



WESTMONT PHARMACEUTICALS, INC.,  
Opposer,

-versus-

NOVARTIS AG,  
Respondent-Applicant.

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}  
} IPC No. 14-2009-00217  
} Opposition to:  
} Appln. Serial No. 4-2008-015373  
} Filing Date: 19 December 2008  
} TM: "CARDOGREL"  
}

### NOTICE OF DECISION

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#### GREETINGS:

Please be informed that Decision No. 2013 - 44 dated February 27, 2013 ( copy enclosed) was promulgated in the above entitled case.

Taguig City, February 27, 2013.

For the Director:

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



WESTMONT PHARMACEUTICALS, INC.,  
*Opposer,*

IPC No. 14-2009-00217  
Opposition to:

- versus -

Appln. Serial No. 4-2008-015373  
(Filing Date: 19 December 2008)  
Trademark: "CARDOGREL"

NOVARTIS AG,

*Respondent-Applicant.*

x-----x

Decision No. 2013- 44

## DECISION

WESTMONT PHARMACEUTICALS, INC. ("Opposer")<sup>1</sup> filed on 28 August 2009 an opposition to Trademark Application Serial No. 4-2008-015373. The application, filed by NOVARTIS AG ("Respondent-Applicant")<sup>2</sup>, covers the mark "CARDOGREL" for use on "*pharmaceutical, veterinary and sanitary preparations, dietetic substances adapted for medical use, food for babies, plasters, materials for dressings, material for stopping teeth, dental wax*" under class 5 of the International Classification of goods.<sup>3</sup>

The Opposer alleges, among other things, that the mark CARDOGREL so resembles its registered mark "CARDIOSEL". According to the Opposer, the registration of the mark CARDOGREL in favor of the Respondent-Applicant will violate Section 123 of Rep. Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code"). The Opposer also contends that the Respondent-Applicant's use and registration of CARDOGREL will take advantage of, dilute and diminish the distinctive character or reputation of CARDIOSEL.

To support its opposition, the Opposer submitted as evidence a printout of page 4 of the "IPO E-Gazette" with releasing date of 30 April 2009 and other documents relating to the mark CARDIOSEL, particularly, copies of Cert. of Reg. No. 66955 (issued on 14 February 1989), affidavit of use/copies of affidavit of use, sample product label, sales data, and copy of the certificate of product registration issued by the Bureau of Food and Drugs.<sup>4</sup>

The Respondent-Applicant filed on 12 January 2010 its Verified Answer disputing the material allegations of the opposition, contending that CARDOGREL is not confusingly similar with the Opposer's marks. According to the Respondent-Applicant, it has the right to use and appropriate the mark in the Philippines, CARDOGREL being a world famous mark. Its evidence consists of certified copies of the certificates of trademark registration in Peru, Uzbekistan, and Albania; copy of its worldwide trademark portfolio; the legalized Affidavit-Testimony of Marcus Goldbach and Andrea Felbermeir; and pages from its Annual Report for 2008.<sup>5</sup>

The preliminary conference was conducted and terminated on 22 March 2010. Then, after the

1 A corporation duly organized and existing under the laws of the Philippines with principal office located at 4<sup>th</sup> Floor Bonaventure Building, Greenhills, San Juan City. .

2 A foreign corporation with principal address at 4002, Basel, Switzerland.

3 The Nice Classification is a classification of goods and services for the purpose of registering trademark and service 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 "I".

5 Marked as Exhibits "A" to "F", inclusive.

Respondent-Applicant filed its position paper on 15 April 2010, while the Opposer did so on 27 April 2010.

Sec. 123.1 (d) of the IP Code 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.

In this regard, records show that at the time the Respondent-Applicant filed its trademark application on 19 December 2008, the Opposer already has an existing trademark registration for CARDIOSEL under Reg. No. 66955 (issued on 14 February 1989). The Opposer's trademark registration covers "*cardiovascular preparations*" under class 5.

Succinctly, this Bureau finds that the mark CARDOGREL is not confusingly similar to CARDIOSEL just because both start with the letters "CARD" and ends with the letters "EL". The marks' respective composition and/or configuration do not indicate "CARD" being the prominent part or feature of these marks. It cannot also be said that "CARD" or "CARDIO" in the Opposer's mark is unique because, obviously, it is derived from the term "*cardiovascular*". Thus, while the Opposer's mark in its entirety is registrable, it is to be considered as a suggestive mark, which is, in the hierarchy of distinctiveness, is a weak mark.

Comparing the subject marks, the middle letters in the Respondent-Applicant's mark - "OGR" - however, are different from those in Opposer's mark (i.e. "IOS"). The middle letters conferred upon the Respondent-Applicant's mark visual and aural character such that it can easily be distinguished from the Opposer's mark. When one looks at the Respondent-Applicant's, what is "imprinted" in memory is the middle letter "O" in between two (2) curves bulging inwards:

) O (

A different visual experience though is gained with respect to the Opposer's mark. The letter that is exactly at the middle is not the letter "O" but the letter "I", hence, the impression of a vertical line between two inward curves or bulges:

) I (

Aurally, the "hissing" sound of "DIOS" is in stark contrast from the "ugh" sound of "DOG".

That confusion, much less deception, is unlikely in this instance is highlighted by the fact that while both parties uses or will use their respective marks on goods under class 5, the pharmaceutical products covered by the mark CARDOGREL are different from the CARDIOSEL products. The goods are not similar nor closely related.

It is emphasized that the essence of trademark registration is to give protection to the owners of 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 product.<sup>6</sup> This Bureau finds and concludes that the


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

Respondent-Applicant's mark sufficiently meets this function.

**WHEREFORE**, premises considered, the instant opposition is hereby **DISMISSED**. Let the filewrapper of Trademark Application Serial No. 4-2008-015373 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

**SO ORDERED.**

Taguig City, 27 February 2013.

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