THERAPHARMA, INC.,	}	**IPC No. 14-2008-00099**
Opposer,	}	Opposition to:
	}	
	}	
- versus -	}	Appln. Ser. No. 4-2007-009692
	}	Date Filed: September 3, 2007
	}	
ACTAVIS GROUP PTC EHF.,	}	
Respondent-Applicant.	}	Trademark: **CALUBLOC**
x----------x		Decision No. 2012 - 43

DECISION

THERAPHARMA, INC.[1] ("Opposer") filed on 30 April 2008 a Verified Opposition to Trademark Application No. 4-2007-009692. The application, filed by ACTAVIS GROUP PTC EHF.[2] ("Respondent-Applicant"), covers the mark CALUBLOC used for goods under Class 05[3], particularly, *"pharmaceutical preparations and substances for the treatment of cancer"*.

The Opposer alleges the following:

> "1. The trademark CALUBLOC so resembles CALCIBLOC trademark owned by Opposer, registered with this Honorable Office prior to the publication for opposition of the mark CALUBLOC. The trademark CALUBLOC, which is owned by Respondent, will likely cause confusion, mistake and deception on the part of the purchasing public, most especially considering that the opposed trademark CALUBLOC is applied for the same class of goods as that of trademark CALCIBLOC, i.e. Class 5;
>
> "2. The registration of the trademark CALUBLOC in the name of the Respondent will violate Sec. 123 of Republic Act No. 8293, otherwise known as the Intellectual Property Code of the Philippines, which provides, in part, that a mark cannot be registered if it:
>
> x x x
>
> 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.
>
> "3. Respondent's use and registration of the trademark CALUBLOC will diminish the distinctiveness and dilute the goodwill of

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1 A corporation duly organized and existing under the laws of the Philippines with principal office located at 3rd Floor, Bonaventure Plaza, Ortigas Avenue, Greenhills, San Juan City.

2 A foreign corporation with principal office address at Reykjavikurvegi 76, 220 Hafnarfirdi, Iceland.

3 Nice Classification is a classification of goods and services for the purpose of registering trademarks and service marks, based on a multilateral administered by the World Intellectual Property Organization. This 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.

Opposer's trademark CALCIBLOC."

The Opposer's evidence consists of the following:

1. Exhibit "A" - Computer print-out of Trademarks Published for Opposition released on 01 February 2008;

2. Exhibit "B" - Certified true copy of Certificate of Registration No. 48810 for the trademark CALCIBLOC;

3. Exhibit "C" - Certified true copy of Affidavit of Use for 5th Anniversary filed on 11 August 1995;

4. Exhibit "D" - Certified true copy of Affidavit of Use for 10th Anniversary filed on 22 August 2000;

5. Exhibit "E" - Certified true copy of Affidavit of Use for 15th Anniversary filed on 28 October 2005;

6. Exhibit "F" - Sample product label bearing the trademark CALCIBLOC;

7. Exhibit "G" - Copy of certification and sales performance issued by Intercontinental Marketing Services (IMS) dated 03 March 2008; and

8. Exhibit "H" - Certified true copy of Certificate of Product Registration issued by the BFAD for the mark CALCIBLOC.

This Bureau issued a Notice to Answer and served a copy thereof upon the Respondent-Applicant on 23 May 2008. The Respondent-Applicant, however, did not file an Answer despite receipt of the notice and the extensions of time given. Thus, pursuant to Section 11[4] of Office Order No. 79, this case is deemed submitted for decision on the basis of the opposition, affidavits of witnesses and evidence submitted by the Opposer.

Should the Respondent-Applicant's trademark application be allowed?

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

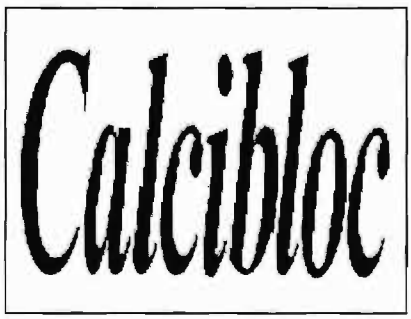
[4] Section 11. *Effect of failure to file Answer* – In case the respondent fails to file an answer, or if the answer is filed out of time, the case shall be decided on the basis of the petition or opposition, the affidavits of the witnesses and the documentary evidence submitted by the petitioner or opposer.

his product.[5]

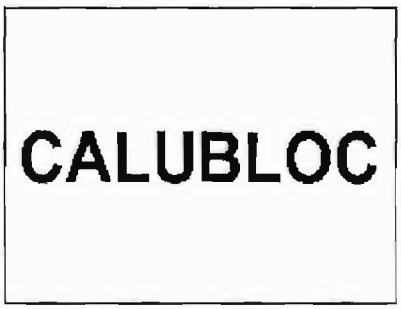
Thus, Sec. 123.1 (d) of R. A. No. 8293, also known as The Intellectual Property Code of the Philippines ("IP Code") provides that a mark cannot be registered if it is identical with a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date, in respect of the same goods or services or closely related goods or services or if it nearly resembles such a mark as to be likely to deceive or cause confusion.

The records and evidence show that at the time the Respondent-Applicant filed its trademark application on 03 September 2007, the Opposer already has an existing trademark registration for the mark CALCIBLOC under Registration No. 048810 issued on 03 August 1990. This registration covers *"medicinal preparations indicated for prophylaxis and treatment of angina, myocardial infarction and all forms of hypertension"* while that of the Respondent-Applicant includes *"pharmaceutical preparations and substances for the treatment of cancer"*. Evidently, the goods covered by the competing marks are related not only because they belong to the same class of goods, *i.e.* Class 5, but also because they have the same attributes or characteristics being pharmaceutical preparations. But do they resemble each other such that confusion, mistake or deception is likely to occur?

The competing marks reproduced below for comparison:



Opposer's mark



Respondent-Applicant's mark

The features in both marks that immediately draw the eyes and ears are the first and last syllables. Dissecting their composition, it is obvious that they have three (3) syllables which both start with letters "C-A-L" and end with letters "B-L-O-C". The difference lies only on the second or middle syllables with Opposer's consisting of letters "C-I" as against Respondent-Applicant's "U". While there may have been variations in their font style, when taken in their entireties, still creates resemblance in appearance and sound in the contending marks.

In this regard, confusion cannot be avoided by merely dropping, adding or changing one of the letters of a registered mark.[6] Confusing similarity exists

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[5] *Pribhdas J. Mirpuri v. Court of Appeals*, G. R. No. 114508, 19 November 1999.

[6] *Continental Connector Corp. v. Continental Specialties Corp.*, 207 USPQ.

when there is such a close of ingenuous imitation as to be calculated to deceive ordinary persons, or such resemblance to the original as to deceive ordinary purchaser as to cause him to purchase the one supposing it to be the other.[7] Indeed, to constitute an infringement of an existing trademark patent and warrant a denial of an application for registration, the law does not require that the competing trademarks must be so identical as to produce actual error or mistake; it would be sufficient, for purposes of the law, that the similarity between the two marks is such that there is a possibility or likelihood of the purchaser of the older brand mistaking the newer brand for it.[8]

Aptly, this Bureau finds that the Respondent-Applicant's mark which is almost the same as that of the Opposer was not crafted on pure coincidence. The field from which a person may select a trademark is practically unlimited. As in all cases of colorable imitations, the unanswered riddle is why, of the millions of terms and combinations of letters available, the Respondent-Applicant had to come up with a mark identical with the Opposer, which the latter has been using since 1985, if there was no intent to take advantage of the goodwill generated by the other mark.

WHEREFORE, premises considered, the instant opposition is hereby **SUSTAINED.** Let the filewrapper of Trademark Application No. 4-2007-009692, together with a copy of this Decision, be returned to the Bureau of Trademarks for appropriate action.

SO ORDERED.

Taguig City, 06 March 2012.

Atty. NATHANIEL S. AREVALO
Director IV
Bureau of Legal Affairs

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[7] *Societe Des Produits Nestle, S. A. v. Court of Appeals,* G. R. No. 112012, April 4, 2001.
[8] *American Wire & Cable Co. v. Director of Patents, et. al.,* G. R. No. L-26557, 18 February 1970.