



SANOFI,
Opposer,

-versus-

MULTICARE PHARMACEUTICALS
PHILIPPINES, INC.,

Respondent- Applicant.

IPC No. 14-2013-00077

Opposition to:

Appln. Serial No. 4-2012-011744

Filing Date: 24 September 2012

TM: "TRAXAN AND DEVICE"

X-----X

NOTICE OF DECISION

CESAR C. CRUZ AND PARTNERS

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GREETINGS:

Please be informed that Decision No. 2014 - 187 dated July 23, 2014 (copy enclosed) was promulgated in the above entitled case.

Taguig City, July 23, 2014.

For the Director:


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



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DECISION

SANOFI (“Opposer”)¹ filed an opposition to Trademark Application Serial No. 4-2012-011744. The application, filed by MULTICARE PHARMACEUTICALS PHILIPPINES, INC. (“Respondent-Applicant”)², covers the mark “TRAXAN AND DEVICE” for use on “*pharmaceutical product for the treatment & prophylaxis of hemorrhage associated with excessive fibrinolysis*” under Class 5 of the International Classification of Goods and Services.³

The Opposer anchors its opposition on Sec. 123.1 (d) of Rep. Act No. 8293, also known as the Intellectual Property Code of the Philippines (“IP Code”). According to the Opposer, TRAXAN AND DEVICE is confusingly similar to its registered mark “TRANXENE”. To support its opposition, the Opposer submitted as evidence the schedule or list of applications and registrations abroad of the mark TRAXENE, copies of certificates of registrations of the mark TRANXENE, and the duly legalized and authenticated Affidavit of Jose Sanchez and the attachments thereto⁴.

The Respondent-Applicant filed its verified answer on 08 July 2013 denying the material allegations in the opposition. According to the Respondent-Applicant, TRAXAN AND DEVICE is not confusingly similar to the mark TRANXENE. The Respondent-Applicant’s evidence consists of photographs of product packaging.

Pursuant to Office Order No. 154, s. 2010, the case was referred to this Bureau’s Alternative Dispute Resolution Services for mediation. The parties, however, refused to submit their dispute to mediation proper. Accordingly, after the conduct and termination of the Preliminary Conference, the parties filed their respective position papers.

¹ A corporation organized and existing under the laws of France with principal address at Societe Anonyme, 2 Avenue Pont Pasteur 69007 Lyon, France.

² A domestic corporation with address at 26th Floor Rufino Tower, 6748 Ayala Avenue, Makati City.

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.

⁴ Marked as Exhibits “A” to “C”, inclusive.

Should the mark TRAXAN AND DEVICE be allowed to be registered in favor of the Respondent-Applicant?

Sec. 123.1(d) of the IP Code provides that a mark cannot be registered if it is identical with a registered mark or a mark with an earlier filing or priority date belonging to a different proprietor, 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.

Records show that at the time the Respondent-Applicant filed its trademark application on 24 September 2012, the Opposer already has an existing trademark registration for TRANXENE under Reg. No. 026977, with the renewal registration issued on 02 March 1979. The registration covers medicinal and pharmaceutical preparations and/or products intended "*for the management of anxiety disorders or for the short term relief of the symptoms of anxiety*".

But, are the marks, depicted below, confusingly similar?

TRANXENE

Opposer's mark

 Traxan

Respondent-Applicant's mark

This Bureau finds the mark TRAXAN AND DEVICE not confusingly similar to TRANXENE. Both marks start with the letters "T", "R", and "A". Consumers, however, can easily see at a quick glance that the mark TRAXAN AND DEVICE is not the mark TRANXENE. The Respondent-Applicant's mark is composed of eight letters as against the Opposer's six. Also, while TRANXENE is a single word mark, the Respondent-Applicant's mark consists of the word TRAXAN and a device which looks like layered spherical object. Furthermore, TRAXAN sounds distinct from TRANXENE. The first syllable of the Opposer's mark is pronounced as "*tran*" while that of in the Respondent-Applicant is pronounced as "*traks*". In respect of the second syllables, it is "*sin*" in the Opposer's mark as against the "*san*" in the Respondent-Applicant's.

That confusion, much less deception, is unlikely in this instance, is underscored by the fact that the goods or pharmaceutical products indicated in the Respondent-Applicant's application are different from those covered by the Opposer's registration. TRANXENE is a brand or mark for an "*anti-anxiety drug*", while TRAXAN AND DEVICE will be used on "*pharmaceutical product for the treatment & prophylaxis of hemorrhage associated with excessive fibrinolysis*". It cannot be inferred therefore that the Respondent-Applicant in adopting the mark TRAXAN AND



DEVICE was inspired or motivated with an intent to confuse, much less deceive the public or the consumers into believing that there is a connection between the two marks and/or the two parties.

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 or 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.⁵ This Bureau finds that the mark applied for registration by the Respondent-Applicant meets this function.

WHEREFORE, premises considered the instant opposition is hereby **DISMISSED**. Let the filewrapper of Trademark Application Serial No. 4-2012-011744 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 23 July 2014.



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

⁵ *Pribhdas J. Mirpuri v. Court of Appeals*, G.R. No. 114508, 19 Nov. 1999.