



BIOMEDIS, INC.,
Opposer,

-versus-

AMBICA INTERNATIONAL TRADING
CORPORATION,
Respondent-Applicant.

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IPC No. 14-2014-00336
Opposition to:
Appl. No. 4-2014-005521
Date Filed: 06 May 2014
TM: "AMBICLAV"

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NOTICE OF DECISION

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

GENER CABOTAJE SANSAET
Counsel for Respondent-Applicant
West Tower 2005-A, PSE Centre, Exchange Road
Ortigas Center, Pasig City

GREETINGS:

Please be informed that Decision No. 2015 - 265 dated November 10, 2015 (copy enclosed) was promulgated in the above entitled case.

Taguig City, November 10, 2015.

For the Director:


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

BIOMEDIS, INC.,

Opposer,

-versus-

**AMBICA INTERNATIONAL TRADING
CORPORATION**

Respondent-Applicant.

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} **IPC NO. 14-2014-00336**

} Opposition to:

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} Application No. 4-2014-005521

} Date filed :6 May 2014

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} Trademark: **AMBICLAV**

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} Decision No. 2015- 265

DECISION

BIOMEDIS, INC. (Opposer)¹ filed an opposition to Trademark Application Serial No. 4-2014-005521. The application, filed by, AMBICA INTERNATIONAL TRADING CORPORATION (Respondent-Applicant)², covers the mark "AMBICLAV", for use on "pharmaceutical preparations namely anti-bacterial" under Class 05 of the International Classification of Goods³.

The Opposer states:

"7. At the onset, it is important to point out that this is not the first time Respondent-Applicant filed an application for registration of the mark 'AMBICLAV' with the IPO. In fact, in Decision No. 2011-33 dated 31 March 2011 rendered by this Honorable Bureau in *Biomedis Inc. vs. Ambica International Trading Corporation* docketed as Inter Partes Case (IPC) No. 14-2010-00064, it was held therein that Respondent-Applicant's mark 'AMBICLAV' is confusingly similar with Opposer's trademark 'AMOCLAV'xxx"

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

To support its opposition, the Opposer submitted as evidence the following:

¹ A domestic corporation with address at Dynavision Bldg., 108 Rada St., Legaspi Village, Makati City

² A domestic corporation with address at #9 Amsterdam Extension, Merville Park Subdivision, Paranaque City

³ The Nice Classification of Goods and Services is for registering trademarks and service marks based on 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.

1. Print-out of IPO e-Gazette showing the Respondent-Applicant's trademark application;
2. Copy of Decision No. 2011-33 dated 31 March 2011 entitled *Biomedis Inc. vs. Ambica International Trading Corporation*;
3. Copy of Entry of Judgment/Execution of Decision;
4. Copy of Certificate of Registration No. 4-1999-003627 dated 1 July 2005 for the mark "AMOCLAV" ;
5. Copies of Declarations of Actual Use dated 24 May 1999 and Affidavit of Use dated 9 August 2010;
6. Sample packaging label of the product "AMOCLAV";
7. Certificate of Product Registration dated 19 September 2013; and
8. Certification from IMS Health Philippines Inc. dated 21 July 2014⁴

This Bureau served upon the Respondent-Applicant a "Notice to Answer" on 29 August 2014. The Bureau required the Respondent-Applicant to submit the original Secretary's Certificate within ten days from receipt of Order No. 2015-191. The Respondent-Applicant filed its compliance beyond the ten day period. Thus, the Hearing Officer issued on 10 September 2015 Order No. 2015-1397 declaring the Respondent-Applicant in default for failure to complete the requirements on time.

Without need to belabor the issue any further, in a case between the same parties, the Bureau has rendered a decision in Inter Partes Case (IPC) No. 14-2010-00064⁵ on the registrability of the mark "AMBICLAV" *vis- a- vis* the Opposer's mark "AMOCLAV". We ruled:

This Bureau finds the competing marks confusingly similar. The features or parts of the competing marks that draw the eyes and ears are the syllables "AM" and "CLAV". Their prominence renders the difference in the letters between them, "O" for the Opposer's and "BI" for the Respondent-Applicant's, inconsequential. Confusion cannot be avoided by merely adding, removing or changing some letters of a registered mark. xxx"

The dispositive portion of the decision reads:

WHEREFORE, premises considered, the opposition is hereby SUSTAINED. Let the filewrapper of the Trademark Application Serial No. 4-2009-009162 be returned, together with a copy of this decision, to the Bureau of Trademark (BOT) for information and appropriate action.

An Entry of Judgment/Execution of Decision was issued 29 September 2011.⁶

WHEREFORE, premises considered, the instant Opposition to Trademark Application No. 4-2014-005521 is hereby **SUSTAINED**. Let the filewrapper of the

⁴ Exhibits "A" to "G"


⁵ Exhibit "B"

⁶ Exhibit "C"

subject trademark be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 10 November 2015.


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