

**EXCELMED SOLUTIONS, INC.,**  
*Opposer,*

**-versus-**

**BLESILDA M. SALINAS,**  
*Respondent-Applicant.*

X-----X

}	<b>IPC No. 14-2014-00084</b>
}	Opposition to:
}	Appln. Serial No. 4-2013-00000547
}	Date Filed: 18 January 2013
}	
}	
}	<b>TM: EXCELMED GENERICS DRUG</b>

**NOTICE OF DECISION**

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


**ATTY. ROMEO S. SALINAS**  
*Counsel for Respondent- Applicant*  
No. 4 Lisbon Street, Vista Verde  
North Executive Village, Caybiga,  
Caloocan City

**GREETINGS:**

Please be informed that Decision No. 2016 - 540 dated 23 December 2016 (copy enclosed) was promulgated in the above entitled case.

Pursuant to Section 2, Rule 9 of the IPOPHL Memorandum Circular No. 16-007 series of 2016, any party may appeal the decision to the Director of the Bureau of Legal Affairs within ten (10) days after receipt of the decision together with the payment of applicable fees.

Taguig City, 11 January 2017.

  
**MARILYN F. RETUAL**  
IPRS IV  
Bureau of Legal Affairs

<b>EXCELMED SOLUTIONS, INC.,</b>	} <b>IPC NO. 14-2014-00084</b>
Opposer,	} Opposition to:
	}
-versus-	} Appln. Ser. No. 4-2013-00000547
	} Date Filed: 18 January 2013
	}
<b>BLESILDA M. SALINAS,</b>	} Trademark: <b>"EXCELMED GENERICS</b>
Respondent-Applicant.	} <b>DRUG"</b>
x-----x	} Decision No. 2016- <b>540</b>

**DECISION**

**EXCELMED SOLUTIONS, INC.**, (Opposer)<sup>1</sup> filed an opposition to Trademark Application Serial No. 4-2013-00000547. The application, filed by **BLESILDA M. SALINAS** (Respondent-Applicant)<sup>2</sup>, covers the mark **"EXCELMED GENERICS DRUG"**, for use on **"Advertising, Business Management, Business Administration, Office Functions"** under Class 35 of the International Classification of Goods<sup>3</sup>.

The Opposer anchors its opposition on the following grounds:

"7. The registration of the mark **'EXCELMED GENERICS DRUG'** will violate Sec. 165 of the IP Code, which provides that:

**Section 165. Trade Names or Business Names.** - 165.1. A name or designation may not be used as a trade name if by its nature or the use to which such name or designation may be put, it is contrary to public order or morals and if, in particular, it is liable to deceive trade circles or the public as to the nature of the enterprise identified by that name.

165.2.(a) Notwithstanding any laws or regulations providing for any obligation to register trade names, such names shall be protected, even prior to or without registration, against any unlawful act committed by third parties.

(b) In particular, any subsequent use of the trade name by a third party, whether as a trade name or mark or collective mark, or any such use of a similar trade name or mark, likely to mislead the public, shall be deemed unlawful.

"8. Under the above-quoted provision, the IP Code gives preferential right to the owner of a trade name, whether the same is registered or not,

<sup>1</sup> A corporation organized and existing under Philippine laws with principal address at 66 United Street, Mandaluyong City

<sup>2</sup> Filipino with address at #4 Lisbon St., Vista Verde North, Caybiga, Caloocan City

<sup>3</sup> The Nice Classification of Goods and Services is for registering trademarks and service marks based on 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.

as against subsequent use of the said trade name by a third party that will mislead the public.”

According to the Opposer, the dominant portion of Respondent-Applicant’s mark is the dominant word of its corporate name that will likely mislead the public.

To support its opposition, the Opposer submitted as evidence the following: copy of the pertinent page of IPO E-Gazette showing Respondent-Applicant’s trademark application and a copy of Articles of Incorporation of EXCELMED SOLUTIONS, INC. <sup>4</sup>

The Respondent-Applicant filed its Answer on 11 June 2014, alleging among that as a whole, the trade mark or trade name of Opposer is EXCELMED SOLUTIONS, INC. while Respondent-Applicant uses EXCELMED GENERICS DRUG (“EGD”)with a logo, therefore, the tradenames/trademarks are not identical and similar to each other. She emphasized the dissimilarity in the trade dress or appearance in the respective products and the fact that her application contains a logo with the wordings “Sulit sa galling at presyo. Aprub ni Dok!” The Respondent-Applicant also points out that the primary purpose of EGD is to market generic drugs, while the Opposer is engaged in the marketing and trading of goods such as drugs, medicines and other pharmaceutical preparations, medical devices and supplies.

The Respondent-Applicant submitted as evidence a copy of Department of Trade and Industry Certificate of Business Name Registration and Food and Drug Administration License to Operate dated 1 April 2014.<sup>5</sup> The Preliminary Conference was terminated on 5 November 2015, where only the Opposer was present.

Should the Respondent-Applicant be allowed to register the trademark EXCELMED GENERICS DRUG?

The Respondent-Applicant’s mark is depicted below:



Records show that at the time Respondent-Applicant applied for registration of the mark “EXCELMED GENERICS DRUGSTORE” the Opposer already registered the mark “EXCELMED SOLUTIONS, INC.” as its corporate name with the Securities and Exchange Commission (“SEC”) under A200100488.<sup>6</sup> The primary purpose of Opposer’s registration with the SEC is:

“to engage in the business of marketing and trading (wholesale and retail basis) of goods such as drugs, medicines and other pharmaceutical preparations, medical devices; physician and hospital supplies; druggists sundries; cosmetics; toilet articles; and other similar goods.”

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<sup>4</sup> Exhibit “A” and “B”

<sup>5</sup> Exhibit 1

<sup>6</sup> Exhibit “B”

The business of the Opposer necessarily encompasses that of Respondent-Applicant. It is not far-fetched that the public may be deceived that her business is associated with the Opposer's considering that it has been in existence since 2001. But more importantly, Since the Opposer's corporate name, is also used as trade name and company name, as such, it is entitled to protection under the IP Code, to wit:

**Section 165. Trade Names or Business Names.** - 165.1. A name or designation may not be used as a trade name if by its nature or the use to which such name or designation may be put, it is contrary to public order or morals and if, in particular, it is liable to deceive trade circles or the public as to the nature of the enterprise identified by that name.

165.2.(a) Notwithstanding any laws or regulations providing for any obligation to register trade names, such names shall be protected, even prior to or without registration, against any unlawful act committed by third parties.

In line with this, the Supreme Court in *Philips Export B.V. v. Court of Appeals*<sup>7</sup>, has held:


As early as *Western Equipment and Supply Co. v. Reyes*, 51 Phil. 115 (1927), the Court declared that a corporation's right to use its corporate and trade name is a property right, a right *in rem*, which it may assert and protect against the world in the same manner as it may protect its tangible property, real or personal, against trespass or conversion. It is regarded, to a certain extent, as a property right and one which cannot be impaired or defeated by subsequent appropriation by another corporation in the same field (*Red Line Transportation Co. vs. Rural Transit Co.*, September 8, 1934, 20 Phil 549).

Scrutinizing the composition of the trademark vis-à-vis Opposer's corporate name, the word EXCELMED is the central feature. The words GENERIC and DRUGSTORE are merely descriptive. Thus, the Respondent-Applicant may not appropriate as its mark, a name which constitutes the trade name of another entity, as such would lead to a likelihood of confusion.

**WHEREFORE**, premises considered, the instant Opposition to Trademark Application No. 4-2013-00000547 is hereby **SUSTAINED**. Let the filewrapper of the subject trademark be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

**SO ORDERED.**

Taguig City, 23 DEC 2016

  
Atty. ADORACION U. ZARE, LL.M.  
Adjudication Officer  
Bureau of Legal Affairs

<sup>7</sup> G.R. No. 96161 February 21, 1992