

L.R. IMPERIAL, INC.,
Opposer,

-versus-

INNOGEN PHARMACEUTICALS, INC.,
Respondent-Applicant.

}	IPC No. 14-2014-00092
}	Opposition to:
}	Appln. Serial No. 4-2013-012796
}	Date Filed: 24 October 2013
}	
}	TM: URLYX

X-----X

NOTICE OF DECISION

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


INNOGEN PHARMACEUTICALS, INC.
Respondent- Applicant
29 Scout Baroyan Street,
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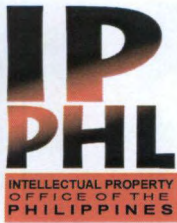
GREETINGS:

Please be informed that Decision No. 2017 - 23 dated 26 January 2017 (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, 26 January 2017.


MARILYN F. RETUAL
IPRS IV
Bureau of Legal Affairs



L.R. IMPERIAL, INC.,

Opposer,

-versus

INNOGEN PHARMACEUTICALS, INC.,

Respondent-Applicant.

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IPC No. 14-2014-00092

Opposition to Trademark

Application No. 4-2013-012796

Date Filed: 24 October 2013

Trademark: "URLYX"

Decision No. 2017- 23

DECISION

L.R. Imperial, Inc.¹ ("Opposer") filed an opposition to Trademark Application Serial No. 4-2013-012796. The contested application, filed by Innogen Pharmaceuticals, Inc.² ("Respondent-Applicant"), covers the mark "URLYX" for use on "*anti-cholesterol preparation*" under Class 05 of the International Classification of Goods³.

The Opposer anchors its opposition on the provision of Section 123.1 (d) of the Republic Act No. 8293, otherwise known as the Intellectual Property Code of the Philippines ("IP Code"). It contends that the Respondent-Applicant's mark "URLYX" is confusingly similar to its registered mark "ORLYZ" especially that they are applied for the same class and goods. In support of its Opposition, the Opposer submitted the following pertinent page of the IPO E-Gazette publishing the applied mark for opposition and certified true copy of Certificate of Registration No. 4-2013-002701.⁴

On 14 March 2014, a Notice to Answer was served upon the Respondent-Applicant. The latter, however, failed to comply. Thus, the Adjudication Officer issued Order No. 2016-1061 on 01 July 2016 declaring the Respondent-Applicant in default and submitting the case for resolution.

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

Section 123.1 (d) the IP Code provides that:

"Section 123. Registrability. - 123.1. A mark cannot be registered if it:

¹ A domestic corporation, duly organized and existing under the laws of the Philippines with office address at Bonaventure Plaza, Greenhills, San Juan, Metro Manila, Philippines.

² With office address at 29 Scout Bayoran St., Quezon City, Metro Manila, Philippines.

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" and "B".

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- (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; x x x"**

Records reveal that the Opposer was issued registration for its mark "ORLYZ" on 22 September 2013 under Certificate of Registration No. 4-2013-002701. The Respondent-Applicant, on the other hand, filed the contested application only on 24 October 2013.

To determine whether the marks of Opposer and Respondent-Applicant are confusingly similar, the two are reproduced below for comparison:

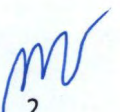
ORLYZ URLYX

Opposer's mark

Respondent-Applicant's mark

The competing marks are similar with respect to their middle letters "RLY". This, however, is insufficient to draw a conclusion that the marks are confusingly similar. Taken in their entirety, the marks exude differences in sound and appearance. The Opposer's mark comprises of the syllables /or/ and /liz/. On the other hand, the Respondent-Applicant's mark is pronounced as /ur-likes/. Visually, the round shape letter "O" is easily distinguishable from the curve of the letter "U". In the same manner, the slashing lines in the letter "Z" is discernible from the crossing lines of the letter "X".

Moreover, although both marks cover goods under Class 05, the Respondent-Applicant's trademark application indicates goods or products for anti-cholesterol. These are not similar to those covered by the Opposer's trademark registration, which specifically indicates that the mark "ORLYZ" is for anti-obesity pharmaceutical preparation. Assuming en arguendo that the parties' respective goods are related, still the differences between the marks make confusion, much more deception, unlikely. It is also noteworthy that the products are pharmaceuticals that are dispensed with the aid of pharmacists who are unlikely to confuse the brands given the different uses thereof.



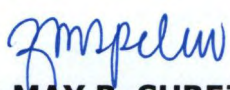
Furthermore, it is doubtful if the consumers in encountering the mark "ORLYZ" will have in mind or be reminded of the trademark "URLYX", and vice-versa. The Opposer has not established that "ORLYZ" is a well-known mark nor that its mark's fame could support the claim that Respondent-Applicant's trademark application and use of the mark "URLYX" manifest the latter's intent of riding in on the goodwill supposedly earned and enjoyed by the former.

Finally, it is emphasized that the essence of trademark registration is to give protection to the owners of trademarks. The function of a trademark is to point out distinctly the origin or ownership of the goods to which it is affixed; to secure to him who has been instrumental in bringing into the market a superior article of merchandise, the fruit of his industry and skill; to assure the public that they are procuring the genuine article; to prevent fraud and imposition; and to protect the manufacturer against substitution and sale of an inferior and different article as his product.⁵ The Respondent-Applicant's trademark sufficiently met this requirement.

WHEREFORE, premises considered, the instant opposition is hereby **DISMISSED**. Let the filewrapper of Trademark Application Serial No. 4-2013-012796 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 26 JAN 2017


Atty. Z'SA MAY B. SUBEJANO-PE LIM
Adjudication Officer
Bureau of Legal Affairs

⁵ Pribhdas J. Mirpuri vs. Court of Appeals, G.R. No. 114508, 19 November 1999.