

THERAPHARMA INC.,
Opposer,

-versus-

EUROASIA PHARMACEUTICALS, INC.,
Respondent-Applicant.

X-----X

IPC No. 14-2015-00334

Opposition to:

Appln. Serial No. 4-2015-003987

Date Filed: 14 April 2015

TM: AMVAL

NOTICE OF DECISION

OCHAVE & ESCALONA

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EUROASIA PHARMACEUTICALS, INC.

Respondent- Applicant
Unit 1201, 12th Floor AIC Burgundy Empire Tower
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Pasig City

GREETINGS:

Please be informed that Decision No. 2017 - 136 dated 20 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, 21 April 2017.

MARILYN F. RETUAL

IPRS IV

Bureau of Legal Affairs

Republic of the Philippines
INTELLECTUAL PROPERTY OFFICE

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<p>THERAPHARMA INC., Opposer,</p> <p>-versus-</p> <p>EUROASIA PHARMACEUTICALS, INC., Respondent-Applicant.</p> <p>x-----x</p>	<p>} IPC NO. 14-2015-00334</p> <p>} Opposition to:</p> <p>}</p> <p>} Appln. Ser. No. 4-2015-003987</p> <p>} Date Filed: 14 April 2015</p> <p>}</p> <p>} Trademark: AMVAL</p> <p>}</p> <p>} Decision No. 2017- <i>136</i></p>
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DECISION

THERAPHARMA INC., (Opposer)¹ filed an opposition to Trademark Application Serial No. 4-2015-003987. The application, filed by EUROASIA PHARMACEUTICALS, INC., (Respondent-Applicant)², covers the mark “AMVAL”, for use on “pharmaceutical preparation” under Class 5 of the International Classification of Goods³.

The Opposer anchors its opposition on the following grounds:

“7. The mark ‘AMVAL’ applied for by Respondent-Applicant so resembles the trademark ‘AMVASC’ owned by Opposer, and duly registered with this Honorable Bureau prior to the publication of the application for the mark ‘AMVAL’.

“8. The mark ‘AMVAL’, will likely cause confusion, mistake and deception on the part of the purchasing public, most especially considering that the opposed mark ‘AMVAL’, is applied for the same class and goods as that of Opposer’s trademark ‘AMVASC’, i.e. Class (5) of the International Classification of Goods for pharmaceutical preparations.

“2. The registration of the mark ‘AMVAL’ 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:

¹ A domestic corporation duly organized and existing under Philippine laws with principal address at 4th Floor, Bonaventure Plaza, Ortigas Avenue, Greenhills, San Juan City, Philippines

² A domestic corporation with principal address at Unit 1201 12/F AIC Burgundy Empire Tower, ADB Ave., Ortigas Business Center, Pasig City

³ 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.

(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;

“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 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 ‘AMVAL’ will diminish the distinctiveness of Opposer’s trademark ‘AMVASC’.

The Opposer also alleges that:

“12. Opposer is engaged in the marketing and sale of a wide range of pharmaceutical products and is the registered owner of the trademark “AMVASC”

“12.1. The trademark application for the trademark ‘AMVASC’ was filed with the IPO on 16 January 2006 by Opposer and was approved for registration on 19 March 2007 to be valid for a period of ten (10) years, or until 19 March 2017.

“12.1. Thus, the registration of the trademark ‘AMVASC’ subsists and remains valid to date.

“13. The trademark ‘THERABLOC’ has been extensively used in commerce in the Philippines.

“13.1. In order to legally market, distribute and sell this pharmaceutical preparation in the Philippines, the product has been registered in the Food and Drugs Authority. xxx

“13.3. A sample product label bearing the trademark ‘AMVASC’ and actually used in commerce is hereto attached hereof as Exhibit ‘F’ and made an integral part hereof.xxx”

“13.4. No less than the Intercontinental Marketing Services (‘IMS’) itself, the world’s leading provider of business intelligence and strategic consulting services for the pharmaceutical and healthcare industries with operations in more than 100 countries, acknowledged and listed the brand ‘AMVASC’ as one of the leading brands in the Philippines in the

category of 'C08B- Calcium Antagonists Combs' in terms of market share and performance.xxx"

To support its opposition, the Opposer submitted as evidence the following:

1. Print-out of IPO e-Gazette showing the Respondent-Applicant's trademark application published for opposition;
2. Copy of Certificate of Registration No. 4-2006-000470 for the trademark "AMVASC" issued on 19 March 2007;
3. Certificate of Listing of Identical Product issued by the Food and Drugs Authority dated 14 March 2014;
4. Copy of Declaration of Actual Use dated 27 February 2007 and 7 May 2012; and
5. Sample product label of "AMVASC"; and
6. Certification from IMS Health dated 8 July 2015.⁴

This Bureau served upon the Respondent-Applicant a "Notice to Answer" on 4 August 2015. The Respondent-Applicant, however, did not file an Answer. The Hearing Officer issued an order declaring the Respondent-Applicant in default on 11 February 2016.

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

Records show that at the time Respondent-Applicant applied for registration of the mark "AMVAL" the Opposer already registered the mark AMVASC under Registration No. 4-2006-000470⁵ issued on 19 March 2007. The goods covered by the Opposer's trademark registration are also under Class 5, same as indicated in the Respondent-Applicant's trademark application.

The question is: Are the competing marks identical or closely resembling each other such that confusion or mistake is likely to occur?

Amvasc

Amval

Opposer's mark

Respondent-Applicant's mark

The marks of the parties are written in a block style lettering with no stylized device. The Respondent-Applicant's mark contains all the literal elements of the Opposer's mark differing only in the last letter "L" while the Opposer uses the last letters "SC". As a result, the marks are phonetically similar. The Respondent-Applicant's mark AMVAL, when pronounced, sounds confusingly similar to the Opposer's mark, AMVASC. Visually and aurally, the competing marks are confusingly similar.

⁴ Exhibits "A" to "G"

⁵ Exhibit "B"

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.⁶ This Bureau finds that the Respondent-Applicant's mark does not serve this function.


Succinctly, because the Respondent-Applicant uses its mark on goods that are similar or closely related to the Opposer's it is likely that the consumers will have the impression that these goods originate from a single source or origin. The confusion or mistake would subsist not only the purchaser's perception of goods but on the origin thereof as held by the Supreme Court, to wit:

Callman notes two types of confusion. The first is the confusion of goods in which event the ordinary 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 then be deceived either into that belief or into belief that there is some connection between the plaintiff and defendant which, in fact does not exist.⁷

WHEREFORE, premises considered, the instant Opposition to Trademark Application No. 4-2015-003987 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, 20 APR 2017


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

⁶Pribhdas J. Mirpuri v. Court of Appeals, G. R. No. 114508, 19 November 1999.

⁷Converse Rubber Corp. v. Universal Rubber Products, Inc., et. al., G. R. No. L-27906, 08 January 1987.