

RITEMED PHILIPPINES, INC.,
Opposer,

-versus-

SANOFI AVENTIS DEUTSCHLAND GMBH,
Respondent-Applicant.

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IPC No. 14-2015-00322
Opposition to:

Appln. Serial No. 4-2015-002528
Date Filed: 09 March 2015

TM: CARDACE

X-----X

NOTICE OF DECISION

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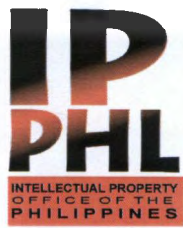
GREETINGS:

Please be informed that Decision No. 2017 - 117 dated 07 April 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, 18 April 2017.


MARILYN F. RETUAL
IPRS IV
Bureau of Legal Affairs



RITEMED PHILIPPINES, INC.,
Opposer,
 -versus-
 SANOFI AVENTIS DEUTSCHLAND GMBH,
Respondent-Applicant.
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IPC No. 14-2015-00322
 Opposition to:
 Application No. 4-2015-002528
 Date Filed: 09 March 2015
 Trademark: "CARDACE"
 Decision No. 2017- 117

DECISION

RITEMED PHILIPPINES, INC.¹ ("Opposer") filed an opposition to Trademark Application Serial No. 4-2015-002528. The application, filed by Sanofi Aventis Deutschland GMBH² ("Respondent-Applicant"), covers the mark "CARDACE" for use on "pharmaceutical preparations" under Class 05 of the International Classification of Goods and Services.³

The Opposer alleges:

x x x
 GROUNDS FOR OPPOSITION

"The grounds for this Verified Notice of Opposition are as follows:

"7. The mark 'CARDACE' applied for by Respondent-Applicant so resembles the trademark 'CARDIOACE' owned by Opposer and duly registered with this Honorable Bureau prior to the publication of the application for the mark 'CARDACE'.

"8. The mark 'CARDACE' will likely cause confusion, mistake and deception on the part of the purchasing public, most especially considering that the opposed mark 'CARDACE' is applied for the same class and goods as that of Opposer's trademark 'CARDIOACE', i.e., Class 05 of the International Classification of Goods.

"9. The registration of the mark 'CARDACE' in the name of the Respondent-Applicant will violate Sec. 123.1 (d) of the IP Code, which provides, in part, that a mark cannot be registered if it: x x x

"10. 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

¹With address on record at Dolmar Building, 56 EDSA, Mandaluyong City, Metro Manila, Philippines.

² With address at Bruningsstrasse 50, 65926, Frankfurt Am Main, Germany Fed. Rep.

³The Nice Classification is a classification of goods and services for the purpose of registering trademark and service marks, based on a 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 Purposes of the Registration of Marks concluded in 1957.

the mark applied for nearly resembles a registered mark that confusion or deception in the mind of the purchasers will likely result.

"11. Respondent-Applicant's use and registration of the mark 'CARDACE' will diminish the distinctiveness of Opposer's trademark 'CARDACE'.

"ALLEGATIONS IN SUPPORT OF THE OPPOSITION

"In support of this Verified Notice of Opposition, Opposer will rely upon and prove the following facts:

"12. Opposer is engaged in the marketing and sale of a wide range of pharmaceutical products and is the registered owner of the trademark 'CARDIOACE'.

"12.1. The trademark application for the trademark 'CARDIOACE' was filed with the IPO on 7 November 2013 by Opposer and was approved for registration on 17 July 2014 to be valid for a period of ten (10) years, or until 17 July 2024. Thus, the registration of the trademark 'CARDIOACE' subsists and remains to be valid to date. A certified true copy of the Certificate of Registration No. 4/2013/00013393 for the trademark 'CARDIOACE' is attached hereto as Exhibit 'B' and made an integral part hereof.

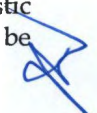
"12.2. By virtue of the foregoing, there is no doubt that Opposer has acquired an exclusive ownership over the trademark, 'CARDIOACE' to the exclusion of all others.

"13. As provided in Section 138 of the IP Code, 'A certificate of registration of a mark shall be prima facie evidence of the validity of the registration, the registrant's ownership of the mark, and of the registrant's exclusive right to use the same in connection with the goods or services and those that are related thereto specified in the certificate.'

"14. The registration of Respondent-Applicant's mark 'CARDACE' will be contrary to Section 123.1 (d) of the IP Code. 'CARDACE' is confusingly similar to Opposer's trademark 'CARDIOACE'.

"14.1. There are no set rules that can be deduced in particularly ascertaining whether one trademark is confusingly similar to, or is a colorable imitation of, another. Nonetheless, jurisprudence provides enough guidelines and tests to determine the same.

"14.1.1. In *Societe' Des Produits Nestle', S.A. vs. Court of Appeals (356 SCRA 207, 216 [2001])*, the Supreme Court, citing *Ethepa v. Director of Patents (16 SCRA 495, 497-498 [1966])*, held "[i]n determining if colorable imitation exists, jurisprudence has developed two kinds of tests - the Dominancy Test and the Holistic Test. The test of dominancy focuses on the similarity of the prevalent features of the competing trademarks which might cause confusion or deception and thus constitute infringement. On the side of the spectrum, the holistic test mandates that the entirety of the marks in question must be considered in determining confusing similarity."



"14.1.2. It is worthy to note at this point that in Societe' Des Produits Nestle', S.A. vs. Court of Appeals (supra, p. 221) the Supreme Court held "[T]he totality or holistic test only relies on visual comparison between two trademarks whereas the dominance test relies not only on the visual but also on the aural and connotative comparisons and overall impressions between the two trademarks."

"14.1.3. Relative thereto, the Supreme Court in McDonalds' Corporation vs. L.C. Big Mak Burger, Inc. (437 SCRA 10, 32-33 [2004]) held: x x x

"14.1.4. This was affirmed in McDonald's Corporation vs. Macjoy Fastfood Corporation (514 SCRA 95, 109 [2007]), which held that, '[t]he Court has consistently used and applied the dominance test in determining confusing similarity or likelihood of confusion between competing trademarks.'

"14.1.5. In fact, the dominance test is 'now explicitly incorporated into law in Section 155.1 of the Intellectual Property Code, which defines infringement as the colorable imitation of a registered mark xxx or a dominant feature thereof.' (MacDonald's Corporation, supra, p. 33 [2004])

"14.1.6. Thus, applying the dominance test in the instant case, it can be readily concluded that the mark 'CARDACE', owned by Respondent-Applicant, so resembles Opposer's trademark 'CARDIOACE', that it will likely cause confusion, mistake and deception on the part of the purchasing public.

"14.1.6.1. Respondent-Applicant's mark 'CARDACE' appears and sounds almost the same as Opposer's trademark 'CARDIOACE'.

"14.1.6.2. Respondent-Applicant's mark 'C-A-R-D-A-C-E' comprises the first four (4) and last (3) letters of Opposer's trademark 'C-A-R-D-I-O-A-C-E'.

"14.1.6.3. Notably, the only difference between the two marks is deletion of the letters 'IO' from Opposer's mark, which by itself would not be sufficient to eliminate the possibility of confusion between the two (2) marks. As held by this Honorable Bureau in a recent decision in the case of United Home Products, Inc. vs. TGP Pharma, Inc. docketed as IPC No. 14-2014-00532, [c]onfusion cannot be avoided by merely adding, removing, or changing some letters of a registered mark. x x x

"14.1.7. Clearly, Respondent-Applicant's mark 'CARDACE' adopted the dominant features of the Opposer's trademark 'CARDIOACE'.

"14.1.8. As further ruled by the High Court in McDonald's Corporation case (supra p. 33-34 [2004]): x x x

"14.1.9. In *American Wire & Cable Co., vs. Director of Patents* (31 SCRA 544, 547-548 [1970]), the Supreme Court explained: x x x

"14.2. Opposer's trademark 'CARDIOACE' and Respondent-Applicant's mark 'CARDACE' are practically identical marks in sound and appearance that they leave the same commercial impression upon the public.

"14.3. Thus, the two marks can easily be confused for one over the other, most especially considering that the opposed mark 'CARDACE' is applied for the same class and goods as that of Opposer's trademark 'CARDIOACE' under Class 05 of the International Classification of Goods.

"14.4. Yet, Respondent-Applicant still filed a trademark application for 'CARDACE' despite its knowledge of the existing trademark registration of 'CARDIOACE', which is confusingly similar thereto in both its sound and appearance, to the extreme damage and prejudice of Opposer.

"14.5. Opposer's intellectual property right over its trademark is protected under Section 147.1 of the IP Code, which states: x x x

"14.6. 'When, as in the present case, one applies for the registration of a trademark or label which is almost the same or very closely resembles one already used and registered by another, the application should be rejected and dismissed outright, even without any opposition on the part of the owner and user of a previously registered label or trademark, this not only to avoid confusion on the part of the public, but also to protect an already used and registered trademark and an established goodwill.' x x x

"15. To allow Respondent-Applicant to market its products bearing the mark 'CARDACE' undermines Opposer's right to its trademark 'CARDIOACE'.

"15.1. Being the lawful owner of 'CARDIOACE', Opposer has the exclusive right to use and/or appropriate the said trademark and prevent all third parties not having its consent from using in the course of trade identical or similar marks, where such would result in a likelihood of confusion.

"15.2. By reason of Opposer's ownership of the trademark 'CARDIOACE', it also has the right to prevent third parties, such as Respondent-Applicant, from claiming ownership over Opposer's trademark or any depiction similar thereto, without its authority or consent.

"15.3. Moreover, following the illustrative list of confusingly similar sounds in trademarks cited in the *McDonald's Corporation* case (*supra*, p. 34 [2004]), it is evident that Respondent-Applicant's mark 'CARDACE' is aurally confusingly similar to Opposer's trademark 'CARDIOACE': x x x

"15.4. Further, the fact that Respondent-Applicant seeks to have its mark 'CARDACE' registered in the same class (Nice Classification 05) as Opposer's trademark 'CARDIOACE' will undoubtedly add to the likelihood of confusion among the purchasers of these two goods.

"16. The registration and use of Respondent-Applicant's confusingly similar mark 'CARDACE' on its goods will enable the latter to obtain benefit from Opposer's reputation and goodwill, and will tend to deceive and/or confuse the public into believing that Respondent-Applicant is in any way connected with the Opposer.

"16.1. As held in *Sterling Products International, Inc. vs. Farbenfabriken Bayer Aktiengesellschaft, et. al.* (27 SCRA 1214, 1227 [1968]) there are two types of confusion in trademark infringement. 'The first is the confusion of goods' in which event the ordinarily prudent purchaser would be induced to purchase one product in the belief that he was purchasing the other.' In which case, 'defendant's goods are then bought as the plaintiff's, and the poorer quality of the former reflects adversely on the plaintiff's reputation.' The other is the confusion of business: 'Here though the goods of the parties are different, the defendant's product is such as might reasonably be assumed to originate with the plaintiff, and the public would be deceived either into that belief or into the belief that there is some connection between the plaintiff and defendant which, in fact, does not exist."

"16.2. The doctrine of confusion of business or origin is based on cogent reasons of equity and fair dealing. It has to be realized that there can be unfair dealing by having one's business reputation confused with another. 'The owner of a trademark or trade name has a property right in which he is entitled to protection, since there is damage to him from confusion of reputation or goodwill in the mind of the public as well as from confusion of goods.' (*Ang vs. Teodoro*, 74 Phil 50, 55-56 [1942])

"16.3. Applying the foregoing to the instant case, to allow Respondent-Applicant to use its mark 'CARDACE' on its product would likely cause confusion or mistake in the mind of the public or deceive purchasers into believing that the product of Respondent-Applicant with the mark 'CARDACE' originated from or is being manufactured by Opposer, or at the very least, is connected or associated with the 'CARDIOACE' product of Opposer, when such connection does not exist.

"16.4. In *Canon Kabushiki Kaisha vs. Court of Appeals* (336 SCRA 266, 275 [2000]), the Supreme Court explained that: x x x

"16.5. Clearly, the scope of protection accorded to trademark owners includes not only confusion of goods but also confusion of origin. As in this case, there is undoubtedly also a confusion of the origin of goods covered by the mark of Respondent-Applicant and trademark of Opposer, which should not be allowed.

"17. In case of grave doubt, the rule is that, '[a]s between a newcomer who by confusion has nothing to lose and everything to gain and one who by honest dealing has already achieved favor with the public, any doubt should be resolved against the newcomer inasmuch as the field from which he can select a desirable trademark to indicate the origin of his product is obviously a large one.' (*Del Monte Corporation, et. al. vs. Court of Appeals*, 181 SCRA 410, 420 [1990])

"17.1. In *American Wire & Cable Co., vs. Director of Patents* (supra, p. 551), it was observed that: x x x

"17.2. When a newcomer used, without a reasonable explanation, a confusingly similar, if not at all identical, trademark as that of another 'though the field of its selection was so broad, the inevitable conclusion is that it was done deliberately to deceive.' (Del Monte Corporation, et. al. vs. Court of Appeals, supra, p. 419-420)

"18. Respondent-Applicant's use of the mark 'CARDACE' in relation to any of the goods covered by the opposed application, if these goods are considered not similar or closely related to the goods covered by Opposer's trademark 'CARDIOACE', will undermine the distinctive character or reputation of the latter trademark. Potential damage to Opposer will be caused as a result of its inability to control the quality of the products put on the market by Respondent-Applicant under the mark 'CARDACE'.

"19. Thus, Opposer's interests are likely to be damaged by the registration and use of the Respondent-Applicant of the mark 'CARDACE'. The denial of the application subject of this opposition is authorized under the IP Code.

"20. In support of the foregoing, the instant Notice of Opposition is herein verified by Mr. Vincent Patrick L. Guerrero, which will likewise serves as his affidavit. (Nasser vs. Court of Appeals, 191 SCRA 783, 792-793 [1990])

The Opposer's evidence consists of a copy of the pertinent page of the IPO E-Gazette released on 08 June 2015; and a copy of Certificate of Registration No. 4/2013/00013393 for the trademark "CARDIOACE".⁴

This Bureau issued a Notice to Answer and sent a copy thereof upon Respondent-Applicant on 18 August 2015. The Respondent-Applicant filed their Answer on 13 November 2015 and avers the following:

x x x

"AFFIRMATIVE DEFENSES

"28. Likelihood of confusion is a relative concept; to be determined only according to the particular, and sometimes peculiar, circumstances of each case. Whether a trademark causes confusion and is likely to deceive the public hinges on 'colourable imitation' which has been defined as, 'such similarity in form, content, words, sound, meaning, special arrangement or general appearance of the trademark or trade name in their overall presentation or in essential and substantive and distinctive parts'.

"29. Phonetically and aurally, there are very perceptible and marked differences between the Respondent-Applicant's mark CARDACE and the Opposer's mark CARDIOACE. The Opposer's mark CARDIOACE is composed of three (3) syllables, i.e., CAR-DIO-ACE, while the Respondent-Applicant's mark CARDACE is composed of only two (2) syllables, i.e., CAR-DACE, which demonstrates the visual and aural dissimilarity between the said marks. Thus, the

⁴Marked as Annexes "A" and "B".

marks are highly distinct from each other as to cause no confusion, mistake and deception among the consuming public.

"30. The Respondent-Applicant's 'CARDACE' is pronounced as a single word with no emphasis on any syllable. On the other hand, the Opposer's mark 'CARDIOACE', when pronounced, has obvious emphasis, and force on the truncation of the medical word or term 'CARDIOVASCULAR' as 'CARDIO'. The inclusion by the Opposer of the word 'ACE', a word in itself and not a mere conjured word, after the word 'CARDIO' gives the ordinary consumer two common words to identify the Opposer's goods which will make the same much different from the Respondent-Applicant's mark 'CARDACE'. Further, the emphasis is the Respondent-Applicant's mark 'CARDACE' is on the first syllable 'CAR' which again demonstrates the visual and aural dissimilarity between the said marks. Thus, even an ordinary purchaser will instantly notice the very obvious difference between the two marks and will not likely be confused.

"31. The Respondent-Applicant's mark is composed of only two (2) syllables namely 'CAR'-'DACE' while the Opposer's mark is composed of three (3) syllables, i.e., 'CAR'-'DIO'-'ACE'. These differences confer on the Respondent-Applicant's mark a character that makes it distinguishable from the Opposer's mark as to composition, presentation and sound. These distinctions are even readily apparent in the second and third syllables of the competing marks as the Opposer's mark is pronounced as 'DIO-ACE' while the Respondent-Applicant's mark is simply pronounced as 'DACE'.

"32. The Supreme Court has consistently ruled that even if there was some similarity in the marks, the goods were competing, there was no confusing similarity if the existing similarities can be negated by the presence of real and substantial differences not only between the marks themselves but also by other factors like size, background, nature of materials used, colors, contents, and pictorial arrangement in the labels or packaging. Thus: x x x

"33. An important factor to determine whether there is confusing similarity between two trademarks is to consider the age, training and education of the usual purchaser. An ordinary purchaser is not the, 'completely unwary consumer but of the 'ordinary intelligent buyer' considering the type of product involved.' In one case the Supreme Court defined an ordinary purchaser as, 'one accustomed to buy, and therefore to some extent familiar with, the goods in question.' 'An ordinary purchaser must be thought of as having, and credited with, at least a modicum of intelligence.'

"34. The products of the Respondent-Applicant bearing the mark 'CARDACE' are for 'pharmaceutical preparations' with an active ingredient called RAMIPRIL. Since, medicinal products are not ordinary household items which are bought at a minimal cost, the purchasing public would be more cautious in their purchases. Medicinal products being essential to health would naturally be bought only after deliberate, comparative and analytical investigation.

"35. The mere fact that goods bearing the mark 'CARDACE' by the Respondent-Applicant and 'CARDIOACE' by the Opposer are sold in same channels of trade does not necessarily cause confusion to the general public. In

Mighty Corporation vs. E & J Gallo Winery (434 SCRA 473 [2004]), the Supreme Court citing with approval decisions of the US patent office and courts held that:

x x x

"36. Pharmacists are mandated to proceed with extreme caution in dispensing pharmaceutical products prescribed by physicians. In Mercury Drug Corporation v. Baking, 523 SCRA 184 (2007), the Honorable Supreme Court opined that, 'due to the sensitive nature of its business, petitioner (Mercury Drug Corporation) must at all times maintain a high level of meticulousness.' In Mercury Drug Corporation v. De Leon, G.R. No. 165622 (2008), the Honorable Supreme Court reiterated that, the profession of pharmacy demands that great care and skill reminded pharmacists to exercise the highest degree of care known to practical men.

"37. It must also be noted that it is common practice in the Philippines for drugstores to employ pharmacists and/or pharmacy assistants to assist buyers in their purchases. Medicines are not displayed alongside common items but are usually in an enclosed area of a pharmacy, accessible only to pharmacists and/or pharmacy assistants. These pharmacists and/or pharmacy assistants are experienced and trained to identify varying medicinal products and can very well distinguish between the Respondent-Applicant's goods bearing the mark 'CARDACE' and the Opposer's goods bearing the mark 'CARDIOACE'. Thus, the likelihood of confusion and its dangers is about nil.

"38. Furthermore, the Respondent-Applicant's mark CARDACE is a drug sold under prescription which have an active ingredient called RAMIPHIL while the Opposer's CARDIOACE mark is used as a vitamin complement for heart circulation. The mere fact that the goods bearing the mark CARDACE will be sold under a prescription, while the Opposer's goods are sold over-the-counter undoubtedly show that there is no possibility of confusing among the consuming public. Moreover, the products of the Respondent-Applicant will be dispensed through a special counter for patients with prescriptions while the products of the Opposer will be dispensed with through ordinary counters accessible anytime to the general public without prescription. As such there is no possibility that the two drugs are sold side by side as to cause confusion among the consuming public.

The Respondent-Applicant's evidence consists of the Special Power of Attorney executed by the Opposer in favor of Cesar C. Cruz and Partners Law Offices; and, the Affidavit executed by Dr. Kathrin Körner and Dr. Frank Essler, authorized signatory of Sanofi-Aventis Deutschland GmbH.⁵

Should the Respondent-Applicant be allowed to register the trademark CARDACE?

The Opposer anchors its opposition on the following provisions of Republic Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code"):

⁵Marked as Annexes "A" to "C".

Sec. 123. Registrability. – 123.1. A mark cannot be registered if it:

x x x

- (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;”

Sec. 138. *Certificates of Registration.* – A certificate of registration of a mark shall be prima facie evidence of the validity of the registration, the registrant’s ownership of the mark, and of the registrant’s exclusive right to use the same in connection with the goods or services and those that are related thereto specified in the certificate.

Sec. 147. *Rights Conferred.* – 147.1. The owner of a registered mark shall have the exclusive right to prevent all third parties not having the owner’s consent from using in the course of trade identical or similar signs or containers for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use, of an identical sign for identical goods or services, a likelihood of confusion shall be presumed.

Records show that at the time the Respondent-Applicant filed its trademark application on 09 March 2015, the Opposer has an existing trademark registration for the mark **CARDIOACE** under Reg. No. 4-2013-13393 issued on 17 July 2014. This registration covers “pharmaceutical preparations, angiotensin converting enzyme” under Class 05. On the other hand, the Respondent-Applicant’s trademark application for the mark **CARDACE** covers “pharmaceutical preparations” under Class 05.

Hence, the question, does **CARDACE** resemble **CARDIOACE** such that confusion or deception is likely to occur? The marks are shown below:

CARDIOACE

CARDACE

Opposer’s trademark

Respondent-Applicant’s mark

Although both have the same first four (4) letters “C-A-R-D” or the word **CARD**, Opposer can not exclusively appropriate these letters or the word **CARD**. There is no doubt that Opposer’s first two syllables “**CARDIO**” is from the Greek word *Kardia*, meaning “heart” considering that the Opposer’s mark is intended as angiotensin converting enzyme . The prefix “**CARDIO**”, therefore, is not considered unique if used as a trademark or as part thereof for the subject goods. Indeed, “**CARDIO**” when used as part of a trademark connotes or suggests the cardiovascular system.

Succinctly, an opposition cannot be sustained solely for the reason that the contending marks both contain the word CARD or CARDIO. What makes the trademark distinctive are the suffixes and/or devices, if any, appended to the prefix "CARD" or "CARDIO". Corollarily, the determination whether there is confusing similarity would depend on the evaluation of the other words, letters or features that are added to the word CARD or CARDIO. Confusion is likely in this instance because of the close resemblance between the marks which used the prefix "CARD" and the last syllable ACE. Hence, a mistake in the dispensation of these drugs is possible. Likewise, it could result to mistake with respect to perception because the marks sound so similar. Under the idem sonans rule, the following trademarks were held confusingly similar in sound: "BIG MAC" and "BIG MAK"⁶, "SAPOLIN" and LUSOLIN"⁷, "CELDURA" and "CORDURA"⁸, "GOLD DUST" and "GOLD DROP". The Supreme Court ruled that similarity of sound is sufficient ground to rule that two marks are confusingly similar, to wit:

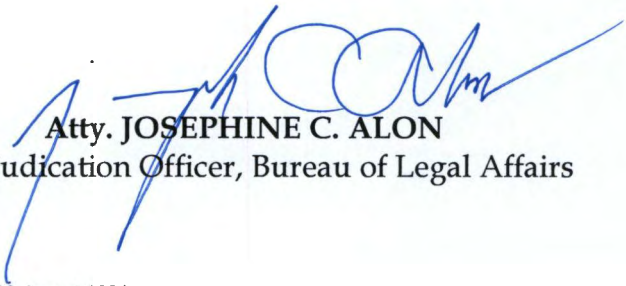
Two letters of "SALONPAS" are missing in "LIONPAS": the first letter a and the letter s. Be that as it may, when the two words are pronounced, the sound effects are confusingly similar. And where goods are advertised over the radio, similarity in sound is of especial significance...."SALONPAS" and "LIONPAS", when spoken, sound very much alike. Similarity of sound is sufficient ground for this Court to rule that the two marks are confusingly similar when applied to merchandise of the same descriptive properties.⁹

In conclusion, the subject trademark application is covered by the proscription under Sec. 123.1 (d) (iii) of the IP Code.

WHEREFORE, premises considered, the instant Opposition to Trademark Application No. 4/2015/002528 is hereby SUSTAINED. Let the filewrapper of the subject trademark application be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 07 APR 2017.


Atty. JOSEPHINE C. ALON
Adjudication Officer, Bureau of Legal Affairs

⁶ *MacDonalds Corp, et. al v. L. C. Big Mak Burger*, G.R. No. L-143993, 18 August 2004.

⁷ *Sapolin Co. v. Balmaceda and Germann & Co.*, 67 Phil, 705.

⁸ *Co Tiong SA v. Director of Patents*, G.R. No. L- 5378, 24 May 1954; *Celanes Corporation of America vs. E. I. Du Pont de Nemours & Co.* (1946), 154 F. 2d 146 148.)

⁹ *Marvex Commerical Co., Inc. v. Petra Hawpia & Co., et. al.*, G.R. No. L-19297, 22 Dec. 1966.