



WESTMONT PHARMACEUTICAL, INC.,
Opposer,

-versus-

LITTMAN DRUG CORPORATION,
Respondent-Applicant.

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}
} IPC No. 14-2013-00070
} Opposition to:
} Appln. Serial No. 4-2012-003301
} Date Filed: 15 March 2012
} TM: "DUOBLOC"
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}

NOTICE OF DECISION

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GREETINGS:

Please be informed that Decision No. 2015 - 195 dated September 18, 2015 (copy enclosed) was promulgated in the above entitled case.

Taguig City, September 18, 2015.

For the Director:


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



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LITTMAN DRUG CORPORATION,	}	TM: DUOBLOC
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x-----x		Decision No. 2015- <u>195</u>

DECISION

WESTMONT PHARMACEUTICAL, INC. ("Opposer")¹ filed an opposition to the Trademark Application Serial No. 4-2012-003301. The application filed by LITTMAN DRUG CORPORATION² ("Respondent-Applicant"), covers the mark "DUOBLOC" for use on "pharmaceutical preparation" under Class 05 of the International Classification of Goods.

The Opposer alleges the following grounds:

"7. The mark ' DUOBLOC ' owned by Respondent-Applicant so resembles the trademark 'CALCIBLOC' owned by Opposer and duly registered with this Honorable Office prior to the publication for opposition of the mark 'DOUBLOC';

"8. The mark ' DUOBLOC ' will likely cause confusion, mistake and deception on the part of the purchasing public, most especially considering that the opposed mark 'DOUBLOC' is applied for the same class and goods as that of the Opposer's trademark 'CALCIBLOC', i.e. Class 05 of the International Classification of Goods as Pharmaceutical Preparation;

"9. The registration of the mark 'DOUBLOC' in the name of Respondent-Applicant will violate Section 123 of the IP Code xxx."

Opposer's evidence consists of the following:

1. Exhibit "A" - print out of the pertinent page of IPOP HL E-Gazette;
2. Exhibit "B" - certified copy of the Certificate of Registration No. 48810 for the trademark 'CALCIBLOC';

¹ A domestic corporation with principal address at 4th Floor Bonaventure Plaza, Ortigas Avenue, Greenhills, San Juan City.

² A domestic corporation with address at Unit 810 West Tower, PSE Center, Exchange Road, Pasig City.

3. Exhibit "C" - certified copy of the Deed of Assignment;
4. Exhibit "D" - certified copy of the Certificate of Renewal Registration No. 48810 for 'CALCIBLOC';
5. Exhibits "E" to "E-2" - certified copies of the Affidavits of Use;
6. Exhibit "F" - sample product label bearing the trademark 'CALCIBLOC'; and
7. Exhibit "G" - certified copy of the Certificate of Product Registration issued by FDA.

This Bureau issued on 04 March 2013 a Notice to Answer and personally served a copy thereof to the Respondent-Applicant on 11 March 2013. After two motions for extension of time, Respondent-Applicant filed its Answer on 03 June 2013, alleging, among others, the following Special and Affirmative Defenses:

"10. Opposer has no valid cause of action against respondent;

"11. The registrability of respondent's DUOBLOC trademark has been determined and resolved by no less than the Intellectual Property Office (IPO) when the latter, through the Bureau of Trademarks, allowed the subject application of the respondent despite the existing Certificate of Trademark Registration of Opposer's alleged CALCIBLOC trademark which was never cited during the merit examination of the respondent's subject trademark application;

"12. Contrary to the claims of the Opposer, the allowance or registration of the respondent's DUOBLOC trademark will not cause confusion, mistake or deception to the public nor does its registration violate Sec. 123. 1 of the IP Code;

"13. Respondent's DUOBLOC is a distinct three-syllable trademark (DU-O-BLOC) originally coined by the respondent which did not have in mind the CALCIBLOC trademark of Opposer when respondent decided to adopt the said DUOBLOC trademark.

"14. The DUOBLOC of the respondent is a brand name for a tablet medicine previously called COMET. The change of the brand name from COMET to DUOBLOC was approved by the Food and Drug Administration (previously Bureau of Food and Drugs or BFAD) as reflected in the dorsal portions of the Certificate of Product Registration Nos. DI-000224 (for the 6.5 mg tablet) and DI -003302 (for the 25mg tablet);

"15. DUOBLOC drug is a prescription drug (as opposed to the over the counter drugs) used in the management of hypertension and angina

pectoris and as an adjunct to standard therapy in symptomatic heart failure;

"16. DUOBLOC's generic name is CARVEDILOL. In the packaging of DUOBLOC product, the generic name CARVEDILOL is **displayed prominently** and is always enclosed in a box while the brand name DUOBLOC is written below;

"17. As a prescription drug, DUOBLOC cannot be bought by or for patients at a drugstore without the required medical doctor's prescription. Hence, the consumer may not,

The evidence of Respondent-Applicant consists of the following:

1. Exhibit "1" - Affidavit of Teodoro C. Lim, General Manager of Littman Drug Corp;
2. Exhibit "2" - Corporate Secretary's Certificate ;
3. Exhibit "3" to "3-b" - certified true copy of Certificate of Incorporation, Articles of Incorporation and By Laws of Respondent issued by the SEC;
4. Exhibit "3-c" - certified copy of the Certificate of License to Operate as Drug Distributor/Importer/Wholesaler issued by BFAD (now FDA);
5. Exhibit "4" to "4-a" - certified copy of Certificate of Product Registration No. DI-00022 issued by FDA for generic Carvedilol 6.25mg tablet (brandname Comet with notation of changed name to DUOBLOC at the back page)
6. Exhibit "5" to "5-a"- certified copy of Certificate of Product Registration No. DI-003302 issued by FDA for the generic Carvedilol 25mg tablet (brand name COMET with notation of changed name to DUOBLOC at the back page);
7. Exhibit "6" to "6-b" - Actual product packaging sample of DUOBLOC, instructional material and sample tablet packaging;
8. Exhibit "7" - side by side comparison pictures between Opposer's CALCIBLOC and Respondent's DUOBLOC;
9. Exhibits "8" to 8-d" - copies of downloaded IPO search materials showing registration of the trademark NEOBLOC, SMOKEBLOC & Device, C-BLOC; RA BLOC and COLGATE DENTIN-BLOC.

The preliminary conference was terminated on 25 September 2013 and the parties were directed to file their respective position papers. On 03 October 2013 Respondent-Applicant filed its Position Paper while Opposer did so on 07 October 2013.

Should the Respondent-Applicant be allowed to register the mark DUOBLOC?

The records show that at the time the Respondent-Applicant filed its application for the mark DUOBLOC on 15 March 2012, the Opposer has already been issued a registration for its trademark CALCIBLOC on 03 August 2010 under Registration No. 68049. The goods covered by Opposer's trademark is "medicinal preparations indicated for prophylaxis and treatment of angina, myocardial infarctions and all forms of hypertension" under Class 05 while that of Respondent-Applicant is used in the management of hypertension and angina pectoris and as an adjunct to standard therapy in symptomatic heart failure. As such, the goods of the parties are the same as they are used to treat angina and hypertension.

But, are the competing marks identical or confusingly similar as to likely deceive or cause confusion?

Reproduced hereunder are the marks of the parties:

Calcibloc

DUOBLOC

Opposer's Mark

Respondent-Applicant's Mark

Both Opposer's and Respondent-Applicant's marks contain the word "BLOC". However, this Bureau finds that the presence of the word "BLOC" in both marks is insufficient to establish a finding of confusing similarity between the competing marks to sustain the opposition. The word "BLOC" has been understood to mean "to block something". It has been used in combination with other letters or words. That is why, in this Office's Trademark Registry there are numerous trademark registrations and applications where the word "BLOC" has been used in combination with other letters or words such as, B-BLOC, RA BLOC, DENTIN BLOC, among others, under different classes. This underscores the fact that the word "BLOC" has not been appropriated exclusively by one person or entity as part of its trademark and is not very distinctive as to effectively identify the source of goods or services. Hence, what will determine whether the competing trademarks are confusingly similar are the other words or symbols present in the marks. It is clear from the comparison of the two marks that there are no other features that are similar. In Opposer's mark, the word bloc is preceded by "CALCI" while in Respondent-Applicant's mark, it is word "DUO". The different features of the marks only confirms that they are not confusingly similar.

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. The mark applied for registration by Respondent-Applicant meets this function.

WHEREFORE, premises considered, the instant opposition is hereby **DISMISSED**. Let the filewrapper of Trademark Application Serial No. 4-2012-003301, together with a copy of this Decision, be returned to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 18 September 2015.


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