



SEARSMED PHARMA CORP.,
Opposer,

-versus-

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

}
} IPC No. 14-2012-00607
} Opposition to:
} Appln. Serial No. 4-2012-010610
} Date Filed: 31 August 2012
} TM: "MEGAVIT"
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NOTICE OF DECISION

SEARSMED PHARMA CORP.,
Opposer
Unit 222, Yuchengco Bldg.
484 Quintin Paredes St.,
Binondo, Manila

NONA F. CRISOL
For Respondent- Applicant
2nd Floor, Vernida 1, Amorsolo St.,
Legaspi Village, Makati City

GREETINGS:

Please be informed that Decision No. 2016 - 89 dated March 21, 2016 (copy enclosed) was promulgated in the above entitled case.

Taguig City, March 21, 2016.

For the Director:

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

SEARSMED PHARMA CORP.,	}	IPC No. 14-2012-00607
Opposer,	}	Opposition to:
	}	
-versus-	}	Application No. 4-2012-010610
	}	Date Filed: 31 August 2012
CATHAY YSS DISTRIBUTORS	}	
CO., INC.,	}	Trademark: MEGAVIT
Respondent-Applicant.	}	
x-----x		Decision No. 2016 - <u>89</u>

D E C I S I O N

SEARSMED PHARMA CORP.¹ ("Opposer") filed a Notice of Opposition to Trademark Application No. 4-2012-010610. The application, filed by CATHAY YSS DISTRIBUTORS CO., INC.² ("Respondent-Applicant") covers the mark MEGAVIT for use on "*pharmaceutical preparations*" under Class 05 of the International Classification of goods³.

The Opposer alleges the following:

"1. That Searsmed Pharma is actively using the brand MEGAVIT in their multivitamin product for the last five years up to the present time in the pharmaceutical industry.

"2. That Searsmed Pharma was granted by the Food and Drug Administration of the Philippines a Certificate of Product Registration (CPR) bearing the brand name MEGAVIT for the last five years with this license being renewed since then up to the present time.

"3. That Searsmed Pharma is selling the MEGAVIT brand of multivitamins to Mercury Drug for the last 5 years and is being sold in almost all Mercury drug outlets until present, and as such, goodwill and loyalty of its existing customers has been shown and established.

"4. That Searsmed Pharma is continuously promoting and advertising MEGAVIT brand of multivitamins among the practicing doctors, to the public and to its clientele for the last five years up to the present time.

"5. That under the Food and Drug Administration of the Philippines, BFAD Registration No. 2, s. 1986 dated November 17, 1986, Section 4 states that "No imported drug or pharmaceutical specialty, though patented and/or registered in other countries will be registered if there exist an identical or similar brand name already registered with BFAD". Under the same, Section 7 states that "every brand name of a drug or

1 A corporation duly organized and existing under the laws of the Philippines with office address at Uni 222 Yuchengco Bldg., 484 Quintin Paredes St., Binondo, Manila, Philippines.

2 A domestic corporation with address at 2nd Floor Vernida I, Amorsolo Street, Legaspi Village, Makati City.

3 Nice Classification is a classification of goods and services for the purpose of registering trademarks and service marks, based on a multilateral administered by the World Intellectual Property Organization. This 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.

pharmaceutical specialty shall be submitted for name clearance to BFAD prior to registration. The purpose of the name clearance is to prevent similarity of the brand name with other previously registered drug product". Thus, it is highly conclusive that other parties shall not be able to secure an FDA registration of a pharmaceutical product bearing the mark MEGAVIT hence, their actual use in the industry may not be realized.

"6. That allowing another party to register and use the mark MEGAVIT in the same industry will only create public confusion, unfair trade competition leading to legal battles thus generating damages only to Searsmed Pharma Corp."

The Opposer's evidence consists of the following:

1. Affidavit of Lorecel T. Godino;
2. Affidavit of Ruben Q. Dizon;
3. Certified copy of Certificate of Listing of Identical Drug Product and renewals for Megavit Multivitamins Syrup and Multivitamins issued by BFAD;
4. License to Operate as Drug Distributor/Wholesaler issued by FDA on 14 October 2010;
5. Copy of BFAD Regulation No. 2, s. 1986 issued on 17 November 1986;
6. MegaVit drops labels;
7. Actual boxes of MegaVit multivitamins syrup;
8. MegaVit syrup original labels;
9. Copies of sales invoices;
10. Copies of Mercury Drug's purchase orders of MegaVit products; and
11. Photographs of MegaVit advertising.

This Bureau issued and served a copy of the Notice to Answer upon the Respondent-Applicant on 04 March 2013. The Respondent-Applicant, however, did not file its Answer. Hence, this case is deemed submitted for decision on the basis of the opposition, affidavits of witnesses and documentary evidence submitted by the Opposer.

Without delving on the substantive issue, the instant opposition should be dismissed.

Rule 2, Section 7 of the amended Rules and Regulations on Inter Partes Proceedings (promulgated through Office Order No. 99, s. 2011, as amended by Office Order No. 14-068, s. 2014), provides the requirements for filing the opposition or petition, to wit:

Section 7. Filing Requirements for Opposition and Petition. - (a) The opposition or petition must be in writing, verified and accompanied by a certification of non-forum shopping, and in due form as prescribed in these Rules. x x x [Emphasis Supplied]

The same amended Rules and Regulations likewise provide an opportunity for the Opposer or Petitioner to complete or cure the defect in the opposition or petition with the corresponding sanction in case of failure to comply with the same. Thus:

Section 8. *Action on the Notice of Opposition or Motion for Extension to File Notice of Opposition, and Petition.* - x x x (c) The opposer, including those who file a motion for extension of time to file notice of opposition, or the petitioner shall be given a period of five (5) days from receipt of the order to complete or to cure any of the following defects: x x x

(2) Failure to attach the originals of the following documents:

- (i) Verification;
- (ii) Certification of non-forum shopping;
- (iii) Special Power of Attorney of representative(s) who signed the pleadings, the verification, and the certification of non-forum shopping; the proof of authority to issue or execute the Special Power of Attorney; and
- (iv) Proof of authentication by the appropriate Philippine diplomatic or consular office, of the foregoing documents, if executed abroad.

The 5-day period to complete or cure the defects in the filing may be extended for another 5 days upon motion by the opposer or petitioner based on meritorious grounds which must be explicitly stated in the motion, and upon payment of the applicable fees.

Failure to complete or cure the defect shall cause the dismissal of the case. [Emphasis Supplied]

In the instant case, when the Opposer filed its Notice of Opposition, the same was not accompanied by the required Verification although it contains an unnotarized Certificate of Non-Forum Shopping executed by the President of the corporation. In accordance with the above-quoted Section 8 (c) of Office Order No. 99, as amended, this Bureau issued Order No. 2013-113 dated 22 January 2013, directing the Opposer to submit within five (5) days from receipt thereof the duly notarized Verification and Certification of Non-Forum Shopping as well as the proof of service with warning that the Opposer's failure to submit the required documents shall cause the dismissal of the instant case.

In response thereto, the Opposer filed on 31 January 2013, the notarized Certificate of Non-Forum Shopping as well as the proof of service without, however, submitting the requested notarized Verification. The Opposer, therefore, failed to complete or cure the defect in the opposition despite the opportunity given.

The submission of the verification is a necessary requirement for the filing of the opposition. Thus, the failure to comply or submit the same is sanctioned by the dismissal of the case. The Supreme Court itself has recognized the significance of the verification requirement as it is intended to secure an assurance that the allegations in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith. In fact, according to the High Court, the absence of a proper verification is cause to treat the pleading as unsigned and dismissible.⁴

⁴ *Martos, et. al. v. New San Jose Builders, Inc.*, G. R. No. 192650, 24 October 2012.

Thus, the dismissal of the instant opposition is warranted for failure to comply with the verification requirement.

WHEREFORE, premises considered, the opposition is hereby **DISMISSED**. Let the filewrapper of Trademark Application Serial No. 4-2012-010610 be returned, together with a copy of this Decision, to the Bureau of Trademarks (BOT) for information and appropriate action.

SO ORDERED.

Taguig City, 21 March 2016.



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