

WESTMONT PHARMACEUTICALS, INC.,
Opposer,

-versus-

RITZEN PHILIPPINES, INC.,
Respondent-Applicant.

X-----X

} **IPC No. 14-2014-00041**
} Opposition to:
} Appln. Serial No.4-2013-008621
} Date filed: 19 July 2013
} TM: "IMMUNO VIT"
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}
}
}

NOTICE OF DECISION

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GREETINGS:

Please be informed that Decision No. 2015 - 262 dated November 11, 2015 (copy enclosed) was promulgated in the above entitled case.

Taguig City, November 11, 2015.

For the Director:


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

WESTMONT PHARMACEUTICALS, INC.,

Opposer,

-versus-

RITZEN PHILIPPINES, INC.,

Respondent-Applicant.

IPC No. 14-2014-00041

Opposition to Trademark

Application No. 4-2013-008621

Date Filed: 19 July 2013

Trademark: **"IMMUNO VIT"**

x ----- x Decision No. 2015- 262

DECISION

Westmont Pharmaceuticals, Inc.¹ ("Opposer") filed an opposition to Trademark Application Serial No. 4-2013-008621. The contested application, filed by Ritzen Philippines Inc.² ("Respondent-Applicant"), covers the mark "IMMUNO VIT" for use on *"pharmaceuticals* under Class 05 of the International Classification of Goods³.

The Opposer anchors its opposition on the provision of Section 123.1 (d) of Republic Act No. 8293, also known as the Intellectual Property Code of the Philippines (IP Code) alleging that its mark "IMMUNOSIN" is confusingly similar to the applied mark "IMMUNO VIT". According to the Opposer, the mark "IMMUNOSIN" was registered with the Bureau of Patent and Technology Transfer as early as 23 November 1989 by General Drug & Chemical Company, Inc. ("GDCCI"). On 18 September 1999, GDCCI assigned the said mark to it and a copy of the Assignment of Registered Trademark was filed with the Intellectual Property Office of the Philippines (IPOP HL) on 22 September 1999.

The Opposer avers that it extensively used "IMMUNOSIN" in commerce in the Philippines and that it dutifully filed the pertinent Affidavits of Actual Use. It claims that the Intercontinental Marketing Services ("IMS") acknowledged its mark as one of the leading brands in the Philippines for "J05B – AntiVirals Excl. Anti-HIV Market" in terms of market share and sales performance. It asserts that it has acquired exclusive ownership over its mark.

In support of its Opposition, the Opposer submitted the following as evidence:⁴

¹ A corporation duly organized and existing under and by virtue of the laws of the Philippines, with business address at Bonaventure Plaza, Greenhills, San Juan, Metro Manila.

² A corporation organized and existing under and by virtue of the laws of the Philippines with office address at 7F South Center, 2206 Market St., Madrigal Business Park II, Alabang, Muntinlupa City, Metro Manila.

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 "I".

Republic of the Philippines
INTELLECTUAL PROPERTY OFFICE

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1. copy of the IPO E-Gazette publishing the Respondent-Applicant's mark for opposition;
2. certified true copy of Principal Register No. 46980;
3. certified true copy of the Assignment of Registered Trademark dated 18 September 1999;
4. certified copy of the Certificate of Renewal Registration No. 046980;
5. certified copies of the Affidavits of Use;
6. sample product bearing the mark "IMMUNOSIN"
7. copy of the IMS certification; and
8. certified true copy of Certificate of Product Registration No. DR-XY4639.

The Respondent-Applicant filed its Answer denying that there is likelihood of confusion between "IMMUNOSIN" and "IMMUNO VIT". It asserts that since its packaging shows that it uses its mark as "syrup for kids", "with CM-Glucan" and "food supplement" while the Opposer uses "IMMUNOSIN" for anti-viral infection, the goods travel in different channels of trade. It also contends that "IMMUNO" is a prefix for "immune" which is the intended purpose and characteristics of the goods covered by the marks and that the same prefix is used by eight other trademarks owners. It posits that its applied mark is also covered by Certificate of Product Registration No. FR-89623 issued by the Food and Drug Administration ("FDA").

The Respondent-Applicant's evidences consist of the following:⁵

1. copy of Certificate of Product Registration No. FR-89623;
2. copy of its Declaration of Actual Use ("DAU");
3. sample product label of "IMMUNOSIN"; and
4. other marks using the prefix "IMMUNO."

The primordial issue to be resolved is whether the trademark "IMMUNO VIT" should be allowed.

The Opposer anchors its opposition on Section 123.1 (d) of the IP Code which provides:

"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; xxx"

⁵ Marked as Exhibits "4" to "11".

Records show that at the time the Respondent-Applicant filed its trademark application, GDCCI already has an existing registration for the mark "IMMUNOSIN" under Certificate of No. 46980 issued on 12 November 1989. Subsequently, the trademark registration was assigned to the Opposer. The latter caused the renewal of the registration starting 23 November 2009.

But are the competing marks, as shown below, confusingly similar?

Immunosin

Opposer's mark

IMMUNO VIT

Respondent-Applicant's mark

Notwithstanding the similarity in the prefix "IMMUNO", it is unlikely that the co-existence of the marks will cause confusion, mistake or deception among the public. The term "IMMUNO" may be inferred as derived from "immune", immune system or immunology considering that the Opposer's mark is intended as medicinal preparation useful for immunopotentiator. The prefix "IMMUNO", therefore, is not considered unique if used as a trademark or as part thereof for the subject goods. Indeed, "IMMUNO" when used as part of a trademark connotes or suggests the immune system.

Succinctly, what makes the trademark distinctive are the suffixes and/or devices, if any, appended to the prefix "IMMUNO". In this instance, the suffix "SIN" in the Opposer's mark and "VIT" in the Respondent-Applicant's sufficiently makes a fine distinction between the marks as to sound and appearance such that confusion is unlikely. There is a remote possibility for a consumer to assume or conclude that there is a connection between the contending parties and/or marks merely because of the common appropriation of "IMMUNO".

Moreover, sustaining the opposition will cause the unintended effect of giving exclusive right to the Opposer of the prefix "IMMUNO", which evidently describes the products involved. As aptly raised by the Respondent-Applicant, there are other registered marks in the Trademark Registry belonging to different proprietors using the prefix "IMMUNO" including "IMMUNOMAX" under Certificate of Registration No. 4-2009-012747, "IMMUNOCAP" under Certificate of Registration No. 4-2005-002542 and "HBS HEALTH BALANCING SYSTEM IMMUNO-C AND DEVICE" under Certificate of Registration No. 4-2007-008336 issued respectively to Gruppo Medica, Phadia AB and Personal Collection Direct Selling, Inc..

Furthermore, 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.⁶ Respondent-Applicant's trademark sufficiently met this function.

WHEREFORE, premises considered, the instant opposition is hereby **DISMISSED**. Let the filewrapper of Trademark Application Serial No. 4-2013-008621 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 11 November 2015.



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

⁶ Pribhdas J. Mirpuri vs. Court of Appeals, G.R. No. 114508, 19 November 1999.