



**Republic of the Philippines  
COURT OF APPEALS**

Manila

**ELEVENTH DIVISION**

**BIOMEDIS, INC.,**

*Petitioner,*

**CA-G.R. SP NO. 138763**

*Members:*

- versus -

**LIBREA-LEAGOGO**, Chairperson  
LAZARO-JAVIER, and  
SADANG, JJ.

**LITTMAN  
CORPORATION,**

**DRUG**

*Respondent.*

*Promulgated:*

06/01/15

X-----X

**DECISION**

***LIBREA-LEAGOGO, C.C., J.:***

Before this Court is a Petition for Review<sup>1</sup> dated 03 February 2015 under Rule 43 of the Rules of Court seeking the reversal of the Decision<sup>2</sup> dated 15 December 2014 issued by the Office of the Director General, Intellectual Property Office in *Appeal No. 14-2013-0016; IPC No. 14-2011-00248*, which dismissed the appeal.

Respondent filed its Comment/Opposition<sup>3</sup> dated 01 April 2015. Per JRD verification,<sup>4</sup> no reply was filed as per CMIS entry. Thus, the second paragraph of the Resolution<sup>5</sup> dated 05 March 2015 is reiterated and the Petition is submitted for decision.

**FACTUAL ANTECEDENTS**

It appears that on 07 December 2010, applicant Littman Drug Corporation ("Littman," for brevity) filed an application for registration of the mark "Begesic," which application was designated as *Application Serial No. 4-2010-013251*, for use on 'pharmaceutical

preparations, namely, a topically-applied pain relieving cream that are made up of methyl salicylate and menthol, that is greaseless, non-staining and with pleasant smell' under Class 5 of the International Classification of Goods or Services. On 30 May 2011, Littman's trademark application was published for opposition in the Intellectual Property Office's Electronic Gazette.<sup>6</sup>

Opposer Biomedis, Inc. ("Biomedis," for brevity) filed a Verified Notice of Opposition<sup>7</sup> dated 24 June 2011. Biomedis alleged as grounds for its opposition, *inter alia*, that: the mark "Begesic" owned by Littman so resembles the trademark "Biogesic" owned by Biomedis and duly registered with the Intellectual Property Office ("IPO," for brevity) prior to the publication for opposition of the mark "Begesic"; the mark "Begesic" will likely cause confusion, mistake and deception on the part of the purchasing public, considering that the opposed mark "Begesic" is applied for the same class and goods (Class 05 of the International Classification of Goods as Pharmaceutical/Medicinal Preparation) as that of Biomedis' trademark "Biogesic"; and the registration of the mark "Begesic" in the name of Littman will violate Section 123 of the IP Code which provides that 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.

Biomedis further alleged, *inter alia*, that: the trademark application for the trademark "Biogesic" was filed with the Philippine Patent Office on 20 September 1965 by Biomedis and was approved for registration on 24 March 1996 to be valid for a period of twenty (20) years or until 24 March 1986; before the expiration of the registration, Biomedis filed a petition for renewal of registration, which was accordingly granted and valid for another period of twenty (20) years or until 24 March 2006; on 24 November 2005, Biomedis filed another petition for renewal of registration of the trademark "Biogesic" with the IPO, which was accordingly granted and valid for another period of ten (10) years from 24 March 2006 or until 24 March 2016; there is no doubt that Biomedis has acquired an exclusive ownership over the trademark "Biogesic" to the exclusion of all others; the registration of Littman's mark "Begesic" will be contrary to Section 123.1 (d) of the IP Code; "Begesic" is confusingly similar to Biomedis' trademark "Biogesic"; Littman's mark "Begesic" appears and sounds almost the same as Biomedis' trademark "Biogesic"; the first and last five letters of Littman's mark "B-E-G-E-S-I-C" are exactly the same with Biomedis' trademark "B-I-O-G-E-S-I-C"; Littman merely changed the letters "IO" of Biomedis' trademark "Biogesic" to letter "E" in

arriving at Littman's mark "Begesic"; Littman's mark "Begesic" adopted the dominant features of Biomedis' trademark "Biogesic"; Biomedis' "Biogesic" and Littman's mark "Begesic" are practically identical marks in sound and appearance that they leave the same commercial impression upon the public; the registration and use of Biomedis' confusingly similar mark "Begesic" on its goods will enable the latter to obtain benefit from Biomedis' reputation and goodwill and will tend to deceive and/or confuse the public into believing that Littman is in any way connected with Biomedis; the owner of a trademark or trade name has a property right in which he is entitled to protection, since there is damage to him from confusion of reputation or goodwill in the mind of the public as well as from confusion of goods; to allow Littman to use its mark "Begesic" on its product would likely cause confusion or mistake in the mind of the public or deceive purchasers into believing that the product of Littman originate from or is being manufactured by Biomedis, or at the very least, is connected or associated with the "Biogesic" product of Biomedis when such connection does not exist; Littman's use of the mark "Begesic" in relation to any of the goods covered by the opposed application, if these goods are considered not similar or closely related to the goods covered by Biomedis' trademark "Biogesic", will take unfair advantage of, dilute and diminish the distinctive character or reputation of the latter mark; potential damage to Biomedis will be caused as a result of its inability to control the quality of the products put on the market by Littman under the mark "Begesic"; and Biomedis' interests are likely to be damaged by the registration and use of Littman of the mark "Begesic". It was prayed that Littman's application for registration of the mark "Begesic" with *Application Serial No. 4-2010-013251* filed on 07 December 2010 be denied.

The IPO issued a Notice to Answer<sup>8</sup> dated 11 July 2011 requiring Littman to file its Verified Answer to Biomedis' Verified Notice of Opposition. It appears that Littman filed a letter inadvertently dated as 18 August 2010, requesting for an extension of the period to file an answer but the IPO observed that the request for extension was filed out of time; and that Littman did not file an answer.<sup>9</sup>

On 25 March 2013, Director IV Atty. Nathaniel S. Arevalo of the Bureau of Legal Affairs of the IPO ("BLA-IPO," for brevity) rendered a Decision, the dispositive portion of which reads:

***"WHEREFORE,** premises considered, the instant opposition is hereby DISMISSED. Let the filewrapper of Trademark Application Serial No. 4-2010-013251 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and*

*appropriate action.*

SO ORDERED.”<sup>10</sup>

Biomedis filed its Appeal Memorandum<sup>11</sup> dated 02 May 2013. It appears that on 21 June 2013, the case was referred to the IPOPHL Alternative Dispute Resolution Services but the parties failed to arrive at an amicable settlement.<sup>12</sup> In an Order<sup>13</sup> dated 07 August 2013, the parties were required to submit their respective memoranda. Biomedis and Littman filed their Memoranda dated 28 August 2013<sup>14</sup> and 03 September 2013,<sup>15</sup> respectively.

On 15 December 2014, Director General Ricardo R. Blancaflor of the Office of the Director General of the IPO (“ODG-IPO,” for brevity) rendered a Decision,<sup>16</sup> the *fallo* of which reads:

*“WHEREFORE, premises considered, the appeal is hereby DISMISSED. Let a copy of this Decision and the records of this case be furnished and returned to the Director of Bureau of Legal Affairs for appropriate action. Further, let also the Director of the Bureau of Trademarks and the library of the Documentation, Information and Technology Transfer Bureau be furnished a copy of this Decision for information, guidance, and records purposes.*

SO ORDERED.”<sup>17</sup>

Hence, this Petition for Review.

## **RULING**

Petitioner Biomedis raises a lone issue for resolution, to wit:

*“WHETHER OR NOT THE ODG-IPO COMMITTED SERIOUS AND REVERSIBLE ERRORS OF FACT AND LAW IN RULING THAT THERE IS NO CONFUSING SIMILARITY BETWEEN PETITIONER'S TRADEMARK 'BIOGESIC' AND RESPONDENT'S MARK 'BEGESIC'.”<sup>18</sup>*

Petitioner Biomedis contends, *inter alia*, that: respondent's mark “Begesic” is confusingly similar with petitioner's trademark “Biogestic”; the ODG-IPO erred when it isolated the suffix “gesic” and solely used the same as reference in determining whether or not the marks are confusingly similar; the ODG-IPO should have compared the trademark “Biogestic” in its entirety as against respondent's mark “Begesic”; petitioner is not claiming any right to the suffix “gesic” but rather to the trademark “Biogestic”; the registration of respondent's

mark "Begesic" will be contrary to Section 123.1 of the Intellectual Property Code; the mark "Begesic" owned by respondent so resembles the trademark "Biogesic" of petitioner which will likely cause confusion, mistake and deception on the part of the purchasing public, most especially considering that the BLA-IPO conceded in its Decision that both goods are "analgesic", and thus, are closely related goods; both marks are practically identical in sound and appearance that they leave the same commercial impression upon the public; the two marks can be easily confused for one over the other most especially since respondent's mark "Begesic" is applied for the same class and goods as that of petitioner's trademark "Biogesic"; to allow respondent to continue to market its products bearing the mark "Begesic" undermines petitioner's right to its trademark "Biogesic"; and as the lawful owner of the trademark "Biogesic", petitioner is entitled to prevent respondent from using a confusingly similar mark in the course of trade where such would likely mislead the public.

Respondent Littman ripostes, *inter alia*, that: both the BLA-IPO and ODG-IPO rejected the main argument of petitioner that there is confusing similarity between the contending marks; the ODG-IPO ruled that petitioner has no exclusive right to use the suffix "gesic" as there are other prior registrants of trademarks bearing the said suffix; respondent's product "Begesic" is entirely different from the "Biogesic" product of petitioner because the former is a pharmaceutical multi-purpose wonder cream pain reliever which is for external use only whereas the latter is a medicine orally taken for patients with sickness or fever; there could be no confusion as to the source of the product because the packaging of "Begesic" is clear that it is manufactured by Berlin Pharmaceutical Ind. Co. of Thailand and imported and distributed by respondent Littman; petitioner's "Biogesic" packaging indicates United Laboratories as the manufacturer and that the same is manufactured for petitioner Biomedis; as stated in the Decision of the BLA-IPO, there are aural and visual differences between the two subject trademarks; and respondent's "Begesic" trademark will not infringe on the product of petitioner because consumers are not led to believe that respondent Littman's product originated from petitioner.

Stripped of verbiage, the focal issue in this case is whether or not the ODG-IPO erred in dismissing petitioner Biomedis' appeal.

We find in the negative.

The basic law on trademark, infringement, and unfair competition is Republic Act No. 8293 (Intellectual Property Code of

the Philippines), specifically Sections 121 to 170 thereof. It took effect on January 1, 1998.<sup>19</sup> A 'trademark' is any distinctive word, name, symbol, emblem, sign, or device, or any combination thereof adopted and used by a manufacturer or merchant on his goods to identify and distinguish them from those manufactured, sold, or dealt in by others. Inarguably, a trademark deserves protection.<sup>20</sup>

(S)ection 123.1 (d) of the IP Code provides that a mark cannot be registered if it is identical with a registered mark belonging to a different proprietor with an earlier filing or priority date, with respect to the same or closely related goods or services, or has a near resemblance to such mark as to likely deceive or cause confusion,<sup>21</sup> viz:

*“SECTION 123. Registrability. — 123.1. A mark cannot be registered if it:*

*x 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;*

*x x x x”*

In this case, it is undisputed that on 07 December 2010, respondent Littman filed with the IPO an application for the registration of the trademark “Begesic” for goods under Class 5 of the International Classification of Goods and Services, which application was accorded Application Serial No. 4-2010-013251.<sup>22</sup> On 27 July 2011, petitioner Biomedis filed a Verified Notice of Opposition praying therein that the trademark application of respondent Littman be denied on the grounds that: respondent Littman's mark “Begesic” so resembles petitioner Biomedis trademark “Biogesic”; the mark “Begesic” will likely cause confusion, mistake and deception on the part of the purchasing public, most especially since the opposed mark “Begesic” is applied to the same class and goods as that of petitioner Biomedis' trademark “Biogesic”; and the registration of the mark “Begesic” in the name of respondent Littman will violate Section 123 of the IP Code.<sup>23</sup>

In trademark cases, particularly in ascertaining whether one trademark is confusingly similar to another, no set rules can be

deduced because each case must be decided on its merits.<sup>24</sup> Whether a trademark causes confusion and is likely to deceive the public hinges on 'colorable imitation' which has been defined as 'such similarity in form, content, words, sound, meaning, special arrangement or general appearance of the trademark or tradename in their overall presentation or in their essential and substantive and distinctive parts as would likely mislead or confuse persons in the ordinary course of purchasing the genuine article.'<sup>25</sup> But likelihood of confusion is a relative concept, the particular, and sometimes peculiar, circumstances of each case being determinative of its existence.<sup>26</sup>

Here, the dissimilarities between the trademarks "Biogesic" and "Begesic" are sufficient enough to preclude the purchasing public from confusing one product with the other.

*As keenly observed by the BLA-IPO. "(t)he marks both start with the letter 'B' and end with the suffix 'GESIC'. In this regard, there is sufficient reason to infer and conclude that 'GESIC' is derived from the word 'analgesic' or pain reliever. The pharmaceutical products covered by the Opposer's trademark registration and the Respondent-Applicant's trademark application are 'analgesic' or pain relievers. A trademark that ends with the suffix 'GESIC' and is used on 'analgesic' is therefore a suggestive mark, which is a weak mark. The mark or brand name itself gives away or tells the consumers the goods or service, and/or the kind, nature, use or purpose thereof. The opposition therefore cannot be sustained solely on account of the marks having the same suffix ('GESIC') because to do so would have the unintended effect of giving the Opposer practically the exclusive right to use 'GESIC' which obviously refer to 'analgesic'."*<sup>27</sup>

Indeed, both "Biogesic" and "Begesic" are pain-relieving pharmaceutical products<sup>28</sup> that end with the suffix "gesic" which is lifted from the generic term "analgesic." An analgesic is a drug that relieves pain.<sup>29</sup> The word "generic" is defined as that relating to a whole group of class and is not sold or made under a particular brand name,<sup>30</sup> that is not a trademark.<sup>31</sup> Generic terms are those which constitute 'the common descriptive name of an article or substance,' or comprise the 'genus of which the particular product is a specie,' or are 'commonly used as the name or description of a kind of goods,' or 'imply reference to every member of a genus and the exclusion of individuating characters,' or 'refer to the basic nature of the wares or services provided rather than to the more idiosyncratic characteristics of a particular product,' and are not legally protectable.<sup>32</sup> No one may

appropriate generic or descriptive words. They belong to the public domain(.)<sup>33</sup> 'A word or a combination of words which is merely descriptive of an article of trade, or of its composition, characteristics, or qualities, cannot be appropriated and protected as a trademark to the exclusion of its use by others . . . inasmuch as all persons have an equal right to produce and vend similar articles, they also have the right to describe them properly and to use any appropriate language or words for that purpose, and no person can appropriate to himself exclusively any word or expression, properly descriptive of the article, its qualities, ingredients or characteristics, and thus limit other persons in the use of language appropriate to the description of their manufactures, the right to the use of such language being common to all. This rule excluding descriptive terms has also been held to apply to trade-names. As to whether words employed fall within this prohibition, it is said that the true test is not whether they are exhaustively descriptive of the article designated, but whether in themselves, and as they are commonly used by those who understand their meaning, they are reasonably indicative and descriptive of the thing intended. If they are thus descriptive, and not arbitrary, they cannot be appropriated from general use and become the exclusive property of anyone.'<sup>34</sup>

It is of no moment that petitioner Biomedis already has an existing trademark registration for the mark "Biogestic" bearing Reg. No. 12196 issued on 24 March 1966 and renewed on 24 March 2006.<sup>35</sup> Petitioner Biomedis cannot be conferred the exclusive right to use the generic and descriptive suffix 'gesic' on its pharmaceutical product on the ground that it is the owner of a registered trademark. It bears emphasis that '. . . (a) descriptive word may be admittedly distinctive, especially if the user is the first creator of the article. It will, however, be denied protection, not because it lacks distinctiveness, but rather because others are equally entitled to its use.'<sup>36</sup>

In the similar case of *American Cyanamid Company v. The Director of Patents and Tiu Chian*,<sup>37</sup> the Supreme Court held that there is no confusing or deceptive similarity between "Sulmet" and "Sulmetine" (since) the (products) represented by the trademarks of the parties (are) medicinal (preparations) for veterinary use, x x x a prospective buyer will be cautious and prudent enough to examine the contents of the printed matter on the label, unlike in a situation where the product is for ordinary personal or household use, such as soap and other toilet articles, biscuits, candies, and the like where the consumer is not expected to exercise more than ordinary diligence in the choice of selection of the article he is buying. The High Court sustained the findings of the Director of Patents that the word



SULMET is derived from a combination of the syllables "SUL" which is derived from Sulfa and "MET" from methyl both of which are chemical compounds present in the article manufactured by the contending parties and the addition of the syllable "INE" in respondent's label is sufficient to distinguish respondent's product or trademark from that of petitioner.<sup>38</sup>

In *Ethepa vs. the Director of Patents, Westmont Pharmaceutical, Inc.*<sup>39</sup> which was cited in the *American Cyanamid Company* case, the question was whether the trademark "ATUSSIN" of Westmont may be registered in the Philippines notwithstanding the objection of Ethepa which claimed that it would be damaged because "ATUSSIN" is so confusingly similar with "PERTUSSIN". It was held that the use of the word "tussin" as a component of both trademarks cannot be considered as a factor for declaring the two confusingly similar for "tussin" is descriptive and generic and is open for appropriation by anyone, and that while the word by itself cannot be used exclusively to identify one's goods it may properly become a subject of a trademark by combination with another word or phrase x x.<sup>40</sup>

Furthermore, the trademarks "Biogesic" and "Begesic" are visually different such that confusion, in the minds of the purchasing public, is unlikely. As aptly found by the BLA-IPO which was not disturbed by the ODG-IPO, viz:

*"In the Opposer's mark, the suffix 'GESIC' is combined with the prefix 'BIO'. On the other hand, 'GESIC' in the Respondent-Applicant's mark follows the letters or syllable 'BE'. 'BIO' is visually different from 'BE'. The straight vertical line and the sphere representing the letters 'I' and 'O', contrast with the vertical and horizontal lines comprising the letter 'E'."*<sup>41</sup>

It also bears stress that although "Biogesic" and "Begesic" are analgesics or pain relievers, the two are strikingly dissimilar products which would negate the likelihood of confusion in the mind of an ordinary purchaser. As found by the BLA-IPO, both products differ in composition and in the nature of use or application in that *"BIOGESIC represents a drug or medicine which is taken orally while the mark BEGESIC is used on (sic) a pharmaceutical product which is a topical application, hence, for external use. The consumers can easily see the difference between the products considering that BIOGESIC is not only an 'analgesic' but also 'antipyretic drugs' (fever reducers)."*<sup>42</sup>

It also bears reiteration that the products involved in this case are not the common, everyday items that the public consume. Both “Biogesic” and “Begesic” are pharmaceutical products that will only be bought when needed to be used. These are not your ordinary household items like catsup, soy sauce or soap which are of minimal cost. x x x Accordingly, the casual buyer is predisposed to be more cautious and discriminating in and would prefer to mull over his purchase. Confusion and deception, then, is less likely. x x x But mass products, low priced articles in wide use, and matters of everyday purchase requiring frequent replacement are bought by the casual consumer without great care. . . .<sup>43</sup>

Moreover, more credit should be given to the 'ordinary purchaser.' Cast in this particular controversy, the ordinary purchaser is not the 'completely unwary consumer' but is the 'ordinarily intelligent buyer' considering the type of product involved. x x x (T)he 'ordinary purchaser' was defined as one 'accustomed to buy, and therefore to some extent familiar with, the goods in question. The test of fraudulent simulation is to be found in the likelihood of the deception of some persons in some measure acquainted with an established design and desirous of purchasing the commodity with which that design has been associated. The test is not found in the deception, or the possibility of deception, of the person who knows nothing about the design which has been counterfeited, and who must be indifferent between that and the other. The simulation, in order to be objectionable, must be such as appears likely to mislead the ordinary intelligent buyer who has a need to supply and is familiar with the article that he seeks to purchase.<sup>44</sup>

There is no merit to petitioner Biomedis' arguments that: there is likelihood of confusion between “Biogesic” and “Begesic” as both products are over-the counter drugs; and the registration and use of respondent Littman's confusingly similar mark “Begesic” on its goods will enable the latter to obtain benefit from petitioner Biomedis' reputation and goodwill and will tend to deceive the public into believing that respondent Littman is in any way connected with petitioner Biomedis.<sup>45</sup>

As already discussed, although “Biogesic” and “Biomedis” are both analgesics, the products are different such that the purchasing public is less likely to be deceived. Moreover, the mere fact that goods are (over-the-counter pain relievers) sold in one store under the same roof does not automatically mean that buyers are likely to be confused as to the goods' respective sources, connections or sponsorships. The fact that different products are available in the

same store is an insufficient standard, in and of itself, to warrant a finding of likelihood of confusion.<sup>46</sup> As correctly pointed out by the ODG-IPO, “x x x a person who would buy the (respondent Littman's) products would do so not on the basis of the mistaken belief that the product is that of (petitioner Biomedis') but because that is the product the person intends to buy. x x x the goods involved are not everyday common goods which are easily dispensed and bought at a minimal cost. Rather, the subject products are pharmaceutical products which are available only in drug stores and dispensed with the intervention of professionals having knowledge of their indications and intended effects. x x x (Hence), the likelihood of confusion as to the (respondent's) and the (petitioner's) marks is remote.<sup>47</sup>

Petitioner Biomedis argues that even if the products involved in this case can only be dispensed with the intervention of professionals, there is still likelihood of confusion which may be detrimental not only to an owner of a registered mark but also to the consuming public as seen in the case of *Mercury Drug Corporation v. Baking*.<sup>48</sup>

We are not persuaded.

In *Mercury Drug Corporation v. Baking*,<sup>49</sup> Mercury Drug was held liable for damages to a customer who fell asleep while driving and figured in a vehicular accident after he was sold with the wrong medicine by Mercury Drug's saleslady who misread the prescription for his blood sugar which is Diamicon as a prescription for Dormicum, the latter being a potent sleeping tablet.

Petitioner Biomedis' apprehension is specious. It is inconceivable that a buyer would be mistaken in purchasing or using the topically-applied pain relieving cream “Begesic”<sup>50</sup> for “Biogesic” which is taken orally.<sup>51</sup> Moreover, the fact that both “Begesic” and “Biogesic” are over-the-counter pain relievers highlights the fact that it is safe to use even without a prescription from a doctor. Over-the-counter drugs are medicines sold directly to a consumer without a prescription from a healthcare professional x x x. In many countries, over-the-counter drugs are selected by a regulatory agency to ensure that they are ingredients that are safe and effective when used without a physician's care.<sup>52</sup>

We likewise uphold the ODG-IPO's rumination regarding the common practice of pharmaceutical companies of adopting trademarks for their product that reflect or resemble the product's generic name, the predominant chemical compound contained in the

pharmaceutical preparation, the ailments sought to be treated, or the intended medical relief. The ODG-IPO further noted that other prior trademark registrations exist for marks using the suffix 'gesic' for pharmaceutical preparations, which are not owned by the petitioner,<sup>53</sup> among which are Kiddigesic, Oxygesic, Cortalgesic, Exelgesic, Geogesic, Qualigesic, Paugesic, Nasagesic, Mefarogesic, Naprogesic, Stangesic, Vamgesic, Rectogesic, Dolgesic, Actigesic, Skygesic, Wellcogesic, Durogesic, Sumagesic, and Opogesic.<sup>54</sup>

Verily, the protection of trademarks as intellectual property is intended not only to preserve the goodwill and reputation of the business established on the goods bearing the mark through actual use over a period of time, but also to safeguard the public as consumers against confusion on these goods. On this matter of particular concern, administrative agencies, such as the IPO, by reason of their special knowledge and expertise over matters falling under their jurisdiction, are in a better position to pass judgment thereon. Thus, their findings of fact in that regard are generally accorded great respect, if not finality by the courts, as long as they are supported by substantial evidence, even if such evidence might not be overwhelming or even preponderant. It is not the task of the appellate court to weigh once more the evidence submitted before the administrative body and to substitute its own judgment for that of the administrative agency in respect to sufficiency of evidence.<sup>55</sup>

Section 10, Rule 43 of the Rules of Court provides that “*xxx the findings of fact of the court or agency concerned, when supported by substantial evidence, shall be binding on the Court of Appeals.*” Section 5 of Rule 133 defines substantial evidence as “*xxx that amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion.*” Here, We find no cogent reason to overturn the ODG-IPO's findings, which are supported by substantial evidence.

**WHEREFORE**, premises considered, the Petition is **DENIED**.  
Costs against petitioner.

**SO ORDERED.**

**CELIA C. LIBREA-LEAGOGO**  
Associate Justice

**WE CONCUR:**

**AMY C. LAZARO-JAVIER**  
Associate Justice

**MELCHOR Q.C. SADANG**  
Associate Justice

**CERTIFICATION**

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

**CELIA C. LIBREA-LEAGOGO**  
Associate Justice  
Chairperson, Eleventh Division

- 1 *Rollo*, pp. 8-33
- 2 *Id.* at 36-39
- 3 *Id.* at 196-208
- 4 *Id.* at 195 (dorsal side)
- 5 *Id.* at 195
- 6 *Id.* at 70-71
- 7 *Id.* at 50-69
- 8 *Id.* at 90-91
- 9 *Id.* at 41
- 10 *Id.* at 43
- 11 *Id.* at 92-115
- 12 *Id.* at 160
- 13 *Id.* at 160-161
- 14 *Id.* at 162-185
- 15 *Id.* at 186-194
- 16 *Id.* at 36-39
- 17 *Id.* at 39
- 18 *Id.* at 14
- 19 *Berris Agricultural Co., Inc. v. Norvy Abyadang*, G.R. No. 183404, 13 October 2010
- 20 *Philip Morris, Inc., et al. v. Fortune Tobacco Corporation*, G.R. No. 158589, 27 June 2006
- 21 *Great White Shark Enterprises, Inc. v. Danilo M. Caralde, Jr.*, G.R. No. 192294, 21 November 2012
- 22 *Rollo*, pp. 51, 186
- 23 *Id.* at 41, 52
- 24 *Victorio P. Diaz v. People of the Philippines and Levi Strauss [Phils.], Inc.*, G.R. No. 180677, 18 February 2013, citing *McDonald's Corporation v. Macjoy Fastfood Corporation*, G.R. No. 166115, 02 February 2007, 514 SCRA 95, 107
- 25 *Mighty Corporation and La Campana Fabrica De Tabaco, Inc. v. E. & J. Gallo Winery and the Andresons Group, Inc.*, G.R. No. 154342, 14 July 2004
- 26 *Philip Morris, Inc., et al. v. Fortune Tobacco Corporation*, *supra*
- 27 *Rollo*, p. 42
- 28 *Id.* at 42, 55, 202
- 29 <http://www.merriam-webster.com/dictionary/analgesic>. Last visited 04 May 2015
- 30 <http://www.merriam-webster.com/dictionary/generic>. Last visited 04 May 2015
- 31 Webster's New World Dictionary, Second College Edition, p. 582
- 32 *Cf. Societe Des Produits Nestle, S.A., et al. v. Court of Appeals, et al.*, G.R. No. 112012, 04 April 2001
- 33 *Asia Brewery, Inc. v. The Hon. Court of Appeals and San Miguel Corporation*, G.R. No. 103543, 05 July 1993, citing *Ong Ai Gui v. Director of Patents*, 96 Phil. 673, 676 [1955]
- 34 *Id.*, citing 52 Am. Jur. 542-543
- 35 *Rollo*, pp. 42, 53-54
- 36 *Asia Brewery, Inc. v. The Hon. Court of Appeals and San Miguel Corporation*, *supra*, citing 2 Callman, *Unfair Competition and Trademarks*, pp. 869-870
- 37 G.R. No. L-23954, 29 April 1977
- 38 *Id.*
- 39 L-20635, 31 March 1966, 16 SCRA 495
- 40 *Id.*
- 41 *Rollo*, p. 42
- 42 *Id.*

<sup>43</sup> Victorio P. Diaz v. People of the Philippines and Levi Strauss [Phils.], Inc., *supra*, citing Emerald Garment Manufacturing Corporation v. Court of Appeals, G.R. No. 100098, December 29, 1995, 251 SCRA 600, 616-617

<sup>44</sup> *Id.*

<sup>45</sup> *Rollo*, pp. 21-22, 24

<sup>46</sup> Mighty Corporation and La Campana Fabrica De Tabaco, Inc. v. E. & J. Gallo Winery and the Andresons Group, Inc., *supra*

<sup>47</sup> *Rollo*, pp. 38-39

<sup>48</sup> G.R. No. 156037, 25 May 2007

<sup>49</sup> *Id.*

<sup>50</sup> *Rollo*, p. 202

<sup>51</sup> *Id.* at 42

<sup>52</sup> [http://en.wikipedia.org/wiki/Over-the-counter\\_drug](http://en.wikipedia.org/wiki/Over-the-counter_drug). Last visited 04 May 2015

<sup>53</sup> *Rollo*, p. 39

<sup>54</sup> *Id.* (see footnote 10 of the ODG-IPO Decision dated 15 December 2014)

<sup>55</sup> Berris Agricultural Co., Inc. v. Norvy Abyadang, *supra*