



GLAXOSMITHKLINE BIOLOGICALS SA.,
Opposer,

-versus-

JOHNSON & JOHNSON,
Respondent - Applicant.

X-----X

IPC No. 14-2011-00458

Opposition to:

Appln. Serial No. 4-2011-005548

Date filed: 16 May 2011

TM: "CADRIX"

NOTICE OF DECISION

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GREETINGS:

Please be informed that Decision No. 2014 - 273 dated October 30, 2014 (copy enclosed) was promulgated in the above entitled case.

Taguig City, October 30, 2014.

For the Director:


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



GLAXOSMITHKLINE BIOLOGICALS SA,	} IPC NO. 14-2011-00458
Opposer,	} Opposition to:
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-versus-	} Appln. Ser. No. 4-2011-005548
	} Date Filed: 16 May 2011
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JOHNSON & JOHNSON,	} Trademark: CADRIX
Respondent-Applicant.	}
x-----x	} Decision No. 2014- 273

DECISION

GLAXOSMITHKLINE BIOLOGICALS SA, (Opposer)¹ filed an opposition to Trademark Application Serial No. 4-2011-005548. The application, filed by **JOHNSON & JOHNSON** (Respondent-Applicant)², covers the mark “CADRIX”, for use on “human pharmaceuticals for the treatment of infectious-related disease, auto-immune and inflammatory diseases, cardiovascular diseases, central nervous system diseases and pain, dermatological disorders, metabolic diseases, anti-viral diseases, oncological diseases, respiratory diseases, ophthalmic diseases, muscle dystonias, wrinkles and smooth muscle disorders, gastro-intestinal diseases, human pharmaceuticals for uses as hemostatic agents” under Class 5 of the International Classification of Goods³.

The Opposer anchors its opposition on the following grounds:

“1. Opposer is the owner of the mark CERVARIX which has been registered by the Opposer in the Philippines even prior to Respondent-Applicant’s application for the confusingly similar mark, CADRIX also for goods under class 5.

“1.1. On December 21, 2006, a trademark application for CERVARIX was filed by Opposer under Serial No. 4-2006-013775 for goods in class 05, namely ‘vaccines for human use’.

“1.2. The mark CERVARIX was thereafter registered on March 12, 2007, and remains validly registered up to this date.

“1.3. On the other hand, Respondent-Applicant Johnson & Johnson filed its application to register the mark CADRIX on May 16, 2011, or

¹ A corporation duly organized and existing under the laws of Belgium with address at Rue de L’Institut 89, B-1330 Rixensart, Belgium

² A corporation incorporated in the United States of America with address at One Johnson & Johnson Plaza, New Brunswick, New Jersey 08933, U.S.A.

³ The Nice Classification of Goods and Services is for registering trademarks and service marks based on multilateral treaty administered by the WIPO, called the Nice Agreement Concerning the International Classification of Goods and Services for Registration of Marks concluded in 1957.

more than four years after Opposer's trademark CERVARIX was filed in the Philippines, also for goods under class 05, namely, 'human pharmaceuticals for the treatment of infectious-related disease, auto-immune and inflammatory diseases, cardiovascular diseases, central nervous system diseases and pain, dermatological disorders, metabolic diseases, anti-viral diseases, oncological diseases, respiratory diseases, ophthalmic diseases, muscle dystonias, wrinkles and smooth muscle disorders, gastro-intestinal diseases, human pharmaceuticals for uses as hemostatic agents'.

"1.4. The products covered by Opposer's mark CERVARIX and the products covered by Respondent-Applicant's trademark application are similar as they refer to pharmaceutical products used to treat infectious related diseases, auto-immune and inflammatory diseases. Both marks pertain to class 5 goods which may cause confusion among pharmacists and consumers.

"1.5. Moreover, both marks are visually similar and have the same over-all impression having the same letters 'C', 'A', 'R', 'I' and 'X'. The only difference in the spelling between the two marks is the presence of the letters 'E' and 'V' in CERVARIX.

"1.6. Majority of the letters in the registered mark CERVARIX are present in the Respondent-Applicant's mark. When handwritten, as in written prescriptions, the marks are undoubtedly confusingly similar as shown below: x x x

"1.7. Since both marks fall under the same category of goods, that is Class 5, and CADRIX nearly resembles the registered mark CERVARIX and are visually similar, the likelihood of confusion is very high. Respondent-Applicant's trademark application for CADRIX should therefore be denied registration under Section 123.1 (d) of Intellectual Property Code (IP) Code, to wit:

Sec. 123.Registrability-

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;

To support its opposition, the Opposer submitted as evidence the following:

1. Print-out of IPO website showing the "CERVARIX" mark with Registration No. 42006013775 dated 12 March 2007; and
2. Print-out of IPO website showing status of pending application of "CADRIX" mark.

This Bureau served upon the Respondent-Applicant a "Notice to Answer" on 2 May 2012. The Respondent-Applicant, however, did not file an Answer. Thus, the Hearing Officer issued on 1 October 2012 Order No. 2012-1306 declaring the Respondent-Applicant in default.

Records show that at the time Respondent-Applicant applied for registration of the mark "CADRIX" the Opposer already registered the mark "CERVARIX" under Certificate of Registration No. 42006013775. The goods covered by the Opposer's trademark registration are also under Class 05, namely: "vaccines for human use".

The question is: Are the competing marks identical or closely resembling each other such that confusion or mistake is likely to occur?

The competing marks are reproduced below:

CERVARIX CADRIX

Opposer's mark

Respondent-Applicant's mark


The marks are similar with respect to the suffix ("RIX"), first letter "C" and "A". Such similarities however, are not sufficient to conclude that confusion among the consumers is likely to occur. The Opposer uses the prefix "CERVA" while the Respondent-Applicant uses "CAD" which when pronounced are phonetically dissimilar. In combination with the suffix "RIX", the resultant marks are visually and aurally different. Moreover, although the marks are used for goods under class 5, the Opposer uses its CERVARIX mark for "vaccines for human use" while the Respondent-Applicant's CADRIX mark is applied on a variety of pharmaceutical uses such as "treatment of infectious-related disease, auto-immune and inflammatory diseases, cardiovascular diseases, central nervous system diseases and pain, dermatological disorders, metabolic diseases, anti-viral diseases, oncological diseases, respiratory diseases, ophthalmic diseases, muscle dystonias, wrinkles and smooth muscle disorders, gastro-intestinal diseases". Thus, confusion, mistake and deception is unlikely among the purchasing public.

WHEREFORE, premises considered, the instant Opposition to Trademark Application No. 4-2011-005548 is hereby **DISMISSED**. Let the filewrapper of the

subject trademark be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 30 October 2014.


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