



MEDICHEM PHARMACEUTICALS, INC.,
Opposer,

-versus-

**THE CATHAY YSS DISTRIBUTORS
COMPANY, INC.,**
Respondent-Applicant.

}
} **IPC No. 14-2010-00246**
} Opposition to:
} Application No.4-2010-002933
} Date filed: 17 March 2010
} **TM: "PLAXOL"**
}
}
}
}
}
}
}
}
}
}

x-----x

NOTICE OF DECISION

OCHAVE & ESCALONA
Counsel for the Opposer
66 United Street
Mandaluyong City

**JIMENEZ GONZALES BELLO VALDEZ
CALUYA & FERNANDEZ**
Counsel for Respondent-Applicant
6th Floor, SOL Building, 112 Amorsolo Street
Legaspi Village, 1229 Makati City

GREETINGS:

Please be informed that Decision No. 2015 - 83 dated May 11, 2015 (copy enclosed) was promulgated in the above entitled case.

Taguig City, May 11, 2015.

For the Director:


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



MEDICHEM PHARMACEUTICALS, INC. }
Opposer, }
 -versus- }
 THE CATHAY YSS DISTRIBUTORS }
 COMPANY, INC., }
Respondent-Applicant. }

IPC No. 14-2010-00246
 Opposition to:
 Application No. 4-2010-002933
 Date Filed: 17 March 2010
 Trademark: "PLAXOL"

x-----x

Decision No. 2015- 83

DECISION

MEDICHEM PHARMACEUTICALS, INC.¹ ("Opposer") filed an opposition to Trademark Application Serial No. 4-2010-002933. The application, filed by The Cathay YSS Distributors Company, Inc.² ("Respondent-Applicant"), covers the mark "PLAXOL" for use on "*antiplatelet*" under Class 05 of the International Classification of Goods and Services.³

The Opposer alleges:

x x x
"GROUNDS FOR OPPOSITION"

"The grounds for this Verified Notice of Opposition are as follows:

"7. The mark 'PLAXOL' owned by Respondent-Applicant so resembles the trademark 'FLOXEL' owned by Opposer and duly registered with this Honorable Bureau prior to the publication for opposition of the mark 'PLAXOL'.

"8. The mark 'PLAXOL' will likely cause confusion, mistake and deception on the part of the purchasing public, most especially considering that the opposed mark 'PLAXOL' is applied for the same class and goods as that of Opposer's trademark 'FLOXEL', i.e. Class 05 of the International Classification of Goods as Pharmaceutical Preparation.

"9. The registration of the mark 'PLAXOL' in the name of the Respondent-Applicant will violate Sec. 123 of the IP Code, which provides, in part, that a mark cannot be registered if it:

xxx

Under the above-quoted provision, any mark, which is similar to a registered mark, shall be denied registration in respect of similar or related goods or if the mark

¹A domestic corporation duly organized and existing under the laws of Philippines, with office address at 108 Rada Street, Legaspi Village, Makati City, Philippines.
²A domestic corporation with address on record at 2nd Floor Vernida I, Amoroso St., Legaspi Village, Makati City, Metro Manila.
³The Nice Classification is a classification of goods and services for the purpose of registering trademark and service marks, based on a 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 Purposes of the Registration of Marks concluded in 1957.

applied for nearly resembles a registered mark that confusion or deception in the mind of the purchasers will likely result.

"ALLEGATIONS IN SUPPORT OF THE OPPOSITION

"In support of this Verified Notice of Opposition, Opposer will rely upon and prove the following facts:

"10. Opposer is the registered owner of the trademark 'FLOXEL'.

"10.1. Opposer is engaged in the marketing and sale of a wide range of pharmaceutical products. The trademark application for the trademark 'FLOXEL' was filed with the IPO on 26 August 1999 by Opposer and was approved for registration on 17 January 2005 to be valid for a period of ten (10) years, or until 17 January 2015. Thus, the registration of the trademark 'FLOXEL' subsists and remains valid to date. A certified true copy of the Certificate of Registration No. 4-1999-006295 for the trademark 'FLOXEL' is hereto attached x xx

"11. The trademark 'FLOXEL' has been extensively used in commerce in the Philippines.

"11.1. Opposer has dutifully filed its Declaration of Actual Use and Affidavit of Use pursuant to the requirement of the law to maintain the registration of the trademark 'FLOXEL' in force and effect. Certified true copies of the Declaration of Actual Use and Affidavit of Use are hereto attached x xx

"11.2. A sample product label bearing the trademark 'FLOXEL' actually used in commerce and is hereto attached x x x

"11.3. No less than the Intercontinental Marketing Services ('IMS') itself, the world's leading provider of business intelligence and strategic consulting services for the pharmaceutical and healthcare industries with operations in more than 100 countries, acknowledged and listed the brand 'FLOXEL' as one of the leading brands in the Philippines in the category of 'J01G-Fluoroquilones Type Market' in terms of market share and sales performance. The Certification and sales performance is hereto attached x xx

"11.4. In order to legally market, distribute and sell this pharmaceutical preparation in the Philippines, Opposer registered the product with the Bureau of Food and Drugs ('BFAD'). A certified true copy of the Certificate of Product Registration issued by the BFAD for 'FLOXEL' is hereto attached xxx

"11.5. By virtue of the foregoing there is no doubt that Opposer has acquired an exclusive ownership over the trademark 'FLOXEL' to the exclusion of all others.

"11.6. As provided in Section 138 of the IP Code, 'A certificate of registration of a mark shall be prima facie of the validity of the registration, the registrant's ownership of the mark, and of the registrant's exclusive right to use the same in connection with the goods or services and those that are related thereto specified in the certificate.'

"12. The registration of Respondent-Applicant's mark 'PLAXOL' will be contrary to Section 123.1 (d) of the IP Code. 'PLAXOL' is confusingly similar to Opposer's trademark 'FLOXEL'.

"12.1. There are no set rules that can be deduced in particularly ascertaining whether one trademark is confusingly similar to, or is a colorable imitation of, another. Nonetheless, jurisprudence provides enough guidelines and tests to determine the same.

"12.1.1. In *Societe' Des Produits Nestle', S.A. vs. Court of Appeals* [356 SCRA 207, 216 [2001]], the Supreme Court, citing *Ethepa v. Director of Patents* (16 SCRA 495, 497-498 [1966]), held "[i]n determining if colorable imitation exists, jurisprudence has developed two kinds of tests - the Dominancy Test and the Holistic Test. The test of dominancy focuses on the similarity of the prevalent features of the competing trademarks which might cause confusion or deception and thus constitute infringement. On the side of the spectrum, the holistic test mandates that the entirety of the marks in question must be considered in determining confusing similarity."

"12.1.2. It is worthy to note at this point that in *Societe' Des Produits Nestle', S.A. vs. Court of Appeals* (supra, p. 221) the Supreme Court held "[T]he totality or holistic test only relies on visual comparison between two trademarks whereas the dominancy test relies not only on the visual but also on the aural and connotative comparisons and overall impressions between the two trademarks."

"12.1.3. Relative thereto, the Supreme Court in *McDonalds' Corporation vs. L.C. Big Mak Burger, Inc.* [437 SCRA 10] held:

xxx

"12.1.4 This was affirmed in *McDonald's Corporation vs. MacjoyFastfood Corporation* (514 SCRA 95, 109 [2007]), which held that, '[t]he Court has consistently used and applied the dominancy test in determining confusing similarity or likelihood of confusion between competing trademarks."

"12.1.5. In fact, the dominancy test is 'now explicitly incorporated into law in Section 155.1 of the Intellectual Property Code, which defines infringement as the colorable imitation of a registered mark xxx or a dominant feature thereof.' xxx

"12.1.6. Thus, applying the dominancy test in the instant case, it can be readily concluded that the mark 'PLAXOL', owned by Respondent-Applicant, so resembles Opposer's trademark 'FLOXEL', that it will likely cause confusion, mistake and deception on the part of the purchasing public.

"12.1.6.1. Respondent-Applicant's mark 'PLAXOL' appears and sounds almost the same as Opposer's trademark 'FLOXEL'.

"12.1.6.2. The second, fourth and last letters of Respondent-Applicant's mark 'PLAXOL' is exactly the same with Opposer's trademark 'FLOXEL'.

"12.1.6.3. Both marks are composed of two (2) syllables /PLAX/-/OL/ and /FLOX/-/EL/.

"12.1.6.4. Both marks are composed of SIX (6) letters.

"12.1.7. Clearly, Respondent-Applicant's mark 'PLAXOL' adopted the dominant features of the Opposer's trademark 'FLOXEL'.

"12.1.8. As further ruled by the High Court in McDonald's Corporation case [supra, p.33-34 [2004]]:

xxx

"12.1.9. In American Wire & Cable Co., vs. Director of Patents (31 SCRA 544, 547-548 [1970]), the Supreme Court explained:

xxx

"12.2. Opposer's trademark 'FLOXEL' and Respondent-Applicant's mark 'PLAXOL' are practically identical marks in sound and appearance that they leave the same commercial impression upon the public.

"12.3. Thus, the two marks can easily be confused for one over the other, most especially considering that the opposed mark 'PLAXOL' is applied for the same class and goods as that of Opposer's trademark 'FLOXEL' under Class 05 of the International Classification of Goods as Pharmaceutical Preparation.

"12.4. Yet, Respondent-Applicant still filed a trademark application for 'PLAXOL' despite its knowledge of the existing trademark registration of 'FLOXEL', which is confusingly similar thereto in both its sound and appearance, to the extreme damage and prejudice of Opposer.

"12.5. Opposer's intellectual property right over its trademark is protected under Section 147 of the IP Code, which states:

xxx

"12.6. 'When, as in the present case, one applies for the registration of a trademark or label which is almost the same or very closely resembles one already used and registered by another, the application should be rejected and dismissed outright, even without any opposition on the part of the owner and user of a previously registered label or trademark, this not only to avoid confusion on the part of the public, but also to protect an already used and registered trademark and an established goodwill.' x xx

"13. To allow Respondent-Applicant to continue to market its products bearing the mark 'PLAXOL' undermines Opposer's right to its trademark 'FLOXEL'. As the lawful owner of the trademark 'FLOXEL', Opposer is entitled to prevent the Respondent-Applicant from using a confusingly similar mark in the course of trade where such would likely mislead the public.

"13.1. Being the lawful owner of 'FLOXEL', Opposer has the exclusive right to use and/or appropriate the said marks and prevent all third parties not having its consent from using in the course of trade identical or similar marks, where such would result in a likelihood of confusion.

"13.2. By reason of Opposer's ownership of the trademark 'FLOXEL', it also has the right to prevent third parties, such as Respondent-Applicant, from claiming ownership over Opposer's marks or any depiction similar thereto, without its authority or consent.

"13.3. Moreover, following the illustrative list of confusingly similar sounds in trademarks cited in McDonald's Corporation case (supra, p. 34), it is evident that Respondent-Registrant's mark 'PLAXOL' is aurally confusingly similar to Opposer's trademark 'FLOXEL':

xxx

"13.4. Further, the fact that Respondent-Applicant seeks to have its mark 'PLAXOL' registered in the same class (Nice Classification 05) as Opposer's trademark 'FLOXEL' will undoubtedly add to the likelihood of confusion among the purchasers of these two goods.

"14. By virtue of Opposer's prior and continued use of the trademark 'FLOXEL', the same have become well-known and established valuable goodwill to the consumers and the general public as well. The registration and use of Respondent-Applicant's confusingly similar mark 'PLAXOL' on its goods will enable the latter to obtain benefit from Opposer's reputation, goodwill and advertising and will tend to deceive and/or confuse the public into believing that Respondent-Applicant is in any way connected with Opposer.

"14.1. As held in *Sterling Products International, Inc. vs. Farbenfabriken Bayer Aktiengesellschaft, et. al.* (27 SCRA 1214, 1227 [1968]) there are two types of confusion in trademark infringement. '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 assumed to originate with the plaintiff, and the public would be deceived either into that belief or in to belief that there is some connection between the plaintiff and defendant which, in fact, does not exist.'

"14.2. The doctrine of confusion of business or origin is based on cogent reasons of equity and fair dealing. It has to be realized that there can be unfair dealing by having one's business reputation confused with another. 'The owner of a trademark or trade name has a property right in which he is entitled to protection, since there is damage to him from confusion of reputation or goodwill in the mind of the public as well as from confusion of goods.' xxx

"14.3. Applying the foregoing to the instant case, to allow Respondent-Applicant to use its mark 'PLAXOL' on its product would likely cause confusion or mistake in the mind of the public or deceive purchasers into believing that the

product of Respondent-Applicant originate from or is being manufactured by Opposer, or at the very least, is connected or associated with the 'FLOXEL' product of Opposer, when such connection does not exist.

"14.4. In Canon Kabushiki Kaisha vs. Court of Appeals (336 SCRA 266, 275 [2000]), the Supreme Court explained that:

xxx

"14.5. Clearly, the scope of protection accorded to trademark owners includes not only confusion of goods but also confusion of origin. As in this case, besides from the confusion of goods already discussed, there is undoubtedly also a confusion of the origin of the goods covered by the marks of Respondent-Applicant and Opposer, which should not be allowed.

xxx

"15. In case of grave doubt, the rule is that, '[a]s between a newcomer [Respondent-Applicant] who by confusion has nothing to lose and everything to gain and one [Opposer] who by honest dealing has already achieved favor with the public, any doubt should be resolved against the newcomer [Respondent-Applicant] inasmuch as the field from which he can select a desirable trademark to indicate the origin of his product is obviously a large one.' (Del Monte Corporation, et. al. vs. Court of Appeals, 181 SCRA 410, 420 [1990])

"15.1. In American Wire & Cable Co., vs. Director of Patents (supra, p. 551), it was observed that:

xxx

"15.2. When, as in the instant case, Respondent-Applicant used, without a reasonable explanation, a confusingly similar trademark as that of Opposer 'though the field of its selection was so broad, the inevitable conclusion is that it was done deliberately to deceive.' (Del Monte Corporation, et. al. vs. Court of Appeals, supra, p. 419-420)

"16. Respondent-Applicant's use of the mark 'PLAXOL' in relation to any of the goods covered by the opposed application, if these goods are considered not similar or closely related to the goods covered by Opposer's trademark 'FLOXEL', will take unfair advantage of, dilute and diminish the distinctive character or reputation of the latter mark. Potential damage to Opposer will be caused as a result of its inability to control the quality of the products put on the market by Respondent-Applicant under the mark 'PLAXOL'.

"17. Thus, Opposer's interests are likely to be damaged by the registration and use of the Respondent-Applicant of the mark 'PLAXOL'. The denial of the application subject of this opposition is authorized under the IP Code.

"20. In support of the foregoing, the instant Notice of Opposition is herein verified by Ms. Merza C. Alejandrino, which will likewise serves as her affidavit. (Nasser vs. Court of Appeals, 191 SCRA 783, 792-793 [1990])

The Opposer's evidence consists of copies of pertinent pages of the IPO E-Gazette released on 20 September 2010; a copy of the certificate of registration No. 4-

1999-006295 for the trademark FLOXEL with filing date on 26 August 1999; copies of the declaration of actual and affidavit of use for the trademark FLOXEL; a sample product label bearing the trademark "FLOXEL"; a copy of the certification issued by IMS Health Philippines, Inc. with the brand "FLOXEL" listed as one of the leading brands in the Philippines and sales performance of "FLOXEL"; and, a copy of the certificate of product registration issued by the BFAD for "FLOXEL".⁴

This Bureau issued a Notice to Answer and served a copy thereof upon Respondent-Applicant on 18 November 2010. The Respondent-Applicant filed its Answer on 16 February 2011 alleging among other things:

xxx

"SPECIAL AND AFFIRMATIVE DEFENSES

"11. Respondent adopts and incorporates, by way of reference, all the material, pertinent, and relevant allegations contained in the preceding paragraphs;

x x x

"12. Opposer maintains that PLAXOL and FLOXEL are confusingly similar. Evidence, however, will show that the marks are not confusingly similar and that there is actually no possibility of confusion.

"13. Opposer alleges that the mark 'PLAXOL' appears and sounds almost the same as Opposer's trademark 'FLOXEL'. This allegation, however, is not supported by evidence. By merely looking at, and pronouncing, the syllables of the marks, it cannot be gainsaid that the two marks give different visual and aural impressions. While Opposer maintains that the second, fourth, and last letters of the marks are exactly the same, and further posits that PLAXOL resembles FLOXEL, Respondent-Applicant avers that despite these similar letters, the other letters that make up the PLAXOL mark give off an appearance and sound far removed from the FLOXEL mark.

"14. Opposer goes to the extent of breaking down the marks into two syllables each and comparing them side-by-side to emphasize their similarities. Nonetheless, by doing so, Opposer only emphasized the apparent differences of the two marks. The first syllable of the PLAXOL mark, 'PLAX' is pronounced the same way as the word 'plagues' (plaeks). The 'P' and the 'A' in the first syllable essentially distinguish it from the sound of the first syllable of FLOXEL which is 'FLOX'. So also, as far as the second syllables of the marks are concerned, it is plain and apparent that the appearance and sound of 'OL' in PLAXOL and 'EL' I FLOXEL are too distinct. Put together, there is obviously no resemblance in appearance and sound between the two marks.

"15. Opposer seeks the application of the dominance test in determining confusing similarity between the two marks. However, even if the dominance test

⁴Marked as Exhibits "A" to "G", inclusive.

were to be applied, PLAXOL is still not confusingly similar with FLOXEL. As stated in Philip Morris, Inc. v. Fortune Tobacco Corporation,

xxx

"16. Further, in the Philip Morris case, the Supreme Court's ruling on the application of the dominancy test is instructive, thus:

xxx

"17. As earlier pointed out, there is no similarity in the 'prevalent features of the competing trademarks'. The two marks do not appear and sound the same. The use of the marks will not likely cause confusion or mistake in the mind of the public or deceive purchasers, nor will the use of the PLAXOL mark point to the Opposer as its origin or owner.

"18. The 'FLOX' in 'FLOXEL' comes from its generic name 'Levofloxacin', while PLAXOL is a term coined fancifully by Respondent-Applicant. PLAXOL's generic name is 'Clopidogrel'. Clearly, Respondent-applicant did not adopt, as otherwise pointed out by Opposer, the dominant features of Opposer's trademark. The two marks, having varying generic names, evidently refer to varying medical formulations, and are ultimately used for the treatment of different illnesses.

xxx

"19. This Honorable Office will note that while both marks are under Class 5, this should not dictate the possibility of confusing similarity of the goods. In Philippine Refining Co., Inc. v. Ng Sam and the Director of Patents, the Supreme Court ruled thus:

xxx

"20. Hence, following this ruling in the Philippine Refining Co. case, this Honorable Office must also consider that the marks involve medicines that are to be used for different ailments. It bears stressing that PLAXOL (generic name:CLOPIDOGREL) is an antiplatelet drug used primarily as an inhibitor of ADP-induced platelet aggregation. It is a variety of drugs that inhibit platelet function decrease morbid events in people with established atherosclerotic cardiovascular disease as evidenced by stroke or transient ischaemic attacks, myocardial infarction, unstable angina, or need for vascular bypass or angioplasty. On the other hand, FLOXEL (generic name:LEVOFLOXACIN) is an antibacterial tablet 'for the treatment of adults with mild, moderate, and severe infections caused by susceptible strains of the designated microorganisms for the following conditions: Acute Bacterial Sinusitis; Community-acquired pneumonia; Complicated skin and skin structure infections; Nosocomial pneumonia.

"21. In the case of Bristol Myers Co. vs. Director of Patents, where the Supreme Court allowed the separate registration of the trademark 'BUFFERIN' and 'BIOFERIN,' it was ruled that with regard to medicines, the requirement for prescription makes 'the chances of being confused into purchasing one for the other are therefore all the more rendered negligible.'

"22. It is worthy to note that the products or medicines involved in this case are not common consumer goods, like the products involved in the following cases cited by the Opposer: McDonald's Corporation vs. L.C. Big Mak Burger, Inc., American Wire and Cable Company v. Director of Patents, Chuachow Soy &

Canning Co., vs. Director of Patents, and Canon Kabushiki Kaisha vs. Court of Appeals. To be sure, the McDonald's Corporation case involved food products, the American Wire Case involved electric wires, apparatus, machines and supplies, the Chuachow Soy & Cannin Co. case concerned marks used for the manufacture of soy sauce, and the Canon Kabushiki Kaisha case involved paints, chemical products, toner, dyestuff, and sandals. These are not the types of products involved in this case. Hence, the cited rulings are not on all fours with this case.

"23. It is then only proper for this Honorable Court to consider the ruling in Etepha v. Director of Patents, a case which involved prescription drugs, in deciding the presence of confusing similarity. In Etepha, the Supreme Court ruled:

xxx

"24. Evidently, the Supreme Court has already ruled out the possibility of confusing medicines when physicians and pharmacists are involved. Given that this matter of confusing similarity of two pharmaceutical products is the main issue in this case, this Honorable Office has no reason to divert from the thrust of the rulings in the previously cited cases of Etepha and Bristol Myers: confusion in the dispensation of drugs is rendered impossible by the intervention of a physician and a pharmacist in the acquisition of the drugs.

"25. More importantly, in view of the enactment of RA 9502 or the Universally Accessible Cheaper and Quality Medicines Act of 2008 ('Cheaper Medicines Act' for brevity), physicians and other medical practitioners are mandated by law to write the generic name of the medicines they are prescribing, to wit:

xxx

"26. Further, the Cheaper Medicines Act amended Sec. 25 of the Pharmacy Law, thus:

xxx

"27. Given the foregoing, it bears stressing that these drugs are not the usual medicines consumed, like paracetamol for fever or loperamide for diarrhea. The purchase of the products involved in this case entail more vigilance from the buying public, who are more likely to be cautious and less likely to be confused especially that the drugs are prescription drugs and cannot simply be purchased over-the-counter. On top of this, the drugs to which the marks pertain do not even share a common generic name.

"28. Undeniably, the margin of error in the acquisition of one for the other is quite remote. When written, the marks also bear no confusing similarity. The disparity in spelling will surely give different visual impressions. These differences in aural and visual impressions together with the presence of physicians and pharmacists in the dispensation of these prescription drugs nullify the likelihood of confusion.

"29. At any rate, this Honorable Office will note that no less than the Intellectual Property Office through the Bureau of Trademarks affirmed the registrability of Respondent-applicant's mark PLAXOL when the subject

application was allowed after it had undergone merit examination without citing the Opposer's mark as an obstacle to the registration of the subject application.

The Respondent-Applicant's evidence consists of a copy of the secretary's certificate issued by its corporate secretary, on the appointment of the law firm of Jimenez Gonzales Bello Valdez Caluya & Fernandez (JG Law) as the attorneys-in-fact of The Cathay YSS Distributors Company, Inc. and the Affidavit of the aforementioned corporate secretary, Nona F. Crisol.⁵

The Preliminary Conference was terminated on 10 August 2011. Then after, the Opposer and Respondent-Applicant submitted their respective position papers.

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

The Opposer anchors its opposition on Sections 123.1, paragraphs (d) of Republic Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code"), to wit:

Sec. 123.Registrability. - 123.1. A mark cannot be registered if it:

x xx

(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;"

Records show that the Opposer filed a trademark application for FLOXEL on 26 August 1999. The application matured into a registration and a Certificate of Registration was issued on 17 January 2005. The application covers antibacterial pharmaceutical preparation under Class 05. On the other hand, the Respondent-Applicant filed the contested trademark application on 17 March 2010.

The marks are shown below:

Floxel

Opposer's trademark

Plaxol

Respondent-Applicant's mark

⁵Marked as Exhibits "1" and "2".

This Bureau finds that confusion or deception is unlikely to occur in this instance. Although the contending marks have the same number of letters and syllables, the visual and aural properties in respect of the Respondent-Applicant's mark has rendered said mark a character that is distinct from the Opposer's. While the marks are common as to the letters "L" and "X", those in between these letters make it easier for the consumers to distinguish one from the other. Moreover, the pharmaceutical products covered by the marks treat different illnesses. PLAXOL with the generic name Clopidogrel are antiplatelet drugs while FLOXEL with the generic name Levofloxacin are antibacterial, specifically medicinal preparations for acute bacterial sinusitis, community-acquired pneumonia, nosocomial pneumonia and complicated skin and skin structure infections.

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.⁶ This Bureau finds that the Respondent-Applicant's mark sufficiently serves this function.

WHEREFORE, premises considered, the instant Opposition is hereby DISMISSED. Let the filewrapper of Trademark Application Serial No. 4-2010-002933 together with a copy of this Decision be returned to the Bureau of Trademarks (BOT) for information and appropriate action.

SO ORDERED.

Taguig City, 11 May 2015.



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

⁶Pribhdas J. Mirpuri vs. Court of Appeals, G.R. No. 114508, 19 Nov. 1999.