



THERAPHARMA, INC.,
Opposer,

-versus-

THE GENERICS PHARMACY, INC.,
Respondent-Applicant.

X-----X

} IPC No. 14-2011-00509
} Opposition to:
} Appln. Serial No. 4-2011-007721
} Date Filed: 01 July 2011
} TM: "VASCUGARD"

NOTICE OF DECISION

OCHAVE & ESCALONA
Counsel for Opposer
66 United Street
Mandaluyong City

THE GENERICS PHARMACY, INC.
Respondent-Applicant
459 Quezon Avenue
Quezon City

GREETINGS:

Please be informed that Decision No. 2013 - 218 dated November 12, 2013 (copy enclosed) was promulgated in the above entitled case.

Taguig City, November 12, 2013.

For the Director:


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



THERAPHARMA, INC.,
Opposer,

IPC No. 14-2011-00509
Opposition to:

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(Filing Date: 01 July 2011)
TM: VASCUGARD

THE GENERICS PHARMACY, INC.,
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x-----x

Decision No. 2013- 218

DECISION

THERAPHARMA, INC., (“Opposer”)¹ filed an opposition to Trademark Application Serial No. 4-2011-007721. The application, filed by THE GENERICS PHARMACY, INC., (“Respondent-Applicant”)², covers the mark “VASCUGARD” for use on “*pharmaceutical product, namely calcium channel blocker*” under Class 5 of the International Classification of Goods or Services.³

The Opposer alleges among other things, that VASCUGARD resembles its registered mark “VASCORIDE”, and will likely cause confusion, mistake and deception. Pointing out that VASCUGARD and VASCORIDE cover the same class and goods (“anti-hypertension”), the Opposer claims that the Respondent-Applicant’s application is proscribed by Sec. 123 of Rep. Act No. 8293, also known as the Intellectual Property Code of the Philippines (“IP Code”). To support its opposition, the Opposer submitted:

1. a printout of page four of the “IPO E-Gazette” released on 10 October 2011 which lists trademark applications published for opposition including Trademark Application Serial No. 4-2011-007721;
2. copy of Cert. of Reg. No. 4-2011-007721;
3. copy of the Declaration of Actual Use for the mark VASCORIDE;
4. sample product label bearing the mark VASCORIDE; and
5. copy of the Certificate of Product Registration issued by the Bureau of Food and Drugs for the mark VASCORIDE.⁴

This Bureau issued a Notice to Answer and served a copy thereof upon the Respondent-Applicant on 06 January 2012. The Respondent-Applicant, however, did not file an Answer. Hence, the Hearing Officer issued on 10 July 2012 Order No. 2012-927 declaring the Respondent-Applicant in default.

The Opposer anchors its opposition on, Sec. 123.1(d) of the 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

1 A corporation organized and existing under the laws of the Philippines with principal office located at 3rd Floor Buenaventure Plaza, Greenhills, San Juan City.
2 A domestic corporation with principal address at 459 Quezon Avenue, Quezon 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.
4 Marked as Annexes “A” to “F”.

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

Records show that at the time the Respondent-Applicant filed its trademark application on 01 July 2011, the Opposer has already an existing registration for the mark VASCORIDE under Reg. No. 4-2004-011663 issued on 31 December 2005 covering "*Medicinal preparation for the treatment of Hypertension*" under class 5. Nevertheless, this Bureau finds that the co-existence of the marks, depicted below, will unlikely cause confusion, much less deception.

Vascoride

VASCUGARD

Opposer's mark

Respondent-Applicant's mark

Both marks start with the letters "VASC". In the medical field, "VASC" is a prefix or suffix that is derived from the word "*vascular*". Vascular pertains to, is composed of, or is provided with vessels that convey fluids, such as blood.⁵ When the term "vascular" or "vasc" is used as a trademark or as a component thereof for pharmaceutical products that are applied to ailments relating to the heart or circulatory system, it is considered as a suggestive mark because it gives clue as to the nature and purpose thereof. Suggestive marks are weak marks as far as their distinctiveness is concerned. This Bureau takes cognizance of the contents of the Trademark Registry and finds registered trademarks that contain the prefix or suffix "VASC" and used on pharmaceutical products that treat illnesses related to heart and the circulatory system, including "AMVASC" (Reg. No. 4-2006-000470, issued on 19 March 2007), "NORVASC" (Reg. No. 048241, issued on 29 May 1990), "PROVASC" (Reg. No. 4-2007-008432, issued on 14 July 2008), and "UNIVASC" (Reg. No.4-1997-123204, issued on 23 July 2001). While the mark AMVASC is registered in favor of the Opposer, the other registered marks belong to other proprietors. This shows the descriptive nature of the prefix or suffix VASC.

Succinctly, this Bureau cannot sustain the opposition merely on the basis or ground that the first four letters of the contending marks are the same. To do so will have the unintended effect of giving the Opposer the exclusive right to use the descriptive prefix or suffix "VASC" for use on pharmaceutical products that treats ailments relating to the heart and the circulatory system. In determining whether the Respondent-Applicant's mark is confusingly similar to the Opposer's, one must look beyond the prefix or suffix "VASC" and scrutinize the other letters or words composing the mark.

In this regard, the syllable "GARD" definitely looks different from the word "RIDE". Hence, if these marks are placed side by side, the eyes can easily distinguish one mark from the other. VASCUGARD also sounds distinct from VASCORIDE. Aside from the obvious phonetic

⁵ Ref.: <http://www.thefreedictionary.com/vascular> citing Random House Kernerman Webster's College Dictionary, © 2010 K Dictionaries Ltd. Copyright 2005, 1997, 1991 by Random House, Inc.

difference between "GARD" and "RIDE", the "-CU-" in VASCUGARD is pronounced as "*kyu*" in contrast with the "CO" in VASCORIDE.

WHEREFORE, premises considered, the instant opposition is hereby **DISMISSED**. Let the filewrapper of Trademark Application Serial No. 4-2011-007721 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 12 November 2013.



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