



RITEMED PHILIPPINES, INC.,  
Opposer,

-versus-

PHARMAHEX, INC.,  
Respondent-Applicant.

X-----X

IPC No. 14-2010-00047  
Opposition to:  
Appln. Ser.No. 4-2009-500591  
Date filed: 24 August 2009  
TM: "RHINOMED"

**NOTICE OF DECISION**

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**GREETINGS:**

Please be informed that Decision No. 2015 - 250 dated November 04, 2015 (copy enclosed) was promulgated in the above entitled case.

Taguig City, November 04, 2015.

For the Director:

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

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*Opposer,* }  
 -versus- }  
 PHARMAHEX, INC. }  
*Respondent-Applicant.* }  
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IPC No. 14-2010-00047  
 Case Filed: 19 February 2010  
 Opposition to:  
 Application No. 4-2009-500591  
 Date Filed: 24 August 2009  
 Trademark: "RHINOMED"

Decision No. 2015- 250

**DECISION**

RITEMED PHILIPPINES, INC.<sup>1</sup> ("Opposer") filed an opposition to Trademark Application Serial No. 4-2009-500591. The application, filed by Pharmahex, Inc.<sup>2</sup> ("Respondent-Applicant"), covers the mark "RHINOMED" for use on "*pharmaceutical and veterinary preparations, namely, paracetamol (analgesic and antipyretic), diphenhydramine; medicines use to reduce pain, fever and runny nose associated with or symptoms or colds and flu; decongestants and other nasal preparations; sanitary preparations for medical purposes; dietetic substances; adapted for medical use, food for babies; plasters, materials for dressings; materials for stopping teeth, dental wax; disinfectants; preparations for destroying vermin fungicides, herbicides*" under Classe 05 of the International Classification of Goods and Services.<sup>3</sup>

The Opposer alleges:

x x x

**"GROUNDS FOR OPPOSITION**

"The grounds for this opposition are as follows:

"1. The trademark 'RHINOMED' so resembles 'RITEMED' trademark owned by Opposer, registered with this Honorable Office prior to the publication for opposition of the mark 'RHINOMED'. The trademark 'RHINOMED', which is owned by Respondent, will likely cause confusion, mistake and deception on the part of the purchasing public.

"2. The registration of the trademark 'RHINOMED' in the name of the Respondent will violate Sec. 123 of Republic Act No. 8293, otherwise known as the 'Intellectual Property Code of the Philippines', which provides, in part, that a mark cannot be registered if it:

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

<sup>2</sup> A domestic corporation organized and existing under the laws of the Republic of the Philippines with address at J.A. Development Compound, No. 3 E. Rodriguez Jr. Avenue, Barangay Bagong Ilog, Pasig City.

<sup>3</sup> The 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.

x x x

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

"3. Respondent's use and registration of the trademark 'RHINOMED' will diminish the distinctiveness and dilute the goodwill of Opposer's trademark 'RITEMED'.

x x x

#### "ALLEGATIONS IN SUPPORT OF THE OPPOSITION

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

"4. Opposer, the registered owner of the trademark 'RITEMED', is engaged in the marketing and sale of a wide range of pharmaceutical products. The Trademark Application for the trademark 'RITEMED' was originally filed with the Intellectual Property Office on 27 February 2001 by Opposer which was approved for registration on 09 October 2006 and valid for a period of ten (10) years. Hence, Opposer's registration of the 'RITEMED' trademark subsists and remains valid to date. x x x

x x x

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

"5.1 Opposer dutifully filed Declaration of Actual Use pursuant to the requirement of law, to maintain the registration of 'RITEMED' in force and effect. x x x

"5.2 A sample product label bearing the trademark 'RITEMED' actually used in commerce is hereto attached as Annex 'D'.

"5.3 In order to legally market, distribute and sell pharmaceutical preparations in the Philippines, Opposer was issued a License to Operate registered its products with the Bureau of Food and Drugs (BFAD). x x x

"6. There is no doubt that by virtue of the above-mentioned Certificate of Registration, the uninterrupted use of the trademark 'RITEMED', and the fact that they are well known among consumers, the Opposer has acquired an exclusive ownership over the 'RITEMED' marks to the exclusion of all others.

"7. 'RHINOMED' is confusingly similar to 'RITEMED'.

"7.1 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. Opposer dutifully filed Declaration of Actual Use pursuant to the requirement of law, to maintain the registration of 'RITEMED' in force and effect. x x x

"7.1.1 In fact, in Societe' Des Produits Nestle', S.A. vs. Court of Appeals [356 SCRA 207, 216] the Supreme Court, citing Ethepea v. Director of Patents, 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.

"7.1.2 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."

"7.1.3 Relative thereto, the Supreme Court in McDonalds' Corporation vs. L.C. Big Mak Burger, Inc. [437 SCRA 10] held:

x x x

"7.1.4 Applying the dominancy test, it can be readily concluded that the trademark 'RHINOMED', owned by Respondent, so resembles the trademark 'RITEMED', that it will likely cause confusion, mistake and deception on the part of the purchasing public.

"7.1.4.1 The first and the last syllables of both marks have the same sound and appearance;

"7.1.5 Clearly, the Respondent adopted the dominant features of the Opposer's mark 'RITEMED';

"7.1.6 As further ruled by the High Court in McDonald's case [p33]

x x x

"7.2 The trademark 'RITEMED' and Respondent's trademark 'RHINOMED' are practically identical marks in sound and appearance that they leave the same commercial impression upon the public.

"7.2.1 Thus, the two marks can easily be confused for one over the other to the Opposer's extreme damage and prejudice.

"7.3 Yet, Respondent still filed a trademark application for 'RHINOMED' despite its knowledge of the existing trademark registration of 'RITEMED' which is confusingly similar thereto in both its sound and appearance.

"8. Moreover, Opposer's intellectual property right over its trademark is protected under Section 147 of Republic Act No. 8293, otherwise known as the Philippine Intellectual Property Code ('IP Code'), which states:

x x x

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

"9.1 Being the lawful owner of 'RITEMED', Opposer has the exclusive right to use and/or appropriate the said marks 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.

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

"9.3 Moreover, following the illustrative list of confusingly similar sounds in trademarks which the Supreme Court cited in McDonald's Corporation, McGeorge Food Industries, Inc. vs. L.C. Big Mak Burger, Inc., 437 SCRA 268 (2004), it is evident that the mark 'RHINOMED' is aurally confusingly similar to Opposer's mark 'RITEMED'.

"9.4 To allow Respondent to use its 'RHINOMED' mark on its product would likely cause confusion or mistake in the mind of the public or deceive purchasers into believing that the 'RHINOMED' products of Respondent originate from or is being manufactured by Opposer, or at the very least, is connected or associated with the 'RITEMED', when such connection does not exist.

"9.5 In any event, as between the newcomer, Respondent, which by the confusion loses nothing and gains patronage unjustly by the association of its products bearing the 'RHINOMED' mark with the well-known 'RITEMED' mark, and the first user and actual owner of the well-known mark, Opposer, which by substantial investment of time and resources and by honest dealing has already achieved favor with the public and already possesses goodwill, any doubt should be resolved against the newcomer, Respondent, considering that Respondent, as the latter entrant in the market had a vast range of marks to choose from which would sufficiently distinguish its products from those existing in the market.

"10. By virtue of Opposer's prior and continued use of the trademark 'RITEMED', the same have become well-known and established valuable goodwill to the consumers and the general public as well. The registration and use of Respondent's confusingly similar trademark on its goods will enable the latter to obtain benefit from Opposer's reputation, goodwill and advertising and will tend to deceive and/or confuse the public into believing that Respondent is in any way connected with the Opposer.

"11. Finally, allowing the Respondent to use the mark 'RHINOMED' shall result to confusion of business or confusion of origin.

"12. Thus, Opposer's interests are likely to be damaged by the registration and use of the Respondent of the trademark 'RHINOMED'. In support of the foregoing, the instant Opposition is herein verified by Mr. Willian Versoza which likewise serves as his affidavit (Nasser v. Court of Appeals, 191 SCRA 783 [1990]).

The Opposer's evidence consists of a copy of the IPO E-Gazette officially released on 21 December 2009; copy of the certificate of registration for the trademark RITEMED AND DEVICE filed on 27 February 2001; copy of the declaration of actual use for the trademark RITEMED; copy of the license to operate and some certificates of product registration issued by BFAD; sample product label bearing the trademark RITEMED; copy of the License to Operate issued in favor of Ritemed Phils. Inc.; copy of the certificate of product registration for the drug with generic name Dilitiazem Hydrochloride 30 mg tablet; and, a copy of the certificate of listing of identical drug product for the drug with generic name C0-Amoxiclav 875 mg/125 mg FILM-COATED TABLET.<sup>4</sup>

This Bureau issued a Notice to Answer and served a copy thereof upon Respondent-Applicant on 28 August 2009. Said Respondent-Applicant, however, did not file an Answer.

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

Records show that at the time the Respondent-Applicant filed its trademark application on 24 August 2009, the Opposer has an existing trademark registration for the mark RITEMED AND DEVICE under Trademark Reg. No. 4-2001-001380 issued on 09 October 2006. The registration covers "supplies, sells and distributes drugs, medicine and medical devices" under Class 35. On the other hand, Respondent-Applicant filed its trademark application for the mark RHINOMED for use on "pharmaceutical and veterinary preparations, namely, paracetamol (analgesic and antipyretic), diphenhydramine; medicines use to reduce pain, fever and runny nose associated with or symptoms or colds and flu; decongestants and other nasal preparations; sanitary preparations for medical purposes; dietetic substances; adapted for medical use, food for babies; plasters, materials for dressings; materials for stopping teeth, dental wax; disinfectants; preparations for destroying vermin fungicides, herbicides" in Class 05.

In this regard, the Opposer anchors its opposition on the following provisions of Republic Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code"):

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<sup>4</sup> Marked as Annexes "A" to "G, inclusive.

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 :
- (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;”

Sec. 147.Rights Conferred. - 147.1. The owner of a registered mark shall have the exclusive right to prevent all third parties not having the owner’s consent from using in the course of trade identical or similar signs or containers for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use, of an identical sign for identical goods or services, a likelihood of confusion shall be presumed.

Hence, the question, does RHINOMED resemble RITEMED such that confusion or deception is likely to occur? The marks are shown below:

RITEMED

RHINOMED

Opposer’s trademark

Respondent-Applicant’s mark

This Bureau finds that confusion or deception is unlikely to occur at this instance. The competing marks are used for or have something to do with the supply or distribution of drugs and/or medicines. It is obvious, therefore, that the parties’ marks are derived from the word medicine. Succinctly, an opposition cannot be sustained solely for the reason that the contending marks both contain the suffix MED. Thus, to determine the issue of whether RHINOMED should not be registered on the ground that it is confusingly similar to RITEMED, it is imperative to look into the components or other features of the marks that is/are paired or in combination with MED. In this instance, the use of the first two syllables RHINO to the suffix MED has rendered Respondent-Applicant’s mark a character that is distinct from the Opposer’s mark RITEMED. RHINOMED is overwhelmingly visually and aurally different from RITEMED. Respondent-Applicant’s mark consisting of eight (8) letters has three (3) syllables while Opposer’s mark consisting of seven letters has two (2) syllables. The two

syllables RHINO is pronounced the same way as the word RHINOCEROS, the second syllable "NO" in RHINO distinguishes it from the sound of Opposer's RITE. Also, RHINO or rhin,<sup>5</sup> in medicine, or from Greek refers to nose, nasal, hence, RHINOMED, is a medicine intended, among others, to reduce runny nose associated with or symptoms or colds and flu, decongestants and other nasal preparations. The combination of words and syllables can be registered as trademarks for as long as it can distinguish the goods of a trader from its competitors, although as suggestive mark.


Moreover, in the Trademark Registry, the contents of which the Bureau can take cognizance of via judicial notice, there are registered marks covering pharmaceutical preparations or drugs that have the suffix "MED", such as Bes+Med with Reg. No. 42014009896, Ceti-Med with Reg. No. 42009001422, Mupi-Med with Reg. No. 42014005328, Q-Med with Reg. No. 42011015355, Sara Med with Reg. No. 42008009404 and Thera-Med with Reg. No. 061336, which are owned by entities other than the Opposer.

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.<sup>6</sup> This Bureau finds that the Respondent-Applicant's mark sufficiently serves this function.

WHEREFORE, premises considered, the instant Opposition is hereby DISMISSED. Let the filewrapper of Trademark Application Serial No. 4-2009-500591 together with a copy of this Decision be returned to the Bureau of Trademarks (BOT) for information and appropriate action.

**SO ORDERED.**

Taguig City, 04 November 2015.

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

<sup>5</sup> Merriam-Webster Dictionary.

<sup>6</sup> Pribhdas J. Mirpuri vs. Court of Appeals, G.R. No. 114508, 19 Nov. 1999.