

WESTMONT PHARMACEUTICALS INC.,
Opposer,

-versus-

GETZ PHARMA (PVT) LTD.,
Respondent-Applicant.

X-----X

IPC No. 14-2014-00108
Opposition to:
Appln. Serial No. 4-2013-004541
Date filed: 19 April 2013
TM: "AMPIGET"

NOTICE OF DECISION

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

ERLANI MATA
Local Agent of Respondent-Applicant
c/o Getz Pharma (Phils.) Inc.
2/F Tower 1 The Rockwell Business Center
Ortigas Avenue, Pasig City

GREETINGS:

Please be informed that Decision No. 2015 - 279 dated December 10, 2015 (copy enclosed) was promulgated in the above entitled case.

Taguig City, December 10, 2015.

For the Director:


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

WESTMONT PHARMACEUTICALS INC.,	} IPC NO. 14-2014-00108
Opposer,	} Opposition to:
	}
-versus-	} Appln. Ser. No. 4-2013-00004541
	} Date Filed: 19 April 2013
	}
GETZ PHARMA (PVT.) LTD.,	} Trademark: "AMPIGET"
Respondent-Applicant.	}
x-----x	} Decision No. 2015- 279

DECISION

WESTMONT PHARMACEUTICALS INC., (Opposer)¹ filed an opposition to Trademark Application Serial No. 4-2013-00004541. The application, filed by GETZ PHARMA (PVT.) LTD. (Respondent-Applicant)², covers the mark "AMPIGET", for use on "pharmaceutical products indicated for the treatment of hypertension, chronic stable angina, confirmed or suspected vagospastic angina (prinzmetal's or variant angina) for patients with angiographically-documented coronary artery disease and without heart failure or an injection fraction of <40%" under Class 5 of the International Classification of Goods³.

The Opposer anchors its opposition on the following grounds:

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

"8. The mark 'AMPIGET', will likely cause confusion, mistake and deception on the part of the purchasing public, most especially considering that the opposed mark 'AMPIMAX' is applied for the same class as that of trademark 'AMPIMAX', i.e. Class (5) of the International Classification of Goods.

"9. The registration of the mark 'AMPIGET' in the name of the Respondent-Applicant will violate Sec. 123 of the IP Code, which provides, in part, that a mark cannot be registered if it:

¹ A domestic corporation duly organized and existing under Philippine laws with principal address at Bonaventure Plaza, Ortigas Avenue, Greenhills, San Juan City, Philippines
² A corporation organized and existing under the laws of the United States of America with address at 29-3- /27 Korangi Industrial Area, Karachi, Pakistan
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.

(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;

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 'AMPIGET' will diminish the distinctiveness of Opposer's trademark 'AMPIMAX'.

The Opposer also alleges, among others, the following facts:

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

"11.1. The trademark application for the trademark 'AMPIMAX' was filed with the IPO on 25 July 2008 by Opposer and was approved for registration on 17 November 2008 to be valid for a period of ten (10) years or until 17 November 2018. Thus, the registration of the trademark 'AMPIMAX' subsists and remains valid to date.

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

"12.1. Opposer has dutifully filed a Declaration of Actual Use pursuant to the requirement of the law to maintain the registration of its trademark.

"12.2. In order to legally market, distribute and sell this pharmaceutical preparations in the Philippines, the product has been registered with the Bureau of Food and Drugs (now Food and Drug Administration).

"12.3. A sample of product label bearing the trademark 'AMPIMAX' actually used in commerce is hereto attached and made an integral part hereof.

"12.4. 11.3. 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 100 countries, acknowledged and listed the brand 'AMPIMAX' as one of the leading brands in the

Philippines in the category of 'JO1C Broad Spectrum Penicillin' in terms of market share and sales performance.

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

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

1. Print-out of IPO e-Gazette showing the Respondent-Applicant's trademark application;
2. Copy of Certificate of Registration No. 4-2008-008886 dated 17 November 2008 for the mark "AMPIMAX" for goods under class 5 namely "Antibiotic Pharmaceutical Preparation " ;
3. Copies of Declarations of Actual Use dated 27 October 2009 and 16 October 2013;
4. Copy of Certificate of Product Registration from the Bureau of Food and Drugs dated 18 February 2009;
5. Sample packaging label of the product "AMPIMAX"; and
6. Certification from IMS Health Philippines Inc. dated 26 February 2014⁴

This Bureau served upon the Respondent-Applicant a "Notice to Answer" on 21 March 2014. The Respondent-Applicant, however, did not file an Answer. Thus, the Hearing Officer issued on 9 September 2015 Order No. 2015-1405 declaring the Respondent-Applicant to have waived its right to file an Answer.

Records show that at the time Respondent-Applicant applied for registration of the mark "AMPIGET" the Opposer already registered the mark "AMPIMAX" under Certificate of Registration No. 4-2008-008886 dated 17 November 2008⁵ dated 18 July 1990. The goods covered by the Opposer's trademark registration are also under Class 05, namely: "Antibiotic pharmaceutical preparations", while the Respondent-Applicant's trademark application indicates use as "pharmaceutical products indicated for the treatment of hypertension, chronic stable angina, confirmed or suspected vagospastic angina (prinzmetal's or variant angina) for patients with angiographically-documented coronary artery disease and without heart failure or an injection fraction of <40%".

The question is: Are the competing marks identical or closely resembling each other such that confusion or mistake is likely to occur?

The competing marks are reproduced below:

⁴ Exhibits "A" to "G"

⁵ Exhibit "B"



The logo for AMPIMAX, featuring the word "AMPIMAX" in a bold, stylized font with a textured, almost wood-grain or distressed appearance.The logo for AMPIGET, featuring the word "AMPIGET" in a clean, modern, sans-serif font.

Opposer's mark

Respondent-Applicant's mark


The marks are similar with respect to the prefix ("AMPI"). Such similarity however, is not sufficient to conclude that confusion among the consumers is likely to occur. The records show that the product description⁶ of the pharmaceutical product being sold is a non-narcotic "AMPICILLIN". The Opposer's packaging/label⁷ also indicate that AMPIMAX is brand name for the generic name "AMPICILLIN SODIUM". It appears that the Opposer coined its mark from a portion of the word ampicillin, the product for which its mark stands for. When the suffixes "MAX" and "GET" are appended to the letters AMPI, the resultant words are visually and aurally different. The literal elements, "MAX" and "GET" are phonetically dissimilar because they consist of different vowels and consonants. Given such dissimilarity, confusion and mistake is unlikely among the purchasing public.

Moreover, the trademark registry database is replete with marks containing the prefix "AMPI", registered by different entities, namely: "AMPITA", "AMPIMAX", "AMPIN", and "AMPIDROXIL".⁸

WHEREFORE, premises considered, the instant Opposition to Trademark Application No. 4-2013-00004541 is hereby **DISMISSED**. Let the filewrapper of the 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 December 2015.



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

⁶ Exhibit "E"

⁷ Exhibit "F"

⁸ <http://www.wipo.int/branddb/ph/en>