

THERAPHARMA, INC.,
Opposer,

-versus-

RANBAXY LABORATORIES, INC.,
Respondent- Applicant.

X-----X

}
} IPC No. 14-2010-00014
} Opposition to:
} Appln. No. 4-2009-500329
} Date Filed: 10 June 2009
} TM: "AMLOVAS"

NOTICE OF DECISION

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GREETINGS:

Please be informed that Decision No. 2016 - 78 dated March 16, 2016 (copy enclosed) was promulgated in the above entitled case.

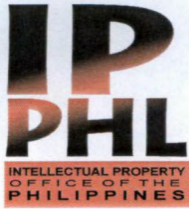
Taguig City, March 16, 2016.

For the Director:

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

Republic of the Philippines
INTELLECTUAL PROPERTY OFFICE

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THERAPHARMA, INC.,
Opposer,

IPC NO. 14-2010-000014

-versus-

Opposition to:
Appln. Serial No. 4-2009-500329
(Filing Date: 10 June 2009)
TM: "AMLOVAS"

RANBAXY LABORATORIES, INC.,
Respondent-Applicant.

X-----X

Decision No. 2016- 78

DECISION

THERAPHARMA, INC. ("Opposer")¹ opposes Trademark Application Serial No. 4-2009-500329. The application, filed by RANBAXY LABORATORIES, INC. ("Respondent-Applicant")², covers the mark "AMLOVAS" for use on "pharmaceutical and medicinal preparations for human and veterinary use" under Class 5 of the International Classification of Goods and Services³.

The Opposer alleges that "AMLOVAS" is confusingly similar to its registered mark "AMVASC". According to the Opposer, the registration of "AMVASC" in favor of the Respondent-Applicant is proscribed under Sec. 123.1(d) of Rep. Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code").

To support the opposition, the Opposer submitted as evidence:

1. copy/printout of the "IPO E-Gazette", with "releasing date 16 November 2009", showing trademarks published for opposition including the Respondent-Applicant's;
2. copy of Certificate of Registration No. 4-2006-000470 for the mark "AMVASC";
3. copy of Declaration of Actual Use of the mark "AMVASC";
4. sample packaging of "AMVASC" product;

¹ A domestic corporation duly organized and existing under the laws of the Philippines with principal address at 3rd Floor, Bonaventure Plaza, Ortigas Avenue, Greenhills, San Juan City, Philippines.

² A foreign corporation with business address at 6 Devika Towers, Nehru Place, New Delhi 110 019, India and corporate office at Plot No. 90, Sector 32, Gurgaon, Haryana, India.

³ 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.

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5. copy of Certification of sales data issued by IMS Health Philippines, Inc., dated 18 August 2009; and
6. copy of Certificate of Listing of Identical Drug Product issued by the Bureau of Food and Drugs, issued on 13 July 2009, for "AMVASC BE".⁴

In its Answer, the Respondent-Applicant alleges that "AMLOVAS" is unique and is neither identical nor confusingly similar to any trademark. According to the Respondent-Applicant the product are pharmaceutical products, hence the likelihood of confusion is remote. The Respondent-Applicant's evidence consists of copies of the filled in Trademark Application Form for the mark "AMLOVAS", Notice to Answer issued by the Bureau's Hearing Officer on 17 February 2010, and authenticated/legalized Power of Attorney issued by the Respondent-Applicant in favor of its counsel in the Philippines⁵.

The Preliminary Conference was conducted and terminated on 25 August 2010. Then after, the parties submitted their respective position papers.

Should the Respondent-Applicant be allowed to register the mark AMLOVAS?

Sec. 123.1(d) of the IP Code provides that a mark shall not be registered if:

- (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;

In this regard, records show that at the time the Respondent-Applicant filed the application for the registration of the mark "AMLOVAS", the Opposer has an existing registration for the mark "AMVASC" (Reg. No. 4-2006-000470 issued on 19 March 2007. The Opposer's trademark registration covers "*medicinal preparation for the treatment of hypertension, chronic stable angina and myocardial ischemia due to vasospastic angina*" under Class 05. Because the Respondent-Applicant's trademark application's coverage is broadly stated as "*pharmaceutical and medicinal preparations for human and veterinary use*", this could include the goods or pharmaceutical products covered by the Opposer's trademark registration.

The question, does "AMLOVAS" resemble "AMVASC" such the confusion, even deception, is likely to occur?

"AMLOVAS" has three syllables, while "AMVASC" consists of two. The first and third syllables of the Respondent-Applicant's mark is practically identical to the two syllables of the Opposer's. While it is possible that visually, one may be able to distinguish one mark from the other, it is otherwise as to sound. Even with the syllable "LO" between "AM" and "VAS", the sound created in pronouncing the Respondent-Applicant's mark is hardly distinguishable from

⁴ Marked as Exhibits "A" to "F", inclusive.

⁵ Marked as Annexes "A" to "C"

that of "AMVASC". Time and again, the court has taken into account the aural effects of the words and letters contained in the marks in determining the issue of confusing similarity.⁶ In *Marvex Commercial Co., Inc. v. Petra Hawpia & Co., et al*⁷, the Court held:

"The following random list of confusingly similar sounds in the matter of trademarks, culled from Nims, Unfair Competition and Trade Marks, 1947, Vol. 1, will reinforce our view that 'SALONPAS' and 'LIONPAS' are confusingly similar in sound: 'Gold Dust' and 'Gold Drop'; 'Jantzen' and 'Jass-Sea'; 'Silver Flash' and 'Supper Flash'; 'Cascarete and Celborite'; 'Celluloid' and 'Cellonite'; 'Chartreuse' and 'Charseurs'; 'Cutex' and 'Cuticlean'; 'Hebe' and 'Meje'; 'Kotex' and 'Femetex'; 'Zuso' and 'Hoo Hoo'. Leon Amdur, in his book Trademark Law and Practice, pp. 419-421, cites, as coming within the purview of the *idem sonans* rule, 'Yusea' and 'U-C-A', 'Steinway Pianos' and 'Steinberg Pianos', and 'Seven-Up' and 'Lemon-Up'. In *Co Tiong vs. Director of Patents*, this Court unequivocally said that 'Celdura' and 'Cordura' are confusingly similar in sound; this Court held in *Sapolin Co. vs. Balmaceda*, 67 Phil. 795 that the name 'Lusolin' is an infringement of the trademark 'Sapolin', as the sound of the two names is almost the same."

Public interest therefore requires, that two marks, identical to or closely resembling each other and used on the same and closely related goods, but utilized by different proprietors should not be allowed to co-exist. Confusion, mistake, deception, and even fraud, should be prevented.

It is emphasized that 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.⁸ This Bureau finds that the mark applied for registration by the Respondent-Applicant does not meet this function.

WHEREFORE, premises considered, the instant opposition is hereby SUSTAINED. Let the filer 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.

16 March 2016. Taguig City.


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

⁶ *Prosource International Inc. v. Horphag Research Management S.A.*, G.R. No. 180073, 25 November 2009.

⁷ G.R. No. L-19297, 22 December 1966.

⁸ *Pribhdas J. Mirpuri v. Court of Appeals*, G.R. No. 114508, 19 November 1999, citing *Etepha v. Director of Patents, supra, Gabriel v. Perez*, 55 SCRA 406 (1974). See also Article 15, par. (1), Art. 16, par. (1), of the Trade Related Aspects of Intellectual Property (TRIPS Agreement).