

THERAPHARMA, INC.,
Opposer,

-versus-

AMVAC AG,
Respondent-Applicant.

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IPC No. 14-2013-00082
Opposition to:
Appln. Serial No. 4-2011-010331
Date Filed: 31 August 2011
**TM: "AMVAC (DEVICE MARK
IN COLOUR)"**

NOTICE OF DECISION

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GREETINGS:

Please be informed that Decision No. 2016 - 27 dated January 26, 2016 (copy enclosed) was promulgated in the above entitled case.

Taguig City, January 26, 2016.

For the Director:

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

THERAPHARMA, INC.,

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IPC No. 14-2013-00082

Opposition to Trademark

Appln. No. 4-2011-010331

Date Filed: 31 August 2011

Trademark: **"AMVAC (DEVICE
MARK IN COLOUR"**

Decision No. 2016- 27

DECISION

Therapharma, Inc.¹ ("Opposer") filed an opposition to Trademark Application Serial No. 4-2011-010331. The contested application, filed by Amvac AG² ("Respondent-Applicant"), covers the mark "AMVAC" for use on *"surgical apparatus and instruments for medical use; contraceptives, in particular condoms; diaphragms, intrauterine contraceptives and accessories therefore included in this class"* under Class 10 of the International Classification of Goods³.

The Opposer maintains that it is the owner of the mark "AMVASC", which was registered on 19 March 2007 under Certificate of Registration No. 4-2006-000470. According to the Opposer, it has dutifully filed Declarations of Actual Use ("DAU") and has registered the product with the Bureau of Food and Drugs ("BFAD"). It asserts that the registration of the Respondent-Applicant's mark "AMVAC" is contrary to Section 123.1 (d) of R.A. No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code"). It cites this Bureau's Decision No. 2009-67 dated 15 June 2009 wherein it was held that "AMVAC" is confusingly similar with "AMVASC". The said decision became final and executory on 30 October 2011 as per Entry of Judgment/Execution of Decision dated 15 November 2011. In support of its Opposition, the Opposer submitted the following:⁴

1. copy of Decision No. 2009-67 of the BLA dated 15 June 2009;
2. copy of the Entry of Judgment/Execution of Decision dated 15 November 2011;
3. printout of the allowed marks published for opposition on 28 January 2013;
4. copy of the Respondent-Applicant's trademark application;
5. certified true copies of its DAUs; and

¹ A corporation organized and existing under the laws of the Philippines, with office address at 3rd Floor, Bonaventure Plaza, Ortigas Avenue, Greenhills, San Juan, Metro Manila, Philippines.

² A Swiss company with address at Metallstrabe 4, 6300 Zug, Switzerland.

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.

⁴ Marked as Exhibits "A" to "G" Republic of the Philippines

6. certified true copy of the Certificate of Listing of Identical Drug Product issued by BFAD.

A Notice to Answer was issued on 15 April 2013 and a copy thereof was served upon the Respondent-Applicant. The latter, however, did not file its Answer. The Hearing Officer thus issued Order No. 2013-1497 on 29 October 2013 declaring the Respondent-Applicant in default and the case submitted for decision.

The issue is whether the Respondent-Applicant's mark "AMVAC" should be allowed registration.

Records show that in IPC Case No. 14-2008-00124⁵ entitled "**Therapharma, Inc. vs. Amvac AG**", this Bureau already rendered a decision⁶, the dispositive portion of which provides:

"Pursuant to the aforementioned provision, the application for registration of the subject mark cannot be allowed. Opposer's mark 'AMVASC' is confusingly similar to Respondent-Applicant's mark 'AMVAC'. Similarly, 'is applied to goods that are closely related to Respondent-Applicant's goods under the following classes to wit: (i) Class 05 consisting of pharmaceutical and veterinary preparations such as chemical, biochemical, molecular biological and biological preparations for medical and hygienic purposes, medicines, vaccines, disinfectants, contraceptives, plasters, materials for dressings, sanitary preparations for medical purposes namely sanitary napkins and tampons and dietetic substances adapted for medical use, (ii) Class 10 namely surgical and medical apparatus and instruments, contraceptives and accessories therefore included in this class, (iii) Class 42 composed of scientific and technological services research specifically the field of chemical, biochemical, molecular biological and biological preparations for medical and hygienic purposes, medicines, vaccines and contraceptives, and (iv) Class 44 consisting of medical and veterinary services, hygienic and beauty care for human beings or animals.

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WHEREFORE, the opposition is **SUSTAINED**. Consequently, Application bearing Serial No. 4-2007-013532 filed on 08 December 2007, for the registration of the mark 'AMVAC' covering pharmaceutical-related goods *inter alia* is, as it is hereby, **REJECTED**.

Let the filewrapper of the trademark 'AMVAC' subject matter of this case together with a copy of this DECISION be forwarded to the Bureau of Trademarks (BOT) for appropriate action.

SO ORDERED."

⁵ Biomedis, Inc. vs. Mylan Pharmaceuticals Private Limited.

⁶ Decision No. 2009-67 dated 15 June 2009.

On 13 September 2011, this Bureau issued Resolution No. 2011-22(D) declaring the motion for reconsideration moot. Consequently, on 15 November 2011, the Entry of Judgment/Execution of Decision was issued stating:

"The Decision became final and executory on 30 October 2011 and accordingly, is hereby recorded in this Bureau's Book of Entries of Judgment."

Noteworthy, the IPC Case No. 14-2008-00124 similarly involves the same parties and the mark "AMVAC". With the finality of the said decision, this Bureau finds no cogent reason to deviate therefrom.

WHEREFORE, premises considered, the instant opposition is hereby **SUSTAINED**. Let the filewrapper of Trademark Application Serial No. 4-2011-010331 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 26 January 2016.


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