



UNITED HOME PRODUCTS, INC.,
Opposer,

-versus-

MEGA LIFESCIENCES LIMITED,
Respondent-Applicant.

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IPC No. 14-2011-000024
Opposition to:
Appln. Serial No. 4-2010-010177
Date filed: 17 September 2010
TM: "LAXAT"

X-----X

NOTICE OF DECISION

OCHAVE & ESCALONA
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For Respondent-Applicant
Mega Lifesciences Pty. Ltd.
Unit 4B 4/F Eurovillia-2
118 V.A. Rufino Street
Legaspi Village, Makati City

GREETINGS:

Please be informed that Decision No. 2013 - 131 dated July 15, 2013 (copy enclosed) was promulgated in the above entitled case.

Taguig City, July 15, 2013.

For the Director:

Atty. PAUSI U. SAPAK
Hearing Officer
Bureau of Legal Affairs



UNITED HOME PRODUCTS, INC.,	}	IPC No. 14-2011-00024
<i>Opposer,</i>	}	Case Filed: 31 January 2011
	}	
- versus -	}	Opposition to:
	}	Appln. Serial No.: 4-2010-010177
	}	Date Filed: 17 September 2010
	}	
MEGA LIFESCIENCES LIMITED,	}	Trademark: LAXAT
<i>Respondent-Applicant.</i>	}	
x-----x		Decision No. 2013 - <u>131</u>

DECISION

UNITED HOME PRODUCTS, INC. ("Opposer")¹ filed on 31 January 2011 a Verified Opposition to Trademark Application Serial No. 4-2010-010177. The application filed by MEGA LIFESCIENCES LIMITED ("Respondent-Applicant")² covers the mark LAXAT for "pharmaceutical preparation for Laxative" under Class 5 of the International Classification of Goods.³

The Opposer alleges among other things the following:

7. The mark "LAXAT" owned by Respondent-Applicant so resembles the trademark "LAXATIN" owned by Opposer, which was applied for registration with this Honorable Office on **09 August 2010** or **prior** to the application of the mark "LAXAT" by Respondent-Applicant on **17 September 2010**.
8. The mark "LAXAT" will likely cause confusion, mistake and deception on the part of the purchasing public, most especially considering that the opposed mark "LAXAT" owned by Respondent-Applicant is applied for the same class of goods as that of Opposer's trademark "LAXATIN", *i.e.* **Class 05 of the International Classification as Laxative**.
9. The registration of the mark "LAXAT" in the name of the Respondent-Applicant will violate Sec. 123 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:

¹ Is a domestic corporation duly organized and existing under the laws of the Philippines, with business address at 66 United Street, Mandaluyong City, Philippines.

² Appears to be a foreign corporation, with principal business address at 384 SOI 6 Pattana 3 Road, Bangpoo Industrial Estate, Samutprakarn Province 10280, Thailand.

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.

- (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;
(Emphasis supplied)

xxx

10. 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.

The Opposer's evidence consists of the following:

- 1. Exhibit "A" to "A-1" – Copies of the pertinent pages of the IPO E-Gazette; and
- 2. Exhibit "B" – Copy of the acknowledgement issued by the IPO acknowledging receipt of trademark application for the trademark LAXATIN filed by the Opposer on 09 August 2010.

This Bureau issued a Notice to Answer and served a copy thereof upon the Respondent-Applicant on 16 May 2011. The Respondent-Applicant, however, did not file an Answer.

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

The Opposer anchored its opposition on Section 123.1 (d) of the Intellectual Property Code ("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 services or closely related goods or services, or if it nearly resembles such a mark as to be likely to deceive or cause confusion.

The records show that at the time the Respondent-Applicant filed its trademark application on 17 September 2010, the Opposer has already filed an application for registration of its mark LAXATIN on 09 August 2010 bearing Serial No. 4-2010-008688, for use on "*laxative, relieves constipation*" under Class 5. Hence, the competing marks are used on similar or closely related goods. Also, the entire mark applied for registration by the Respondent-Applicant is identical to the first five (5) letters of the Opposer's mark.

LAXAT is evidently derived from the word laxative, which means a food or drug that stimulates evacuation of the bowels.⁴ To a consumer, LAXAT obviously refers to laxative. The mark itself gives away or tells the consumers the goods or service, and/or the kind, nature, use or purpose thereof. Sec. 123.1 of the IP Code provides, in part, that a mark cannot be registered if it:

x x x

⁴ www.thefreedictionary.com/laxative

(i) Consist exclusively of signs or indications that may serve in trade to designate the kind, quality, quantity, intended purpose, value, geographical origin, time or production of the goods or rendering of the services, or other characteristics of the goods or services.

A term is descriptive and therefore, invalid as a trademark if, as understood in its normal and natural sense, it forthwith conveys the characteristics, functions, qualities or ingredients of a product to one who has never seen it and does not know what it is, or if it clearly denotes what goods or services are provided in such a way that the customer does not have to exercise powers of perception or imagination⁵.

Accordingly, this Bureau cannot sustain the opposition on the basis of the usage of LAXAT. To do so would have the unintended effect of giving the Opposer the exclusive right to use LAXAT, which evidently describes the pharmaceutical goods covered by the contending marks.

The Opposer's mark may have been registered because it is not entirely composed of all the elements/letters that consist the word laxative. At most, however, the Opposer's mark is a suggestive mark and therefore a weak mark.

Nevertheless, this Bureau finds that the Respondent-Applicant's mark should not be registered in view of Sec. 123.1 (j) of the IP Code.

WHEREFORE, premises considered, the instant opposition is hereby **SUSTAINED** pursuant to Section 123.1 (j) of the IP Code. Let the filewrapper of Trademark Application Serial No. 4-2010-010177, be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 15 July 2013.


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



⁵ See *Societe Des Produits Nestle, S. A. v. Court of Appeals*, 356 SCRA 207, 222-223.