



GLAXOSMITHKLINE BIOLOGICALS SA.,  
Opposer,

-versus-

AMBICA INTERNATIONAL TRADING  
CORPORATION,  
Respondent-Applicant.

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}  
} IPC No. 14-2014-00320  
} Opposition to:  
} Appln. No. 4-2014-005307  
} Date Filed: 02 May 2014  
} TM: "TYPHOFIX"  
}  
}  
}  
}

**NOTICE OF DECISION**

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**GREETINGS:**

Please be informed that Decision No. 2015 - 218 dated October 19, 2015 (copy enclosed) was promulgated in the above entitled case.

Taguig City, October 19, 2015.

For the Director:

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



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**IPC NO. 14-2014-00320**

Opposition to:

App. Ser No. 4-2014-005307

Date Filed: 02 May 2014

TM: **TYPHOFIX**

**Decision No. 2015- 218**

**DECISION**

GLAXOSMITHKLINE BIOLOGICALS SA. ("Complainant")<sup>1</sup> filed an opposition to the Trademark Application Serial No. 4-2014-005307. The application filed by AMBICA INTERNATIONAL TRADING CORPORATION<sup>2</sup> ("Respondent-Applicant"), covers the mark "TYPHOFIX" for use on "*pharmaceutical preparations namely anti-bacterial*" under Class 5 of the International Classification of Goods.

Opposer alleges, among others, the following:

"1. The trademark **TYPHOFIX** which Respondent-Applicant seeks to register in respect of "pharmaceutical preparations namely anti-bacterial" in class 05 nearly resembles Opposer's trademark **TYPHERIX**, registered in the Philippines under Registration No. 4-1998-004536 with respect to 'vaccines for human use, namely typhoid fever immunization' also in class 05 as to be likely to deceive or cause confusion.

x x x

"1.1. **TYPHOFIX** is confusingly similar visually and aurally to Opposer's registered mark **TYPHERIX**. The marks are also confusingly similar when handwritten, which is common for prescription pharmaceuticals such as those designated by the marks.

"1.1.1 **TYPHOFIX** has almost the same spelling as Opposer's **TYPHERIX**. The two trademarks have exactly the same first four (4) letters, 'T', 'Y', 'P' and 'H' written in the same order as well as the same suffix 'IX' which similarities are likely to create confusion to the public. Hence, both trademarks have the same overall impression. xxx

"1.1.2. Due to their identical first four (4) letters "**TYPH**" and the suffix '**IX**', the trademarks, viewed as a whole, are not very different. Aurally, both the prefix '**TYPH**' and the suffix '**IX**' in both marks are phonetically very strong and are likely to make a lasting impression.

<sup>1</sup> A company duly organized under the laws of Belgium with principal place of business at Rue De l 'Institut, 89 B-1330, Rixensart, Belgium.

<sup>2</sup> A domestic corporation with address at #9 Amsterdam Extension, Merville Park Subdivision, Paranaque City.

"1.1.3. The first and last letters and syllables of a trademark are the most distinct and the most likely to be remembered by consumers. Hence, both **TYPHOFIX** and **TYPHERIX**, the most dominant components are syllables 'TYPH' and 'IX'.

"1.1.4. In comparing both marks, six out of the eight letters comprising the mark **TYPHOFIX** are also contained in the mark **TYPHERIX**. In addition, both Respondent-Applicant's trademark **TYPHOFIX** and Opposer's trademark **TYPHERIX** consist of three (3) syllables.

"1.1.5. Moreover, both trademarks are exactly of the same length, **TYPHOFIX** consists of eight (8) letters just as **TYPHERIX** consist of eight (8) letters.

"1.1.6. Finally, when handwritten, as in written prescriptions, the marks are potentially confusingly similar xxx.

"1.1.7. Evidently, therefore, the resemblance and similarities between Opposer's **TYPHERIX** and the subject trademark **TYPHOFIX** are such that they will likely deceive or cause confusion to the public. Such a confusion cannot be allowed especially in this case where pharmaceutical products are involved, and public health is at stake.

"1.2. Opposer's mark **TYPHERIX** was registered with this Honorable Office on June 8, 2006, or more than almost eight (8) years ahead of the subject Trademark Application 4-2014-005307 for **TYPHOFIX** which Respondent filed only on May 2, 2014. Moreover, **TYPHERIX** has been used in the Philippines by the Opposer since 2000.

"1.3. As mentioned above, **TYPHOFIX** designates pharmaceutical preparations in class 05 just as Opposer's **TYPHERIX** trademark designates "vaccines for human use, namely typhoid fever immunization" in the same class. Otherwise stated, both trademarks are destined for use as brand names for pharmaceutical products which flow in the same channels of trade and which would be prescribed or administered by the same group of health professionals.

"1.3.1. The confusing similarity between **TYPHOFIX** and Opposer's **TYPHERIX** will likely mislead the public into believing that Respondent-Applicant's goods bearing the trademark **TYPHOFIX** originated from Opposer.

"1.3.2. Worse, it is not far-fetched that the public may be misled into believing that Respondent-Applicant's and Opposer's goods are one and the same.

"1.4. Considering (a) the confusing similarity between **TYPHOFIX** and **TYPHERIX**, which latter trademark is already protected by registration; and (b) the fact that both trademarks designate pharmaceutical goods in Class 05, there is no doubt that registration of **TYPHOFIX**, the junior trademark, cannot be allowed pursuant to the provisions of Section 123.1 (d) of the Code cited above.

"2. Further, the mark is a well-known mark registered in numerous jurisdictions across the world in the name of herein Opposer. Hence, the registration of a confusingly similar trademark **TYPHOFIX** for pharmaceutical products under

the same class 05 will be a breach of the clear provisions of Section 123.1 (e) of R.A. 8293 on well-known marks.

x x x

"2.1. The trademark **TYPHOFIX** subject of the present opposition is liable to create confusion as it resembles closely the internationally well-known mark of Opposer. It cannot be overemphasized that Opposer uses the mark **TYPHOFIX** for vaccines for human use, namely typhoid fever immunization, which are of the same class that is, class 5, for which Respondent-Applicant also seeks registration of the mark **TYPHOFIX** for pharmaceutical preparations.

"3. The adoption by Respondent-Applicant of the mark **TYPHOFIX**, having the same overall impression as Opposer's mark **TYPHERIX**, clearly diminishes and dilutes the distinctiveness of Opposer's mark **TYPHERIX** which has been used by Opposer in the Philippines as early as 2000.

"3.1. The appropriation by Respondent-Applicant of the mark **TYPHOFIX** is also likely to cause confusion on the part of the medical community or consumers who would likely believe that Respondent-Applicant's products are related or sponsored by Opposer because of the identical prefix and suffix consisting of the first syllable 'TYPH' and the last letters 'IX'.

"4. Finally, it is apparent that Respondent-Applicant's use and attempted registration of the trademark **TYPHOFIX** is done in bad faith, with manifest intent to ride on the popularity and goodwill of the trademark **TYPHERIX**.

"4.1. **TYPHERIX** has been in use in the Philippines and therefore has been known to the Philippine public as early as the year 2000 for vaccines for human use, namely typhoid fever immunization that Opposer has since been selling, distributing and promoting.

"4.2. Out of the whole gamut words and symbols from which Respondent-Applicant could have selected to create a trademark to designate its goods, it purposely used **TYPHOFIX** which arguably an approximation or a variation of Opposer's **TYPHERIX** knowing fully well that the latter has been in the market for almost 14 years for identical goods to the specification filed by the Respondent-Applicant.

"5. Considering the foregoing, the interest of Opposer, as the owner of the internationally well-known **TYPHERIX** trademark, will be damaged and prejudiced by the adoption as well as the registration by Respondent-Applicant of the trademark **TYPHOFIX**."

Opposer's evidence consists of the following:

1. Exhibit "A" - Duly legalized and authenticated Affidavit of Joanne Green;
2. Exhibit "A-1" - Print-out from IPOPHL's Trademark Database of Registration No. 4-1998-004536 for **TYPHERIX**;
3. Exhibit "A-2" - list of foreign registration and applications of **TYPHERIX**;

4. Exhibits "A-3" to "A-5" - certified true copies of trademark registration certificates issued by Singapore, EU and Benelux;
5. Exhibits "A-6" - sales figures indicating the foreign sales of TYPHERIX pharmaceutical products.
6. Exhibit "A-7" - photograph of sample product packaging used in the Philippines;
7. Exhibit "A-8" - copy of the Certificate of Product Registration issued by FDA;
8. Exhibit "A-9" - TYPHERIX advertising figures; and
9. Exhibit "A-10" - printouts of websites where TYPHERIX exposure can be found.

On 01 October 2014, this Bureau issued a Notice to Answer and served a copy thereof to the Respondent-Applicant's address on 09 October 2014. Respondent filed a Motion for Time to File Verified Answer. On 27 November 2014, Respondent filed its Verified Answer through registered mail. On 21 January 2015, this Bureau issued an Order requiring Respondent-Applicant to submit a Secretary's Certificate showing authority of Gener Sansaet to execute and sign the Verification within ten (10) days from receipt of the order. Respondent-Applicant received the order on 09 February 2015. However, it was only on 12 May 2015 that Respondent-Applicant submitted the original Secretary's Certificate. As such, this Bureau issued an Order on 08 July 2015 declaring it in default for failure to complete the requirements on time. Accordingly, pursuant to Rule 2 Section 10 of the Rules and Regulations on Inter Partes Proceedings, as amended, the case is deemed submitted for decision on the basis of the opposition, the affidavits of witnesses, if any, and the documentary evidence submitted by the Opposer.

Should the Respondent-Applicant be allowed to register the mark **TYPHOFIX**?

The records show that at the time the Respondent-Applicant filed its application for the mark TYPHOFIX 02 May 2014, the Opposer has already been issued a registration for its trademark TYPHERIX on 08 June 2006. Opposer's mark TYPHERIX is used for "vaccines for human use, namely typhoid fever immunization" under Class 05 while Respondent-Applicant's mark TYPHOFIX is used on and for "pharmaceutical preparations namely anti-bacterial" under Class 5. While the goods of the parties are used to treat different diseases, they belong to the same class and are sold on same channels of trade. Thus, they are considered related goods.

But, are the parties mark resemble each other such that confusion or mistake or even deception is likely to occur?

The marks are reproduced below for comparison:

**TYPHERIX**

**Opposer's Mark**

**TYPHOFIX**

**Respondent-Applicant's Mark**

There is no doubt that the first four letters "TYPH" of Opposer's mark TYPHERIX is inspired or adopted from the word or prefix "typh" or "typho" which means "fever" and related to typhus or typhoid fever.<sup>3</sup> Being indicative of the Opposer's product itself, it furnishes no indication of the origin of the article and therefore is open for appropriation by anyone.<sup>4</sup> Thus, this Bureau cannot sustain the opposition on the basis of the presence of the prefix "typho" or "typh" in both the competing marks because to do so would give the impression that Opposer has the exclusive right to use the prefix "typho". As such, there is a need to examine the other letters or components of the mark to determine whether there is confusing similarity.

In this case, Respondent-Applicant changed the letter "E" to "O" and the syllable "RIX" to "FIX" in Opposer's mark to form its mark TYPHOFIX. However, despite the substitution of the letter and syllable, the resulting mark can still hardly be distinguished from that of Opposer's mark when pronounced. The Supreme Court has ruled that similarity in sound is sufficient to find a confusing similarity between the two marks as when the marks are advertised on radio where the similarity of sound is of special significance. Further, confusion cannot be avoided by merely adding, removing or changing some letters of a registered mark. Confusing similarity exists when there is such a close or ingenuous imitation as to be calculated to deceive ordinary persons, or such resemblance to the original as to deceive ordinary purchaser as to cause him to purchase the one supposing it to be the other.<sup>5</sup> Colorable imitation does not mean such similitude as amounts to identify, nor does it require that all details be literally copied. Colorable imitation refers to such similarity in form, context, words, sound, meaning, special arrangement or general appearance of the trademark or trade name with that of the other mark or trade name in their over-all presentation or in their essential, substantive and distinctive parts as would likely to mislead or confuse persons in the ordinary course of purchasing the genuine article<sup>6</sup>.

Succinctly, because Respondent-Applicant will use the confusingly similar mark on goods that are related to the goods upon which Opposer's registered mark, there is the likelihood that information, perception or assessment or impression of the Respondent-Applicant's TYPHOFIX product may be unfairly cast upon or attributed to Opposer's TYPHERIX products, or vice-versa.

Finally, it must be 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 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. It is found that Respondent-Applicant's mark did not meet the requirement of the law.

<sup>3</sup> *Farlex Partner Medical Dictionary*. S.v. "typho-." Retrieved October 16 2015 from <http://medical-dictionary.thefreedictionary.com/typho->

<sup>4</sup> *Marvex Commercial Co. Inc. v. Peter Hawpia & Co. et. Al.*, G.R. No. L-19297. December 22, 1966

<sup>5</sup> See *Societe Des Produits Nestle, S.A v. Court of Appeals*, G.R. No.112012, 4 Apr. 2001, 356 SCRA 207, 217.

<sup>6</sup> See *Emerald Garment Manufacturing Corp. v. Court of Appeals*. G.R. No. 100098, 29 Dec. 1995.

**WHEREFORE**, premises considered, the instant opposition is hereby **SUSTAINED**. Let the filewrapper of Trademark Application Serial No. 4-2014-005307, together with a copy of this Decision, be returned to the Bureau of Trademarks for information and appropriate action.

**SO ORDERED.**

Taguig City, 19 October 2015.



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