



THERAPHARMA, INC.,
Opposer,

-versus-

ULTRAMED PHARMA, INC.,
Respondent-Applicant.

} **IPC No. 14-2014-00181**
} Opposition to:
} Appln No. 4-2013-00010646
} Date filed: 05 September 2013
} **TM: "KLOPIDE"**

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NOTICE OF DECISION

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

ULTRAMED PHARMA, INC.
Respondent-Applicant
141 Scout de Guia Street
Quezon City

GREETINGS:

Please be informed that Decision No. 2014 - 291 dated November 06, 2014 (copy enclosed) was promulgated in the above entitled case.

Taguig City, November 06, 2014.

For the Director:


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



THERAPHARMA, INC.,	}	IPC No. 14-2014-00181
Opposer,	}	Opposition to:
	}	
- versus -	}	Application No. 4-2013-00010646
	}	Date Filed: 05 September 2013
ULTRAMED PHARMA, INC.,	}	
Respondent-Applicant.	}	Trademark: KLOPIDE
x-----x	x	Decision No. 2014 - 291

DECISION

THERAPHARMA, INC.¹ ("Opposer") filed on 30 April 2014 a Verified Notice of Opposition to Trademark Application No. 4-2013-00010646. The contested application, filed by ULTRAMED PHARMA, INC.², ("Respondent-Applicant"), covers the mark KLOPIDE for use on "*pharmaceutical - antithrombotic*" under Class 05 of the International Classification of goods³.

The Opposer anchors its opposition on Section 123.1 (h) and (j) of Republic Act No. 8293 or the Intellectual Property Code of the Philippines ("IP Code"). According to the Opposer, the mark KLOPIDE owned by the Respondent-Applicant should be denied registration because it resembles the generic name CLOPIDOGREL. Specifically, the Opposer alleges, among other things, the following:

- "1. Opposer will be damaged by the registration of Respondent-Applicant's mark KLOPIDE;
- "2. CLOPIDOGREL is a generic name and/or descriptive term. As such, it cannot be appropriated; and
- "3. Respondent-Applicant's mark KLOPIDE is confusingly similar to the generic name and/or descriptive term CLOPIDOGREL. Thus, Respondent-Applicant's application for registration of the mark KLOPIDE should be denied."

The Opposer's evidence consists of the following:

1. Copy of the pertinent page of the IPO e-Gazette bearing publication date of 31 March 2014;
2. Copy of the Certificate of Registration No. 4-2007-011440 for the trademark PLOGREL;
3. Copies of the Declaration of Actual Use dated 27 January 2010 and 23 January 2013;
4. Sample product label bearing the trademark PLOGREL;

1 A domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with office address at 3rd Floor Bonaventure Plaza, Ortigas Avenue, Greenhills, San Juan City, Philippines.
 2 Appears to be a domestic corporation, with address at 141 Scout De Guia St., Quezon City, Philippines.
 3 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.

5. Certified true copy of the Certificate of Product Registration issued by the Bureau of Food and Drugs (BFAD) for PLOGREL; and
6. Electronic print out of the WHO Drug Information (Vol. 1, No. 4, 1987) List 27.⁴

This Bureau issued a Notice to Answer and served a copy thereof upon the Respondent-Applicant on 20 May 2014. The Respondent-Applicant, however, did not file its Verified Answer. Thus, this Bureau issued Order No. 2014-986 dated 28 July 2014 declaring the Respondent-Applicant in default and submitting the case for decision on the basis of the opposition, affidavit of witness and documentary or object evidence submitted by the Opposer.

Should the Respondent-Applicant be allowed to register the trademark KLOPIDE?

The Opposer anchors its opposition on Section 123.1 (h) and (j) of R. A. No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code"), which provides, in part, that a mark cannot be registered if it:

x x x

(h) Consists exclusively of signs that are generic for the goods or services that they seek to identify;

x x x

(j) Consists exclusively of signs or of indications that may serve in trade to designate the kind, quality, quantity, intended purpose, value, geographical origin, time or production of the goods or rendering of the services, or other characteristics of the goods or services.

The above-quoted provision proscribes the registration of marks classified as generic or descriptive terms. Generic terms are those which constitute "the common descriptive name of an article or substance," or comprise the "genus of which the particular product is a species," or are "commonly used as the name or description of a kind of goods," or "imply reference to every member of a genus and the exclusion of individuating characters," or "refer to the basic nature of the wares or services provided rather than to the more idiosyncratic characteristics of a particular product," and are not legally protectable. On the other hand, a term is descriptive and therefore invalid as a trademark if, as understood in its normal and natural sense, it "forthwith conveys the characteristics, functions, qualities or ingredients of a product to one who has never seen it and does not know what it is," or "if it forthwith conveys an immediate idea of the ingredients, qualities or characteristics of the goods," or if it clearly denotes what goods or services are provided in such a way that the consumer does not have to exercise powers of perception or imagination.⁵

There is no dispute that CLOPIDOGREL is an active ingredient of Respondent-Applicant's KLOPIDE. Thus, the Opposer maintains that KLOPIDE should not be registered as a trademark because it is confusingly similar to CLOPIDOGREL which is the generic and/or descriptive term of the active ingredient of the kind, quality and intended purpose of goods covered by the Respondent-Applicant's mark.

⁴ Marked as Exhibits "A" to "G".

⁵ *Societe Des Produits Nestle S. A. v. Court of Appeals*, 356 SCRA 207, 222-223.


In terms of sound or aural effect, the Respondent-Applicant's KLOPIDE appears to be similar to the first two syllables of the generic name CLOPIDOGREL, such as /CLO/, /PID/. This similarity, however, is not sufficient to conclude that KLOPIDE is descriptive of the nature, quality, ingredients or other characteristics of the generic name CLOPIDOGREL. The variations in the Respondent-Applicant's mark starting with the letter "K" and ending with the letter "E" gives the mark a distinctive character. As in fact, it would require a certain degree of imagination and perception to establish a link or connection between KLOPIDE and the generic name CLOPIDOGREL in terms of quality, quantity, intended purpose, value or other characteristics of the goods.

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.⁶ This Bureau finds that the mark applied for registration by the Respondent-Applicant has sufficient distinctive qualities to meet the aforestated functions.

WHEREFORE, premises considered, the instant opposition is hereby **DISMISSED**. Let the filewrapper of Trademark Application No. 4-2013-00010646 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 06 November 2014.



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

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⁶ *Pribhdas J. Mirpuri v. Court of Appeals*, G.R. No. 114508, 19 November 1999.