



INTELLECTUAL PROPERTY  
OFFICE OF THE PHILIPPINES

**UNITED LABORATORIES, INC.,**  
*Opposer,*

**-versus-**

**MEDIRICH PHARMA DISTRIBUTION CORP.,**  
*Respondent-Applicant.*

X-----X

**IPC No. 14-2016-00498**  
Opposition to:

Appln. Serial No. 4-2015-013927  
Date Filed: 07 December 2015

**TM: MEDIZOL**

### NOTICE OF DECISION

#### **OCHAVE & ESCALONA**

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

#### **MEDIRICH PHARMA DISTRIBUTION CORPORATION**

*Respondent-Applicant*  
Rm. 208 J. Borromeo Building  
F. Ramos corner Arlington Pond Streets,  
Cebu City

#### **GREETINGS:**

Please be informed that Decision No. 2018 - 03 dated 18 January 2018(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, 25 January 2018.

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



INTELLECTUAL PROPERTY  
OFFICE OF THE PHILIPPINES

**UNITED LABORATORIES, INC.,**

Opposer,

-versus-

IPC No. 14-2016-00498

Opposition to Trademark

Application No. 4-2015-013927

Date Filed: 07 December 2015

Trademark: **"MEDIZOL"**

**MEDIRICH PHARMA DISTRIBUTION  
CORPORATION,**

Respondent-Applicant.

X ----- X

Decision No. 2018- 03

**DECISION**

United Laboratories, Inc.<sup>1</sup> ("Opposer") filed an opposition to Trademark Application Serial No. 4-2015-013927. The application, filed by Medirich Pharma Distribution Corporation<sup>2</sup> ("Respondent-Applicant"), covers the mark "MEDIZOL" for use on *"pharmaceutical product as proton pump inhibitor to treat ulcers in the stomach and to reduce acid reflux which may cause heartburn or inflammation"* under Class 05 of the International Classification of Goods<sup>3</sup>.

The Opposer anchors its opposition on Section 123.1 (d) of R.A. No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code")<sup>4</sup>. According to the Opposer, "MEDIZOL" so resembles its own mark "MEDICOL" as to likely cause confusion, mistake and deception on the part of the purchasing public, most especially as both marks are to be applied for the same class of goods. In support of its opposition, the Opposer submitted the following as evidence:<sup>5</sup>

1. pertinent page of the IPO E-Gazette;
2. certified true copy of Certificate of Registration No. 33517;
3. certified true copy of the Certificate of Renewal of Registration No. 33517 applied by its sister company, Myra Pharmaceuticals, Inc.;

<sup>1</sup> A corporation duly organized and existing under and by virtue of the laws of the Philippines, with office address at 66 United Street, Mandaluyong City Philippines.

<sup>2</sup> Appears to be a Philippine corporation, with office address at Rm. 208 J. Borromeo Bldg., F. Ramos corner Arlington Pond Street, Cebu City, Philippines.

<sup>3</sup> 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.

<sup>4</sup> Section 123.1. A mark cannot be registered if it:

(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"

<sup>5</sup> Marked as Exhibits "A" to "H".

4. certified true copy of the Assignment of Registered Trademark from Myra to another of its affiliate, Unam Brands (BVI) Ltd.;
5. certified true copy of the Assignment of Registered Trademark from Unam to the Opposer;
6. certified true copy of the Certificate of Renewal Registration, this time filed by the Opposer;
7. certified copies of the Affidavits of Use;
8. certified true copy of the Certificate of Product Registration issued by the Food and Drugs Administration (FDA); and,
9. certification and sales performance issued by the Intercontinental Marketing Services (IMS).

This Bureau issued a Notice to Answer and served a copy thereof upon the Respondent-Applicant on 05 October 2016. The Respondent-Applicant, however, failed to file an Answer on time. Accordingly, the Adjudication Officer issued, on 30 March 2017, Order No. 2017-787 declaring the Respondent-Applicant in default and the case submitted for decision.

The primordial issue in this case is whether the trademark application for the mark "MEDIZOL" should be allowed.

As culled from available records, the Opposer's predecessor-in-interest, Myra Pharmaceuticals, Inc., was issued Certificate of Registration No. 33517 for its mark "MEDIZOL" on 01 August 1984. The same remains valid and existing upon timely renewal of the registration by herein Opposer. On the other hand, Respondent-Applicant filed its trademark application on 07 December 2015.

To determine whether the competing marks are confusingly similar, the two are reproduced below as follows:

**Medicol**

*Opposer's mark*

**MEDIZOL**

*Respondent-Applicant's mark*

It appears that the Respondent-Applicant merely substituted the fifth letter "C" in the Opposer's mark for the letter "Z". This minor detail fails to lend the former's mark character to sufficiently distinguish it from the Opposer's. Confusing similarity

exists when there is such a close or ingenuous imitation as to be calculated to deceive ordinary persons, or such resemblance to the original as to deceive ordinary purchased as to cause him to purchase the one supposing it to be the other.<sup>6</sup> As held by the Supreme Court in the case of **Del Monte Corporation vs. Court of Appeals**<sup>7</sup>:

*"It has been correctly held that side-by-side comparison is not the final test of similarity. Such comparison requires a careful scrutiny to determine in what points the labels of the products differ, as was done by the trial judge. The ordinary buyer does not usually make such scrutiny nor does he usually have the time to do so. The average shopper is usually in a hurry and does not inspect every product on the shelf as if he were browsing in a library. Where the housewife has to return home as soon as possible to her baby or the working woman has to make quick purchases during her off hours, she is apt to be confused by similar labels even if they do have minute differences. The male shopper is worse as he usually does not bother about such distinctions.*

*The question is not whether the two articles are distinguishable by their label when set side by side but whether the general confusion made by the article upon the eye of the casual purchaser who is unsuspecting and off his guard, is such as to likely result in his confounding it with the original. As observed in several cases, the general impression of the ordinary purchaser, buying under the normally prevalent conditions in trade and giving the attention such purchasers usually give in buying that class of goods is the touchstone."*

Noteworthy, both marks are used or are intended to be used similarly on pharmaceutical preparations. It is settled that the likelihood of confusion extends not only as to the purchaser's perception of the goods but likewise on its origin. Callman notes two types of confusion. 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 then 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."<sup>8</sup> Thus, the consumers may have the notion that Opposer expanded business and manufactured a new product by the name "MEDIZOL", which could be mistakenly assumed a derivative or variation of "MEDICOL".

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<sup>6</sup> Societe des Produits Nestle, S.A. vs. Court of Appeals, GR No. 112012, 04 April 2001.

<sup>7</sup> G.R. No. L-78325, 25 January 1990.

<sup>8</sup> Societe des Produits Nestle, S.A. vs. Dy, G.R. No. 172276, 08 August 2010.

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.<sup>9</sup> The Respondent-Applicant's trademark fell short in meeting this function.

Accordingly, this Bureau finds and concludes that the Respondent-Applicant's trademark application is proscribed by Sec. 123.1(d) of the IP Code.

**WHEREFORE**, premises considered, the instant opposition is hereby **SUSTAINED**. Let the filewrapper of Trademark Application Serial No. 4-2015-013927 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

**SO ORDERED.**

Taguig City, **18 JAN 2018** .

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

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<sup>9</sup> Pribhdas J. Mirpuri vs. Court of Appeals, G.R. No. 114508, 19 November 1999.