



AMGEN INC.,  
Opposer,

-versus-

IRENEO T. CHUATOCO,  
Respondent-Applicant.

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IPC No. 14-2009-00268  
Opposition to:  
Appln. Serial No. 4-2009-001301  
Date Filed: 09 February 2009  
TM: "ANGIVAS"

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**NOTICE OF DECISION**

**CESAR C. CRUZ & PARTNERS Law Offices**  
Counsel for the Opposer  
30<sup>th</sup> Floor, Ayala Life-FGU Center  
6811 Ayala Avenue, Makati City

**LILIBETH S. CHUA**  
For Respondent-Applicant  
No.25 Kabignayan Street  
Tatalon, Quezon City

**GREETINGS:**

Please be informed that Decision No. 2015 - 120 dated June 26, 2015 (copy enclosed) was promulgated in the above entitled case.

Taguig City, June 26, 2015.

For the Director:

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



AMGEN INC.,	}	IPC NO. 14-2009-000268
	Opposer,	}
	}	Opposition to:
-versus-	}	Appln. Serial No. 4-2009-001301
	}	Date Filed: 09 February 2009
	}	Trademark: "ANGIVAS"
IRENEO T. CHUATOCO,	}	
	Respondent-Applicant.	Decision No. 2015- <u>120</u>
x-----x		

**DECISION**

AMGEN INC.<sup>1</sup> ("Opposer") filed an opposition to Trademark Application Serial No. 4-2009-001301. The application, filed by Ireneo T. Chuatocho<sup>2</sup> ("Respondent-Applicant"), covers the mark "ANGIVAS" for use on "pharmaceutical preparations, namely, calcium channel blocker, cardiovascular drugs, anti-hypertensive/anti-anginal drugs (amlodipine besilate)" under Class 05 of the International Classification of Goods and Services.<sup>3</sup>

The Opposer alleges:

x x x

"The grounds for the opposition to the registration of the trademark are as follows:

"1. Opposer is the registered owner of the trademark AMGIVA for goods in Class 5 in the Philippines under Certificate of Registration No. 4-2008-003746 issued by the Intellectual Property Office on September 1, 2008. Opposer filed its trademark application for registration of the AMGIVA trademark on April 1, 2008.

"2. Respondent-Applicant filed its trademark application for registration of the ANGIVAS trademark for goods in Class 5 on February 9, 2009.

"3. Opposer's AMGIVA trademark was registered long before Respondent-Applicant appropriated the similar mark ANGIVAS for its own products in Class 5.

<sup>1</sup>A foreign corporation organized and existing under and by virtue of the laws of the State of Delaware, United States of America, with principal office address at One Amgen Center Drive, Thousand Oaks, CA 91320-1799, U.S.A.

<sup>2</sup>With address at #25 Kabignayan St., Tatalon, Quezon City.

<sup>3</sup>The 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

"4. Respondent-Applicant's trademark ANGIVAS closely resembles Opposer's AMGIVA mark, and is likely to cause confusion, mistake and deception on the part of the purchasing public when applied to or used in connection with the goods of Respondent-Applicant, by misleading them into believing that Respondent-Applicant's goods either come from Opposer, or are sponsored or licensed by Opposer.

"5. Respondent-Applicant adopted the trademark ANGIVAS on its own goods with the obvious intention of misleading the public into believing that its goods bearing the trademark originate from, or are licensed or sponsored by, Opposer, which is the owner of the prior, confusingly similar trademark AMGIVA.

"6. The approval of Respondent-Applicant's trademark ANGIVAS is based on the representation that it is the originator, true owner and first user of the trademark, which was merely derived from, and is confusingly similar to, Opposer's AMGIVA mark.

"7. Respondent-Applicant's use of the trademark ANGIVAS infringes upon Opposer's exclusive right to use the AMGIVA mark, which is protected under Sections 147 and 123.1 (d) and (e) of the Intellectual Property Code (hereinafter the "IP Code"), Article 6bis of the Paris Convention and Article 16 of the Agreement on Trade Related Aspects of Intellectual Property Rights, to which the Philippines and United States of America adhere.

"8. The registration of the trademark ANGIVAS in the name of the Respondent-Applicant is contrary to other provisions of the IP Code.

"To support this opposition, Opposer will prove and rely upon, among other facts, the following:

"1. Opposer is the rightful owner of the AMGIVA mark. Opposer has registered or applied for the registration of its AMGIVA mark in many countries around the world.

"2. Opposer's AMGIVA mark is an arbitrary trademark and is entitled to broad legal protection against unauthorized users like Respondent-Applicant who have appropriated the deceptively similar trademark ANGIVAS for its own goods.

"3. Respondent-Applicant's registration and use of a confusingly similar trademark will tend to deceive and/or confuse purchasers into believing that Respondent-Applicant's products emanate from, or are under the sponsorship of, Opposer, and will damage Opposer's interests for the following reasons:

- (a) The trademarks are confusingly or deceptively similar.
- (b) The goods on which the trademarks are used (i.e., pharmaceutical preparations in Class 5) are confusingly similar and will or are likely to be advertised to consumers through the same channels of trade.



"4. The registration and use of a nearly identical trademark by Respondent-Applicant will diminish the distinctiveness of Opposer's AMGIVA mark.

x x x

The Opposer's evidence consists of the notice of opposition; the affidavit of Stuart L. Watt, Vice President, Law of Amgen, Inc. executed on 05 November 2009 with the following attachments: a copy of certificate of registration no. 4-2008-003746, copy of a list of countries where Amgen's AMGIVA mark is registered and/or applied, copies of certificates of registration for the AMGIVA mark issued in Amgen's name in different countries, territories and jurisdictions worldwide; and, a copy of the power of attorney appointing the law firm SYCIP SALAZAR HERNANDEZ & GATMAITAN as its attorney-in-fact and counsel to represent Amgen in this opposition case.<sup>4</sup>

This Bureau issued a Notice to Answer and sent a copy thereof upon Respondent-Applicant on 14 January 2010. The Respondent-Applicant, however, did not file an Answer.

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

The Opposer anchors its opposition on Sec. 123.1 (d) and (e) and Sec. 147 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;"
  
- (e) Is identical with, or confusingly similar to, or constitutes a translation of a mark which is considered by the competent authority of the Philippines to be well-known internationally and in the Philippines, whether or not it is registered here, as being already the mark of a person other than the applicant for registration, and used for identical or similar goods or services: *Provided*, That in determining whether a mark is well-known, account shall be taken of the knowledge of the

<sup>4</sup> Marked as Annexes "A" to "C", inclusive.

relevant sector of the public, rather than of the public at large, including knowledge in the Philippines which has been obtained as a result of the promotion of the mark;

Sec. 147. *Rights Conferred.* - x x x 147.2. The exclusive right of the owner of the well-known mark defined in Subsection 123.1 (e) which is registered in the Philippines, shall extend to goods and services which are not similar to those in respect of which the mark is registered: *Provided,* That use of that mark in relation to those goods or services would indicate a connection between those goods or services and the owner of the registered mark: *Provided further,* That the interests of the owner of the registered mark are likely to be damaged by such use.

Records show that the Opposer filed a trademark application for AMGIVA on 01 April 2008. The application matured into a registration and a Certificate of Registration was issued on 01 September 2008. The application covers pharmaceutical preparations, namely, pharmaceuticals for the treatment of bone disease under Class 05. On the other hand, the Respondent-Applicant filed the contested trademark application on 09 February 2009. The Respondent-Applicant indicated in its trademark application the goods under Class 05, i.e. pharmaceutical preparations, namely, calcium channel blocker, cardiovascular drugs, anti-hypertensive/anti-anginal drugs (amlodipine besilate).

The marks are shown below:

**AMGIVA**

**ANGIVAS**

Opposer's trademark

Respondent-Applicant's mark

This Bureau finds that while the pharmaceutical products indicated in Respondent-Applicant's trademark application are not similar to those covered by the Opposer's registration, confusion is still likely to occur in this instance because of the close resemblance between the marks and that the goods are for human consumption. Section 123.1 (d) of the IP Code provides:

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

- (f) 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;"

The marks look and sound very similar. Both AMGIVA and ANGIVAS marks have three (3) syllables, "AM-GI-VA" and "AN-GI-VAS". Respondent-Applicant merely changed Opposer's letter M with the letter N and inserted letter S in coming up with the mark ANGIVAS. It could result to mistake with respect to perception because the marks sound so similar. Under the idem sonans rule, the following trademarks were held confusingly similar in sound: "BIG MAC" and "BIG MAK"<sup>5</sup>, "SAPOLIN" and LUSOLIN"<sup>6</sup>, "CELDURA" and "CORDURA"<sup>7</sup>, "GOLD DUST" and "GOLD DROP". The Supreme Court ruled that similarity of sound is sufficient ground to rule that two marks are confusingly similar, to wit:

Two letters of "SALONPAS" are missing in "LIONPAS": the first letter a and the letter s. Be that as it may, when the two words are pronounced, the sound effects are confusingly similar. And where goods are advertised over the radio, similarity in sound is of special significance...."SALONPAS" and "LIONPAS", when spoken, sound very much alike. Similarity of sound is sufficient ground for this Court to rule that the two marks are confusingly similar when applied to merchandise of the same descriptive properties.<sup>8</sup>

It is emphasized that a trademark must be a visible sign capable of distinguishing the goods or services of an enterprise.<sup>9</sup> 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.<sup>10</sup> This Bureau finds that the mark applied for registration by the Respondent-Applicant does not meet this function.

It is also worth mentioning that Trademark Application No. 4-2009-001301 is the subject matter of opposition case, docketed as Inter Partes No. 14-2009-00257. This Bureau also sustained the opposition ruling that "ANGIVAS" is confusingly similar to the registered mark "REGIVAS". Both marks cover pharmaceutical products, specifically, cardiovascular drugs.

<sup>5</sup> *MacDonalds Corp, et. al v. L. C. Big Mak Burger*, G.R. No. L-143993, 18 August 2004.

<sup>6</sup> *Sapolin Co. v. Balmaceda and Germann & Co*, m 67 Phil, 705.

<sup>7</sup> *Co Tiong SA v. Director of Patents*, G.R. No. L- 5378, 24 May 1954; *Celanes Corporation of America vs. E. I. Du Pont de Nemours & Co.* (1946), 154 F. 2d 146 148.)

<sup>8</sup> *Marvex Commerical Co., Inc. v. Petra Hawpia & Co., et. al.*, G.R. No. L-19297, 22 Dec. 1966.


<sup>9</sup> Sec. 121.1 of the IP Code.

<sup>10</sup> *Pribhdas J. Mirpuri vs. Court of Appeals*, G.R. No. 114508, 19 November 1999.

WHEREFORE, premises considered, the instant Opposition to Trademark Application No. 4-2009-001301 is hereby SUSTAINED. Let the filewrapper of the subject trademark application be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

**SO ORDERED.**

Taguig City, 26 June 2015.



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