



PEDIATRICA, INC.,  
Opposer,

-versus-

GLAXO GROUP LIMITED,  
Respondent-Applicant.

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}  
} IPC No. 14-2010-00135  
} Opposition to:  
} Application No.4-2009-012883  
} Date filed: 16 December 2009  
} TM: "RELENZA"  
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### NOTICE OF DECISION

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#### GREETINGS:

Please be informed that Decision No. 2015 - 86 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



**PEDIATRICA, INC.,**  
Opposer,

-versus-

**GLAXO GROUP LIMITED,**  
Respondent-Applicant.

X-----X

} **IPC NO. 14-2010-00135**  
} Opposition to:  
}  
} **Appln. Ser. No. 4-2009-12883**  
} **Date Filed: 16 December 2009**  
} **Trademark: RELENZA**  
}  
}  
} **Decision No. 2015- 86**

### DECISION

PEDIATRICA, INC., (Opposer)<sup>1</sup> filed an opposition to Trademark Application Serial No. 4-2009-12883. The application, filed by GLAXO GROUP LIMITED (Respondent-Applicant)<sup>2</sup>, covers the mark "RELENZA", for use on "pharmaceutical preparations and substances" under Class 5 of the International Classification of Goods<sup>3</sup>.

The Opposer anchors its opposition on the following grounds:

"1. The trademark 'RELEZA' so resembles 'RELESTAL' trademark owned by Opposer, registered with this Honorable Office prior to the publication for opposition of the mark 'RELENZA'. The trademark 'RELENZA', which is owned by Respondent-Applicant, will likely cause confusion, mistake and deception on the part of the purchasing public, most especially considering that the opposed trademark 'RELENZA', is applied for the same class of goods as that of trademark 'RELESTAL', i.e. Class (5).

"2. The registration of the trademark 'RELENZA' in the name of the Respondent-Applicant will violate Sec. 123 of Republic Act No. 8293, otherwise known as the Intellectual Property Code of the Philippines, which provides, in part, that a mark cannot be registered if it:

(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;

<sup>1</sup> A corporation duly organized and existing under Philippine laws with principal address at 3rd Floor, Bonaventure Plaza, Ortigas Avenue, Greenhills, San Juan City.

<sup>2</sup> A foreign corporation with address at Glaxo Wellcome House, Berkeley Avenue, Greenford, Middlesex UB6 ONN, England

<sup>3</sup> The Nice Classification of Goods and Services is for registering trademarks and service marks based on 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.

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

"3. Respondent-Applicant's use and registration of the trademark 'RELENZA' will diminish the distinctiveness and dilute the goodwill of Opposer's trademark 'RELESTAL'.

The Opposer also alleges that:

"4. Opposer, the registered owner of the trademark 'RELESTAL', is engaged in the marketing and sale of a wide range of pharmaceutical products. The Trademark Application for the trademark 'RELESTAL' was first filed with the Intellectual Property Office on 5 December 1977 and valid for a period of twenty (20) years. Prior to the lapse of the twenty-year term, Opposer applied for the renewal of the registration with the Intellectual Property Office. The said application was granted on 28 July 2000 and valid for another period of twenty years from 5 December 1997. Hence, Opposer's registration of the 'RELESTAL' trademark subsists and remains valid to date.

"5. The trademark 'RELESTAL' has been extensively used in commerce in the Philippines.

"5.1. Opposer dutifully filed Affidavits of Use pursuant to the requirement of law, to maintain the registration of 'RELESTAL' in force and effect.

"5.2. A sample of product label bearing the trademark 'RELESTAL' actually used in commerce is hereto attached.

"5.3. In order to legally market, distribute and sell these pharmaceutical preparations in the Philippines, we registered the products with the Bureau of Food and Drugs (BFAD).

"6. There is no doubt that by virtue of the above-mentioned Certificate of Registration, the uninterrupted use of the trademark 'RELESTAL', and the fact that they are well known among customers, the Opposer has acquired an exclusive ownership over the 'RELESTAL' marks to the exclusion of others.

"7. 'RELENZA' is confusingly similar to 'RELESTAL'.

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"9. To allow Respondent-Applicant to continue to market its products bearing the 'RELENZA' mark undermines Opposer's rights to its marks.

As the lawful owner of the marks 'RELESTAL', 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.

"10. By virtue of Opposer's prior and continued use of the trademark 'RELESTAL', 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 trademark on its goods will enable the latter to obtain benefit from Opposer's reputation and goodwill and will tend to deceive and/or confuse the public into believing that Respondent-Applicant is in any way connected with the Opposer.xxx"

To support its opposition, the Opposer submitted as evidence the following:

1. Print-out of IPO e-Gazette showing the Respondent-Applicant's trademark application;
2. Copy of Certificate of Registration No. 4-2003-010821 dated 5 December 1997 for the mark "RELESTAL";
3. Copy of Certificate of Renewal dated 28 July 2000;
4. Copies of Affidavits of Use dated 11 December 1982, 23 November 1987, 16 December 1992, 16 January 2003 and 4 September 2007;
5. Sample product label of "RELESTAL"; and
6. Copy of Certificate of Product Registration from Bureau of Food and Drugs (BFAD) dated 15 March 2005.<sup>4</sup>

The Respondent-Applicant filed its Answer on 3 December 2010, alleging among other things, the following:

"4. The Opposition should be dismissed for being unmeritorious. The two marks are distinct from one another. Opposer's 'RELESTAL' mark is registered as an antispasmodic and such is made evident by the last three letters of the mark. The suffix 'TAL' is prevalent to brand names for antispasmodics. Numerous sources including: <http://www.drugs.com/mtm/antispasmodic.html> and [http://www.emedicinehealth.com/drug-belladone\\_alkaloids\\_and\\_phenobarbital/article\\_em.htm](http://www.emedicinehealth.com/drug-belladone_alkaloids_and_phenobarbital/article_em.htm) indicate that brand names for antispasmodics are Bellatal, D-Tal, Donnatal whereas the generic names for antispasmodics are belladonna alkaloids and Phenobarbital. On the otherhand, <http://www.drug3k.com/drug/antsispasmodic-12720.htm> cites that alternative names for antispasmodics are Donnatal, Belladona W/Phenobarbital, D-Tal, Donnatine, Colidrops, Lahoy Mixture #3.

5. That being said, it is apparent that the TAL in Opposer's brand 'RELESTAL' clearly identifies the mark as antispasmodic. On the other hand, Respondent-Applicant's mark 'RELENZA' is used for treatment of

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<sup>4</sup> Annexes "A" to "J"



influenza. It is highly unlikely that a patient prescribed with an antispasmodic will mistakenly buy a medicine for the treatment of influenza. Hence, no confusion, mistake and deception on the part of the purchasing public can exist contrary to Opposer's claim.

"6. The question is whether the use of the marks involved is likely to cause confusion or mistake in the mind of the public or deceive purchasers. In the case of prescription medicines, there is no likelihood of confusion.

"7. Respondent-Applicant's 'RELENZA' mark is known worldwide and has achieved goodwill. As evident from numerous websites including RELENZA's home page <http://www.relenza.com> and <http://en.wikipedia.org/wiki/Zanamivir> 'RELENZA' is a drug used to prevent or shorten the duration of the flu (influenza). It is also worth taking note that the owner of the 'RELENZA' mark is Glaxo Group Limited, a leading healthcare company worldwide.

"8. It has been well established that in determining whether a mark is well-known, account shall be taken of the knowledge of the relevant sector of the public, rather than the public at large. In the case of drugs, which are the goods involved in the marks under consideration, qualified medical practitioners and druggists will be the ones dispensing the medicines. By reason of training druggists and medical practitioners are not likely to be misled or confused about which medicine to prescribe or dispense. That having been said, Respondent-Applicant's 'RELENZA' mark is known internationally for the treatment of influenza. The same is evident simply from an ocular search in the internet.

"9. Respondent-Applicant is the owner of numerous registrations for the mark RELENZA in class 5 worldwide xxx

"10. Visually, phonetically and aurally, the mark 'RELENZA' is dissimilar to Respondent-Applicant's mark 'RELESTAL'.

xxx

"13. In the Philippines, the mark 'RELENZA' has been used and advertised 'RELENZA' has been existing side by side with Opposer's mark 'RELENZA' since the 1990s. Hence, there can be no confusion between two marks that have co-existed for a decade. Any confusion or adverse effects to Opposer is but imaginary.

"14. Respondent-Applicant's RELENZA mark is a well-known and world famous mark. Hence, the registration of the Respondent-Applicant's mark will not constitute a violation of Section 123 and 147 of Republic Act 8293.

"15. The Respondent-Applicant has also extensively promoted the RELENZA mark worldwide. Over the years, Respondent-Applicant has obtained significant exposure for the goods upon which the RELENZA mark is used in various media, including television commercials, outdoor advertisements, internationally well-known print publications and other promotional activities."

In support of its Answer, the Respondent-Applicant submitted print-out of web pages<sup>5</sup> regarding antispasmodic drugs and the drug "RELENZA".

To support its Answer, the Respondent-Applicant submitted as evidence the following:

1. Print-out of web pages about antispasmodic drugs;
2. Authenticated and notarized Special Power of Attorney dated 17 November 2010;
3. Notarized Affidavit of Joanne B. Green dated 17 November 2010;
4. Copy of Certificate of Registration of the mark "RELENZA" in Great Britain;
5. Print-out of web pages of <http://www.relenza.com>; and
6. Print-out of pages of about zanamivir drugs.<sup>6</sup>

The Preliminary Conference was held on 23 June 2011 where both parties were directed to file their respective position papers. Both parties submitted his position paper on 4 July 2011.

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

Records show that at the time Respondent-Applicant applied for registration of the mark "RELENZA" the Opposer already registered the mark RELESTAL under Registration No. 25303 issued on 5 December 1977. The goods covered by the Opposer's trademark registration are also under Class 5, same as indicated in the Respondent-Applicant's trademark application.

The question is: Are the competing marks identical or closely resembling each other such that confusion or mistake is likely to occur?

The competing marks are reproduced below:

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<sup>5</sup> Annexes "A" to "E"

<sup>6</sup> Exhibits "A" to "K"

# Relestal

# RELENZA

Opposer's mark

Respondent-Applicant's mark

The marks are similar with respect to the prefix ("RELE") and the vowel, "a" in their suffix. Such similarity however, is not sufficient to conclude that confusion among the consumers is likely to occur. Both marks start with the letters or syllables "RELE". However, the last three letters in the Respondent-Applicant's mark - ("NZA") is clearly different in looks and in sound from the last four letters in the Opposer's ("STAL"). It is unlikely that on account of the similarity in the first four letters ("RELE"), the public would be vulnerable to confusion much less deception. It is noteworthy that the generic or non-proprietary name of the Opposer's drug is "DICYCLOVERINE HCl", as seen from a reproduction of the packaging<sup>7</sup> below:



Clearly, as seen from the label reproduced above, the nature and administration of the pharmaceutical product the Opposer's product, RELESTAL is an anticholinergic/antispasmodic pediatric syrup administered orally for children. On the other hand, the Respondent-Applicant's product, RELENZA, international nonproprietary name (INN) is "zanamivir", which is a neuraminidase inhibitor used in the treatment and prophylaxis of Influenzavirus<sup>8</sup> available as an inhalation powder administered by mechanical ventilation.

Further, the Respondent-Applicant has registered the trademark RELENZA in the United Kingdom since 14 May 1994<sup>9</sup>. Furthermore, it is observed that the Opposer's drug action slows the activity of the brain and nervous system that produces many effects

<sup>7</sup> Annex "I"

<sup>8</sup> Exhibit "K"


<sup>9</sup> Exhibit "D"- Annex "1"

in the body including, the reduction of muscle spasms in the digestive or urinary tract,<sup>10</sup> while the Respondent-applicant's drug is for the treatment of influenza a and influenza b virus. Because the marks are used on products of different nature, confusion and deception is unlikely. There is no likelihood of confusion of business. It is improbable for one who is buying or dispensing "RELENZA" products to be reminded of the mark "RELESTAL".

**WHEREFORE**, premises considered, the instant Opposition to Trademark Application No. 4-2009-12883 is hereby **DISMISSED**. Let the filewrapper of the subject trademark be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

**SO ORDERED.**

Taguig City, 11 May 2015.

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

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<sup>10</sup> Annex "A"