



**BAYER INTELLECTUAL PROPERTY GMBH,**  
Opposer,

**-versus-**

**RODORA R. JIMENEZ,**  
Respondent-Applicant.

X-----X

} **IPC No. 14-2014-00319**  
}  
} Opposition to:  
} Application No. 4-2014-000912  
} Date filed: 22 January 2014  
} **TM: "RAVIN PROTECT MOSQUITO**  
} **REPELLANT"**  
}

**NOTICE OF DECISION**

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Pasig City

**RODORA R. JIMENEZ**  
Respondent-Applicant  
2257 C. Bornay Street  
Kalawaan, Pasig City

**GREETINGS:**

Please be informed that Decision No. 2015 - 63 dated April 21, 2015 (copy enclosed) was promulgated in the above entitled case.

Taguig City, April 21, 2015.

For the Director:

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



**BAYER INTELLECTUAL  
PROPERTY GMBH,**  
Opposer,

- versus -

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x ----- x

IPC No. 14-2014-00319

Opposition to:

Appl. No. 4-2014-000912

Date Filed: 22 January 2014

Trademark: "**RAVIN PROTECT  
MOSQUITO REPELLANT**"

Decision No. 2015 - 63

### DECISION

BAYER INTELLECTUAL PROPERTY GMBH ("Opposer"),<sup>1</sup> filed a verified opposition to Trademark Application Serial No. 4-2014-000912. The application, filed by RODORA R. JIMENEZ ("Respondent-Applicant")<sup>2</sup>, covers the mark "RAVIN PROTECT MOSQUITO REPELLANT" for use on "*insect repellants*" under class 05 of the International Classification of Goods<sup>3</sup>.

The following are the grounds of the opposition:

"1. Opposer is the assignee of Bayer AG, the originator, true owner and first user of the trademark LARVIN, which is an internationally-known mark used on preparations for killing weed and destroying vermin, insecticides, herbicides and fungicides, belonging to International Class 5 of the Nice Classification. The mark LARVIN, Reg. No. 4-2005-007346 had already been assigned by Bayer AG to the Opposer.

"2. Bayer AG has adopted and continuously used the same in the Philippines since 2005 up to the present. It has already developed an exceedingly valuable goodwill worldwide on the mark LANVIN, and the Opposer therefore, has every right to exclude others, such as the respondent-applicant from registering or using a similar mark in the Philippines, more so if such use is made on the same goods.

"3. The filing of the application for RAVIN PROTECT MOSQUITO REPELLANT, Appl. No. 4-2014-000912 under Class 5 by the respondent-applicant will cause confusion on the part of the consumers or purchasers as it tends to create an impression that its products originate from the Opposer. Confusion as to the respondent-applicant's affiliation, connection or association with the Opposer is likewise probable, considering that its mark is similar to the Opposer's mark.

"4. The registration of the trademark RAVIN PROTECT MOSQUITO REPELLANT, Appl. No. 4-2014-000912 under Class 5, in the name of the respondent-applicant will cause irreparable damage and injury to the petitioner within the contemplation of Section 134 of Republic Act 8293, otherwise known as the New Intellectual Property Code of the Philippines.

<sup>1</sup> A corporation duly organized and existing under the laws of the Federal Republic of Germany with business address at Alfred-Nobel-STR, 1040789 Monheim am Rhein, Germany.

<sup>2</sup> With business address at 2257 C. Bornay St., Kalawaan, Pasig City.

<sup>3</sup> The Nice Classification is a classification of goods and services for the purpose of registering trademark and service 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.

"Opposer will rely on the following facts:

"1. Opposer is the subsidiary of Bayer AG, a global enterprise with core competencies in the fields of health care, nutrition and high-tech materials. Its products and services are designed to benefit people and improve their quality of life. In the field of health care, it is a leading developer and manufacturer of various pharmaceutical preparations for disease prevention, diagnosis and treatment.

"2. Bayer AG is the originator, owner and first user of the mark LARVIN for insecticides under Class 5. It has obtained various certificates of registration for the said mark worldwide.

"3. In the Philippines, the trademark application for LARVIN was filed by Bayer AG with the Intellectual Property Office (IPO) on August 2, 2005. Thereafter, Certificate of Registration No. 4-2005-007346 was issued by the IPO on November 19, 2007 for preparations for killing weeds and destroying vermin. insecticides, herbicides and fungicides under Class 5.

To maintain its protection over the mark, BAYER AG filed the 3rd Year and 5th Year Declarations of Actual Use at the IPO on June 25, 2008 and September 25, 2013, respectively.

x x x

"5. Opposer's mark can be considered as a well-known mark within the contemplation of the law. For a mark to be accorded 'well-known status', it is a requirement that the mark must be considered by competent authority in the Philippines to be well-known not only in the international market but in the Philippines as well. Bayer AG launched its products for insecticides for LARVIN in various jurisdictions starting 1980. Its products were commercially launched in the Philippines in 2005. Today, LARVIN is an internationally known brand of preparations for killing weed and destroying vermin, insecticides, herbicides and fungicides.

"6. Admittedly, Opposer's mark is well-known internationally and in the Philippines. The mark's well-known status in the Philippines was due to the bonafide commercial sale of LARVIN products in the domestic market since 2005. Bayer AG had invested a considerable amount in promoting, advertising and marketing its preparations bearing the mark LARVIN in the Philippines through the years.

"7. Opposer's products have likewise been advertised significantly in the internet at Opposer's website: [www.bayer.com](http://www.bayer.com), easily accessible to Filipino consumers, and are listed for sale in various websites.

"8. There is really no issue as to priority of use. Bayer AG has been using the mark LARVIN in commerce long before respondent-applicant filed its application for RAVIN PROTECT MOSQUITO REPELLANT with the IPO on January 22, 2014. Due to Opposer's tremendous efforts, considerable advertising and promotional activities, and of course the superior quality of its LARVIN products, Opposer has already established and gained a valuable reputation on the aforesaid mark.

"9. A close perusal of the two mark would readily show that respondent-applicant's mark is deceptively similar to Opposer's mark. Thus, respondent-applicant's mark would indubitably create confusion or deceive purchasers as to the actual source or origin of its goods to such extent that the respondent-applicant's goods may be mistaken by the unwary public as related to the products manufactured and sold by Opposer.

"10. Purchases are likely to consider the goods of the respondent-applicant under the mark RAVIN PROTECT MOSQUITO REPELLANT, as emanating from the Opposer and on the basis thereof purchase respondent-applicant's goods, which would eventually lead to Opposer's loss of sales. The purchasing public has come to know, rely upon, recognize and depend on the superior

quality of the Opposer's products bearing the mark LARVIN. Any defect or fault that can be found on respondent-applicant's products under the similar mark would injure the valuable goodwill and reputation which the Opposer has long established for its LARVIN products."

The Opposer's evidence consists of the following:

1. Exhibit "A" - Deed of Assignment by Bayer AG to Opposer;
2. Exhibit "B" - Letter request for recordal of the assignment at the IPO;
3. Exhibit "C" - List of trademark portfolio of Bayer AG for LARVIN in Class 5;
4. Exhibit "D" - Certificate of Registration No. 4-2005-007346 for LARVIN issued date on 19 November 2007;
5. Exhibit "E" - 3rd Year Declaration of Actual Use;
6. Exhibit "F" - 5th Year Declaration of Actual Use; and,
7. Exhibit "G" - Certificate of Authentication of Special Power of Attorney.

This Bureau issued and served upon the Respondent-Applicant a Notice to Answer on two successive dates, 03 November 2014 and 30 November 2014. Respondent-Applicant however, did not file an answer. Thus, this case is deemed submitted for decision on the basis of the opposition and evidence of the Opposer.

Should Respondent-Applicant be allowed to register the trademark RAVIN PROTECT MOSQUITO REPELLANT?

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

A mark cannot be registered if it:

x x x

(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;

The records and evidence show that at the time the Respondent-Applicant filed its trademark application for RAVIN PROTECT MOSQUITO REPELLANT on 22 January 2014,<sup>4</sup> the Opposer has already an existing trademark registration for the mark LARVIN bearing Registration No. 4-2005-007346 issued on 19 November 2007, which was filed on 02 August 2005<sup>5</sup>. Unquestionably, the Opposer's application and registration preceded that of Respondent-Applicant's. Further, a scrutiny of the goods covered by the mentioned marks show the commonality in the pharmaceutical products covered by the marks in classification no. 5. Opposer's LARVIN covers preparations for killing weeds and destroying vermin, *insecticides*, herbicides, fungicides; whereas the Respondent-Applicant's RAVIN PROTECT covers *insect-repellants*. It appears that they are pharmaceutical products intended for related purpose.

The competing marks are hereby reproduced for comparison:

<sup>4</sup> Filewrapper records.  
<sup>5</sup> Exhibit "D" of Opposer.



Opposer's Trademark



Respondent-Applicant's Trademark

The trademark applied for registration by the Respondent-Applicant contains the word RAVIN. This is the feature of the Respondent-Applicant's mark that makes it distinctive. The other words and parts of the mark, including the word "PROTECT" and "MOSQUITO Repellant" are descriptive, or at most suggestive of the goods covered by the trademark application. In this regards, RAVIN looks, much more sounds, like LARVIN.

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.<sup>6</sup> 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.<sup>7</sup>

Succinctly, because the coverage of the Respondent-Applicant's trademark application would allow using the mark RAVIN PROTECT on goods or pharmaceutical products that are already dealt in by the Opposer using the mark LARVIN, the changes in spelling did not diminish the likelihood of the occurrence of mistake, confusion, or even deception. The contending marks have identical sounds which make it not easy for one to distinguish one mark from the other. Trademarks are designed not only for the consumption of the eyes, but also to appeal to the other senses, particularly, the faculty of hearing. Thus, when one talks about the Opposer's trademark or conveys information thereon, what reverberates is the sound made in pronouncing it. The same sound, however, is practically replicated when one pronounces the Respondent-Applicant's mark. This is the application of the *idem sonams rule* as held in the case of Sapolin Co. v. Balmaceda<sup>8</sup> which provides that confusion is likely to arise between contending marks which when pronounced sounds alike.

It is stressed that the determinative factor in a contest involving trademark registration is not whether the challenged mark would actually cause confusion or deception of the purchasers but whether the use of such mark will likely cause confusion or mistake on the part of the buying public. To constitute an infringement of an existing trademark, the law does not require that the competing

<sup>6</sup> Societe Des Produits Nestle, S.A. v. Court of Appeals, G.R. No. 112012, 04 April 2001, 356 SCRA 207, 217.

<sup>7</sup> Emerald Garment Manufacturing Corp. v. Court of Appeals, G.R. No. 100098, 29 December 1995.

<sup>8</sup> 67 Phil. 795.

trademarks must be so identical as to produce actual error or mistake; it would be sufficient, for purposes of the law, that the similarity between the two labels is such that there is a possibility or likelihood of the purchaser of the older brand mistaking the newer brand for it.<sup>9</sup> The likelihood of confusion would subsist not only on the purchaser's perception of goods but on the origins thereof as held by the Supreme Court:<sup>10</sup>

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 on 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 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.

Accordingly, this Bureau finds that the Respondent-Applicant's trademark application is proscribed by Sec. 123.1 (d) of the IP Code. It must be emphasized that the Respondent-Applicant was given opportunity to defend its trademark application. It, however, failed to do so.

**WHEREFORE**, premises considered, the instant opposition is hereby **SUSTAINED**. Let the filewrapper of Trademark Application Serial No. 4-2014-000912 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City 21 April 2015.

  
**Atty. NATHANIEL S. AREVALO**  
*Director IV, Bureau of Legal Affairs*

<sup>9</sup> American Wire and Cable Co. v. Director of Patents, et al., 31 SCRA 544, G.R. No. L-26557, 18 February 1970.  
<sup>10</sup> Converse Rubber Corporations v. Universal Rubber Products, Inc. et al., G.R. No. L-27906, 08 January 1987.