WESTMONT PHARMACEUTICAL INC., Opposer, **-versus-** **TREVENODD CORP.,** Respondent- Applicant.	}	**IPC No. 14-2012-00199** Opposition to: Appln. Serial No. 4-2011-013921 Date Filed: 21 November 2011 **TM: "IMMUNE-C"**

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NOTICE OF DECISION

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

TREVENODD CORP.
Respondent- Applicant
Unit 501-B Regalia Park Towers
150 P. Tuazon, Cubao
Quezon City

GREETINGS:

Please be informed that Decision No. 2016 - 128 dated May 03, 2016 (copy enclosed) was promulgated in the above entitled case.

Taguig City, May 03, 2016.

For the Director:

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

Westmont Pharmaceutical Inc.,
Opposer,

- versus -

Trevenodd Corp.,
Respondent-Applicant.

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IPC NO. 14 – 2012 - 00199

Opposition to:
Trademark Application Serial No. 42011013921
Date filed: 21 November 2011
TM: "IMMUNE-C"

DECISION NO. 2016 - 128

D E C I S I O N

Westmont Pharmaceutical Inc., (Opposer)[1] filed an Opposition to Trademark Application Serial No. 4-2011-013921. The trademark application filed by Trevenodd Corp., (Respondent-Applicant)[2], covers the mark IMMUNE-C for *"Ascorbic Acid – Vitamin C"* under Class 5 of the International Classification of Goods and Services.[3]

The Opposer based its Opposition on the following grounds:

1.) The mark "IMMUNE-C" owned by Respondent-Applicant so resembles the trademark "IMMUNOSIN" owned by Opposer and duly registered with this Honorable Bureau prior to the publication for opposition of the mark "IMMUNE-C."
2.) The mark "IMMUNE-C" will likely cause confusion, mistake and deception on the part of the purchasing public, most especially considering that the opposed trademark "IMMUNE-C" is applied for the same class and goods as that of Opposer's trademark "IMMUNOSIN", i.e. Class 05 of the International Classification of Goods as pharmaceutical product.
3.) The registration of the mark "IMMUNE-C" in the name of the Respondent-Applicant will violate Sec. 123 of the IP Code, which provides, in part, that 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

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[1] A domestic corporation duly organized and existing under the laws of Philippines with office address located at 4th Floor, Bonaventure Plaza, Ortigas Avenue, Greenhills, San Juan City, Philippines.
[2] A domestic corporation with office address located at 501-B Regalia Park Towers, 150 P. Tuazon, Cubao, Quezon City, Philippines
[3] The Nice Classification of Goods and Services is for registering trademarks and service marks based on 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.

(ii) closely related goods or services;
(iii) if it nearly resembles such a mark as to be likely to deceive or cause confusion: (Emphasis supplied)

To support its opposition, the Opposer submitted the following:

1. Exhibit "A" to "A-1" – Copies of pages from IPO E-Gazette;
2. Exhibit "B" – Certified True Copy of the Certificate of Registration No. 46980 for the trademark "IMMUNOSIN";
3. Exhibit "C" – Certified True Copy of the Deed of Assignment duly filed with the IPO;
4. Exhibit " D" – Certified True Copy of the Certificate of Renewal of Registration No. 46980 for the trademark "IMMUNOSIN";
5. Exhibits "E", "F" and "G" – Certified True Copies of the Affidavit of Use;
6. Exhibit "H" – sample product label bearing the trademark "IMMUNOSIN"; and
7. Exhibit "I" – Copy of the Certificate of Product Registration issued by the BFAD for "IMMUNOSIN";

This Bureau issued a Notice to Answer on 2 May 2012 and served a copy to the Respondent-Applicant on 9 May 2012. However, the Respondent-Applicant did not file an Answer to the Opposition. In view of the failure to file an Answer, an Order dated 4 April 2013 was issued declaring the Respondent-Applicant in default. Consequently, this case was deemed submitted for decision.

The issue to resolve is whether the Respondent - Applicant should be allowed to register the trademark "IMMUNE-C."

At the outset, records show that at the time the Respondent-Applicant filed its trademark application on 21 November 2011, the Opposer has an existing trademark registration for the mark "IMMUNOSIN" (Certificate of Registration No. 46980). The registration covers *"Medicinal Preparation useful as Immunopotentiator"* under Class 5.

The competing marks are reproduced below for comparison:

Immunosin	IMMUNE-C
Opposer's Trademark	Respondent – Applicant's Trademark

Upon perusal of the two competing trademarks and the evidence submitted by the Opposer, this Bureau finds the Opposition meritorious.

The first five (5) of the seven (7) letters of the wordmark being applied by Respondent-Applicant are the same with the registered trademark of the Opposer. Also, the phonetic effects of the wordmarks, "IM – MU – NO – SIN" and "IM – MUNE – C", are virtually the same taking consideration the whole of the two wordmarks. The minimal differences in the last part of the marks are not enough to distinguish the two wordmark from each other.

Our Supreme Court has consistently held that trademarks with *idem sonans* or similarities of sounds are sufficient ground to constitute confusing similarity in trademarks.[4]

This Bureau also finds that the goods subject of the competing trademarks, are similar and/or closely related. The product of the Respondent-Applicant is a medical preparation of Vitamin C which is closely related if not similar with an immunopotentiator as both aims to strengthen the immune system of the body. Undoubtedly, there is very likelihood that the product of the Respondent-Applicant may be confused with that of the the Opposer's. The public may even be deceived on assuming that Respondent-Applicant's products originated from the Opposer, or that there is a connection between the parties and/or their respective goods.

Succinctly, the field from which a person may select a trademark is practically unlimited. Like in all other cases of colorable imitation, the unanswered riddle is why, of the millions of terms and combination of design available, the Respondent-Applicant had to come up with a mark identical or so closely similar to another's mark if there was no intent to take advantage of the goodwill generated by the other mark.[5]

Time and again, it has been held in our jurisdiction that 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.[6] Corollarily, the law does not require actual confusion, it being sufficient that confusion is likely to occur.[7] Because the Respondent-Applicant will use his mark on goods that are similar and/or closely related to the opposer's, the consumer is likely to assume that the Respondent-Applicant's goods originate from or sponsored by the opposer or believe that there is a connection between them, as in a trademark licensing agreement. 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:[8]

> 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

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[4] Marvex Commercial Co., Inc. vs. Petra Hawpia and Co, G.R. No. L-19297, 22 December 1966
[5] American Wire & Cable Company vs. Dir. Of Patent , G.R. No. L-26557, February 18, 1970.
[6] American Wire & Cable Co. vs. Director of Patents, et. al., G.R. No. L-26557, February 18, 1970
[7] Philips Export B.V. et. al. vs. Court of Appeals, et. al., G.R. No. 96161, February 21, 1992
[8] Converse Rubber Corporation vs. Universal Rubber-Products, Inc. et. al. G.R. No. L27906, January 8, 1987

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.

WHEREFORE, premises considered, the instant opposition to Trademark Application Serial No. 42011013921 is hereby **SUSTAINED.** Let the filewrapper of Trademark Application Serial No. 42011013921 be returned together with a copy of this Decision to the Bureau of Trademarks (BOT) for appropriate action.

SO ORDERED.

Taguig City, 03 MAY 2016

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