



WESTMONT PHARMACEUTICALS INC.,
Opposer,

-versus-

THE GENERICS PHARMACY, INC.,
Respondent-Applicant.

X-----X

IPC No. 14-2011-00251
Opposition to:
Appln. Serial No. 4-2011-000691
Date Filed: 21 January 2011
TM: "VERZINE"

NOTICE OF DECISION

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GREETINGS:

Please be informed that Decision No. 2015 - 247 dated November 04, 2015 (copy enclosed) was promulgated in the above entitled case.

Taguig City, November 04, 2015.

For the Director:

Edwin Danilo A. Datinc
Atty. EDWIN DANILO A. DATINC
Director III
Bureau of Legal Affairs



WESTMONT PHARMACEUTICALS, INC.,

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-versus-

THE GENERICS PHARMACY, INC.,

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x ----- x

IPC No. 14-2011-00251

Opposition to Trademark

Application No. 4-2011-000691

Date Filed: 21 January 2011

Trademark: "VERZINE"

Decision No. 2015- 247

DECISION

Westmont Pharmaceuticals, Inc.¹ ("Opposer") filed an opposition to Trademark Application Serial No. 4-2011-000691. The contested application, filed by The Generics Pharmacy, Inc.² ("Respondent-Applicant"), covers the mark "VERZINE" for use on "*pharmaceutical product categorized as anivertigo*" under Class 05 of the International Classification of Goods³.

The Opposer alleges that it is the registered owner of the trademark "VERSANT". According to the Opposer, its sister company, L.R. Imperial, Inc. ("LRII"), filed an application for registration of the mark "VERSANT" way back 03 February 2003 and the same was granted on 20 March 2005. On 17 November 2008, LRII assigned ownership over the mark to the Opposer and the corresponding Deed of Assignment was filed on 06 January 2009. In addition, it registered its products with the Bureau of Food and Drugs (BFAD). It thus contends that the mark "VERZINE" should not be registered for being confusingly similar to its registered mark. In support of its allegations in the Opposition, the Opposer submitted the following as evidence:

1. printout of page 7 of the IPO E-Gazette released on 06 June 2011;
2. copy of Certificate of Registration No. 4-2003-001760;
3. copy of the Declaration of Actual Use (DAU) filed by the Opposer;
4. sample product label bearing the mark "VERSANT"; and
5. copy of the certificate of product registration issued by the BFAD.

¹ A domestic corporation with business address at Unit 2205-A 22nd Floor, West Tower, Philippine Stock Exchange Center, Ortigas Center, Pasig City.

² With known address at 459 Quezon Avenue, Quezon City.

³ The Nice Classification is a classification of goods and services for the purpose of registering trademark and services marks, based on the 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 Purpose of the Registration of Marks concluded in 1957.

On 25 July 2011, this Bureau issued a Notice to Answer and served a copy thereof upon the Respondent-Applicant. The latter, however, did not file an Answer. Thus, the Hearing Officer issued Order No. 2015-634 on 24 April 2015 declaring Respondent-Applicant in default and the case submitted for decision.

The issue to be resolved is whether the trademark "VERZINE" should be allowed registration.

The Opposer anchors its opposition on Section 123.1 (d) of Republic Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code"), which provides:

Section 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; x x x"

In this regard, records reveal that at the time the Respondent-Applicant filed its application for the mark "VERZINE", the Opposer has a valid and existing registration of the mark "VERSANT" under Certificate of Registration No. 4-2003-001760 issued on 20 March 2005. The goods covered by the Opposer's registration, "*antihypertensive/calcium blocker pharmaceutical preparation*", are different from that indicated on the Respondent-Applicant's trademark registration.

The marks shown below:

Versant

Opposer's mark

VERZINE

Respondent-Applicant's mark

similarly begin with the syllable "VER". This Bureau finds that confusion, much less deception, is unlikely. Aside from the identical first syllable, the competing marks are

distinguishable from each other. The /sant/ in the Opposer's mark is visually and aurally different from the /zin/ or /zayn/ in the Respondent-Applicant's.

Also, because of the disparity between the goods covered by the Opposer's mark on one hand, and the goods indicated in the Respondent-Applicant's application on the other, it is doubtful if the consumers in encountering the mark "VERSANT" will have in mind or be reminded of the trademark "VERZINE".

It is 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.⁴ The Respondent-Applicant's trademark sufficiently met this requirement.

WHEREFORE, premises considered, the instant opposition is hereby **DISMISSED**. Let the filewrapper of Trademark Application Serial No. 4-2011-000691 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

⁴ Pribhdas J. Mirpuri vs. Court of Appeals, G.R. No. 114508, 19 November 1999.