

WESTMONT PHARMACEUTICALS, INC.,  
Opposer,

-versus-

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

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}  
} **IPC No. 14-2014-00245**  
} Opposition to:  
} Appln. Serial No. 4-2013-004654  
} Date Filed: 23 April 2013  
} **TM: "ANGIMAX MR"**  
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**NOTICE OF DECISION**

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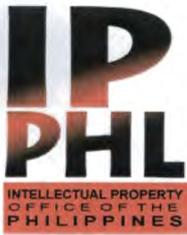
**GREETINGS:**

Please be informed that Decision No. 2016 - 220 dated June 30, 2016 (copy enclosed) was promulgated in the above entitled case.

Taguig City, July 01, 2016.

For the Director:

*Edwin O. Dating*  
**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. 14-2014-00245  
Opposition to:

Appln. No. 4-2013-004654  
Date Filed: 23 April 2013  
Trademark: "ANGIMAX MR"

Decision No. 2016 - 220

### DECISION

WESTMONT PHARMACEUTICALS, INC. ("Opposer"),<sup>1</sup> filed a verified opposition to Trademark Application Serial No. 4-20143-004654. The application, filed by CATHAY YSS DISTRIBUTORS CO. INC. ("Respondent-Applicant"),<sup>2</sup> covers the mark "ANGIMAX MR" for use on "*pharmaceutical; anti-angina*" under class 05 of the International Classification of Goods.<sup>3</sup>

The Opposer alleges the following grounds for the opposition:

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

"8. The mark 'ANGIMAX MR' will likely cause confusion, mistake and deception on the part of the purchasing public, most especially considering that the opposed mark 'ANGIMAX MR' 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 MR' 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:

**(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;**
- (Emphasis supplied)

<sup>1</sup> A domestic corporation duly organized and existing under the laws of the Philippines, with office address at 4/F, Bonaventure Plaza, Ortigas Avenue, Greenhills, San Juan City, Philippines.

<sup>2</sup> A domestic corporation with office address at 9 Amsterdam Extension, Merville Park Subdivision, Paranaque City, Philippines.

<sup>3</sup> The Nice Classification is a classification of goods and services for the purpose of registering trademark and service 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.

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.

The Opposer's evidence 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.

On 15 December 2014, Respondent-Applicant submitted its Verified Answer containing the following special and affirmative defenses:

"The Respondent-applicant's mark 'ANGIMAX MR' is not visually and aurally similar to Opposer's AMPIMAX mark.

"16. The Respondent-applicant asserts that confusing similarity should be measured by how marks are actually used and appear in the market place given the fundamental principle in trademark law that trademarks are for the protection of the consumers who should be able to distinguish trademarks in the market place. The trademarks in their entirety as they appear in their respective labels or hang tags must also be considered in relation to the goods to which they are attached. The discerning eye of the observer must focus not only on the predominant words but also on the other features appearing in both labels in order that he may draw his conclusion whether one is confusingly similar to the other.

x x x

"19. Likewise it must be emphasized that ANGIMAX MR is an ANTI-ANGINA preparation produced in 'tablets' while AMPIMAX is an ANTI-BACTERIAL formula produced in sterile powder for injection therefore categorized as intramuscular/intravenous medicines. Hence, even if the pharmaceutical products will be sold by piece or individually, pharmacists and ordinary purchasers will be immediately made aware of the specific pharmaceutical product they are holding.

x x x

"The nature of the products and the circumstances under which the products are sold render confusion of goods and business impossible.

x x x

"38. Although the goods covered by both marks fall under the same classification of goods, the goods are non-competitive. The pharmaceutical products of the Respondent-applicant and the Opposer do not have the same indications or do not treat the same ailments. The generic name of Respondent-applicant's 'ANGIMAX MR' is Trimetazidine Dihydrochloride which is an anti-angina while the generic name of Opposer's AMPIMAX is Ampicillin Sodium+Sulbactam Sodium which is an anti-bacterial drug."

The Respondent-Applicant's evidence consists of the following:

1. Secretary's Certificate;
2. Copy of Motion for Extension of Time to File Verified Answer;
3. Affidavit of Ms. Nona Crisol dated 26 August 2014.
4. Actual box of AMPIMAX;
5. Actual box of AMGIMAX MR;
6. Certificate of Product Registration; and,
7. Certification of Sales Data for J0IC - Broad Spectrum Penicillin Market.

Thereafter, Preliminary Conference was conducted and terminated on 20 July 2015.<sup>4</sup> The Opposer submitted its position paper on 10 July 2015; while the Respondent-Applicant submitted its position paper on 13 July 2015. Hence, this instant case is deemed submitted for decision.

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

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 23 April 2013<sup>5</sup>, the Opposer has a registration for the trademark AMPIMAX issued on 24 July 2008 for antibiotic pharmaceutical preparation under class 05.<sup>6</sup>

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

***Ampimax***

**ANGIMAX MR**

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* and the letters *MR*. The similarity in 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.<sup>7</sup> On the other hand, Opposer's mark AMPIMAX was derived from the drug Ampicillin which is a

<sup>4</sup> Minutes of Hearing dated 20 July 2015.

<sup>5</sup> Filewrapper records.

<sup>6</sup> IPOPhil Trademarks Database, available at <http://www.wipo.int/branddb/ph/en/> (last accessed 21 June 2016).

<sup>7</sup> Angina Pectoris, available at [http://www.heart.org/HEARTORG/Conditions/HeartAttack/SymptomsDiagnosisofHeartAttack/Angina-Pectoris-Stable-Angina\\_UCM\\_437515\\_Article.jsp#](http://www.heart.org/HEARTORG/Conditions/HeartAttack/SymptomsDiagnosisofHeartAttack/Angina-Pectoris-Stable-Angina_UCM_437515_Article.jsp#) (last accessed 10 December 2015).

penicillin-like antibiotic used to treat certain infections caused by bacteria such as pneumonia; bronchitis; and ear, lung, skin, and urinary tract infections.<sup>8</sup> 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 MR 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 MR and *vice versa*.

**WHEREFORE**, premises considered, the instant opposition is hereby **DISMISSED**. Let the filewrapper of Trademark Application Serial No. 4-2013-004654 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 30 JUN 2016

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

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<sup>8</sup> Medline Plus, available at <https://www.nlm.nih.gov/medlineplus/druginfo/meds/a685002.html> (last accessed 10 December 2015).