



WESTMONT PHARMACEUTICALS, INC.,  
Opposer,

-versus-

THE GENERICS PHARMACY, INC.,  
Respondent-Applicant.

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}  
} IPC No. 14-2011-00452  
} Opposition to:  
} Appln. Serial No. 4-2011-006816  
} Date filed: 10 June 2011  
} TM: "CARVEBLOC"  
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### NOTICE OF DECISION

**OCHAVE & ESCALONA**  
Counsel for the 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 - 05 dated January 11, 2013 ( copy enclosed) was promulgated in the above entitled case.

Taguig City, January 11, 2013.

For the Director:

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



WESTMONT PHARMACEUTICALS, INC.,  
Opposer,

IPC No. 14-2011-00452  
Case Filed: 12 October 2011  
Opposition to:

-versus-

Appln. No. 4-2011-006816  
Date Filed: 10 June 2011

THE GENERICS PHARMACY, INC.,  
Respondent.

TM: "CARVEBLOC"

x-----x

Decision No. 2013 - 05

### DECISION

WESTMONT PHARMACEUTICALS, INC., ("Opposer")<sup>1</sup> filed on 12 October 2011 an opposition to Trademark Application Serial No. 4-2011-006816. The application, filed by THE GENERICS PHARMACY, INC., ("Respondent-Applicant")<sup>2</sup> covers the mark CARVEBLOC for use on "*pharmaceutical product*" under Class 05 of the International Classification of Goods.<sup>3</sup>

The Opposer alleges, among other things, the following:

1. The mark CARVEBLOC owned by Respondent-Applicant so resembles the trademark CALCIBLOC owned by Opposer and duly registered with this Honorable Bureau prior to the publication for opposition of the mark CARVEBLOC;
2. The mark CARVEBLOC will likely cause confusion, mistake and deception on the part of the purchasing public, most especially considering that the opposed mark CARVEBLOC is applied for the same class and goods as that of Opposer's trademark CALCIBLOC, *i.e.* Class 05 of the International Classification of Goods as Pharmaceutical Product;
3. The registration of the mark CARVEBLOC 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:

<sup>1</sup> Is a domestic corporation duly organized and existing under the laws of the Philippines, with office address at 4<sup>th</sup> Floor, Bonaventure Plaza, Ortigas Avenue, Greenhills, San Juan City, Philippines.

<sup>2</sup> Appears to be a domestic corporation with office address at 459 Quezon Avenue, Quezon City, Philippines.

<sup>3</sup> 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)

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. Copies of the pertinent pages of the IPO E-Gazette;
2. Certified true copy of the Certificate of Reg. No. 48810 for the trademark CALCIBLOC;
3. Certified true copy of the Deed of Assignment;
4. Certified true copies of the Petition for Renewal of Reg. and Notice of Allowance;
5. Certified true copies of the Affidavit of Use;
6. Sample product label bearing the mark CALCIBLOC;
7. Certification and sales performance; and
8. Certified true copy of Certificate of Product Registration issued by the BFAD for the mark CALCIBLOC.<sup>4</sup>

This Bureau issued a Notice to Answer and served a copy thereof upon the Respondent-Applicant on 17 November 2011. However, the Respondent-Applicant did not file its Verified Answer. Hence, the instant opposition is considered submitted for Decision based on the opposition and evidence submitted by the Opposer.

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

It is emphasized that the essence of trademark registration is to give protection to the owners of the 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

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<sup>4</sup>Marked as Exhibits "A" to H", inclusive.

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>5</sup>.

Thus, Sec. 123.1 (d) of R.A. No. 8293, also known as the Intellectual Property Code of the Philippines ("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 mark as to be likely to deceive or cause confusion.

Records show that at the time the Respondent-Applicant filed its trademark application on 10 June 2011, the Opposer has already an existing trademark registration for the mark CALCIBLOC under Registration No. 48810 issued on 03 August 1990 for use on "*medicinal preparations indicated for prophylaxis and treatment of angina, myocardial infraction and all forms of hypertension*" under Class 05 of the International Classification of Goods.

But are the competing marks, as shown below, identical or similar or resemble each other such that confusion, mistake or deception is likely to occur?

*Calcibloc*

Opposer' Mark

**CARVEBLOC**

Respondent-Applicant's Mark

This Bureau finds the competing marks are confusingly similar. The features or parts of the competing marks that draw the eyes and ears are the syllables "CAL" for the Opposer and "CAR" for the Respondent-Applicant. When pronounced, they are almost exactly the same. Further, the two marks both contained as their last syllables the word "BLOC". In conclusion, the competing marks when pronounced sound alike. The only difference between the competing marks is in the third (3) syllable "CI" for the Opposer and "VE" for the Respondent-Applicant. However, this is insignificant and insufficient to confer a character that the two marks are not confusingly similar.

Also, considering the goods carried by the contending marks, there is no doubt that the indicated goods in the Respondent-Applicant's trademark application, *i.e.* "*pharmaceutical products*", under Class 05 is broad enough to include also the goods covered by Opposer's registration. As such, the consumers will have the impression that these products originate from a single source or origin or they are associated with one another. The likelihood of confusion therefore, would even subsist not only on the

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<sup>5</sup> Pribhdas J. Mirpuri v. Court of Appeals, G.R. No. 115508, 19 November 1999.

purchaser's perception of the goods but on the origin thereof as held by the Supreme Court<sup>6</sup>:

Callman notes two types of confusion. The first is the confusion of goods in which event the ordinarily prudent purchaser would be induced to purchase one product in the belief that he was purchasing the other. In which case, defendant's goods are then bought as the plaintiff's and the poorer quality of the former reflects adversely on the plaintiff's reputation. The other is the confusion of business. Here, though the goods of the parties are different, the defendant's product is such as might reasonably be assumed to originate with the plaintiff and the public would then be deceived either into that belief or into belief that there is some connection between the plaintiff and defendant which, in fact does not exist.

It is stressed that the laws on Trademarks and Tradenames is based on the principle of business integrity and common justice. This law, both in letter and spirit is laid upon the premise that, while it encourages fair trade in every way and aims to foster, and not to hamper competition, no one especially a trader, is justified in damaging or jeopardizing other's business by fraud, deceit, trickery or unfair methods of any sort. This necessarily precludes the trading by one dealer upon the good name and reputation built by another<sup>7</sup>.

The Respondent-Applicant in the instant opposition was given the opportunity to explain its side and to defend its trademark application. However, it failed and/or chose not to do so.

Accordingly, the Respondent-Applicant's trademark application is proscribed by Sec. 123.1 (d) of the IP Code.

**WHEREFORE**, premises considered, the Opposition is hereby **SUSTAINED**. Let the filewrapper of Trademark Application Serial No. 4-2011-006816 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

**SO ORDERED.**

Taguig City, 11 January 2013.

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

<sup>6</sup> Converse Rubber Corporation v. Universal Rubber Products, Inc., et.al. G.R. No. L-27906, 08 January 1987.

<sup>7</sup> See Baltimore Bedding Corp. v. Moses, 182 and 229, 34A (2d) 338.