WESTMONT PHARMACEUTICALS, INC., *Opposer,* **-versus-** **UNIVERSAL ROBINA CORPORATION,** *Respondent-Applicant.*	}	**IPC No. 14-2013-00365** Opposition to: Appln. Serial No. 4-2012-013852 Date Filed: 14 November 2012 **TM: LEVOMAX**

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NOTICE OF DECISION

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GREETINGS:

Please be informed that Decision No. 2017 - 161 dated 19 May 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, 22 May 2017.

MARILYN F. RETUTAL
IPRS IV
Bureau of Legal Affairs

WESTMONT PHARMACEUTICALS, INC.,

Opposer,

- versus -

UNIVERSAL ROBINA CORPORATION,

Respondent-Applicant.

IPC NO. 14 – 2013 - 00365

Opposition to:
Trademark Application Serial No. 42012013852

TM: "LEVOMAX"

DECISION NO. 2017 - 161

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D E C I S I O N

WESTMONT PHARMACEUTICALS, INC. (Opposer)[1] filed an Opposition to Trademark Application Serial No. 4-2012-013852. The trademark application filed by UNIVERSAL ROBINA CORPORATION (Respondent-Applicant)[2], covers the mark LEVOMAX for *"veterinary products namely supplements and multivitamins for consumption of rooster, fowl and hens."* under Class 5 of the International Classification of Goods and Services[3].

The Opposer based its Opposition on the following grounds:

1. The Respondent-Applicant's "LEVOMAX" mark resembles the prior registered "LEVOX" trademark of Opposer and will likely cause confusion, mistake and deception on the purchasing public; and
2. The registration of the mark "LEVOMAX" will violate Section 123 of the IP Code

The Opposer alleged that: Opposer is the registered owner of the trademark "LEVOX" which has been extensively used in commerce in the Philippines; the "LEVOX" brand has been acknowledged by Intercontinental

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[1] A domestic corporation with Office Address at 4th Flr. Bonaventure Plaza, Ortigas Avenue, Greenhills, San Juan City, Philippines.
[2] A domestic Corporation with business address at 110 E. Rodriguez Jr. Avenue, Libis, Quezon City, Philippines
[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.

Marketing Services as one of the leading brands in the Philippines; LEVOMAX appears and sounds almost the same as LEVOX and leave the same commercial impression upon the public; Allowing the LEVOMAX mark will also result to a likelihood of confusion as to the business reputation or goodwill between the Opposer and the Respondent-Applicant; and it will also take unfair advantage of, dilute and diminish the distinctive character of the Opposer's LEVOX trademark.

In support of its Opposition, the Opposer submitted the following as evidence:

Exhibit "A" – Copy of the pertinent page of the IPO E-Gazette;
Exhibit "B" – Certified True Copy of the Certificate of Registration No. 4-1998-007705 for the trademark LEVOX;
Exhibit "C" – Sample of product packaging bearing the "LEVOX" mark;
Exhibit "D" – Certified True Copy of the Certificate of Product Registration for LEVOX issued by FDA; and
Exhibit "E" – Certification and Sales Performance issued by IMS;

This Bureau issued and served a Notice to Answer to the Respondent-Applicant on 12 September 2013.

On 11 December 2013, Respondent-Applicant filed its Verified Answer denying all the material allegations of the Opposition. The Respondent-Applicant also argued that: the subject mark (LEVOMAX) is not confusingly similar with the cited mark (LEVOX); the pictorial presentation, packaging and the printed materials are different; the allegation of confusing similarity is negated by the difference of the goods of the respective mark; the Opposer's certificate of registration is limited to the broad spectrum antibacterial medicinal preparation only; and Respondent's resort to word play does not prove that the subject mark and cited mark are identical in appearance and sound.

The Respondent-Applicant submitted the following evidence:

Exhibit "1" – Copy of the Trademark Application for the LEVOMAX mark;
Exhibit "2" – Copy of the Registrability Report issued by the Bureau of Trademark;
Exhibit "3" – Copy of the Notice of Allowance issued by the Bureau of Trademark;
Exhibit "4" – Copy of the Certificate of Product Registration from the Bureau of Animal Industry;
Exhibit "5" – Sample of Actual Packaging of the Respondent-Applicant's product;
Exhibit "6" – Sample of Actual Packaging of the Opposer's product; and
Exhibit "7" – Copy of the Screenshot which embodies the list of the Opposer's medicines.

On 24 September 2014, the Preliminary Conference was terminated and the parties were directed to submit their respective Position Papers.

The basic issue to be resolved in the instant case is whether Respondent-Applicant's trademark LEVOMAX should be allowed for registration.

The instant opposition is anchored on Section 123.1, paragraph (d), of the IP Code which 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 or if it nearly resembles such mark as to be likely to deceive or cause confusion.

The competing marks are reproduced below for comparison:

Levox

Opposer's Trademark

Respondent-Applicant's Trademark

At the time the Respondent-Applicant filed her trademark application for LEVOMAX mark on 14 November 2012, the Opposer has already a prior and existing trademark registration for the mark LEVOX. However, this Bureau finds that it is unlikely that the registration of the Respondent-Applicant mark will cause confusion or deception among the buying public.

Contrary to the arguments of the Opposer, the two contending trademarks are distinct from each other both, visually and aurally. At the outset, the Opposer's mark is composed of five (5) letters with two (2) syllables (LE-VOX) while that of the Respondent-Applicant has seven (7) letters with three (3) syllables (LE-VO-MAX). Although the contending marks have five (5) similar letters, their phonetical differences are very much apparent and cognizable. In addition, the graphical presentations of the two marks including their font style are starkly different. Undoubtedly, the Respondent-Applicant's composite mark with a picture device of a rooster's head and the stylized font is distinguishable from the plain wordmark of the Opposer.

Moreover, this Bureau has taken notice of the fact that the goods subject of the contending marks are different from each other. The Opposer's goods involve medicinal preparation intended for human consumption while the Respondent-Applicant products are supplements for rooster, fowls and hens.

Our Supreme Court has held that confusing similarity should be determined on the basis of visual, aural, connotative comparisons and overall impressions engendered by the marks in controversy as they are encountered in

the realities of the marketplace.[4] Unlike ordinary consumer goods which are being bought by the public out of individual preferences, pharmaceutical products belong to a different class of goods and their dispensation are highly regulated by the government. Thus in the instant case, confusion on the part of buying public is highly doubtful considering the subject goods of the two marks are for two distinct usage and do not flow in the same channels of trade.

Furthermore, the above-mentioned glaring differences in the two trademarks and the distinction in the nature of the goods subject of the competing marks disprove the argument of the Opposer that the Respondent-Applicant is taking unfair advantage of or the use of the Respondent-Applicant's mark will dilute and diminish the distinctive character or reputation of the Opposer's trademark.

In our jurisdiction, 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] This Bureau finds that the trademark being applied for by the Respondent-Applicant satisfies this function.

WHEREFORE, premises considered, the instant Opposition to Trademark Application Serial No. 42012013852 is hereby **DISMISSED.** Let the filewrapper of Trademark Application Serial No. 42012013852 be returned together with a copy of this Decision to the Bureau of Trademarks (BOT) for appropriate action.

SO ORDERED.

Taguig City, 19 MAY 2017

Leonardo Oliver Limbo
Adjudication Officer
Bureau of Legal Affairs

[4] Societe Des Produits Nestle, S.A. v. Court of Appeals, G.R. No. 11012, 4 April 2001
[5] Gabriel *v.* Perez, 55 SCRA 406, 417 [1974] citing 52 Am Jur, p. 508; Etepha *v.* Director of Patents, 16 SCRA 495, 497 [1966]; see also Phil. Refining Co., Inc. *v.* Ng Sam, 115 SCRA 472, 476-477 [1982]; also cited in Agpalo, Trademark Law and Practice in the Philippines, p. 5 [1990]