



OFFICE OF THE DIRECTOR GENERAL

NOVARTIS AG,
Appellant,

-versus-

EON PHARMATEX, INC.,
Appellee.

x-----x

APPEAL NO. 14-2013-0054
IPC No. 14-2012-00086
Opposition to:

Application No. 4-2011-011706
Date Filed: 29 September 2011
Trademark: AZITAR

NOTICE

E.B. ASTUDILLO & ASSOCIATES

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Director, Bureau of Trademarks
Intellectual Property Office
Taguig City

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Appellee
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Pasig City

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Documentation, Information and
Technology Transfer Bureau
Taguig City



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DATE: 9-29-2014
BY: [Signature]

NATHANIEL S. AREVALO

Director, Bureau of Legal Affairs
Intellectual Property Office
Taguig City

GREETINGS:

Please be informed that on 18 September 2014, the Office of the Director General issued a Decision in this case (copy attached).

Taguig City, 18 September 2014.

Very truly yours,

ROBERT NEREO B. SAMSON
Attorney V

ROBERT NEREO B. SAMSON
ATTORNEY V



OFFICE OF THE DIRECTOR GENERAL

NOVARTIS AG,
Opposer-Appellant,

Appeal No. 14-2013-0054

-versus-

IPC No. 14-2012-00086

Opposition to:

EON PHARMATEX, INC.,
Respondent-Appellee.

Application No. 4-2011-011706

Date Filed: 29 September 2011

Trademark: AZITAR

X-----X

DECISION

NOVARTIS AG (“Appellant”) appeals the decision¹ of the Director of Bureau Legal Affairs (“Director”) dismissing the Appellant’s opposition to the registration of the mark “AZITAR” in favor of EON PHARMATEX, INC. (“Appellee”).

Records show that the Appellee filed on 29 September 2011 Trademark Application No. 4-2011-011706 seeking to register AZITAR for use on pharmaceuticals, namely antibacterial tablet. The trademark application was published in the Intellectual Property Office Electronics Gazette for Trademarks on 30 January 2012. Subsequently, the Appellant filed a “VERIFIED NOTICE OF OPPOSITION” dated 30 March 2012 alleging that it will be damaged by the registration of AZITAR.

The Appellant maintained that AZITAR is confusingly similar to its mark “AZYTH” as to be likely, when applied to or used in connection with the goods of the Appellee, to cause confusion, mistake, and deception on the part of the purchasing public. The Appellant claimed that the registration of AZITAR will violate Section 123.1 of the Intellectual Property Code of the Philippines (“IP Code”) and will diminish the distinctiveness and dilute the goodwill of its mark AZYTH. The Appellant averred that AZYTH and AZITAR cover similar, related and competing goods² which are sold, marketed and/or found in the same channels of business and trade, thus, compounding the likelihood of confusion.

The Bureau of Legal Affairs issued a “NOTICE TO ANSWER” dated 23 November 2012 requiring the Appellee to file a verified answer to the opposition within thirty (30) days from notice. The Appellee did not file its comment and consequently, the case was deemed submitted for decision.³

¹ Decision No. 2013-209 dated 23 October 2013.

² The mark AZYTH covers the following goods: pharmaceutical veterinary and sanitary preparations. Dietetic substances adapted for medical use, food for babies. Plasters, materials for dressings. Material for stopping teeth, dental wax.

³ Order No. 2013-604 dated 16 April 2013.

IPPHL
INTELLECTUAL PROPERTY OFFICE
DATE: *jrpl*

ROBERT NEREC B. SAMSON
ATTORNEY AT LAW

As can be gleaned above, the competing marks are both word marks which have the same first two letters, "A" and "Z". Moreover, the sound of the third letter of the Appellant's mark "Y" may also be pronounced similarly as the third letter in the Appellee's mark which is "I". Both marks also have the same fourth letter "T".

However, these similarities are not sufficient for this Office to rule that AZITAR is confusingly similar with AZYTH.

Significantly, the products covered by these marks are pharmaceutical products which the buying public are expected to examine carefully before purchasing them. The nature and cost of the goods of the parties require a prospective buyer to be more aware and cautious in the purchase of the product. The products covered by AZYTH and AZITAR are pharmaceutical preparations which are not the everyday common goods or household items. Accordingly, a likelihood of confusion that the products bearing the mark AZYTH would be mistaken or considered as AZITAR is very remote in this case.

In the related case of *Etepha, A. G. vs. Director of Patents and Westmont Pharmaceutical, Inc.*⁷, the Supreme Court of the Philippines held that:

6. In the solution of a trademark infringement problem, regard too should be given to the class of persons who buy the particular product and the circumstances ordinarily attendant to its acquisition. The medicinal preparations, clothed with the trademarks in question, are unlike articles of everyday use such as candies, ice cream, milk, soft drinks and the like which may be freely obtained by anyone, anytime, anywhere. Petitioner's and respondent's products are to be dispensed upon medical prescription. The respective labels say so. An intending buyer must have to go first to a licensed doctor of medicine: he receives instructions as to what to purchase; he reads the doctor's prescription; he knows what he is to buy. He is not of the incautious, unwary, unobservant or unsuspecting type; he examines the product sold to him; he checks to find out whether it conforms to the medical prescription. The common trade channel is the pharmacy or the drugstore. Similarly, the pharmacist or druggist verifies the medicine sold. The margin of error in the acquisition of one for the other is quite remote.

Moreover, there are visual and obvious differences between these marks that prevent a likelihood of confusion that AZYTH will be mistaken as AZITAR or vice versa. The mark AZYTH only has two (2) syllables and is pronounced differently with AZITAR which has three (3) syllables. Thus, it is not likely that a person who intends to buy the Appellant's products bearing the mark AZYTH will pronounce it as AZITAR or a person intending to buy AZYTH will be given AZITAR. Similarly, it is unlikely that a person who is to buy AZITAR products would be given the AZYTH products.

As correctly pointed out by the Director:

In this instance, the difference between the contending marks is sufficient to eliminate the likelihood of confusing one mark for the other. It is highly unlikely that

⁷ G. R. No. L-20635, 31 March 1966.



ROBERT PEREZ A. SANSON

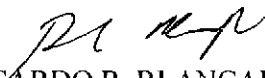
a consumer will be confused, much more deceived, into believing that Respondent-Applicant's goods originated from the Opposer's. Respondent-Applicant's mark is pronounced as /a-zi-tar/, which is far from Opposer's mark which is simply pronounced with two syllables /a-zith/.⁸

Wherefore, premises considered, the appeal is hereby dismissed.

Let a copy of this Decision be furnished to the Director of Bureau of Legal Affairs and the Director of Bureau of Trademarks for their appropriate action and information. Further, let a copy of this Decision be furnished to the library of the Documentation, Information and Technology Transfer Bureau for records purposes.

SO ORDERED.

11 8 SEP 2014 , Taguig City.


RICARDO R. BLANCAFLOR
Director General

⁸ Decision No. 2013-209 dated 23 October 2013, pages 3-4.