UNITED LABORATORIES, INC.,	}	**IPC No. 14-2014-00066**
Opposer,	}	Opposition to:
	}	Appln Serial No. 4-2013-00011000
	}	Date Filed: 12 September 2013
-versus-	}	**TM: "KLAZIDE"**
	}	
	}	
	}	
EON PHARMATEK, INC.,	}	
Respondent-Applicant.	}	

x----------x

NOTICE OF DECISION

OCHAVE & ESCALONA
Counsel for the Opposer
No. 66 United Street
Mandaluyong City

EON PHARMATEK, INC.
For Respondent-Applicant
No. 17, 3rd Street, Bo. Kapitolyo
Pasig City

GREETINGS:

Please be informed that Decision No. 2015 - 121 dated June 29, 2015 (copy enclosed) was promulgated in the above entitled case.

Taguig City, June 29, 2015.

For the Director:

Atty. EDWIN DANILO A. DATING
Director III
Bureau of Legal Affairs

UNITED LABORATORIES, INC.,
Opposer,

- versus -

EON PHARMATEK, INC.,
Respondent-Applicant.
x ---------- x

IPC No. 14-2014-00066
Opposition to:

Appln. No. 4-2013-00011000
Date Filed: 12 September 2013
Trademark : **"KLAZIDE"**

Decision No. 2015 - 121

DECISION

UNITED LABORATORIES, INC. ("Opposer")[1], filed on 12 February 2014 a verified opposition to Trademark Application Serial No. 4-2013-00011000. The application, filed by EON PHARMATEK, INC., ("Respondent-Applicant")[2], covers the mark "KLAZIDE" for use of goods under class 5[3] on pharmaceuticals - antidiabetic tablet, capsule, syrup, suspension, solution, injection.

The Opposer alleges the following grounds for opposition:

"7. The mark 'KLAZIDE' applied for by Respondent-Applicant so resembles the trademark 'KLAZ' owned by Opposer and duly registered with this Honorable Bureau prior to the publication of the application for the mark 'KLAZIDE'.

"8. The mark 'KLAZIDE' will likely cause confusion, mistake and deception on the part of the purchasing public.

"9. The registration of the mark 'KLAZIDE' in the name of the Respondent-Applicant will violate Sec. 123.1(d) of the IP Code.

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.

"10. Respondent-Applicant's use and registration of the mark 'KLAZIDE' will diminish the distinctiveness of Opposer's trademark 'KLAZ'."

The Opposer's evidence consists of the following:

1. Copy of pertinent page of IPO E-Gazette;
2. Certified true copy (Ctc) Certificate of RegistrationNo. 4-2005-011646 for KLAZ;
3. Ctc of Assignment of Application for Registration of Trademark KLAZ;
4. Ctc of Declarations of Actual Use;
5. Sample product label;
6. Certification and sales performance issued by the IMS; and,

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1 A domestic corporation duly organized and existing under the laws of the Philippines with the principal business address at 66 United St., Mandaluyong City, Metro Manila, Philippines.

2 A domestic corporation with office address at Unit 703, AIC Burgundy Empire Tower, ADB Avenue, Ortigas Center, Pasig City, Philippines.

3 The Nice Classification of goods and services is for registering trademark and service marks, based on a 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.

7. Ctc of Certificate of Product Registration No. DR-XY35736 for KLAZ.

This Bureau issued and served upon the Respondent-Applicant a Notice to Answer on 24 February 2014, and an Alias Notice to Answer on 18 November 2014. Respondent-Applicant however, in both instances did not file an answer. Thus, he is declared in default and this case is deemed submitted for decision.

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

Section 123.1 paragraph (d) of R.A. No. 8293, otherwise known as the Intellectual Property Code ("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 if it nearly resembles such mark as to be likely to deceive or cause confusion.

Records and evidence show that at the time the Respondent-Applicant filed its trademark application for KLAZIDE on 12 September 2013,[4] the Opposer has already an existing registration for the mark KLAZ bearing Registration No. 4-2005-011646 issued on 15 January 2007 falling under Class 05 for medicinal preparation for use as antibacterial.[5] While the pharmaceutical products indicated in the Respondent-Applicant's trademark application are not actually similar to the goods covered by the Opposer's trademark registration, there exists the likelihood of confusion. The marks are shown below:

Klaz	KLAZIDE
Opposer's Trademark	Respondent-Applicant's Trademark

The only difference between the marks is that the Respondent-Applicant added to the syllable 'KLAZ' the letters "I", "D", and "E".

In this regard, the confusion cannot be avoided by merely adding, removing or changing some letters of a registered mark. 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 purchaser as to cause him to purchase the one supposing it to be the other.[6] Colorable imitation does not mean such similitude as amount to identify, nor does it require that all details be literally copied. Colorable imitation refers to such similarity in form, context, words, sound, meaning, special arrangement or general appearance of the trademark or tradename with that of the other mark or tradename in their over-all presentation or in their essential substantive and distinctive parts as would likely to mislead or confuse persons in the ordinary course of purchasing the genuine article.[7]

Succinctly, the changes in spelling did not diminish the likelihood of the occurrence of mistake, confusion, or even deception. KLAZ and KLAZIDE have identical initial sounds which make it not easy

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4 Filewrapper records.
5 Exhibit "B" of Opposer.
6 Societe Des Produits Nestle, S.A. v. Court of Appeals, G.R. No. 112012, 04 April 2001, 356 SCRA 207, 217.
7 Emerald Garment Manufacturing Corp. v. Court of Appeals, G.R. No. 100098, 29 December 1995.

for one to distinguish both marks. Trademarks are designed not only for the consumption of the eyes, but also to appeal to the other senses, particularly, the faculty of hearing. Thus, when one talks about the Opposer's trademark or conveys information thereon, what reverberates is the sound made in pronouncing it. The same sound, however, is practically replicated when one pronounces the Respondent-Applicant's mark.

It is stressed that the determinative factor in a contest involving trademark registration is not whether the challenged mark would actually cause confusion or deception of the purchasers but whether the use of such mark will likely cause confusion or mistake on the part of the buying public. To constitute an infringement of an existing trademark, 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 labels is such that there is a possibility or likelihood of the purchaser of the older brand mistaking the newer brand for it.[8] 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:[9]

> 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 on 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 of the former reflects adversely on the plaintiff's reputation. The other is the confusion of business. Hence, 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.

Sec. 123 (d) of the IP Code provides:

A mark cannot be registered if it:

x x x

(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;**

(Emphasis Supplied)

Indeed, the close resemblance between the marks would have the likelihood of a consumer believing that one mark, is related to the other. The fact that the marks cover not exactly the same pharmaceutical products would not prevent the likelihood of confusion since "KLAZIDE" would look like just a variation of "KLAZ", as if the Opposer ventured into the production of another product.

Finally, it must be emphasized that the Respondent-Applicant was given opportunity to defend its trademark application. It, however, failed to do so. Accordingly, this Bureau finds that the Respondent-Applicant's trademark application is proscribed by Sec. 123.1 (d) of the IP Code.

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8 American Wire and Cable Co. v. Director of Patents, et al., 31 SCRA 544, G.R. No. L-26557, 18 February 1970.
9 Converse Rubber Corporations v. Universal Rubber Products, Inc. et al., G.R. No. L-27906, 08 January 1987.

WHEREFORE, premises considered, the instant opposition is hereby **SUSTAINED.** Let the filewrapper of Trademark Application Serial No. 4-2013-00011000 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 29 June 2015.

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