



THERAPHARMA, INC.,  
Opposer,

-versus-

THE GENERICS PHARMACY, INC.,  
Respondent- Applicant.

}  
} IPC No. 14-2011-00164  
} Opposition to:  
} Appln. Serial No. 4-2010-012956  
} Date Filed: 30 November 2010  
} TM: "ANGIVASC"  
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### NOTICE OF DECISION

**OCHAVE & ESCALONA**  
Counsel for Opposer  
66 United Street  
Mandaluyong City

**GERALDINE E. GOMEZ**  
For the Respondent-Applicant  
# 67 Scout Fuentebella St., Tomas Morato  
Quezon City

#### GREETINGS:

Please be informed that Decision No. 2014 - 275 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



**THERAPHARMA, INC.,**

*Opposer,*

**IPC No. 14-2011-00164**

**Opposition to:**

- versus -

Appln. Serial No. 4-2010-012956

Date Filed: 30 November 2010

**TM: "ANGIVASC"**

**THE GENERICS PHARMACY, INC.,**

*Respondent-Applicant.*

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**Decision No. 2014- 275**

## DECISION

THERAPHARMA, INC. ("Opposer")<sup>1</sup> filed an opposition to Trademark Application Serial No. 4-2010-012956. The application, filed by THE GENERICS PHARMACY, INC., ("Respondent-Applicant")<sup>2</sup>, covers the mark "ANGIVASC" for pharmaceutical preparation to treat hypertension and angina pectoris under Class 5 of International Classification of goods and services.<sup>3</sup>

The Opposer alleges among other things, that ANGIVASC is confusingly similar to its registered mark "AMVASC". According to the Opposer, the registration of the mark ANGIVASC in the name of the Respondent-Applicant will violate Sec. 123 of Rep. Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code") and with its use, will diminish the distinctiveness and dilute the goodwill of the mark AMVASC. In support of its opposition, the Opposer submitted in evidence the following:

1. Annex "A" - page three (3) of the IPO E-Gazette;
2. Annex "B" - copy of the Certificate of Registration No. 4-2006-000470 for the mark "AMVASC";
3. Annex "C" - copy of the Declaration of Actual Use;
4. Annex "D" - a sample product label bearing the trademark "AMVASC"; and
5. Annex "E" - copy of the Certificate of Product Registration issued by the Bureau of Food and Drugs for the mark AMVASC.

This Bureau issued a Notice to Answer and served a copy thereof upon the Respondent-Applicant which was duly received on 2 June 2011. However, the

<sup>1</sup> A corporation duly organized and existing under the laws of Philippines with principal office located at 3<sup>rd</sup> Floor, Bonaventure Plaza, Ortigas Avenue, Greenhills, San Juan City

<sup>2</sup> A domestic corporation with principal office address at 459 Quezon Avenue, Quezon City

<sup>3</sup> The Nice Classification is a classification of goods and services for the purpose of registering trademarks and service marks, based on a multilateral administered by the World Intellectual Property Organization. This treaty is called the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks concluded in 1957.

Sec. 123.1 (d) of IP Code prohibits the registration of the mark 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 :
  - (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;

Records show that at the time the Respondent-Applicant filed its trademark application on 30 November 2010, the Opposer already has existing trademark registration, No. 4-2006-000470, for the mark AMVASC. The registration covers medicinal preparation for the treatment of hypertension, chronic stable angina and myocardial ischemia due to vasospastic angina under class 5. The goods covered by the contending marks, depicted below, therefore are similar and/or closely related.

**Amvasc**

Opposer's mark

**ANGIVASC**

Respondent-Applicant's mark

Both marks start with the letters "VASC". In the medical field, "VASC" is a prefix or suffix that was derived from the word "*vascular*". Vascular pertains to, is composed of, or is provided with vessels that convey fluids, such as blood.<sup>4</sup> When the term "vascular" or "vasc" is used as a trademark or as a component thereof for pharmaceutical products that are applied to ailments relating to the heart or circulatory system, it is considered as a suggestive mark because it gives clue as to the nature and purpose thereof. Suggestive marks are weak marks as far as their distinctiveness is concerned. This Bureau takes cognizance of the contents of the Trademark Registry and finds registered trademarks that contain the prefix or suffix "VASC" and used on pharmaceutical products that treat illnesses related to heart and the circulatory system, including "AMVASC" (Reg. No. 4-2006-000470, issued on 19 March 2007), "NORVASC" (Reg. No. 048241, issued on 29 May 1990), "PROVASC" (Reg. No. 4-2007-008432, issued on 14 July 2008), and "UNIVASC" (Reg. No.4-1997-123204, issued on 23 July 2001). While the mark AMVASC is registered in favor of the Opposer, the other registered marks belong to other proprietors. This shows that "VASC" alone is not distinctive for a single proprietor to claim exclusive thereof.

Succinctly, this Bureau cannot sustain the opposition merely on the basis or ground that both the contending marks contain the suffix "VASC. To do so will have the unintended effect of giving the Opposer the exclusive right to use the descriptive prefix or suffix "VASC" for use on pharmaceutical products that treats ailments relating to the heart and the circulatory system. In determining whether the Respondent-Applicant's mark is confusingly similar to the Opposer's, one must look beyond the prefix or suffix "VASC" and scrutinize the other letters or words composing the mark.

In the Opposer's mark, "VASC" is preceded by the syllable "AM". If the syllables

<sup>4</sup> Ref.: <http://www.thefreedictionary.com/vascular> citing Random House Kernerman Webster's College Dictionary, © 2010 K Dictionaries Ltd. Copyright 2005, 1997, 1991 by Random House, Inc.

“ANGI” are paired with the suffix “VASC”, the resulting mark – ANGIVASC - bears close resemblance, to the eyes and to the ears, to the mark AMVASC. Because the competing marks are used on the same pharmaceutical products, mistake or confusion therefore is likely to occur.

The law does not require that the competing trademarks must be so identical as to produce actual error or mistake; it would be sufficient, for purposes of the law, that the similarity between the two labels is such that there is a possibility or likelihood of the purchaser of the older brand mistaking the newer brand for it.<sup>5</sup>


It is emphasized that the essence of trademark registration is to give protection to the owner 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 article; to prevent fraud and imposition; and to protect the manufacturer against substitution and sale of an inferior and different article as his products.<sup>6</sup> The mark applied for registration by the Respondent-Applicant does not meet this function.

In conclusion, this Bureau finds that the registration of the mark ANGIVASC in favor of the Respondent-Applicant 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. 4-2010-012956 be returned, together with a copy of this Decision, to the Bureau of Trademark (BOT) for information and appropriate action.

**SO ORDERED.**

Taguig City, 30 October 2014.

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

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<sup>5</sup> *American Wire and Cable Co. v. Director of Patents, et. al.* (31 SCRA) G.R. No. L-26557, 18 February 1970

<sup>6</sup> *Pribhdas J. Mirpuri v. Court of Appeals*, G.R. No. 114509, 19 Nov. 1999