



RITEMED PHILIPPINES, INC.,
Opposer,

-versus-

EADRIEX PHARMACEUTICALS
PHILIPPINES, INC.,
Respondent-Applicant.

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IPC No. 14-2014-00145
Opposition to:
Appln. Ser.No. 4-2013-009744
Date filed: 14 August 2013
TM: "RILMED"

X-----X

NOTICE OF DECISION

OCHAVE & ESCALONA
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No. 66 United Street
Mandaluyong City

EADRIEX PHARMACEUTICALS PHILS., INC.,
Respondent-Applicant
147 Scout Rallos, Brgy. Sacred Heart
Kamuning, Quezon City

GREETINGS:

Please be informed that Decision No. 2015 - 252 dated November 04, 2015 (copy enclosed) was promulgated in the above entitled case.

Taguig City, November 04, 2015.

For the Director:

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



RITEMED PHILIPPINES, INC.	}	IPC No. 14-2014-00145
<i>Opposer,</i>	}	
-versus-	}	Opposition to:
	}	Application No. 4-2013-009744
	}	Date Filed: 13 August 2013
	}	Trademark: "RILMED"
EADRIEX PHARMACEUTICALS	}	
PHILIPPINES, INC.,	}	
<i>Respondent-Applicant.</i>	}	
x-----x		Decision No. 2015- <u>252</u>

DECISION

RITEMED PHILIPPINES, INC.¹ ("Opposer") filed an opposition to Trademark Application Serial No. 4-2013-00009744. The application, filed by Eadriex Pharmaceuticals Philippines, Inc.² ("Respondent-Applicant"), covers the mark "RILMED" for use on "*pharmaceuticals- pharmaceutical preparation belonging to the non-steroidal anti-inflammantory group of drugs*" under Class 05 of the International Classification of Goods and Services.³

The Opposer alleges:

x x x
"GROUNDS FOR OPPOSITION"

"The grounds for this Verified Notice of Opposition are as follows:

"7. The mark 'RILMED' applied for by Respondent-Applicant so resembles the trademark 'RITEMED' owned by Opposer and duly registered with this Honorable Bureau prior to the publication of the application for the mark 'RILMED'.

"8. The mark 'RILMED' will likely cause confusion, mistake and deception on the part of the purchasing public, most especially considering that the opposed mark 'RILMED' is applied for the same class and goods s that of Opposer's trademark 'RITEMED', i.e., Class 05 of the International Classification of Goods for pharmaceutical preparations as belonging to the non-steroidal anti-inflammatory group of drugs.

"9. The registration of the mark 'RILMED' in the name of the Respondent-Applicant will violate Sec. 123.1 (d) of the IP Code, which provides, in part, that a mark cannot be registered if it:

x x x

¹A foreign corporation organized and existing under the laws of the Republic of the Philippines with principal office located at 2nd Floor, Dolmar Building, No. 5, EDSA, Mandaluyong City.

²A domestic corporation with business address at 147 Scout Rallos, Brgy. Sacred Heart, Kamuning, Quezon City, Metro Manila.

³The 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.

'Under the above-quoted provision, any mark which is similar to a registered mark, shall be denied registration in respect of similar or related goods or if the mark applied for nearly resembles a registered mark that confusion or deception in the mind of the purchasers will likely result.

"10. Respondent-Applicant's use and registration of the mark 'RILMED' will diminish the distinctiveness of Opposer's trademark 'RITEMED'.

"ALLEGATIONS IN SUPPORT OF THE OPPOSITION

"In support of this Verified Notice of Opposition, Opposer will rely upon and prove the following facts:

"11. Opposer is the registered owner of the trademark 'RITEMED'. It is engaged in the marketing and sale of a wide range of pharmaceutical products.

"11.1. The trademark application for the trademark 'RITEMED' was filed with the IPO on 5 March 2013 by Opposer and was approved for registration on 20 June 2013 to be valid for a period of ten (10) years, or until 20 June 2023. Thus, the registration of the trademark 'RITEMED' subsists and remains valid to date. A certified true copy of the Certificate of Registration No. 4-2013-00002459 for the trademark 'RITEMED' is attached hereto x x x

"12. The trademark 'RITEMED' has been extensively used in commerce in the Philippines.

"12.1. A sample product label bearing the trademark 'RITEMED' actually used in commerce is hereto attached as x x x

"12.2. No less than the Intercontinental Marketing Services (IMS) itself, the world's leading provider of business intelligence and strategic consulting services for the pharmaceutical and healthcare industries with operations in more than one hundred (100) countries, acknowledged and listed the mefenamic acid under the brand 'RITEMED' as one of the leading brands in the Philippines in the category of 'N02B Non-narcotic Analgesics' in terms of market share and sales performance. The Certification and sales performance issued by the IMS is attached hereto as x x x

"12.3. In order to legally market, distribute and sell the mefenamic acid under the trademark 'RITEMED' in the Philippines, the product has been registered with the Food and Drug Administration. As evidence of such registration a copy of the Certificate of Product Registration No. DR-XY12431 is attached hereto as x x x

"13. By virtue of the foregoing, there is no doubt that Opposer has acquired an exclusive ownership over the trademark, 'RITEMED' to the exclusion of all others.

"14. As provided in Section 138 of the IP Code, 'A certificate of registration of a mark shall be prima facie evidence of the validity of the registration, the registrant's ownership of the mark, and of the registrant's exclusive right to use the same in

connection with the goods or services and those that are related thereto specified in the certificate.'

"15. The registration of Respondent-Applicant's mark 'RILMED' will be contrary to Section 123.1 (d) of the IP Code. 'RILMED' is confusingly similar to Opposer's trademark 'RITEMED'.

"15.1. There are no set rules that can be deduced in particularly ascertaining whether one trademark is confusingly similar to, or is a colorable imitation of, another. Nonetheless, jurisprudence provides enough guidelines and tests to determine the same.

"15.1.1. In *Societe Des Produits Nestle, S.A. vs. Court of Appeals* (356 SCRA 207, 216 [2001]), the Supreme Court, citing *Etepha vs. Director of Patents* (16 scra 495, 497-498 [1966]), held '[i]n determining if colorable imitation exists, jurisprudence has developed two kinds of tests - the Dominancy Test and the Holistic Test. The test of dominancy focuses on the similarity of the prevalent features of the competing trademarks which might cause confusion or deception and thus constitute infringement. On the other side of the spectrum, the holistic test mandates that the entirety of the marks in question must be considered in determining confusing similarity.'

"15.1.2. It is worthy to note at this point that in *Societe' Des Produits Nestle', S.A. vs. Court of Appeals* [Supra, p. 221,] the Supreme Court held "[T]he totality or holistic test only relies on visual comparison between two trademarks whereas the dominancy test relies not only on the visual but also on the aural and connotative comparisons and overall impressions between the two trademarks."

"15.1.3. Relative thereto, the Supreme Court in *McDonalds' Corporation vs. L.C. Big Mak Burger, Inc.* (437 SCRA 10, 32-33 [2004]) held:

x x x

"15.1.4. This was affirmed in *McDonald's Corporation vs. Macjoy Fastfood Corporation* (514 SCRA 95, 107-108 [2007]), which held that, '[t]he Court has consistently used and applied the dominancy test in determining confusing similarity or likelihood of confusion between competing trademarks.'

"15.1.5. In fact the dominancy test is 'now explicitly incorporated into law in Section 155.1 of the Intellectual Property Code, which defines infringement as the colorable imitation of a registered mark xxx or a dominant feature thereof.' x x x

"15.1.6. Thus, applying the dominancy test in the instant case, it can be readily concluded that the mark 'RILMED', owned by Respondent-Applicant, so resembles Opposer's trademark 'RITEMED', that it will likely cause confusion, mistake and deception on the part of the purchasing public.



"15.1.6.1. Respondent-Applicant's mark 'RILMED' appears and sounds almost the same as Opposer's trademark 'RITEMED'.

"15.1.6.2. The first two (2) and last three (3) letters of Respondent-Applicant's mark 'R-I-L-M-E-D' are exactly the same as the first two (2) and last three (3) letters of Opposer's trademark 'R-I-T-E-M-E-D'.

"15.1.7. Clearly, the Respondent-Applicant's mark 'RILMED' adopted the dominant features of the Opposer's trademark 'RITEMED'.

"15.1.8. As further ruled by the High Court in the McDonald's Corporation case [supra, p.33-34 [2004]]:

x x x

"15.1.9. In American Wire & Cable Co., vs. Director of Patents (31 SCRA 544, 547-548 [1970]), the Supreme Court explained:

x x x

"15.2. Opposer's trademark 'RITEMED' and Respondent-Applicant's mark 'RILMED' are practically identical marks in sound and appearance that they leave the same commercial impression upon the public.

"15.3. Thus, the two marks can easily be confused for one over the other, most especially considering that the opposed mark 'RILMED' is applied for the same class and goods as that of Opposer's trademark 'RITEMED' under Class 05 of the International Classification of Goods for pharmaceutical preparations, in particular non-steroidal anti-inflammatory group of drugs.

"15.4. Opposer's intellectual property right over its trademark is protected under Section 147.1 of the IP Code, which states:

x x x

"16. To allow the Respondent-Applicant to market its products bearing the mark 'RILMED' undermines Opposer's right to its trademark 'RITEMED'. As the lawful owner of the trademark 'RITEMED', Opposer is entitled to prevent the Respondent-Applicant from using a confusingly similar mark in the course of trade where such would likely mislead the public.

"16.1. Being the lawful owner of 'RITEMED', Opposer has the exclusive right to use and/or appropriate the said trademark and prevent all third parties not having its consent from using in the course of trade identical or similar marks, where such would result in a likelihood of confusion.

"16.2. By reason of Opposer's ownership of the trademark 'RITEMED', it also has the right to prevent the third parties, such as Respondent-Applicant, from claiming ownership over Opposer's trademark or any depiction similar thereto, without its authority or consent.



"16.3. Moreover, following the illustrative list of confusingly similar sounds in trademarks cited in McDonald's Corporation case (supra, p. 34 [2004]), it is evident that Respondent-Applicant's mark 'RILMED' is aurally confusingly similar to Opposer's trademark 'RITEMED':

x x x

"16.4. Further, the fact that Respondent-Applicant seeks to have its mark 'RILMED' registered in the same class (Nice Classification 05) as Opposer's trademark 'RITEMED' will undoubtedly add to the likelihood of confusion among the purchasers of these two goods.

"17. The registration and use of Respondent-Applicant's confusingly similar mark 'RILMED' on its goods will enable the latter to obtain benefit from Opposer's reputation and goodwill, and will tend to deceive and/or confuse the public into believing that Respondent-Applicant is in any way connected with the Opposer.

"17.1. As held in *Sterling Products International, Inc. vs. Farbenfabriken Bayer Aktiengesellschaft, et. al.* (27 SCRA 1214, 1227 [1968]) there are two types of confusion in trademark infringement. 'The first is the confusion of goods' in which event the ordinarily prudent purchaser would be induced to purchase one product in the belief that he was purchasing the other.' In which case, 'defendant's goods are then bought as the plaintiff's, and the poorer quality of the former reflects adversely on the plaintiff's reputation.' The other is the confusion of business. 'Here though the goods of the parties are different, the defendant's product is such as might reasonably assumed to originate with the plaintiff, and the public would be deceived either into that belief or in to belief that there is some connection between the plaintiff and defendant which, in fact, does not exist.'

"17.2. The doctrine of confusion of business or origin is based on cogent reasons of equity and fair dealing. It has to be realized that there can be unfair dealing by having one's business reputation confused with another. 'The owner of a trademark or trade name has a property right in which he is entitled to protection, since there is damage to him from confusion of reputation or goodwill in the mind of the public as well as from confusion of goods.' xxx

"17.3. Applying the foregoing to the instant case, to allow Respondent-Applicant to use its mark 'RILMED' on its product would likely cause confusion or mistake in the mind of the public or deceive purchasers into believing that the product of Respondent-Applicant with a mark 'RILMED' originated from or is being manufactured by Opposer, or at the very least, is connected or associated with the 'RITEMED' product of Opposer, when such connection does not exist.

"17.4. In *Canon Kabushiki Kaisha vs. Court of Appeals* (336 SCRA 266, 275 [2000]), the Supreme Court explained that:

x x x

"17.5. Clearly, the scope of protection accorded to trademark owners includes not only confusion of goods but also confusion of origin. As in this case, there is undoubtedly also a confusion of the origin of the goods covered by the



mark of Respondent-Applicant and trademark of Opposer, which should not be allowed.

"18. In case of grave doubt, the rule is that, '[a]s between a newcomer who by the confusion has nothing to lose and everything to gain and one who by honest dealing has already achieved favor with the public, any doubt should be resolved against the newcomer inasmuch as the field from which he can select a desirable trademark to indicate the origin of his product is obviously a large one.' (Del Monte Corporation, et. al. vs. Court of Appeals, 181 SCRA 410, 420 [1990])

"19. Respondent-Applicant's use of the mark 'RILMED' in relation to any of the goods covered by the opposed application, if these goods are considered not similar or closely related to the goods covered by Opposer's trademark 'RITEMED', will undermine the distinctive character or reputation of the latter trademark. Potential damage to Opposer will be caused as a result of its inability to control the quality of the products put on the market by Respondent-Applicant under the mark 'RILMED'.

"20. Thus, Opposer's interests are likely to be damaged by the registration and use of the Respondent-Applicant of the mark 'RILMED'. The denial of the application subject of this opposition is authorized under the IP Code.

"20. In support of the foregoing, the instant Notice of Opposition is herein verified by Mr. Nicandro A. Salud, which will likewise serve as his affidavit. (Nasser vs. Court of Appeals, 191 SCRA 783, 792-793 [1990]).

The Opposer's evidence consists of a copy of the IPO E-Gazette officially released on 03 March 2014; copy of the Certificate of Registration No. 4-2013-00002459 for the trademark RITEMED issued on 20 June 2013; ; sample product label bearing the trademark RITEMED; copy of the Certification and sales performance issued by the IMS; and copy of the Certificate of Product Registration No. DR-XY12431 for the drug with generic name Mefenaic Acid 500 mg Film-Coated Tablet.⁴

This Bureau issued a Notice to Answer and served a copy thereof upon Respondent-Applicant on 25 April 2014. Said Respondent-Applicant, however, did not file an Answer.

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

The Opposer anchors its opposition on Sec. 123 of Republic Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code"):

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

x x x

(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 :

⁴ Marked as Exhibits "A" to "E, inclusive

- (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;"

Records show that at the time the Respondent-Applicant filed its trademark application on 14 August 2013, the Opposer already owns trademark registration for RITEMED under Trademark Reg. No. 4-2013-00002459 issued on 20 June 2013. The Opposer's trademark registration covers pharmaceutical preparation, and thus, as broadly states, could include pharmaceutical products indicated in the Respondent-Applicant's mark.

The competing marks, as shown below, resemble each other such that confusion, or even deception is likely to occur:

RITEMED

RILMED

Opposer's trademark

Respondent-Applicant's mark

It is obvious that the suffix MED in both marks is derived from the word "medicine". In order to render such a mark with the distinctive character to be eligible for registration, letters, words or features should be used in combination with the suffix MED. The determination, therefore, of whether there is confusing similarity would depend on the evaluation of the other words, letters or features that are added to the suffix MED. In this regard, this Bureau finds that the syllable "RIL" in combination with the suffix MED closely resembles the syllable "RITE" as a prefix to "MED". RIL and RITE are monosyllabic and visually similar. When pronounced RILMED sounds similar to RITEMED, as it is probable for consumers to read "RITEMED" as "rit-med" instead of "rayt-med". Under the idem sonans rule, the following trademarks were held confusingly similar in sound: "BIG MAC" and "BIG MAK"⁵, "SAPOLIN" and "LUSOLIN"⁶, "CELDURA" and "CORDURA"⁷, "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 especial

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

⁶ *Sapolin Co. v. Balmaceda and Germann & Co.* 67 Phil. 705.

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

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.⁸

Succinctly, the field from which a person may select a trademark is practically unlimited. As in all other cases of colorable imitations, the unanswered riddle is why of the millions of terms and combinations of letters and designs available, the Respondent-Applicant had to come up with a mark identical or so closely similar to another's mark if there was no intent to take advantage of the goodwill generated by the other mark.⁹


The intellectual property system was established to recognize creativity and give incentives to innovations. Similarly, the trademark registration system seeks to reward entrepreneurs and individuals who through their own innovations were able to distinguish their goods or services by a visible sign that distinctly points out the origin and ownership of such goods or services.

In conclusion, the subject trademark application is covered by the proscription under Sec. 123.1 par. (d) (iii) of the IP Code.

WHEREFORE, premises considered, the instant Opposition to Trademark Application No. 4-2013-00009744 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, 04 November 2015.


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

⁸ *Marvex Commercial Co., Inc. v. Petra Hawpia & Co., et. al.*, G.R. No. L-19297, 22 Dec. 1966.

⁹ *American Wire & Cable Company v. Director of Patents*, G.R. No. L-26557, 18 Feb. 1970.