



WESTMONT PHARMACEUTICALS, INC.,
Opposer,

-versus-

CHAMPION INTERLINK GROUP CORP.,
Respondent- Applicant.

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}
} IPC No. 14-2011-00076
} Opposition to:
} Appln. Serial No. 4-2010-009248
} Date Filed: 29 August 2010
} TM: "AMPIBAC"
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}

NOTICE OF DECISION

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66 United Street
Mandaluyong City

CHAMPION INTERLINK GROUP CORP.
Respondent-Applicant
165 Don Manuel Agregado Street
Quezon City

GREETINGS:

Please be informed that Decision No. 2014 - 246 dated October 10, 2014 (copy enclosed) was promulgated in the above entitled case.

Taguig City, October 10, 2014.

For the Director:

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



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 Opposition to:
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 Date Filed : 29 August 2010
 Trademark: "AMPIBAC"
 Decision No. 2014 - 246

DECISION

WESTMONT PHARMACEUTICALS, INC., ("Opposer")¹ filed an opposition to Trademark Application Serial No. 4-2010-009248. The application, filed by CHAMPION INTERLINK GROUP CORP., ("Respondent-Applicant")², covers the mark "AMPIBAC" for use on "antibiotic" under class 05 of the International Classification of Goods and Services³.

The Opposer alleged the grounds for this Opposition as follows:

"1. The trademark 'AMPIBAC' so resembles 'AMPIMAX' trademark owned by oppose, registered with this Honorable Office prior to the publication for opposition of the mark 'AMPIBAC'. The trademark 'AMPIBAC', which is owned by Respondent, will likely cause confusion, mistake and deception on the part of the purchasing public, most especially considering that the opposed trademark 'AMPIBAC' is applied for the same class of goods as that of trademark 'AMPIMAX', i.e. Class (5); anti-biotic.

"2. The registration of the trademark 'AMPIBAC' in the name of the Respondent will violate Sec. 123 of Republic Act No. 8293, otherwise known as the 'Intellectual Property Code of the Philippines', x x x.

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.

"3. Respondent's use and registration of the trademark 'AMPIBAC' will diminish the distinctiveness and dilute the goodwill of Opposer's trademark 'AMPIMAX'.

"4. Opposer, the owner of the trademark 'AMPIMAX', is engaged in the marketing and sale of a wide range of pharmaceutical products. The Trademark Application for the trademark 'AMPIMAX' was filed with the Intellectual Property Office on 42 July 2008 by Opposer and was approved for registration on 17 November 2008 and valid for a period of ten (10) years. Hence, the registration of the 'AMPIMAX' trademark subsists and remains valid to date. x x x

"5. The trademark 'AMPIMAX' has been extensively used in commerce in the Philippines.

¹ A domestic corporation duly organized and existing under the laws of the Philippines with office address at 4th Floor, Bonaventure Plaza, Ortigas Avenue, Greenhills, San Juan City.
² With registered address at 165 Don Manuel Agregado Street, Quezon City.
³ The Nice Classification of goods and services is for registering trademark and service marks, based on a 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.

x x x

“6. There is no doubt that by virtue of the above-mentioned Certificate of Registration, the uninterrupted use of the trademark ‘AMPIMAX’, and the fact that they are well known among consumers, the Opposer has acquired an exclusive ownership over the ‘AMPIMAX’ marks to the exclusion of all others.

“7. ‘AMPIBAC’ is confusingly similar to ‘AMPIMAX’.

x x x

“8. Moreover, Opposer’s intellectual property right over its trademark is protected under Section 147 of Republic Act No. 8293, otherwise known as the Philippine Intellectual Property Code (‘IP Code’) x x x

“9. To allow Respondent to continue to market its products bearing the ‘AMPIBAC’ mark undermines Opposer’s right to its marks. As the lawful owner of the mark ‘AMPIMAX’, Opposer is entitled to prevent the Respondent from using a confusingly similar mark in the course of trade where such would likely mislead the public.

x x x

“10. By virtue of Opposer’s prior and continued use of the trademark ‘AMPIMAX’, the same have become well-known and established valuable goodwill to the consumers and the general public as well. The registration and use of Respondent’s confusingly similar trademark on its goods will enable the latter to obtain benefit from Opposer’s reputation, goodwill and advertising and will tend to deceive and/or confuse the public into believing that Respondent is in any way connected with the Opposer.

“11. Likewise, the fact that Respondent seeks to have its mark ‘AMPIBAC’ registered in the same class (Nice Classification 5) as the trademark ‘AMPIBAC’ of Opposer will undoubtedly add to the likelihood of confusion among the purchasers of these two goods.”

The Opposer submitted the following evidence marked as Exhibits “A” to “E”:

1. Pertinent pages of the IPO E-Gazette showing trademarks published for opposition;
2. Certificate of Registration for the trademark AMPIMAX;
3. Declaration of Actual Use of trademark AMPIMAX;
4. Sample packaging of AMPIMAX; and,
5. Certificate of Product Registration.

This Bureau issued and served upon the Respondent-Applicant a Notice to Answer on 11 May 2011. Respondent-Applicant however, did not file an answer. Thus, this instant case is submitted for decision.

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

The instant opposition is anchored on Section 123.1 paragraph (d) of the IP Code which provides that a mark cannot be registered if it is identical with a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date, in respect of the same goods or services or closely related goods or services or if it nearly resembles such mark as to be likely to deceive or cause confusion.

The records and evidence show that at the time the Respondent-Applicant filed its trademark application on 23 August 2010, the Opposer has already an existing trademark registration for the mark AMPIMAX bearing Registration No. 4-2008-008886 issued on 17 November 2008.⁴ This registration covers “antibiotic pharmaceutical preparation” under Class 5. Hence, the competing marks are used on similar goods.

Nevertheless, it is unlikely that the coexistence of the marks will cause confusion, much less deception, among the public. The competing marks are reproduced as follows:

Ampimax™

Opposer’s mark

AMPIBAC

Respondent-Applicant’s mark

The similarities between the marks are the first two syllables “AM” and “PI”, and the number of letters involved. These however, are not sufficient to conclude the resemblance between the two marks. The ending syllables of the mark, “MAX” and “BAC”, respectively, differ from each other both in spelling and pronunciation. Thus, the marks produce distinct sounds, which can never be mistaken from each other.

The common syllables “AM” and “PI” when joined is obviously derived from “AMPICILLIN” which is a generic name for antibiotics, and a common ingredient in the contending marks.⁵ A trademark that contains the syllables “AM” and “PI” and used as antibiotic, therefore, gives away or tells the consumers the goods or services, and/or the kind, nature, use of purpose thereof.

Succinctly, what easily comes to the mind when one sees or hears a mark or brand name for antibiotic drugs of which the syllables “AM” and “PI” are part of, is the very concept or idea of the goods. What will set apart or distinguish such mark from another mark which also includes the same used for the same treatment, are letters and/or syllables that follows it. In this instant case, it is very unlikely that a consumer will be mislead or confused into believing that the Respondent-Applicant’s goods came or originated from or connected to or associated with the Opposer’s. The Respondent-Applicant’s mark ends with the syllable “BAC” which is different, visually and aurally, from “MAX” in the Opposer’s mark.

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

Moreover, taking into account the similarity between the competing marks, sustaining the instant opposition would have the unintended effect of giving the Opposer the exclusive right to use the syllables “AM” and “PI”, which evidently and sufficiently describes the pharmaceutical goods involved, i.e. antibiotic drug.

⁴ Exhibit “B” of Opposer.

⁵ Exhibit “D” and Filewrapper Records.

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

WHEREFORE, premises considered, the instant opposition is hereby **DISMISSED**. Let the filewrapper of Trademark Application Serial No. 4-2010-009248 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 10 October 2014.


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