



UNITED AMERICAN PHARMACEUTICALS INC., }
Opposer, }

-versus-

AVENTISUB II, INC., }
Respondent –Applicant. }

X-----X

IPC No. 14-2012-00224
Opposition to:
Appln. Serial No. 4-2012-000574
Date Filed: 16 January 2012
TM: "ALLEGRA"

NOTICE OF DECISION

OCHAVE AND ESCALONA

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66 United Street
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CESAR C. CRUZ AND PARTNERS

Counsel for the Respondent-Applicant
3001 Ayala Life-FGU Center
6811 Ayala Avenue, Makati City

GREETINGS:

Please be informed that Decision No. 2014 - 168 dated March 07, 2014 (copy enclosed) was promulgated in the above entitled case.

Taguig City, March 07, 2014.

For the Director:


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



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<i>Opposer,</i>	}	Opposition to:
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-versus-	}	Appln. Serial No. 4-2012-000574
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AVENTISUB II, INC.,	}	TM: ALLEGRA
<i>Respondent-Applicant.</i>	}	
x-----x		Decision No. 2014- <u>68</u>

DECISION

UNITED AMERICAN PHARMACEUTICALS INC. ("Opposer")¹ filed an opposition to Trademark Application Serial No. 4-2012-000574. The application, filed by AVENTISUB II, INC. ("Respondent-Applicant")², covers the mark "ALLEGRA" for use on "antihistamine, decongestant pharmaceutical preparations not for ophthalmic use" under Class 5 of the International Classification of Goods and Services.³

The Opposer alleges that "ALLEGRA" is confusingly similar to its registered mark "ALLERTA." According to the Opposer, the registration of the mark "ALLEGRA" in favor of the Respondent-Applicant will violate Sec. 123.1 (d) of Rep. Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code"). It also invokes the protection accorded to registered marks under Sec. 147 of the IP Code.

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 with releasing date of 02 April 2012 showing the publication of the Respondent-Applicant's application among other things;
2. Exhibit "B" – certified true copy of Certificate of Reg. No. 4-2004-011565 for the trademark "ALLERTA";
3. Exhibits "C" to "C-1" – certified true copies of the Declaration of Actual Use and Affidavit of Use;
4. Exhibit "D" – sample product label bearing the trademark "ALLERTA"; and
5. Exhibit "E" – certified true copy of the Certificate of Product Registration issued by the Bureau of Food and Drugs for "ALLERTA".

¹ A corporation duly organized and existing under the laws of the Philippines, with office address at 132 Pioneer St., Mandaluyong City, Philippines.

² A foreign corporation with principal office address at 3711 Kenneth Pike, Suite 200 19807, Greenville, Delaware, 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.

The Respondent-Applicant filed its Verified Answer on 17 August 2012 admitting some of the allegations of the Opposition and denying all the material allegations thereof and argues that its mark is not confusingly similar with the Opposer's. It cites this Bureau's Decision No. 2011-04 Inter Partes Case No. 14-2009-00278, and of the concurring decision of the Director General, dated 11 June 2012. These decisions ruled, among other things, that "ALLEGRA" is not confusingly similar to "ALLERTA."

In defense of its trademark application, the Respondent-Applicant submitted in evidence the following:

1. Exhibit "1" – Decision of the Director General in Appeal No. 14-2011-0009 (Inter Partes Case No. 14-2009-00278) dated 11 June 2012;
2. Exhibit "2" – Decision No. 2011-04 dated 14 January 2011 issued by the Director of the Bureau of Legal Affairs in Inter Partes Case No. 14-2009-00278;
3. Exhibit "3 series" – sampling of some of the registrations certificates obtained by the Respondent-Applicant in various countries for its mark "ALLEGRA";
4. Exhibit "4" – the Affidavit of Martin J. Travers; and
5. Exhibit "5" – duly notarized and legalized Special Power of Attorney.

After a judicious evaluation of the issues, records and evidence, this Bureau concludes that there is no cogent reason to sustain the instant opposition. This Bureau finds the Respondent-Applicant correct in citing the previous decisions of this Bureau and the Director General in Inter Partes Case No. 14-2009-00278. In his Decision dated 02 April 2012, the Director General held;

"At a glance, one can see the differences in those marks. While the marks both have the same initial four (4) letters A, L, L and E and the last letter A, still the marks are two different words. Both marks are arbitrary words which the parties did not give any dictionary meaning. The similarity of the first four letters in both marks is not sufficient to conclude that a person who sees these marks will associate ALLERTA with ALLEGRA or vice versa.

"As correctly observed by the Director:

"The competing trademarks consist of three (3) syllables. The first four (4) letters of the competing marks are the same. However, the fourth and fifth letters of the Respondent-Applicant's mark (G, R and A) are different from the Opposer's (R, T and A). Such difference confers on the Respondent-Applicant's mark a character that makes it distinguishable from the Opposer's as to composition, visual presentation and sound. The distinction already manifests in the second syllables of the competing marks.⁴

"In addition, a person who would buy the Appelle's products would do so not on the basis of the mistaken belief that the product is that of the Appellant's but because that is the product the person intends to buy. In one case decided by the Supreme Court of the Philippines, it was held that the

⁴ Decision No. 2011-04 dated 14 January 2011, page 5.

ordinary purchaser must be thought of, as having, and credited with, at least a modicum of intelligence.⁵ Furthermore, the products of the parties are not the everyday common goods or household items bought at a minimal cost. The nature and cost of the goods of the parties require a prospective buyer to be more aware and cautious in the purchase of the product.

"In this instance, the products covered by ALLEGRA and ALLERTA are pharmaceutical preparations which are not the everyday common goods or household items. The purchasing public would be more cautious in the purchase of medicinal products including pharmaceutical preparations that are covered by ALLEGRA or ALLERTA. Accordingly, a likelihood of confusion that the products bearing the mark ALLEGRA would be mistaken or considered as ALLERTA is very remote in this case.

"In the related case of *Etepha, A. G. vs. Director of Patents and Westmont Pharmaceutical, Inc.*⁶, the Supreme Court of the Philippines held that:


In the solution of a trademark infringement problem, regard too should be given to the class of persons who buy the particular product and the circumstances ordinarily attendant to its acquisition. The medicinal preparations, clothed with the trademarks in question, are unlike articles of everyday use such as candies, ice cream, milk, soft drinks and the like which may be freely obtained by anyone, anytime, anywhere. Petitioners and Respondents products are to be dispensed upon the medical prescription. The respective labels say so. An intending buyer must have to go first to a licensed doctor of medicine: he receives instructions as to what to purchase; he reads the doctor's prescription; he knows what he is to buy. He is not of the incautious, unwary, unobservant or unsuspecting type; he examines the product sold to him; he checks to find out whether it conforms to the medical prescription. The common trade channel is the pharmacy or the drugstore. Similarly, the pharmacist or druggist verifies the medicine sold. The margin of error in the acquisition of one for the other is quite remote."

Accordingly, this Bureau finds no factual or legal basis to rule otherwise in this case.

WHEREFORE, premises considered the instant opposition is hereby **DISMISSED**. Let the filer wrapper of Trademark Application Serial No. 4-2012-000574 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 07 March 2014.


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

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⁵ Fruit of the Loom, In. v. Court of Appeals and General Garments Corp. G.R. No. L-32747, 29 Nov. 1984.

⁶ G.R. No. L-20635, 31 March 1966.