



OFFICE OF THE DIRECTOR GENERAL

WESTMONT PHARMACEUTICALS, INC.,

Appellant,

-versus-

MEDHAUS PHARMA, INC.,

Appellee.

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APPEAL NO. 14-2014-0003

IPC No. 14-2010-00177

Opposition to:

Application No. 4-2010-000604

Date Filed: 18 January 2010

Trademark: BESYLON

NOTICE

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Taguig City



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NATHANIEL S. AREVALO

Director, Bureau of Legal Affairs

Intellectual Property Office

Taguig City

GREETINGS:

Please be informed that on 22 September 2014, the Office of the Director General issued a Decision in this case (copy attached).

Taguig City, 22 September 2014.

Very truly yours,

[Signature]

ROBERT NEREO B. SAMSON

Attorney V

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Office of the Director General



OFFICE OF THE DIRECTOR GENERAL

WESTMONT PHARMACEUTICALS, INC.,  
Opposer-Appellant,

Appeal No. 14-2014-0003

-versus-

MEDHAUS PHARMA, INC.,  
Respondent-Appellee.

IPC No. 14-2010-00177  
Opposition to:  
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Date Filed: 18 January 2010  
Trademark: BESYLON

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DECISION

WESTMONT PHARMACEUTICALS, INC. ("Appellant") appeals the decision<sup>1</sup> of the Director of Bureau of Legal Affairs ("Director") dismissing the Appellant's opposition to the registration of the mark "BESYLON".

On 18 January 2010, MEDHAUS PHARMA, INC. filed Trademark Application No. 4-2010-000604 for BESYLON for use on *pharmaceutical product - calcium channel blocker*. The trademark application was published in the Intellectual Property Office Electronics Gazette for Trademarks on 19 July 2010. On 18 August 2010, the Appellant filed a "VERIFIED OPPOSITION" claiming that it will be extremely damaged and prejudiced by the registration of BESYLON.

The Appellant alleged that BESYLON so resembles its mark "DECILONE" which was registered prior to the publication of BESYLON. The Appellant claimed that BESYLON will likely cause confusion, mistake and deception on the part of the purchasing public, especially considering that BESYLON is applied for the same class of goods as DECILONE. The Appellant asserted that the registration of BESYLON will violate Sec. 123 of the Intellectual Property Code of the Philippines ("IP Code") which provides that 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 result. The Appellant stated that the Appellee's use and registration of BESYLON will diminish the distinctiveness and dilute the goodwill of DECILONE.

The Bureau of Legal Affairs issued on 12 November 2010 a notice to the Appellee requiring it to answer the opposition. The Appellee did not file an answer and the case was deemed submitted for decision.

In dismissing the opposition, the Director held that it is unlikely that the coexistence of BESYLON and DECILONE will cause confusion, much less

<sup>1</sup> Decision No. 2013-245 dated 20 December 2013.

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ROBERT HERCO S. SAMSON  
Office of the Director General

deception, among the public. The Director ruled that while BESYLON may sound similar to DECILONE, the public confusing one mark with the other is not likely and that the product covered by BESYLON is entirely different from DECILONE marked/branded product. According to the Director, DECILONE covers *pharmaceutical preparation for effective management of various inflammatory and allergic conditions generally responsive to corticosteroid therapy, which include skin diseases, allergic reactions, acute inflammatory eye diseases, musculo-skeletal disorders, blood dyscrasias, certain neoplastic diseases, collagen diseases and adrenocortical insufficiency.* The Director held that BESYLON meets the function of a trademark.

Not satisfied with the dismissal of its opposition, the Appellant filed on 27 February 2014 an "APPEAL MEMORANDUM [Re: Decision No. 2013-245 dated 20 December 2013]" arguing among other things that the registration of BESYLON should be denied or deemed abandoned for the failure of the Appellee to file the required Declaration of Actual Use ("DAU"). The Appellant attached to its appeal a certification issued by the Bureau of Trademarks that no DAU has been filed for BESYLON.

In this regard, the Appellee's application to register the mark BESYLON is considered refused for its failure to file the required DAU. Sec. 124.2 of the IP Code states that:

124.2. The applicant or the registrant shall file a declaration of actual use of the mark with evidence to that effect, as prescribed by the Regulations within three (3) years from the filing date of the application. Otherwise, the application shall be refused or the mark shall be removed from the Register by the Director.

Consequently, this appeal is now deemed moot and academic and the Office need not decide this case on the merits. The Appellant in filing the opposition to the registration of BESYLON seeks to prevent the registration of this mark in favor of the Appellee. However, in view of the certification issued by the Bureau of Trademarks showing the Appellee's failure to file the DAU, the Appellant's plea for the refusal of the Appellee's trademark application was practically granted.

In one case, the Supreme Court of the Philippines has ruled that:

For a court to exercise its power of adjudication, there must be an actual case or controversy - one which involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution; the case must not be moot or academic or based on extra-legal or other similar considerations not cognizable by a court of justice. A case becomes moot and academic when its purpose has become stale, such as the case before us.<sup>2</sup>

In this instance, no practical or useful purpose would be served by resolving the issues and merits in this case when the Appellee's trademark application is now considered refused. It is unnecessary to indulge in academic discussion of a case

<sup>2</sup>Dean Jose Joya, v. Presidential Commission on Good Government, G. R. No. 96541, 24 August 1993.

presenting a moot question as a judgment thereon cannot have any practical legal effect or, in the nature of things, cannot be enforced.<sup>3</sup>

Wherefore, premises considered, the appeal is hereby dismissed for the reasons discussed above.

Let a copy of this Decision as well as the trademark application and records be furnished and returned to the Director of the Bureau of Legal Affairs and the Bureau of Trademarks for their appropriate action and consideration of the Appellee's failure to file the required DAU. Further, let also the library of the Documentation, Information and Technology Transfer Bureau be furnished a copy of this decision for information, guidance, and records purposes.

SO ORDERED.

22 SEP 2014 Taguig City.

  
RICARDO R. BLANCAFLOR  
Director General

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<sup>3</sup> Gerardo O. Lanuza, Jr. v. Ma. Vivian Yuchengco, G.R. No. 157033, 28 March 2005.

  
CERTIFIED TRUE COPY  
DATE:   
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