BIOFEMME, INC., Opposer, **-versus-** **I.E MEDICA INC.,** Respondent- Applicant.	}	**IPC No. 14-2012-00306** Opposition to: Appln. Serial No. 4-2012-002305 Date Filed: 24 February 2012 **TM: "QUINOLEV"**

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NOTICE OF DECISION

OCHAVE & ESCALONA
Counsel for Opposer
No. 66 United Street
Mandaluyong City

I.E. MEDICA INC.
Respondent-Applicant
5/F RFM Corporate Center
Pioneer Street, Mandaluyong City

GREETINGS:

Please be informed that Decision No. 2014 - 193 dated July 14, 2014 (copy enclosed) was promulgated in the above entitled case.

Taguig City, July 14, 2014.

For the Director:

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

BIOFEMME, INC.,
Opposer,

-versus-

I.E. MEDICA INC.,
Respondent-Applicant.
x ---------- x

IPC No. 14-2012-00306
Opposition to Trademark
Application No. 4-2012-002305
Date Filed: 24 February 2012
Trademark: **"QUINOLEV"**

Decision No. 2014-193

DECISION

Biofemme, Inc.[1] ("Opposer") filed an opposition to Trademark Application Serial No. 4-2012-002305. The contested application, filed by I.E. Medica, Inc.[2] ("Respondent-Applicant"), covers the mark "QUINOLEV" for use on *"pharmaceutical preparations"* under Class 05 of the International Classification of Goods[3].

The Opposer anchors its opposition on Section 123.1 (d) of Republic Act No. 8293, also known as the Intellectual Property Code of the Philippines (IP Code). It contends that Respondent-Applicant's mark "QUINOLEV" resembles its registered mark "QINOLON". According to the Opposer, its sister company, L.R. Imperial, Inc. ("LRI"), filed the trademark application for the mark "QINOLON" on 11 August 1995 with the then Bureau of Patents, Trademarks and Technology Transfer ("BPTTT"). Thereafter, on 06 July 2000, LRI assigned the said mark to another sister company of the Opposer, United American Pharmaceuticals, Inc. ("UAP"). The mark "QUINOLON" was eventually approved for registration on 26 July 2006. Then on 31 January 2008, UAP again assigned the said trademark to the Opposer.

In support its Opposition, the Opposer submitted the following as evidence:

1. Respondent-Applicant's trademark application as published in the IPO E-Gazette;
2. certified true copy of the Assignment of Application for Registration of Trademark dated 06 July 2000;
3. certified true copy of Certificate of Registration No. 4-1995-104224;
4. certified true copy of the Assignment of Registered Trademark dated 31 January 2008;
5. certified true copy of the Affidavit of Use;

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[1] A domestic corporation duly organized and existing under the laws of Switzerland, with office address at 2nd Floor, Bonaventure Plaza, Ortigas, Avenue, Greenhills, San Juan City, Philippines.
[2] Appears to be a domestic corporation, with office address at 5/F RFM Corporate Center, Pioneer Street, Mandaluyong City, Philippines.
[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.

6. sample product label bearing the mark "QINOLON"; and
7. certified true copy of the Certificate of Product Registration issued by the Bureau of Food and Drugs (BFAD).[4]

This Bureau issued a Notice to Answer and served a copy thereof upon the Respondent-Applicant on 04 December 2012. The Respondent-Applicant, however, did not file an Answer. Accordingly, the Hearing Officer issued on 04 April 2013 Order No. 2013-526 declaring the Respondent-Applicant in default and the case submitted for decision.

The primordial issue in this case is whether the trademark "QUINOLEV" should be allowed registration.

Section 123.1(d) of the IP Code provides:

"Section 123.1. A mark cannot be registered if it:

xxx

(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:
(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; x x x"

As culled from available records, the Opposer's predecessor-in-interest, LRI, filed an application for the registration of the mark "QINOLON" as early as 11 August 1995. The said application was eventually allowed and the mark was registered on 26 July 2002. On the other hand, Respondent-Applicant only filed its application on 24 February 2012.

To determine whether the marks of Opposer and Respondent-Applicant are confusingly similar, the two are shown below for comparison:

Qinolon	QUINOLEV
Opposer's mark	*Respondent-Applicant's mark*

Upon observation of the subject trademarks, it can be readily gleaned that the two marks are confusingly similar. The first two syllables of the competing marks

[4] Marked as Exhibits "A" to "G".

are both pronounced as /ki-no/. The addition of the letter "u" between "q" and "i" in Respondent-Applicant's mark does not make a significant variation in its pronunciation. Noteworthy, the syllables /ki-no/ or "quinol" or "qinol" do not make any suggestion to the products they pertain and thus, considered distinct. Overall, the only manifest difference between the competing marks is their last two ending letters. However, the same is not sufficient to eradicate the possibility of confusion between the said marks. Confusion cannot be avoided by merely adding, removing or changing some letters of a registered mark. Confusing similarity exists when there is such a close or ingenuous imitation as to be calculated to deceive ordinary persons, or such resemblance to the original as to deceive ordinary purchased as to cause him to purchase the one supposing it to be the other.[5] As held by the Supreme Court in the case of **Del Monte Corporation vs. Court of Appeals**[6]:

> *"It has been correctly held that side-by-side comparison is not the final test of similarity. Such comparison requires a careful scrutiny to determine in what points the labels of the products differ, as was done by the trial judge. The ordinary buyer does not usually make such scrutiny nor does he usually have the time to do so. The average shopper is usually in a hurry and does not inspect every product on the shelf as if he were browsing in a library. Where the housewife has to return home as soon as possible to her baby or the working woman has to make quick purchases during her off hours, she is apt to be confused by similar labels even if they do have minute differences. The male shopper is worse as he usually does not bother about such distinctions.*
>
> *The question is not whether the two articles are distinguishable by their label when set side by side but whether the general confusion made by the article upon the eye of the casual purchaser who is unsuspicious and off his guard, is such as to likely result in his confounding it with the original. As observed in several cases, the general impression of the ordinary purchaser, buying under the normally prevalent conditions in trade and giving the attention such purchasers usually give in buying that class of goods is the touchstone."*

Significantly, the trademarks "QINOLON" and "QUINOLEV" both refer to goods under Class 05. The Respondent-Applicant uses or intends to use its applied mark for "pharmaceutical preparations". This means that if allowed, it may use the mark for antibacterial pharmaceutical preparation that is indicated and protected in the Opposer's registration. In view of the close resemblance of the competing marks and the fact that they flow on the same channels of trade, mistake, confusion and/or deception is highly possible such that the consumers may be led to believe that both goods originate from the same source.

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[5] Societe des Produits Nestle,S.A. vs. Court of Appeals, GR No. 112012, April 4, 2001.
[6] G.R. No. L-78325, January 25, 1990.

Succinctly, 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 the belief that there is some connection between the plaintiff and defendant which, in fact, does not exist."[7]

Finally, 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.[8] Respondent-Applicant's trademark fell short in meeting this function.

Accordingly, this Bureau finds and concludes that the Respondent-Applicant's trademark application is proscribed by Sec. 123.1(d) of the IP Code.

WHEREFORE, premises considered, the instant opposition is hereby **SUSTAINED**. Let the filewrapper of Trademark Application Serial No. 4-2012-002305 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 14 July 2014.

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

[7] Societe des Produits Nestle, S.A. vs. Dy, G.R. No. 172276, 08 August 2010.
[8] Pribhdas J. Mirpuri vs. Court of Appeals, G.R. No. 114508, November 19, 1999.