



UNAHCO, INC.,
Opposer,

-versus-

SUHITAS PHARMACEUTICALS, INC.,
Respondent-Applicant.

} IPC No. 14-2013-00242
}
} Opposition to:
} Application No. 4-2012-015079
} Date filed: 14 December 2012
} TM: "MITOBAN"
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NOTICE OF DECISION

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

SUHITAS PHARMACEUTICALS, INC.,
Respondent-Applicant
3rd Floor Centrepoint Building
Pasong Tamo corner Export Bank Drive
Makati City

GREETINGS:

Please be informed that Decision No. 2015 - 65 dated April 29, 2015 (copy enclosed) was promulgated in the above entitled case.

Taguig City, April 29, 2015.

For the Director:


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



UNAHCO, INC.,
Opposer,

-versus-

SUHITAS PHARMACEUTICALS, INC.,
Respondent-Applicant.

IPC No. 14-2013-00242
Opposition to Trademark
Application No. 4-2012-015079
Date Filed: 14 December 2012
Trademark: **"MITOBAN"**

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Decision No. 2015- 65

DECISION

Unahco, Inc.¹ ("Opposer") filed an opposition to Trademark Application Serial No. 4-2012-015079. The contested application, filed by Suhitas Pharmaceuticals, Inc.² ("Respondent-Applicant"), covers the mark "MITOBAN" for use on "*pharmaceutical (antineoplastic)*" under Class 05 of the International Classification of Goods³.

The Opposer alleges that it is engaged in the marketing and sale of a wide variety of veterinary feeds and preparations, agricultural and related products. It claims ownership of the mark "MICROBAN", which is registered under Certificate of Registration N. 4-1997-122945 issued on 08 June 2006. According to the Opposer, the mark "MICROBAN" has been extensively used in commerce in the Philippines and that it has registered the product with the Food and Drug Administration (FDA) in order to legally market, distribute and sell its veterinary preparation. In support of its Opposition, the Opposer submitted the following as evidence:⁴

1. copy of pertinent page of the E-Gazette publishing the Respondent-Applicant's trademark application;
2. copy of Certificate of Registration No. 4-1997-122945;
3. letter dated 09 September 2011;
4. copy of the amended Articles of Incorporation;
5. printout from the IPO website showing the change of name of the Opposer;
6. copy of the Declaration of Actual Use (DAU) and Affidavit of Use;
7. sample product label; and

¹ A global pharmaceutical corporation, duly organized and existing under and by virtue of the laws of Switzerland with business address at CH-4002 Basel, Switzerland.

² With address at Devashish, Alkem House, Senapati Bapat Marg, Lower Parel Mumbai India.

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 Marked as Exhibits "A" to "E", inclusive.

8. copy of the Certificate of Product Registration issued by the FDA.

This Bureau issued a Notice to Answer and served a copy thereof upon the Respondent-Applicant on 15 July 2013. The Respondent-Applicant, however, did not file an Answer. Accordingly, the Hearing Officer issued on 26 November 2013 Order No. 2013-1580 declaring the Respondent-Applicant in default and the case submitted for decision.

The issue is whether the Respondent-Applicant's mark "MITOBAN" should be allowed registration.

Records show at the time the Respondent-Applicant filed its application on 14 December 2012, the Opposer already has an existing trademark registration for "MICROBAN" issued on 08 June 2006.

The parties' respective marks are shown below for comparison:

Microban

Opposer's mark

MITOBAN

Respondent-Applicant's mark

The two marks both begin with the prefix "MI" and end with the letters "OBAN". Nevertheless, the marks are easily distinguishable from each other. The Opposer's mark is composed of two words "MICRO" and "BAN", each of which has its own meaning. On the other hand, the Respondent-Applicant's mark "MITOBAN" is arbitrary, with no dictionary meaning. Even the pronunciations are different because of their respective second syllables, "CRO" and "TO".

That the confusion or mistake, much less deception, is unlikely in this case is underscored by the fact that the competing marks cover different products as to nature, purpose and flow in different channels of trade. The Opposer's mark covers *"veterinary preparation used as a broad-spectrum disinfectant effective against viruses, gram positive & gram negative bacteria, fungi and other microorganisms"* while the Respondent-Applicant's will be used on *"pharmaceutical (antineoplastic)"*.

Furthermore, it is doubtful if the consumers in encountering the mark "MICROBAN" will have in mind or be reminded of the trademark "MITOBAN". The Opposer has not established that "MICROBAN" is a well-known mark nor that its mark's fame could support the claim that Respondent-Applicant's trademark application and use of the mark "MITOBAN" manifest the latter's

intent of riding in on the goodwill supposedly earned and enjoyed by the former. Likewise noteworthy, the Trademark Registry of this Office has registered various marks under Class 05 appropriating the suffix "BAN" including "BACTROBAN", "MUPIBAN", "DURSBAN" and "NICHIBAN".

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.⁵ Respondent-Applicant's trademark sufficiently met this requirement.

WHEREFORE, premises considered, the instant opposition is hereby **DISMISSED**. Let the filewrapper of Trademark Application Serial No. 4-2012-015079 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 29 April 2015.


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

⁵ Pribhdas J. Mirpuri vs. Court of Appeals, G.R. No. 114508, 19 November 1999.