



WESTMONT PHARMACEUTICALS, INC.,
Opposer,

-versus-

PT. DEXA MEDICA,
Respondent- Applicant.

X-----X

IPC No. 14-2011-00204
Opposition to:
Appln. Serial No. 4-2010-013110
Date Filed: 02 December 2010
TM: "CARDIBLOCK"

NOTICE OF DECISION

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GREETINGS:

Please be informed that Decision No. 2014 - 237 dated September 29, 2014 (copy enclosed) was promulgated in the above entitled case.

Taguig City, September 29, 2014.

For the Director:

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


CERTIFIED TRUE COPY
DATE: OCT 03 2014
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IPRS IV
Bureau of Legal Affairs



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IPC No. 14-2011-00204
 Opposition to:
 Appln. Serial No. 4-2010-013110
 Date Filed : 02 December 2010
 Trademark: "CARDIBLOK"
 Decision No. 2014 - 237

DECISION

WESTMONT PHARMACEUTICALS, INC., ("Opposer")¹ filed an opposition to Trademark Application Serial No. 4-2010-013110. The application, filed by PT. DEXA MEDICA, ("Respondent-Applicant")², covers the mark "CARDIBLOK" for use on "pharmaceutical products, medicine or preparation for treating congestive heart failure" under class 05 of the International Classification of Goods and Services³.

The Opposer alleged the grounds for this Opposition as follows:

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

"8. The mark 'CARDIBLOK' will likely cause confusion, mistake and deception on the part of the purchasing public, most especially considering that the opposed mark 'CARDIBLOCK' is applied for the same class and goods as that of Opposer's trademark 'CALCIBLOC', i.e. Class 05 of the International Classification of Goods as medicinal preparation used for the treatment of heart disease.

"9. The registration of the mark 'CARDIBLOK' in the name of the Respondent-Applicant will violate Sec. 123 of the IP Code, which provides, in part, that 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;

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

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 A foreign corporation with office address at Jalan Jenderal Bambang Utuyo 138, Palembang 30115, Indonesia.
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.

resembles a registered mark that confusion or deception in the mind of the purchasers will likely result.”

The facts are alleged in summary:

- “10. Opposer is the registered owner of the trademark ‘CALCIBLOC’.
- “11. The trademark ‘CALCIBLOC’ has been extensively used in commerce in the Philippines.
- “12. The registration of Respondent-Applicant’s mark ‘CARDIBLOK’ will be contrary to Section 123.1 (d) of the IP Code. ‘CARDIBLOK’ is confusingly similar to Opposer’s trademark ‘CALCIBLOC’.
- “13. To allow Respondent-Applicant to continue to market its products bearing the mark ‘CARDIBLOK’ undermines Opposer’s right to its trademark ‘CALCIBLOC’. As the lawful owner of the trademark ‘CALCIBLOC’, oppose is entitled to prevent the Respondent-Applicant from using a confusingly similar mark in the course of trade where such would likely mislead the public.
- “14. By virtue of Opposer’s prior and continued use of the trademark ‘CALCIBLOC’, 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-Applicant’s confusingly similar mark ‘CARDIBLOK’ on its goods will enable the latter to obtain benefit from Opposer’s reputation and goodwill and will tend to deceive and/or confuse the public into believing that Respondent-Applicant is in any way connected with Opposer.
- “15. In case of grave doubt, the rule is that, ‘as between a newcomer who by confusion has nothing to lose and everything to gain and one who by honest dealing has already achieved favour with the public, any doubt should be resolved against the newcomer inasmuch as the field from which he can select a desirable trademark to indicate the origin of his product is obviously a large one.
- “16. Respondent-Applicant’s use of the mark ‘CARDIBLOK’ in relation to any of the goods covered by the opposed application, if these goods are considered not similar or closely related to the goods covered by Opposer’s trademark ‘CALCIBLOC’, will take unfair advantage of, dilute and diminish the distinctive character or reputation of the latter mark. Potential damage to Opposer will be caused as a result of its inability to control the quality of the products put on the market by Respondent-Applicant under the mark ‘CARDIBLOK’.”

The Opposer submitted the following evidence marked as Exhibits “A” to “G” inclusive of submarkings:

1. Pertinent pages of the IPO E-Gazette;
2. Certificate of Registration No. 48810 for the trademark CALCIBLOC;
3. Assignment of Registered Trademark CALCIBLOC;
4. Petition for Renewal of Registration for the trademark CALCIBLOC;
5. Notice of Allowance (Renewal) for the trademark CALCIBLOC;
6. Affidavit of Use filed on 11 August 1995;
7. Affidavit of Use for 10th Anniversary;
8. Affidavit of Use for 15th Anniversary;
9. Sample packaging of CALCIBLOC;
10. Certification from IMS Health Philippines, Inc.; and,

11. Certificate of Product Registration.

This Bureau issued and served upon the Respondent-Applicant a Notice to Answer on 24 June 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 CARDIBLOK?

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 02 December 2010, the Opposer has already an existing trademark registration for the mark CALCIBLOC bearing Registration No. 48810 issued on 03 August 1990.⁴ It was renewed on 04 February 2011.⁵ The registration covers “medicinal preparations indicated for prophylaxis and treatment of angina, myocardial infraction and all forms of hypertension” under Class 5. Hence, the competing marks are used on similar and related goods.

The competing marks are reproduced as follows:

CARDIBLOK

Opposer's mark

Calcibloc

Respondent-Applicant's mark

This Bureau finds the competing marks confusingly similar. The beginning and middle syllables, “CARDI” of Opposer and “CALCI” of Respondent-Applicant, contain the same letters “C”, “A” and “I”. Moreover, the respective suffixes “BLOK” of Opposer and “BLOC” of Respondent-Applicant create the same sound when pronounced, despite the different ending letters “K” and “C”. What set apart the trademarks is the middle consonants “R” and “D” which however, do not produce a comparatively distinctive sound. In the entirety, the contending marks create both visual and aural similarity especially because the identical letters create a sound very similar when pronounced. Under the idem sonans rule, two trademarks used on identical or related goods may be confusingly similar if they have similar sound or pronunciation.⁶

⁴ Exhibit “B” of Opposer.

⁵ Exhibit “D-1” of Opposer.

⁶ Sapolin Co. vs. Balmaceda, 67 Phil. 795 (1939).

Confusion cannot be avoided by merely adding, removing or changing some letters of a registered mark. Confusing 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.⁷ Colorable imitation does not mean such similitude as amount to identify, 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 the ordinary course of purchasing the genuine article.⁸

Also, considering the similarity and relatedness of goods carried by the contending marks, the consumers will have the impression that these products originate from a single source or origin or they are associated with one another. The likelihood of confusion therefore, would subsist not only on the purchaser's perception of goods but on the origins thereof as held by the Supreme Court.⁹

Callman notes two types of confusion. The first is the confusion of goods in which event the ordinarily 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. Hence, 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.

It is emphasized that 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 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.¹⁰ The trademark applied for registration by the Respondent-Applicant does not meet this function.

The Respondent-Applicant in the instant opposition was given the opportunity to explain its side and to defend its trademark application. However, it failed 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. 4-2010-013110 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 29 September 2014.


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

⁷ Societe Des Produits Nestle, S.A. v. Court of Appeals, G.R. No. 112012, 04 April 2001, 356 SCRA 207, 217.

⁸ Emerald Garment Manufacturing Corp. V. Court of Appeals, G.R. No. 100098, 29 December 1995.

⁹ Converse Rubber Corporation v. Universal Rubber Products, Inc., et al., G.R. No. L-27906, 08 January 1987.

¹⁰ Pribhdas J. Mirpuri v. Court of Appeals, G.R. No. 114508, 19 Nov. 1999.