



SANOFI,  
Opposer,

-versus-

KASUM HEALTHCARE PVT LTD.,  
Respondent-Applicant.

x-----x

}  
} IPC No. 14-2014-00195  
} Opposition to:  
} Appln. Serial No. 4-2014-001021  
} Date filed: 24 January 2014  
} TM: "DENIGMA"  
}

### NOTICE OF DECISION

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Respondent-Applicant's Agent  
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Anahaw Homes, Dita  
Sta. Rosa, Laguna

#### GREETINGS:

Please be informed that Decision No. 2015 - 101 dated May 20, 2015 (copy enclosed) was promulgated in the above entitled case.

Taguig City, May 20, 2015.

For the Director:

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



**SANOFI,**  
Opposer,

- versus -

**KASUM HEALTHCARE PVT LTD.,**  
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**IPC No. 14-2014-00195**  
Opposition to:

Appln. No. 4-2014-001021  
Date Filed: 24 January 2014  
Trademark : "DENIGMA"

Decision No. 2015 - 101

### DECISION

SANOFI ("Opposer"),<sup>1</sup> filed on 17 July 2014 a verified opposition to Trademark Application Serial No. 4-2014-001021. The application, filed by KASUM HEALTHCARE PVT LTD. ("Respondent-Applicant")<sup>2</sup>, covers the mark "DENIGMA" for use on goods under class 05<sup>3</sup> namely: pharmaceutical preparations namely neurodegenerative disease drugs.

The Opposer alleges the following:

"4. The Opposer is the owner of the ZENIMA mark by prior registration in the Philippines.

4.1 A summary of the Opposer's worldwide trademark registrations and/or application for its ZENIMA mark is attached to the Affidavit of Ms. Sylvie Guillas, which is hereto attached as ANNEX 'B' and made an integral part hereof.

4.2 The Opposer registered its ZENIMA mark in the Philippines on July 25, 2013 under Trademark Registration No. 4/2013/002519.

"5. Notwithstanding the prior registration of the Opposer's ZENIMA mark, the Respondent-Applicant filed Trademark Application No. 4/2014/001021 for DENIGMA on January 24, 2013 with this Honorable Office.

"6. The Opposer has not consented to the Respondent-Applicant's use and registration of the mark DENIGMA, or any other mark identical or similar to its ZENIMA mark for that matter.

"7. The Respondent-Applicant's application for the registration of the mark DENIGMA should not be given due course by this Honorable Office because its registration is contrary to Section 123.1 (d) and Section 123.1 (f) of the Intellectual Property Code.

x x x

<sup>1</sup> A corporation organized and existing under the laws of France with principal address at 534, rue La Boetie, 75008 Paris, France.

<sup>2</sup> With address at D-158/A Okhla Industrial Area, Phase-1, New Delhi 110020, India; with registered representative, Antonio Robles with address at Blk 3, Lot 7B, Bigonia St., Anahaw Homes, Sta. Rosa, Laguna.

<sup>3</sup> 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.

"8. While the Opposer's mark is registered and intended to be used for pharmaceutical preparations under International Class 5, the goods of the Respondent-Applicant for which registration is sought, is designed similarly for, 'pharmaceutical preparations namely neurodegenerative disease drugs', which is exactly under the same International Class 5 as that of the Opposer's product on which its ZENIMA mark is intended to be used.

x x x

"9. Moreover, the Respondent-Applicant's mark closely resembles and is very similar to the Opposer's ZENIMA mark that was previously registered in the Philippines and elsewhere in the world, The resemblance of the Opposer's and the Respondent-Applicant's respective marks is most evident upon cursory examination of both marks a juxtaposition of the said marks."

The Opposer's evidence inclusive of annexes consists of the following:

1. Exhibit "A" - Legalized and authenticated Special Power of Attorney; and,
2. Exhibit "B" - Affidavit of Ms. Sylvie Guillas with attached summary of Opposer's worldwide trademark registrations and/or application for ZENIMA, including Philippines.

This Bureau issued and served upon the Respondent-Applicant a Notice to Answer on 23 July 2014 which was received by the Respondent-Applicant's agent on 24 July 2014. However, this Bureau did not receive an answer and thus, Respondent-Applicant is declared in default and this case is deemed submitted for decision.<sup>4</sup>

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

Section 123.1 paragraph (d) of R.A. No. 8293, otherwise known as the Intellectual Property Code ("IP 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 registration falling under Class 05 for the trademark ZENIMA dated 25 July 2013 for pharmaceutical preparations.<sup>5</sup> It was also issued Certificates of Registration for the same mark in Malaysia and Singapore.<sup>6</sup>

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

**ZENIMA**

Opposer's Trademark

**DENIGMA**

Respondent-Applicant's Trademark

<sup>4</sup> Order No. 2012-1424 dated 06 November 2012.

<sup>5</sup> Exhibit "B" of Opposer.

<sup>6</sup> Annex "B" of Opposer.

The competing marks each consists of three syllables - Opposer's *ZE-NI-MA* and Respondent-Applicant's *DE-NIG-MA*. The similarity of the word marks lies in the ending syllable *MA*. However, the beginning and middle syllables *ZE-NI* for the Opposer's are starkly different from the *DE-NIG* in the Respondent-Applicant's. The letters "D" and "G" in the "DENIGMA" stand out giving the said mark visual character that can easily be distinguished from ZENIMA. Also, when DENIGMA is pronounced, there is the stress on the syllable "NIG". The letter "G", rendered the sound "NIG" which is clearly distinct from "NIM". Furthermore, the hissing sound of "ZE" in ZENIMA can hardly be confused with the hard "DE" in DENIGMA.


This Bureau also underscore the fact that the foregoing marks cover distinct goods and/or pharmaceutical products. The registration of Opposer's ZENIMA covers pharmaceutical preparations; whereas, Respondent-Applicant's DENIGMA particularly covers neurodegenerative disease drugs. The latter is more specific in the illness it is intended to treat neurodegenerative diseases which are caused by the loss or dysfunction of neurons in the brain or spinal cord. These diseases are especially devastating because the affected cells typically cannot regenerate following damage or death. *Neurodegenerative Diseases: Next-Generation Drugs for Four Major Disorders* deals with chronic neurodegenerative diseases by focusing on four of the most comprehensively studied such conditions: Alzheimer's disease (AD), Parkinson's disease (PD), Huntington's disease (HD), and amyotrophic lateral sclerosis (ALS).<sup>7</sup>

Corollarily, the likelihood of the consumers being deceived, mistaken or confused is remote because of the highly sensitive nature of Respondent-Applicant's drugs. The sheer disparity in the nature and purposes of the goods and the manner by which the Respondent-Applicant's goods under the mark DENIGMA are sold or dispensed precludes the probability of confusion or mistake. Moreover, because of the difference in the goods or pharmaceutical products, the Respondent-Applicant cannot be said to have the intent to ride in the goodwill of the mark ZENIMA. It is unlikely for one when confronted with the mark DENIGMA to be reminded of the mark ZENIMA and *vice versa*.

**WHEREFORE**, premises considered, the instant opposition is hereby **DISMISSED**. Let the filewrapper of Trademark Application Serial No. 4-2014-00195 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City 20 May 2015.

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

<sup>7</sup> Neurodegenerative Diseases, available at [http://www.insightpharmareports.com/reports\\_report.aspx?r=668&id=86304](http://www.insightpharmareports.com/reports_report.aspx?r=668&id=86304) (last accessed 20 May 2015).