



UNITED LABORATORIES, INC.,
Opposer,

-versus-

NEW MYREX LABORATORIES
INCORPORATED,
Respondent-Applicant.

}
} **IPC No. 14-2010-00172**
} Opposition to:
} Appln No. 4-2009-008262
} Date filed: 19 August 2009
} **TM: "MYREVIT"**
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NOTICE OF DECISION

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GREETINGS:

Please be informed that Decision No. 2014 - 293 dated November 04, 2014 (copy enclosed) was promulgated in the above entitled case.

Taguig City, November 04, 2014.

For the Director:


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



UNITED LABORATORIES, INC.,

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-versus-

NEW MYREX LABORATORIES

INCORPORATED,

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} **IPC NO. 14-2010-00172**

} Opposition to:

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} Appln. Ser. No. 4-2009-008262

} Date Filed: 19 August 2009

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} Trademark: **MYREVIT**

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} Decision No. 2014- 293

DECISION

UNITED LABORATORIES, INC., (Opposer)¹ filed an opposition to Trademark Application Serial No. 4-2009-008262. The application, filed by NEW MYREX LABORATORIES INCORPORATED (Respondent-Applicant)², covers the mark "MYREVIT", for use on "multivitamins preparations" under Class 5 of the International Classification of Goods³.

The Opposer anchors its opposition on the following grounds:

"7. The mark 'MYREVIT' owned by Respondent-Applicant so resembles the trademark 'MYRA' owned by Opposer and duly registered with this Honorable Bureau prior to the publication for opposition of the mark 'MYREVIT'.

"8. The mark 'MYREVIT', will likely cause confusion, mistake and deception on the part of the purchasing public, most especially considering that the opposed trademark 'MYREVIT' is applied for the same class of goods as that of Opposer's trademark 'MYRA', i.e. Class (5) of the International Classification of Goods for Vitamin preparation.

"9. The registration of the trademark 'MYREVIT' in the name of the Respondent-Applicant will violate Sec. 123 of the IP Code, which provides, in part, that a mark cannot be registered 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:

¹ A corporation duly organized and existing under Philippine laws with principal address at 66 United Street, Mandaluyong City

² A domestic corporation with address at Bo. Sulucan, Catmon, Sta. Maria Bulacan

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.

- (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.

“10. Under the above-quoted provision, any mark, which is similar to a registered mark, shall be denied registration in respect of similar or related goods or if the mark applied for nearly resembles a registered mark that confusion or deception in the mind of the purchasers will likely result.

According to the Opposer:

“11. Opposer is the registered owner of the trademark ‘MYRA’.

“11.1. Opposer is engaged in the marketing and sale of a wide range of pharmaceutical products. The Trademark Application for the trademark ‘MYRA’ was filed with the IPO on 9 September 2005 by Unam Brands (BVI) Ltd. and was approved for registration on 5 March 2007 to be valid for a period of ten (10) years, or until 5 May 2017.

“11.2. In the meantime, on 22 May 2007, Unam Brands (BVI) Ltd. assigned the trademark ‘MYRA’ to herein Opposer. A certified true copy of the Certificate of Registration No. 4-2005-008937 for the trademark ‘MYRA’ is hereto attached and made integral part hereof as Exhibit ‘B’”. A certified true copy of the Deed of Assignment is likewise hereto attached and made an integral part hereof as Exhibit ‘C’.

“11.2. Thus, the registration of the trademark ‘MYRA’ subsists and remains valid to date.

“12. The trademark ‘MYRA’ has been extensively used in commerce in the Philippines.

“12.1. The Declaration of Actual Use has been timely filed pursuant to the requirement of the law to maintain the registration of the trademark ‘MYRA’ in force and effect. A certified true copy of the Declaration of Actual Use filed hereto attached and made integral part hereof as Exhibit ‘D’.

“12.2. A sample of product label bearing the trademark ‘MYRA’ actually used in commerce is hereto attached and made an integral part hereof as Exhibit ‘E’.

“12.3. No less than the Intercontinental Marketing Services (IMS) itself, the world’s leading provider of business intelligence and strategic

consulting services for the pharmaceutical and healthcare industries with operations in more than 100 countries, acknowledged and listed the brand 'MYRA' as the leading brands in the Philippines in the category of 'AllX- Other Vitamins Market' in terms of market share and sales performance. A copy of the Certification and sales performance is hereto attached and made an integral part hereof as Exhibit 'F'.

"12.4. In order to legally market, distribute and sell these pharmaceutical preparations in the Philippines, Opposer registered the product with the Bureau of Food and Drugs Administration ('BFAD'). A copy of the Certificate of Product Registration issued by the BFAD for the trademark 'MYRA' is hereto attached and made an integral part hereof as Exhibit 'G'.

"13. By virtue of the foregoing, there is no doubt that Opposer has acquired an exclusive ownership over the trademark 'MYRA' to the exclusion of all others. xxx"

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

1. Print-out of IPO e-Gazette showing the Respondent-Applicant's trademark application published for opposition;
2. Copy of Certificate of Registration No. 4-2005-008937 for the trademark "MYRA";
3. Copy of Deed of Assignment;
4. Copy of Declaration of Actual use;
5. Sample Packaging/label of "MYRA";
6. Certification from Intercontinental Marketing Service (IMS) dated 16 July 2010; and
7. Copy of Certificate of Product Registration issued by the Bureau of Food and Drugs dated 17 March 2009⁴

The Respondent-Applicant filed its Answer on 17 December 2010, alleging among other things, the following affirmative and special defenses:

"1. The Applicant's mark 'MYREVIT' is unquestionably not confusingly similar with Opposer's mark 'MYRA'.

"2. A simple perusal of the Applicant's mark and the Opposer's mark would readily show that they are very different from each other and will definitely not cause confusion in the mind of the purchasing public.

"3. The only similarity between the two (2) marks are the first three letters which are 'MYR'. Any similarity clearly stops there. It cannot be gainsaid that, the Opposer certainly has no right to exclusively appropriate for itself the letters M-Y-R in the alphabet.

⁴ Exhibits "A" to "G" inclusive of sub-markings

"4. A plain examination of 'Myrevit' and 'Myra' is sufficient to reveal that they are easily distinguishable from each other visually and phonetically. Hence, confusion is not even likely to occur.

"5. It might be well to emphasize that, jurisprudence is replete with cases declaring that opposing trademarks should be compared in their entirety. xxx

"7. Clearly, it was erroneous on the part of the Opposer to claim confusing similarity on the two (2) marks on the basis alone of three (3) letters in the alphabet. Using the holistic test, and even the dominance test, the opposition to the instant application must necessarily fail.

"8. A perusal of the label and packaging of the two (2) products would show that there is no similarity in the way the marks 'Myrevit' and 'Myra' were used or even in the general appearance thereof. The fonts used and the size of the marks are completely different. The colors used in the marks are likewise entirely distinct. Other distinguishing marks, the background, the arrangement and pictorial contents are likewise totally different. An examination of the marks and their packaging would show that there is nothing in the said marks that could in any way be considered confusingly similar.

"9. It is important to note also, that at the front portion of the labels or packages of both marks the origin or manufacturer appears thereon. Thus, Opposer's fear that there may be confusion in origin is clearly unfounded.

xxx

"11. It is likewise an established principle in Philippine trademark jurisprudence, that in pharmaceutical products, consumers are more wary of the nature of the product they are buying. Accordingly, the Opposer's claim that the mark is being registered for goods under Class 5 of the International Classification of Goods, same as Opposer's 'Myra', and thus, would likely cause confusion, should necessarily fail.

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"16. It should also herein be emphasized that Opposer's mark 'Myra' is being used only with respect their product 'Myra E', a vitamin E supplement. On the other hand, Applicant's mark 'Myrevit' is being used in a number of their products, specifically: a) 'Myrevit-Multivitamins', a multivitamin supplement; b) 'Myrevit -C', an Ascorbic Acid supplement; and c) 'Myrevit-B', vitamin B1+B6+B12 supplement. Clearly, 'Myrevit' and 'Myra' are not similar goods. There is even no 'Myrevit' product that is being used as a vitamin E supplement. As pharmaceutical products, where consumers are more discerning and who are precise and exact on the products they usually want and buy, there is definitely no danger of confusion.

“17. It also bears mention that the mark ‘Myrevit’ was derived by the manufacturer from its name ‘New Myrex Laboratories, Inc’. Thus, the first four letters of the mark, ‘M-Y-R-E’, which letters of the alphabet cannot be exclusively appropriated by the Opposer. Clearly, it was never designed to copy, imitate or cause confusion, contrary to the allegations of the Opposer. Rather, ‘Myrevit’ was designated as such the company name of its manufacturer, ‘New Myrex Laboratories, Inc.’

“18. Considering all the foregoing, it is clear and indubitable that the marks ‘MYREVIT’ and ‘MYRA’ are not confusingly similar and will never cause confusion in the minds of the consuming public. Accordingly, the registration of the Applicant’s mark ‘MYREVIT’ will therefore not violate the provisions of Republic Act No. 8293, otherwise known as the Intellectual Property Code of the Philippines.”

The Respondent-Applicant submitted as evidence, the following:

1. Sample product labels/packaging of “MYREVIT”; and
2. Sample product labels/packaging of “MYRA”.⁵

The Preliminary Conference was held on 31 May 2011, where only the counsel for the Opposer appeared and was directed to file its position paper. The Respondent-Applicant was declared to have waived its right to file a position paper for its failure to appear at the Preliminary Conference in Order No. 2011-721. However, the parties were not duly notified because the notice was printed in the old letterhead indicating the old office address in Makati City. The hearing officer issued Order No. 2011-839, setting aside the previous order and directing the Respondent-Applicant to submit its position paper. The Opposer and the Respondent-Applicant submitted their position papers on 10 June 2011 and 6 July 2011, respectively.

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

Sec. 123.1. Registrability. A mark cannot be registered 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 Respondent-Applicant applied for registration of the mark “MYREVIT” the Opposer already registered the mark “MYRA” under Certificate of Registration No. 4-2005-008937. The goods covered by the Opposer’s

⁵ Annexes “A” and “B” inclusive of submarkings

trademark registration are also under Class 05, same as indicated in the Respondent-Applicant's trademark application.

But are the competing marks, depicted below resemble each other such that confusion, even deception, is likely to occur?

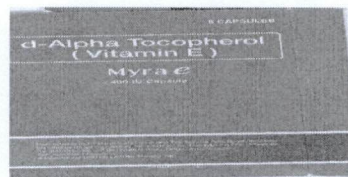
Myra **MYREVIT**

Opposer's mark

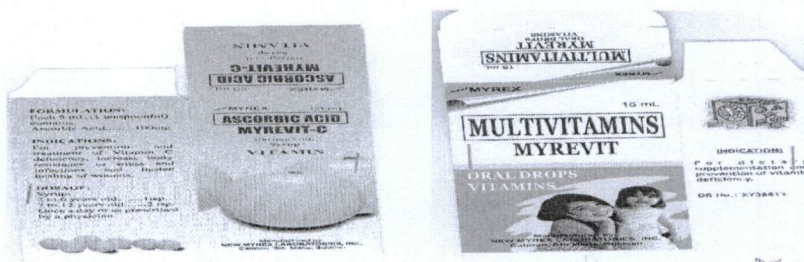
Respondent-Applicant's mark

Scrutinizing the composition of the trademarks involved in this case, it is observed that both marks, are similar with respect to the first three (3) letters ("MYR"). The first two (2) syllables "MYRA" and "MYRE" sound similar when pronounced inspite of the use of different vowels, "a" and "e". The addition of the suffix "VIT" to the Respondent-Applicant's "MYRE" is negligible because when pronounced, the words MYRA and MYREVIT sound the same and are *idem sonans*. Visually and aurally, the marks are confusingly similar.

As seen below, inspite of the difference in their packaging and labels, the word marks appear the same because of the visual similarity of "MYRA" and "MYRE".



Opposer's product label⁶



Respondent-Applicant's product labels⁷

Succinctly, because the Respondent-Applicant uses its mark on goods that are similar or closely related to the Opposer's it is likely that the consumers will have the impression that these goods originate from a single source or origin. The confusion or

⁶ Exhibit "E"

⁷ Annex "A-3" and "A"

mistake would subsist not only the purchaser's perception of goods but on the origin thereof as held by the Supreme Court, to wit:

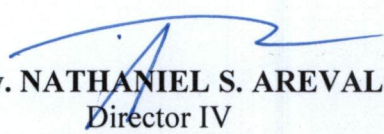
Callman notes two types of confusion. The first is the confusion of goods in which event the ordinary prudent purchaser would be induced to purchase one product in the belief that he was purchasing the other. In which case, defendant's goods are then bought as the plaintiff's and the poorer quality of the former reflects adversely on the plaintiff's reputation. The other is the confusion of business. Here, though the goods of the parties are different, the defendant's product is such as might reasonably be assumed to originate with the plaintiff and the public would then be deceived either into that belief or into belief that there is some connection between the plaintiff and defendant which, in fact does not exist.⁸

The public interest, requires that two marks, identical to or closely resembling each other and used on the same and closely related goods, but utilized by different proprietors should not be allowed to co-exist. Confusion, mistake, deception, and even fraud, should be prevented. It is emphasized that 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 product.⁹

WHEREFORE, premises considered, the instant Opposition to Trademark Application No. 4-2009-008262 is hereby **SUSTAINED**. 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, 4 November 2014.


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

⁸ *Converse Rubber Corp. v. Universal Rubber Products, Inc., et. al.*, G. R. No. L-27906, 08 January 1987.

⁹ *Pribhdas J. Mūrpuri v. Court of Appeals*, G. R. No. 114508, 19 November 1999, citing *Etepha v. Director of Patents, supra, Gabriel v. Perez*, 55 SCRA 406 (1974). See also Article 15, par. (1), Art. 16, par. (1), of the Trade Related Aspects of Intellectual Property (TRIPS Agreement).