



WESTMONT PHARMACEUTICALS, INC.,
Opposer,

-versus-

KIMIN, INC.,
Respondent-Applicant.

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IPC No. 14-2012-00081
Opposition to:
Appln. Serial No. 4-2011-006638
Date filed: 07 June 2011
TM: **"SOLMAX"**

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NOTICE OF DECISION

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GREETINGS:

Please be informed that Decision No. 2015 - 99 dated May 20, 2015 (copy enclosed) was promulgated in the above entitled case.

Taguig City, May 20, 2015.

For the Director:

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



WESTMONT PHARMACEUTICALS, INC.
Opposer,

- versus -

KIMIN, INC.,
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IPC No. 14-2012-00081
Opposition to:

Appln. No. 4-2011-006638
Date Filed: 07 June 2011
Trademark : "SOLMAX"

Decision No. 2015 - 99

DECISION

WESTMONT PHARMACEUTICALS, INC. ("Opposer")¹ filed on 16 February 2012 a verified opposition to Trademark Application Serial No. 4-2011-006638. The application, filed by KIMIN, INC., ("Respondent-Applicant")², covers the mark "SOLMAX" for use on goods under class 31³ namely: animal fattening preparations; feed supplements; nutritional additives for animal foodstuffs; not for medical purposes; additives to fodder, not for medical purposes.

The Opposer alleges the following grounds for this instant opposition:

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

"8. The mark 'SOLMAX' will likely cause confusion, mistake and deception on the part of the purchasing public. The registration of the mark 'SOLMAX' in the name of the Respondent-Applicant will violate Sec. 123 of the IP Code. x x x

"9. Under the above-quoted provision, any mark, which is similar to a registered mark, shall be denied registration if the mark for nearly resembles a registered mark that confusion or deception in the mind of the purchasers will likely result."

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

1. Exhibit "A"- "A-1"- Print-out of Trademark E-Gazette Publication for Opposition;
2. Exhibit "B" - Certified true copy (Ctc) of Certificate of Registration No. 32907 for SOLMUX;
3. Exhibit "C" - Ctc of Certificate of Renewal of Registration No. 32907;
4. Exhibit "D"- "G" - Ctc of Affidavits of Use;
5. Exhibit "H" - Sample product label of SOLMUX; and,
6. Exhibit "I" - Ctc of Certificate of Product Registration No. 001454

¹ A domestic corporation duly organized and existing under the laws of the Philippines, with principal business address at 4th Floor, Bonaventure Plaza, Ortigas Avenue, Greenhills, San Juan City, Philippines.

² A foreign corporation with office address at Rm. 201 Buseok Bldg., 328-6 Yangjae 2-Dong, Seocho-Gu Seoul, 137-897 Republic of Korea.

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.

issued by FDA.

This Bureau issued and served upon the Respondent-Applicant a Notice to Answer on 05 March 2012. Respondent-Applicant however, did not file an answer. Thus, Respondent-Applicant is declared in default and this case is deemed submitted for decision.⁴

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

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 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 ("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 SOLMUX dated 13 December 1983 for mucosolvent preparation for tracheobronchial secretions.⁶ It was also issued a Certificate of Renewal of Registration on 13 December 2003 for its mark SOLMUX.⁷

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

Solmux

Opposer's Trademark

SOLMAX

Respondent-Applicant's Trademark

The competing marks consist of two syllables with the same beginning syllable SOL. The ending syllable differs in its vowel component - Opposer's "U" in SOLMUX is changed to Respondent-Applicant's "A" in SOLMAX. While that appears to be the only distinction between

⁴ Order No. 2012-1424 dated 06 November 2012.

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 "B" of Opposer.

⁷ Exhibit "C" of Opposer.

the marks, a further examination on the goods covered by the marks is necessary to determine the similarity or dissimilarity of the marks to cause public confusion.

It appears that the goods and/or products covered by the competing marks are not the same and the illness to be treated or the use thereof are entirely distinct and different from each other. Opposer's SOLMUX is a mucosolvent preparation for tracheobronchial secretions; a medicine for relief of cough with phlegm for adults.⁸ On the other hand, Respondent-Applicant's SOLMAX is not for medical purposes. It is intended for animal fattening preparations or additives to fodder. Thus, the products belong to different classification of goods. They are directed for different purposes, catered to different markets and available in separate channels of trade.

Corollarily, the likelihood of the consumers being deceived, mistaken or confused is remote because Opposer's SOLMUX is a cough medicine for humans; in contrast to Respondent-Applicant's SOLMAX which is a feed or foodstuffs for animals. The sheer disparity of the nature and purposes of the goods and the manner by which the Respondent-Applicant's goods under the mark SOLMAX are sold, distributed and eventually used precludes the probability of confusion or mistake. Moreover, the Respondent-Applicant cannot be said to have the intent to ride in the goodwill of the mark SOLMUX. It is unlikely for one when confronted with the mark SOLMAX to be reminded of the mark SOLMUX and *vice versa*.

WHEREFORE, premises considered, the instant opposition is hereby **DISMISSED**. Let the filewrapper of Trademark Application Serial No. 4-2011-006638 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 W, Bureau of Legal Affairs

⁸ SOLMUX available at <http://www.unilab.com.ph/consumers/products/solmux-500-mg-capsule/> (last accessed 20 May 2015).