



WESTMONT PHARMACEUTICALS INC.,
Opposer,

-versus-

ZUETICA, INC.,
Respondent-Applicant.

}
} IPC No. 14-2011-00059
} Opposition to:
} Appln No. 4-2010-006159
} Filing Date: 08 June 2010
} TM: "CARDIOSAR"
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NOTICE OF DECISION

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Mandaluyong City


ZUETICA, INC.
Respondent-Applicant
Unit 110 Regalia Park Towers
P. Tuazon, Cubao, Quezon City

GREETINGS:

Please be informed that Decision No. 2015 - 04 dated January 20, 2015 (copy enclosed) was promulgated in the above entitled case.

Taguig City, January 20, 2015.

For the Director:


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



WESTMONT PHARMACEUTICALS INC.,
Opposer,

IPC No. 14-2011-00059
Opposition to:

- versus -

Appln. Serial No. 4-2010-006159
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ZUETICA, INC.,
Respondent-Applicant.

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Decision No. 2015- 04

DECISION

WESTMONT PHARMACEUTICALS INC. ("Opposer")¹, filed an opposition to Trademark Application Serial No. 4-2010-006159. The application, filed by ZUETICA, INC. ("Respondent-Applicant")², covers the mark "CARDIOSAR" for use on "*pharmaceutical preparations-Losartan*" under Class 5 of the International Classification of Goods and Services³.

The Opposer alleges that CARDIOSAR is confusingly similar to its registered mark CARDIOSEL (Reg. No. 049298, issued on 30 October 1990). According to the Opposer, the registration of CARDIOSAR in favour of the Respondent-Applicant will violate Sec. 123.1(d) of Rep. Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code"). To support its opposition, the Opposer submitted as evidence the print-out of the "IPO e-Gazette" showing among other things, the publication Respondent-Applicant's trademark application, a copy of Certificate of Reg. No. 049298, a copy of the print-out of the webpage showing the "on-line verification status" of the mark CARDIOSEL, a sample product label of CARDIOSEL, and a copy of certificate of product registration for CARDIOSEL issued by the Bureau of Food and Drugs on 07 January 2013⁴.

The Respondent-Applicant filed its Answer on 07 June 2011, alleging, among other things, the following:

"1. Opposer claims that the registration of the mark CARDIOSAR for pharmaceutical products in the name of the Respondent will cause extreme damage and prejudice as it is confusingly similar to its product CARDIOSEL. In the Opposer's Annex 'H' referring to the Certificate of Product Registration, the generic name or active ingredient of Respondent's product sold under the mark CARDIOSAR and highlighted in the packaging is LOSARTAN. xxx

"2. It is worthy to note that the generic names or active ingredients of both products are entirely not the same. LOSARTAN (CARDIOSAR) belongs to the class of drugs called

¹ A domestic corporation duly organized and existing under Philippine laws with principal address at 4th Floor, Bonaventure Plaza, Ortigas Avenue, Greenhills, San Juan City, Philippines.

² A domestic corporation with address at Unit 110 Regalia Par Towers, P. Tuazon, Cubao, Quezon City.

³ The Nice Classification of Goods and Services is for registering trademarks and service marks based on multilateral treaty administered by the World Intellectual Property Organization, called the Nice Agreement Concerning the International Classification of Goods and Services for Registration of Marks concluded in 1957.

⁴ Marked as Annexes "A" to "H".

angiotensin receptor blockers while METOPROLOL (CARDIOSEL) is a beta-adrenergic blocking agent or beta-blocker. While both drugs may be indicated for hypertension, they have other specific indications for heart ailments separate and distinct from each other. The choice of what active ingredient to be used for specific diseases depends upon the prescribing physician.

2.1. Both METOPROLOL (CARDIOSEL) and LOSARTAN (CARDIOSAR) are prohibited to be bought, sold or dispensed without the prescription of a physician. In the prescription of drugs, it is mandated by law that a physician should always indicate first the generic name or active ingredient then followed by the brand or the mark.

2.2. Also, it is a common practice by physicians to be discriminating, prudent and cautious in prescribing medications to their patients with heart problems. The prescribing doctor has the responsibility for the clinical care of his patient and in the monitoring of the accuracy, efficacy and safety of the prescribed drugs.

2.3. There being a difference in the generic names or active ingredients of CARDIOSEL (METOPROLOL) and CARDIOSAR (LOSARTAN), including the mandate by law to put first the specific generic name or active ingredient of a drug followed by the brand or mark or a product on the prescription, the prohibition to sell, buy or dispense without prescription, and the responsibility of closely monitoring the accuracy, safety and efficacy of the drug by prescribing physician. It is certain that the buyers will not be confused, mistaken or deceived.

“3. It is very clear that the design, color and size of the packaging are far different from the packaging of the Opposer as prescribed in the opposition. Likewise, our company name as distributor of CARDIOSAR is well emphasized in the packaging. Thus, confusion and mistakes are unlikely to occur.

“4. It should be noted that ‘CARDIO’ on ‘CARDIOSAR’ has been taken from the prefix of Greek origin ‘kardio’ meaning heart (CARDIO) and such prefix is commonly used not only in the Philippines but also all over the world to start any words relating to the heart or cardia (ostium cardiacum) and ‘SAR’ is derived from the second syllable of the active ingredient LOSARTAN.”

The Respondent-Applicant’s evidence consists of the affidavit of its marketing manager Rolando A. Raypon, and a photocopy of the product packaging bearing the mark CARDIOSAR.⁵

Should the Respondent-Applicant be allowed to register the mark CARDIOSAR?

Records show that when the Respondent-Applicant filed its trademark application on 8 June 2010, the Opposer already has an existing registration for the mark CARDIOSEL, particularly, Reg. No. 049298. This registration covers “*cardiovascular preparations*” under Class 5. The Respondent-Applicant itself admitted in its Answer that “*LOSARTAN (CARDIOSAR) belongs to a class of drugs called angiotension receptor blocker*”. Thus, the goods or pharmaceutical products indicated in the Respondent-Applicant’s trademark application are similar and/or closely related to those covered by the Opposer’s trademark registration.

But, are the parties’ respective marks resemble each other such that confusion or mistake, or even deception is likely to occur?

⁵ Marked as Annexes “1” and “2”.

There is no doubt that the prefix "CARDIO" is derived from the Greek word "Kardia" meaning heart. Obviously, CARDIS in the Opposer's mark is derived from or inspired by the word "cardio" which relates to the heart and the human body's circulatory system. Pharmaceutical products under the brands or trademarks starting with the syllable or prefix "cardio" are indicative of the illnesses or diseases on which the products are applied to, that is cardio-vascular or heart related ailments. In this regard, the Trademark Registry, the contents of which this Bureau can take cognizance of via judicial notice, is replete with registered marks that start or contain the prefix "cardio" such as Cardioten (Reg.No.11849), Cardiovist (Reg. No. 3925), and Cardiotect (Reg. No. 12872). These registered marks are owned by entities other than the Opposer. Hence, this Bureau cannot sustain the opposition solely on the ground that the competing marks both start with the prefix "CARDIO". To do so would have the unintended effect of giving the Opposer exclusive use of the prefix "CARDIO". To determine whether two marks that start or contain the prefix "CARDIO" are confusingly similar, there is a need to examine the other letters or components of the marks.

In this regard, when the syllable "SAR" is appended to the prefix "CARDIO", the resulting mark (CARDIOSAR) when pronounced can hardly be distinguished from the Opposer's. Confusion is likely in this instance. The Supreme Court has held that similarity of sound is a sufficient ground to rule that two marks are confusingly similar.⁶ Corollarily, 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 other⁷. Colorable imitation does not mean such similitude as amounts 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 article⁸.

Succinctly, because the Respondent-Applicant will use or uses the mark on goods or products that are similar and/or closely related to those covered by the Opposer's registered trademark, there is the likelihood that information, assessment, perception or impression about CARDIOSAR products may unfairly cast upon or attributed to the CARDIOSEL products and/or Opposer, and *vice-versa*.

It is emphasized that the essence of trademark registration is to give protection to the owners of trademark. The function of the 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 This Bureau finds that the mark applied for registration by the Respondent-Applicant would not serve this function.

WHEREFORE, premises considered, the instant Opposition is hereby **SUSTAINED**. Let the file wrapper of Trademark Application Serial No. 4-2010-006159 be

⁶ *Marvex Commercial Co., Inc. v. Petra Hawpia & Co. and the Director of Patents*, G.R. No.L-9297, 22 Dec. 1966.

⁷ *Societe Des Produits Nestle, S.A v. Court of Appeals*, G.R. No.112012, 4 April 2001, 356 SCRA 207, 217.

⁸ *Emerald Garment Manufacturing Corp. v. Court of Appeals*. G.R. No. 100098, 29 Dec. 1995.

⁹ *Pribhdas J. Mirpuri v. Court of Appeals*, G.R. No. 114508, 19 Nov. 1999.

returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 20 January 2015.


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