



GLAXOSMITHKLINE BIOLOGICALS SA,
Opposer,

- versus -

JOHNSON & JOHNSON,
Respondent-Applicant.

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IPC No. 14-2011-00576

Opposition to:

Appln. No. 4-2011-011529

Date Filed: 23 September 2011

Trademark : "**KADRIX**"

Decision No. 2015 - 71

DECISION

GLAXOSMITHKLINE BIOLOGICALS SA, ("Opposer")¹ filed on 27 February 2012 a verified opposition to Trademark Application Serial No. 4-2011-011529. The application, filed by JOHNSON & JOHNSON ("Respondent-Applicant")², covers the mark "KADRIX" for use on goods under class 05³ namely: human pharmaceutical preparation.

The Opposer alleges the following grounds for opposition:

"1. Respondent-Applicant's trademark KADRIX nearly resembles Opposer's trademark HAVRIX registered under Philippine Trademark Registration No. 4-2003-003543 on April 14, 2005 and also used and registered for goods in the same class 05, namely 'vaccines for human use', as to be likely to deceive or to cause confusion.

1.1 Pursuant to Section 123.1 9d) of the Intellectual Property Code or R.A. 8293, a mark cannot be registered if it nearly resembles a registered mark or a mark with an earlier filing date belonging to a different proprietor.

1.2 Opposer's trademark HAVRIX, with Philippine Trademark Registration No. 060246 enjoys about eighteen (18) years of priority and seniority over Respondent-Applicant's Application No. 4-2011-011529 for KADRIX, counted from the very first filing of the trademark application for HAVRIX in March 03, 1993. Even if the priority and seniority will be reckoned from the filing of the subsequent trademark application for HAVRIX with Philippine Trademark Registration No. 4-2003-003543 in April 21, 2003. Opposer still enjoys priority and seniority over Respondent-Applicant's KADRIX mark.

1.3 Respondent-Applicant's trademark KADRIX also designates the same goods in the same class 05. While KADRIX is used for 'human pharmaceutical preparations'. Opposer's trademark HAVRIX is used for 'vaccines for human use'. This is likely to cause confusion among pharmacists and consumers.

1.4 Respondent-Applicant's trademark KADRIX is visually and aurally similar to Opposer's trademark HAVRIX. KADRIX is also similar to HAVRIX in overall impression likely to deceive or to cause confusion.

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¹ A company duly organized and existing under the laws of Belgium with business address at Rue de L'Institut 89, B-1330 Rixensart, Belgium.

² With address at One Johnson & Johnson Plaza New Brunswick New Jersey 08933, United States of America.

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.

1.5 It is clear from the foregoing that the resemblance and similarities between Opposer's trademark HARVIX and Respondent-Applicant's trademark KADRIX, and the goods for which these marks are used, are such that KADRIX is likely to deceive or to cause confusion, more specifically, where the pharmaceutical products are marketed under marks which look and sound alike.

1.6 Due to the resemblance to Opposer's trademark HAVRIX of Respondent-Applicant's trademark KADRIX, the public is likely to think that Respondent-Applicant's goods originate from Opposer. Respondent-Applicant's use of the trademark KADRIX may falsely and misleadingly suggest a connection between it and Opposer's goods on the one hand, or Respondent-Applicant and Opposer's goods bearing the trademark HAVRIX on the other hand."

The Opposer's evidence consists of the following:

1. Affidavit executed by Mr. David Butler;
2. Pages from website ww.ask.com/about/history.htm;
3. List of worldwide trademark registrations and applications for HAVRIX;
4. Certified true copy (Ctc) of Thailand trademark registration no.208869 for HAVRIX with English translation;
5. Ctc of Vietnam trademark registration no. 17348 for HAVRIX;
6. Ctc of OHIM trademark registration no. 003124526 for HAVRIX;
7. Ctc of USA trademark registration no. 1,701,341 for HAVRIX;
8. Print-out of IPO database on details of Philippine trademark registration no. 060246 for HAVRIX;
9. Print-out of IPO database on details of Philippine trademark registration no. 060246 for HAVRIX;
10. Photos of products and product packaging bearing the mark HAVRIX;
11. Product packaging and package inserts bearing the mark HAVRIX in Philippines;
12. Ctc of Product Registration No. DA-001869 for HAVRIX 720;
13. Ctc of Product Registration No. DA-002573 for HAVRIX 1440;
14. Promotional material for HAVRIX in Philippines;
15. Promotional material for HAVRIX in <http://www.gsk.com/products/vaccines/havrix/htm>;
16. Promotional material for HAVRIX in [http://www.gsksource.com/gskprm/en/US/adirect/gskprm?cmd=ProductDetail&productid=169537071 & featureKey=600574](http://www.gsksource.com/gskprm/en/US/adirect/gskprm?cmd=ProductDetail&productid=169537071&featureKey=600574);
17. Promotional material for HAVRIX in <http://www.rxlist.com/havrix-drug.htm>; and,
18. Promotional material for HAVRIX in http://home.intekom.com/pharm/smith_kb/havrix.html.

This Bureau issued and served upon the Respondent-Applicant a Notice to Answer on 14 March 2012. Respondent-Applicant however, did not file an answer. Thus, it is declared in default and this case is deemed submitted for decision.⁴

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

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

⁴ Order dated 10 December 2012.

which it is affixed; to secure to him, who has been instrumental in bringing out into the market a superior 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.⁵

Section 123.1 paragraph (d) of R.A. No. 8293, otherwise known as the Intellectual Property Code 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 if it nearly resembles such mark as to be likely to deceive or cause confusion.

Records show that the Opposer has registrations falling under Class 05 for the trademark HAVRIX dated 29 March 1995 for vaccine, veterinary and sanitary preparations and substances⁶; and another dated 14 April 2005 for vaccines for human use⁷. Respondent-Applicant, on the other hand, applied for the trademark KADRIX on 23 September 2011 for goods also under Classification 05, specifically for human pharmaceutical preparations.⁸

But, are the contending marks, depicted below, resemble each other such that confusion, even deception, is likely to occur?

HAVRIX

Opposer's Trademark

KADRIX

Respondent-Applicant's Trademark

The contending marks are similar with respect to the suffix "RIX" and the middle letter of the first syllable "A". However, the Opposer uses consonants H and V in the first syllable of the marks; while the Respondent-Applicant uses the consonants K and D in the same position, which when pronounced are phonetically dissimilar. In combination with the suffix "RIX", the resultant marks are visually and aurally different.

Moreover, although the marks are used for goods under class 5, the Opposer uses its HAVRIX mark for "vaccine, veterinary and sanitary preparations and substances", while the Respondent-Applicant uses its KADRIX mark for "human pharmaceutical products". The illness or disease for which the drugs/medicines are intended are distinct to each other. Opposer's HAVRIX is for veterinary and sanitary use, whereas Respondent-Applicant's KADRIX is for human use. Thus, confusion, mistake and deception is unlikely among the purchasing public.

⁵ Pribhdas J. Mirpuri v. Court of Appeals, G.R. No. 114508, 19 Nov. 1999. See also Article 15, par. (1), Art. 16, par. 91 of the Trade-related Aspect of Intellectual Property (TRIPS Agreement).

⁶ Exhibit "D" of Opposer.


⁷ Exhibit "E" of Opposer

⁸ Filewrapper records.

WHEREFORE, premises considered, the instant opposition is hereby **DISMISSED**. Let the filewrapper of Trademark Application Serial No. 4-2011-011529 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City 04 May 2015.


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