



WESTMONT PHARMACEUTICALS, INC.,
Opposer,

-versus-

BIOLINK PHARMA,
Respondent- Applicant.

} **IPC No. 14-2011-00181**
} Opposition to:
} Appln. Serial No. 4-2010-012790
} Filing Date: 26 November 2010
} **TM: "AMPIXIN"**
}
}
}
}

X-----X

NOTICE OF DECISION

OCHAVE & ESCALONA
Counsel for Opposer
No. 66 United Street
Mandaluyong City

FELICITO C. CORDERO
Counsel for the Respondent-Applicant
Room 208, 2nd Floor Pasay City Hall
F.B. Harrison St., Pasay City

GREETINGS:

Please be informed that Decision No. 2014 - 194 dated July 31, 2014 (copy enclosed) was promulgated in the above entitled case.

Taguig City, July 31, 2014.

For the Director:

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



WESTMONT PHARMACEUTICALS, INC.,
Opposer,

IPC No. 14-2011-00181
Opposition to:

- versus -

Appln. Serial No. 4-2010-012790
(Filing Date: 26 November 2010)

TM: "AMPIXIN"

BIOLINK PHARMA,
Respondent-Applicant.

X-----X

Decision No. 2014- 194

DECISION

WESTMONT PHARMACEUTICALS, INC. ("Opposer")¹ filed an opposition to Trademark Application Serial No. 4-2010-012790. The application, filed by **BIOLINK PHARMA** ("Respondent-Applicant")², covers the mark "**AMPIXIN**" for use on "*antibiotic drug*" under class 5 of the International Classification of goods and services.³

The Opposer alleges that it owns and has registered the mark "AMPICIN" which is used on "*antibiotics*". According to the Opposer, AMPIXIN is confusingly similar to AMPICIN. The Opposer asserts that the registration of AMPIXIN in favor 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 will diminish the distinctiveness and dilute the goodwill of the mark AMPICIN. To support its opposition, the Opposer submitted in evidence⁴ copy of page two of the IPO E-Gazette, copies of the Certificate of Registration and Certificate of Renewal of Registration, Affidavits of Use, Sample of product label bearing the mark AMPICIN as actually used in commerce, and copy of the Certificate of Product Registration issued by the Bureau of Food and Drugs for the brand/mark AMPICIN.

This Bureau issued a Notice to Answer and served a copy thereof upon the Respondent-Applicant. However, the Respondent-Applicant did not file an answer.

Should the Respondent-Applicant be allowed to register AMPIXIN?

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 of merchandise, the fruit of

¹ A corporation duly organized and existing under the laws of Philippines with principal office located at 4TH Floor, Bonaventure Plaza, Ortigas Avenue, Greenhills, San Juan City

² A domestic corporation with principal office address at No. 35 Sct. Lozano Street, Brgy. Laging Handa, Quezon 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 Annexes "A" to "H".

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 Thus, Sec. 123.1(d) of the IP Code provides 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

- (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 26 November 2010, the Opposer already has an existing registration for the mark AMPICIN under Reg. No. 36627 issued as early as 09 February 1987. The registration, last renewed on 09 February 2007, covers "*Bactericidal broad-spectrum penicillin*" under class 5. These goods or pharmaceutical products are similar and/or closely related to those indicated in the Respondent-Applicant's trademark application.

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

Ampicin

Opposer's mark

Ampixin

Respondent-Applicant's mark

The Opposer's evidence shows that the mark AMPICIN was derived from the generic name "*ampicillin*". Thus, while AMPICIN may have been registered, it is a suggestive mark at the most and therefore a weak mark.

Nonetheless, this Bureau finds merit in the instant opposition. The only difference between the competing marks is that the Respondent-Applicant merely replaced the letter "c" in the mark AMPICIN with the letter "x". Confusion cannot be avoided by merely adding, removing or changing some letters of a registered mark. Confusingly similarity exists when there is such a close or ingenuous imitation as to be calculated to deceive ordinary persons, or such resemblance to the original as to deceive ordinary purchaser as to cause him to purchase the one supposing it to be the other.⁶ Colorable imitation does not mean such similitude as amounts to identity, nor does it require that all details be literally copied. Colorable imitation refers to such similarity in form, context, words, sound, meaning, special arrangement or general appearance of the trademark or tradename with that of the other mark or tradename in their over-all presentation or in their essential, substantive and distinctive parts as would likely to mislead or confuse persons in their ordinary course of purchasing genuine article.⁷

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

⁶ *Societe Des Produits Nestle, S.A. V. Court of Appeals*, G.R. No. 112012, 4 April 2011, 356 SCRA 207, 217

⁷ *Emerald Garment Manufacturing Corp. V. Court of Appeals*, G.R. No. 100098 29 Dec. 1995.

Succinctly, AMPIXIN sounds practically identical to AMPICIN. Trademarks are designed not only for the "consumption" of the eyes, but also to appeal to the other senses, particularly the faculty of hearing. And where goods are advertised over the radio, similarity in sound is of especial significance⁸ sound is sufficient ground to rule that two competing marks are confusingly similar.⁹ The likelihood of confusion is underscored by the fact that the competing marks are used on similar and/or closely related goods or pharmaceutical products.

It is stressed that the Respondent-Applicant was given the opportunity to explain its side and to defend its trademark application. However, it failed and/or chose not to do so.

Accordingly, the Respondent-Applicant's trademark application 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. 4-2010-012790 be returned, together with a copy of this Decision, to the Bureau of Trademark (BOT) for information and appropriate action.

SO ORDERED.

Taguig City, 31 July 2014.


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

⁸ *Co Tiong Sa v. Director of Patents*, G.R. No. L-5378, 24 May 1954.

⁹ *Marvex Commercial Co. Inc. v. Petra Hawpia & Co and the Director of Patents*, G.R. No. L-19297, 22 December