BOEHRINGER INGELHEIM KG, Opposer, **-versus-** **HERBS AND NATURE CORP.,** Respondent-Applicant.	}	**IPC No. 14-2011-00339** Opposition to: Appln. Serial No. 4-2011-001144 Date filed: 01 Feb. 2011 **TM: "CARDIS"**

NOTICE OF DECISION

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GREETINGS:

Please be informed that Decision No. 2012 – 145 dated August 10, 2012 (copy enclosed) was promulgated in the above entitled case.

Taguig City, August 10, 2012.

For the Director:

Atty. PAUSLU. SAPAK
Hearing Officer, BLA

CERTIFIED TRUE COPY
SHARON S. ALCANTARA
Records Officer II
Bureau of Legal Affairs, IPO

BOEHRINGER INGELHEIM KG,
Opposer,

-versus-

HERBS AND NATURE CORP.,
Respondent-Applicant.
x----------x

IPC NO. 14-2011-00339
Opposition to:

Appln. Ser. No. 4-2011-001144
(Filing Date: 01 Feb. 2011)
TM: "CARDIS"

Decision No. 2012 - 145

DECISION

BOEHRINGER INGELHEIM KG ("Opposer")[1] filed on 24 August 2011 an opposition to Trademark Application Serial No. 4-2011-001144. The application, filed by HERBS AND NATURE CORP. ("Respondent-Applicant")[2], covers the mark "CARDIS" for use on "*food supplement*" under Class 5 of the International Classification of goods.[3]

The Opposer alleges among other things that it is the owner of the trademark "MICARDIS" which is already registered in the Philippines. According to the Opposer, CARDIS is confusingly similar to MICARDIS and its registration therefore will violate Sec. 123 of Rep. Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code"). The Opposer's evidence consists of copies of:

1. its Certificate of Corporation;
2. Power of Attorney it executed in favor of its counsel of record;
3. General Information Sheet relating to its registration with the Philippines' Securities and Exchange Commission;
4. Cert. of Reg. No. 4-1996-111832 for the mark MICARDIS; and
5. various articles and annual/operations/financial reports pertaining to the Opposer.

as well as printouts of various webpages showing its corporate profile and articles on MICARDIS, list of countries where MICARDIS is registered, the authenticated affidavit of Maximilian Kammler, and the notarized affidavit of Teresa Paz B. Grecia Pascual.[4]

This Bureau issued a Notice to Answer and served a copy thereof upon the Respondent-Applicant on 06 October 2011.The Respondent-Applicant, however, did not file an Answer.

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[1] A foreign corporation organized and existing under the laws of the Federal Republic of Germany with principal office at Binger Strabe 148, 55216 Ingelheim, Germany.
[2] A domestic corporation with principal place of business at Block 1, Lot 14, Art Subdivision, Bagbag, Novaliches, Quezon City.
[3] 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.
[4] Marked as Exhibits "A" to "KK", inclusive.

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

It is emphasized that the essence of trademark registration is to give protection to the owners of the trademarks. The function of a trademark is to point out distinctly the origin or ownership of the goods to which it is applied; 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 to 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]. Thus, Sec. 123.1(d) of Rep. Act 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 earlier filing or priority date, in respect of the same goods or services or closely related goods or services or it nearly resembles such, mark as to be likely to deceive or cause confusion.

The records show that at the time the Respondent-Applicant filed its trademark application on 01 February 2011, the Opposer has an existing trademark registration for MICARDIS for use on *"pharmaceutical preparations namely pharmaceutical preparations for the treatment of heart and cardiovascular diseases"* under Class 5 (Reg. No. 4-1996-111832). It appears, however, that the goods covered by the said trademark registration, are not similar and/or closely related to those indicated in the Respondent-Applicant's trademark application. Nevertheless, the Respondent-Applicant's trademark application should not be allowed because the marks, as shown below, resemble each other as to be likely to deceive or cause confusion.

MICARDIS	CARDIS
Opposer's mark	*Respondent-Applicant's mark*

The only difference between the two marks is presence of the syllable "MI" in the Opposer's mark. In this regard, what defines or gives the Opposer's mark a distinctive character that appeals to the eyes and the ears are the syllables "CAR" and "DIS". Obviously, CARDIS in the Opposer's mark is derived from or inspired by the word "*cardio*" which relates to the heart and the human body's circulatory system. But with a creative flair in starting the mark with the syllable "MI" and appending the letter "S" instead of the letter "O" at the end, the mark is essentially an invented word which is unique and highly distinctive. Because of this uniqueness and acquired distinctiveness, it is now easy to associate the Respondent-Applicant's applied mark with the Opposer's.

Aptly, there may or may not be a mistake in the purchase of the goods. But it is likely that the Respondent-Applicant's applied mark is assumed to be a variation of the Opposer's. Information, assessment, perception or impression about CARDIS products may unfairly cast upon or attributed to the MICARDIS products and the Opposer, and

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5 *Pribhdas J. Mirpuri v. Court of Appeals*, G.R. No. 115508, 19 Nov. 1999.

vice-versa. The likelihood of confusion would subsist not only on the purchaser's perception of goods but on the origins thereof as held by the Supreme Court:[6]

> 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 belief that there is some connection between the plaintiff and defendant which, in fact does not exist.

The field from which a person may select a trademark is practically unlimited. As in all cases of colorable imitation, the unanswered riddle is why, of the millions of terms and combination of letters and available, the Respondent-Applicant had come up with a mark identical or so clearly similar to another's mark if there was no intent to take advantage of the goodwill generated by the other mark[7].

The law on trademarks is based on the principle of business integrity and common justice. It is both in letter and spirit, laid upon the premise that, while it encourages fair trade in every way and aims to foster, and not to hamper competition, no one especially a trader, is justified in damaging or jeopardizing others business by fraud, deceit, trickery or unfair methods of any sort. This necessarily precludes the trading by one dealer upon the good name and reputation built by another.[8] Corollarily, the intellectual property system was established to recognize creativity and give incentives to innovations. Similarly, the trademark registration system seeks to reward entrepreneurs and individuals who through their own innovations were able to distinguish their goods or services by a visible sign that distinctly points out the origin and ownership of such goods or services.

WHEREFORE, premises considered, the Opposition is hereby **SUSTAINED.** Let the filewrapper of Trademark Application Serial No. 4-2011-001144 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 10 August 2012.

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

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[6] See *Converse Rubber Corporation v. Universal Rubber Products, Inc., et al.*, G.R. No. L-27906, 08 Jan. 1987.
[7] *American Wire and Cable Co. v. Director of Patents et.* al (SCRA 544), G.R. No. L-26557, 18 Feb. 1970.
[8] See *Baltimore Bedding Corp. v. Moses*, 182 and 229, 34A (2d) 338.