

PEDIATRICA, INC.,
Opposer,

-versus-

THE GENERICS PHARMACY, INC.,
Respondent-Applicant.

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IPC No. 14-2011-00513
Opposition to:
Appln. Serial No. 4-2011-005188
Date filed: 5 May 2011
TM: "MUCOHEX"

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NOTICE OF DECISION

OCHAVE & ESCALONA
Counsel for the Opposer
No. 66 United Street
Mandaluyong City

THE GENERICS PHARMACY
Respondent-Applicant
459 Quezon Avenue
Quezon City

GREETINGS:

Please be informed that Decision No. 2015 - - dated July 24, 2015 (copy enclosed) was promulgated in the above entitled case.

Taguig City, July 24, 2015.

For the Director:

Atty. J. SEPHINE G. ALON
Bureau of Legal Affairs

The Opposer submitted the following pieces of evidence, marked as Exhibits “A” to “H”:

1. Copy of the Intellectual Property Office “E-Gazette” released on 17 October 2011 showing trademarks published for opposition;
2. Certificate of Registration No. 20177 for the trademark MUCOLEXIN; and
3. Affidavits of Use of the trademark MUCOLEXIN.

This Bureau issued and served upon the Respondent-Applicant a Notice to Answer on 28 November 2011. Respondent-Applicant, however, did not file an answer. Thus, this instant case is submitted for decision.

Records show that the Opposer filed an application for the registration of the trademark MUCOLEXIN with the then Philippine Patent Office on 31 July 1972. The application was approved for registration on 3 October 1973, with validity period of twenty (20) years, or until 3 October 1993. The registration was renewed for another period of 20 years or until 3 October 2013. On the other hand, the Respondent-Applicant filed the trademark application subject of the opposition on 5 May 2011.

The issue to be resolved is whether or not the trademark MUCOHEX is confusingly similar to the Opposer’s registered trademark MUCOLEXIN. The competing marks are reproduced below:

Mucolexin

MUCOHEX

Opposer’s mark

Respondent-Applicant’s Mark

The two word marks are similar in the first four letters forming the prefix “MUCO”. Opposer, however, was not able to provide any evidence that it has obtained exclusive use to the said prefix, so as to prevent or exclude others from using the same. It is fairly reasonable to infer that the Opposer has coined its mark from a portion of the term “mucolytic”. Its trademark registration covers “Pharmaceutical preparation (Mucolytic)”. The Respondent-Applicant’s trademark application also indicates use on “medicine, mucolytics, bromhexine preparations”. In the medical field, “MUCO” is a prefix which refers to “*mucus*”⁴, and related to the word “*mucolytic*”, which means capable of reducing the viscosity of mucus⁵. Thus, when the term “muco” is used as a trademark or as a component thereof for pharmaceutical products that are applied to reducing the viscosity of the mucus, it is considered as a suggestive mark because it

⁴ Ref: <http://medical-dictionary.thefreedictionary.com/muco-> citing *Mosby’s Medical Dictionary, 8th edition.* (2009). Retrieved July 21 2015

⁵ Ref: <http://medical-dictionary.thefreedictionary.com/mucolytic> citing *Miller-Keane Encyclopedia and Dictionary of Medicine, Nursing, and Allied Health, Seventh Edition.* (2003). Retrieved July 21 2015

gives a clue as to the nature and purpose thereof. Suggestive marks are weak marks as far as their distinctiveness is concerned. This Bureau cannot therefore sustain the opposition on the basis of the similarity of the prefixes of the contending trademarks alone containing "MUCO".

Hence, to determine whether the Respondent-Applicant's mark is confusingly similar to the Opposer's, it is imperative for this Bureau to scrutinize the letters and/or syllables that follow or accompany the said prefix. In this regard, Respondent-Applicant's mark ends with the single syllable "HEX", which is visually and aurally different from the syllable "LEXIN" in the Opposer's trademark, composed of two (2) syllables and five (5) letters. Clearly, these unique dissimilarities in the suffixes of the contending word marks are sufficient as safeguards in order not to mislead or confuse the consumers into believing that the Respondent-Applicant's goods came or originated from or is connected or associated with the Opposer's. There would then be no possibility or likelihood for the purchasing public to mistake "Mucolexin" for "Mucohex".

WHEREFORE, premises considered, the instant Opposition to the Trademark Application No. 4-2011-005188 is hereby **DISMISSED**. Let the filewrapper of Trademark Application No. 4-2011-005188 be returned together with the copy of this **DECISION** to the Bureau of Trademarks (BOT) for information and appropriate action.

SO ORDERED.

Taguig City, 24 July 2015

ATTY. NATANIEL S. AREVALO
Director IV
Bureau of Legal Affairs

Copy furnished:

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