 26 March 2014.

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

<sup>4</sup> The free online dictionary, Thesaur.

<sup>5</sup> Exhibit "1".

<sup>6</sup> Pribhdas J. Mirpuri v. Court of Appeals, G.R. No. 114509, 19 November 1999