



PEDIATRICA, INC.,
Opposer,

-versus-

REALVET INCORPORATED,
Respondent-Applicant.

} **IPC No. 14-2013-00155**
} Opposition to:
} Application No.4-2012-011537
} Date filed: 19 September 2012
} **TM: "MYCOFERM"**
}
}
}
}
}
}
}

X-----X

NOTICE OF DECISION

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

REALVET INCORPORATED
Respondent-Applicant
Realvet Corporate Building
Caltex Road, A-Pool
Sta Rita, Batangas

GREETINGS:

Please be informed that Decision No. 2015 - 24 dated March 10, 2015 (copy enclosed) was promulgated in the above entitled case.

Taguig City, March 10, 2015.

For the Director:

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



PEDIATRICA INC.,
Opposer,

-versus-

REALVET INCORPORATED,
Respondent-Applicant.

IPC No. 14-2013-00155
Opposition to Trademark
Application No. 4-2012-011537
Date Filed: 19 September 2012
Trademark: **"MYCOFERM"**

X ----- X

Decision No. 2015- 24

DECISION

Pediatrica Inc.¹ ("Opposer") filed an opposition to Trademark Application Serial No. 4-2012-011537. The contested application, filed by Realvet Inc.² ("Respondent-Applicant"), covers the mark "MYCOFERM" for use on "*veterinary product*" under Class 05 of the International Classification of Goods³.

The Opposer anchors its opposition on Section 123.1 (d) of Republic Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code"). It contends that the Respondent-Applicant's applied mark "MYCOFERM" appears and sounds almost the same as its own mark "MYCODERM" for the following reasons:⁴

13.1.6.1. Respondent-Applicant's mark 'MYCOFERM' appears and sounds almost the same as Opposer's trademark 'MYCODERM'.

13.1.6.2. The first four letter and the last three letter of Opposer's trademark 'MYCODERM' are exactly the same with Respondent-Applicant's mark 'MYCOFERM'.

13.1.6.3. Both marks are composed of three (3) syllables.

13.1.6.4. Both marks are composed of eight (8) letters.

13.1.6.5. Respondent-Applicant merely changed the fifth letter of Opposer's trademark 'MYCODERM' from letter 'D' to letter 'F' in arriving at Respondent-Applicant's mark 'MYCOFERM'."

In support of its Opposition, the Opposer submitted the following as evidence are the copy of the IPO E-Gazette page wherein the Respondent-Applicant's mark was published for opposition and the certified true copy of the acknowledgement receipt for trademark application of "MYCODERM".⁵

¹ A domestic corporation duly organized and existing the laws of the Philippines, with office address at 3rd Floor, Bonaventure Plaza, Ortigas Avenue, Greenhills, San Juan City, Metro Manila, Philippines.

² With known address at Realvet Corporate Building, Caltex Road, A-Pool, Sta. Rita, Batangas City, Batangas, Philippines.

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 See Verified Opposition, pp. 7-8.

⁵ Marked as Exhibits "A" to "B".

This Bureau issued a Notice to Answer and served a copy thereof upon the Respondent-Applicant on 30 April 2013. The Respondent-Applicant, however, did not file an Answer. Accordingly, the Hearing Officer issued on 16 October 2103 Order No. 2013-1426 declaring the Respondent-Applicant in default and submitting the case for decision.

Section 123.1 (d) of R.A. No. 8293, also known as the Intellectual Property Code ("IP Code") provides that:

"Section 123.1. A mark cannot be registered if it:

xxx

(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"

Records reveal that the Opposer filed an application for its mark "MYCODERM" as early as 30 March 2012. On the other hand, the Respondent-Applicant filed its application for the contested mark "MYCOFERM" only on 19 September 2012.

The question is whether the competing marks, as shown below, are confusingly similar:

MYCODERM

Opposer's mark

MYCOFERM

Respondent-Applicant's mark

The Respondent-Applicant's mark is almost identical to the Opposer's. The letter "D" in the Opposer's mark is simply replaced with the letter with "F" in the Respondent-Applicant's. As such, the competing marks look and sound alike. 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 purchased as to cause him to

purchase the one supposing it to be the other.⁶ Aptly, the Supreme Court held in the case of **Del Monte Corporation vs. Court of Appeals**⁷, thus:

"The question is not whether the two articles are distinguishable by their label when set side by side but whether the general confusion made by the article upon the eye of the casual purchaser who is unsuspecting and off his guard, is such as to likely result in his confounding it with the original. As observed in several cases, the general impression of the ordinary purchaser, buying under the normally prevalent conditions in trade and giving the attention such purchasers usually give in buying that class of goods is the touchstone."

Moreover, it is settled that the likelihood of confusion would not extend not only as to the purchaser's perception of the goods but likewise on its origin. 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*: "Here 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 the belief that there is some connection between the plaintiff and defendant which, in fact, does not exist."⁸

It may be argued that the Opposer's trademark pertains to "*topical corticosteroid*" while the Respondent-Applicant's mark covers "*veterinary product*". However, the resemblance between the marks could result into one committing mistake in the dispensation or application of the products. The likelihood of confusion, mistake and/or deception poses dangerous risks and tragic consequences in the health and safety of the consumers as "MYCOFERM" is not intended for human consumption.

Finally, 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 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 Respondent-Applicant's trademark fell short in meeting this function.

⁶ Societe des Produits Nestle, S.A. vs. Court of Appeals, GR No. 112012, 04 April 2001.

⁷ G.R. No. L-78325, 25 January 1990.

⁸ Societe des Produits Nestle, S.A. vs. Dy, G.R. No. 1772276, 08 August 2010.

⁹ Pribhdas J. Mirpuri vs. Court of Appeals, G.R. No. 114508, 19 November 1999.

Accordingly, this Bureau finds and concludes that 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. 4-2012-011537 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 10 March 2015.


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