



UNITED LABORATORIES, INC.,
Opposer,

-versus-

THE CATHAY YSS DISTRIBUTORS
COMPANY, INC.,
Respondent- Applicant.

}
} IPC No. 14-2010-00245
} Opposition to:
} Appln. Serial No. 4-2010-002934
} (Filing Date: 17 March 2010)
} TM: "PLATZ"
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NOTICE OF DECISION

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GREETINGS:

Please be informed that Decision No. 2014 - 141, dated May 21, 2014 (copy enclosed) was promulgated in the above entitled case.

Taguig City, May 21, 2014.

For the Director:

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



UNITED LABORATORIES, INC.,
Opposer,

IPC NO. 14-2010-00245
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THE CATHAY YSS DISTRIBUTORS,
Respondent-Applicant.

X-----X

Decision No. 2014- 141

DECISION

UNITED LABORATORIES, INC.¹ ("Opposer") filed an opposition to Trademark Application Serial No. 4-2010-002934. The application, filed by THE CATHAY YSS DISTRIBUTORS COMPANY, INC.,² ("Respondent-Applicant"), covers the mark "PLATZ" for use on "*antiplatelets*" under Class 5 of the International Classification of Goods and Services³.

The Opposer anchors its opposition on Sec. 123.1(d) of Rep. Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code"). According to the Opposer, PLATZ is confusingly similar to its registered mark "KLAZ".

To support its opposition, the Opposer submitted as evidence a printout of page 1 of the "IPO E-Gazette" with releasing date of 20 September 2010, and documents relating to the mark KLAZ, particularly, copy of Cert. of Reg. No. 4-2005-011646, sample product label, and copy of the certificate of product registration issued by the Bureau of Food and Drugs.⁴

The Respondent-Applicant filed its Answer via registered mail on 23 December 2011. According to the Respondent-Applicant, PLATZ is a fanciful term that it created from the word "*antiplatelet*" and it did not intentionally seek its registration to compete with the Opposer's "KLAZ" mark. The Respondent-Applicant claims that it simply sought to register PLATZ because it suggests that the medicine it represents, and requests that this Bureau consider that the marks cover drugs that cater to different ailments. Furthermore, the Respondent-Applicant argues that PLATZ and KLAZ when read aloud will not produce the same sounds.

¹ A corporation duly organized and existing under the laws of the Philippines with principal address at No. 66 United Street, Mandaluyong City.

² A corporation duly organized and existing under Philippine laws with office address at 2nd Floor Vernidad I Building, Amorsolo Street, Legaspi Village, Makati 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 "D".

In defending its trademark application, the Respondent-Applicant submitted as evidence the Affidavit and the "SECRETARY'S CERTIFICATE" of Corporate Secretary Nona F. Crisol and a photocopy of sample PLATZ label.⁵

Pursuant to Office Order No. 154, *Rules of Procedure for IPO Mediation Proceedings*, and Office Order No. 197, *Mechanics for IPO Mediation and Settlement Period*, the case was set for mediation on 30 January 2012. However, the parties were unable to reach an amicable settlement. Accordingly, the preliminary conference was conducted and eventually terminated on 10 July 2012. Then after, the parties filed their respective position papers on 24 July 2012.

Should the mark PLATZ be registered in favour of the Respondent-Applicant?

Records show that at the time the Respondent-Applicant filed its trademark application on 17 March 2010, the Opposer already has an existing registration for the mark KLAZ, under Reg. No. 4-2005-011646 issued on 15 January 2007.

But, are the marks, depicted below, confusingly similar?

Platz

Klaz

Both marks contain the letters "L", "A" and "Z". However, this commonality between the marks is not sufficient to support a conclusion that the marks are confusingly similar. The Opposer's registered mark starts with the letter "K". On the other hand, the Respondent-Applicant's mark start with the letter "P". The bulging curved line in the letter "P" contrasts with the intersecting diagonal lines in the letter "K". Also, the letter "T" between "A" and "Z" enhanced one's ability to recognize the visual and aural differences between the marks in an instant.

That confusion, much less deception, is unlikely to occur in this instant is bolstered by the fact that the pharmaceutical products indicated in the Respondent-Applicant's application ("*antiplatelets*") are very different from those covered by the Opposer's trademark registration ("*medicinal preparation for antibacterial*"). The likelihood of consumers believing that a connection exists between the two marks and/or the parties is practically nil.

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

⁵ Marked as Exhibits "1" and "2", inclusive.

manufacturer against substitution and sale of an inferior and different article as his product.⁶ This Bureau finds the Respondent-Applicant's mark consistent with this function.

WHEREFORE, premises considered, the instant opposition is hereby DISMISSED. Let the filewrapper of Trademark Application Serial No. 4-2010-002934 be returned, together with a copy of this Decision, to the Bureau of Trademarks, for information and appropriate action.

SO ORDERED.

Taguig City, 21 May 2014.


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

⁶ *Pribhdas J. Mirpuri v. Court of Appeals*, G.R. No. 114508, 19 Nov. 1999.