

WESTMONT PHARMACEUTICALS INC.,
Opposer,

-versus-

CATHAY YSS DISTRIBUTORS CO. INC.,
Respondent- Applicant.

X-----X

IPC No. 14-2014-00061
Opposition to:
Appln. Serial No. 4-2013-00001758
Date Filed: 18 February 2013
TM: "ANGIMAX"

NOTICE OF DECISION

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

JIMENEZ GONZALES BELLO VALDEZ
CALUYA & FERNANDEZ
Counsel for Respondent-Applicant
6th Floor, SOL Building
112 Amorsolo Street, Legaspi Village
Makati City

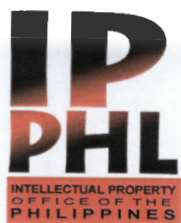
GREETINGS:

Please be informed that Decision No. 2016 - 50 dated February 18, 2016 (copy enclosed) was promulgated in the above entitled case.

Taguig City, February 18, 2016.

For the Director:


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



**WESTMONT PHARMACEUTICALS
INC.,**
Opposer,

- versus -

**CATHAY YSS DISTRIBUTORS CO.
INC.,**
Respondent-Applicant.

X ----- X

IPC No. 14-2014-00061
Opposition to:

Appln. No. 4-2013-00001758
Date Filed: 18 February 2013
Trademark: "ANGIMAX"

Decision No. 2016 - 50

DECISION

WESTMONT PHARMACEUTICALS INC. ("Opposer"),¹ filed an opposition to Trademark Application Serial No. 4-2013-00001758. The application, filed by CATHAY YSS DISTRIBUTORS CO. INC. ("Respondent-Applicant"),² covers the mark "ANGIMAX" for use on goods under class 05³ namely: pharmaceutical preparations namely tablet for treatment for ischaemic heart disease, angina pectoris, sequelae of infraction.

The Opposer alleges the following among other things:

"7. The mark 'ANGIMAX' filed by Respondent-Applicant so resembles the trademark 'AMPIMAX' owned by Opposer and duly registered with the IPO prior to the publication for opposition of the mark 'ANGIMAX'.

"8. The mark 'ANGIMAX' will likely cause confusion, mistake and deception on the part of the purchasing public, most especially considering that the opposed mark 'ANGIMAX' is applied for the same class and goods as that of Opposer's trademark 'AMPIMAX', i.e. Class 05 of the International Classification of Goods as Pharmaceutical Preparation.

"9. The registration of the mark 'ANGIMAX' in the name of the Respondent-Applicant will violate Sec. 123 of the IP Code.

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.

¹ A corporation organized and existing under the laws of France with office address at 4th Floor, Bonaventure Plaza, Ortigas Avenue, Greenhills, San Juan City, Philippines.

² With address at 2nd Floor Vernida I, Amorsolo St. Legaspi Village, Makati City, Philippines.

³ The Nice Classification of goods and services is for registering trademark and service marks, based on a 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.

The Opposer's evidence, inclusive of annexes, consists of the following:

1. Pertinent page of the IPO E-Gazette;
2. Certificate of Registration No. 4-2008-008886 for AMPIMAX;
3. Declarations of Actual Use;
4. Sample product insert or label bearing the mark AMPIMAX;
5. Certificate of Product Registration issued by the BFAD for AMPIMAX; and,
6. Certification and sales performance.

This Bureau issued and served upon the Respondent-Applicant a Notice to Answer on 04 March 2014. The Respondent-Applicant, however, did not file an answer. Thus, the Respondent-Applicant was declared in default.⁴

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

Section 123.1, paragraph (d), of R.A. No. 8293, also known as the Intellectual Property Code ("IP Code") provides that a mark cannot be registered if it is identical with a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date, in respect of the same goods or services or closely related goods or services if it nearly resembles such mark as to be likely to deceive or cause confusion.

Records show that at the time the Respondent-Applicant filed its trademark application in 2013, the Opposer has a registration for the trademark AMPIMAX issued on 24 July 2008 for antibiotic pharmaceutical preparation under class 05.⁵

But, are the contending marks, depicted below, resemble each other such that confusion, even deception, is likely to occur?

Ampimax

ANGIMAX

Opposer's Trademark

Respondent-Applicant's Trademark

The competing marks each consists of three syllables - Opposer's *AM-PI-MAX* and Respondent-Applicant's *AN-GI-MAX*. The similarity of the word marks lies in the beginning letter *A*, the middle letter *I* and the ending syllable *MAX*. However, the middle letters *M* and *P* for the Opposer's create a stark difference from that of Respondent-Applicant's middle letters *N* and *G*.

It also appears that Respondent-Applicant's mark *ANGIMAX* was derived from the goods it cover, which includes the treatment for angina pectoris which is the medical term for chest pain or discomfort due to coronary heart disease. It occurs when the heart muscle doesn't get as much blood as it needs. This usually happens because one or more of the heart's arteries is narrowed or blocked, also called ischemia.⁶ On the other hand, Opposer's mark AMPIMAX was derived from the drug Ampicillin which is a penicillin-like antibiotic used to treat certain infections caused by bacteria such as pneumonia; bronchitis;

⁴ Order No. 2014-620 dated 12 May 2014.

⁵ Exhibit "B" of Opposer.

⁶ Angina Pectoris, available at http://www.heart.org/HEARTORG/Conditions/HeartAttack/SymptomsDiagnosisofHeartAttack/Angina-Pectoris-Stable-Angina_UCM_437515_Article.jsp# (last accessed 10 December 2015).


and ear, lung, skin, and urinary tract infections.⁷ This shows that the foregoing marks were derived and coined independently, and they cover distinct goods and/or pharmaceutical products.

Corollarily, the likelihood of the consumers being deceived, mistaken or confused is remote because of the highly sensitive nature of the respective parties' drugs. The sheer disparity in the nature and purposes of the goods and the manner by which the Respondent-Applicant's goods under the mark ANGIMAX are sold or dispensed precludes the probability of confusion or mistake. Moreover, because of the difference in the goods or pharmaceutical products, the Respondent-Applicant cannot be said to have the intent to ride in the goodwill of the mark AMPIMAX. It is unlikely for one when confronted with the mark AMPIMAX to be reminded of the mark ANGIMAX and *vice versa*.

WHEREFORE, premises considered, the instant opposition is hereby **DISMISSED**. Let the filewrapper of Trademark Application Serial No. 4-2013-001758 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 18 February 2016.


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

⁷ Medline Plus, available at <https://www.nlm.nih.gov/medlineplus/druginfo/meds/a685002.html> (last accessed 10 December 2015).