



THERAPHARMA, INC.,  
Opposer,

-versus-

EON PHARMATEK, INC.,  
Respondent- Applicant.

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} IPC No. 14-2014-00065  
}  
} Opposition to:  
} Appln. Serial No. 4-2013-00010996  
} Date Filed: 12 September 2013  
} TM: "ALUNOL"

### NOTICE OF DECISION

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

**EON PHARMATEK, INC.**  
Respondent- Applicant  
No.17, 3<sup>rd</sup> Street Bo. Kapitolyo  
Pasig City

### GREETINGS:

Please be informed that Decision No. 2016 - 227 dated June 30, 2016 (copy enclosed) was promulgated in the above entitled case.

Taguig City, July 01, 2016.

For the Director:

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

**THERAPHARMA, INC.,**  
Opposer,

- versus -

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**IPC No. 14-2014-00065**

Opposition to:

Appln. No. 4-2013-00010996  
Date Filed: 12 September 2013  
Trademark: **"ALUNOL"**

Decision No. 2016 - 227

### DECISION

THERAPHARMA, INC. ("Opposer"),<sup>1</sup> filed verified opposition to Trademark Application Serial No. 4-2013-00010996. The application, filed by EON PHARMATEK, INC. ("Respondent-Applicant"),<sup>2</sup> covers the mark "ALUNOL" for use on goods under class 05<sup>3</sup> namely: *pharmaceuticals - xanthine oxidase inhibitor tablet, capsule, syrup, suspension, solution, injection*.

The Opposer alleges the following grounds for opposition:

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

"8. The mark 'ALUNOL' will likely cause confusion, mistake and deception on the part of the purchasing public, most especially considering that the opposed mark 'ALUNOL' is applied for the same class and goods as that of Opposer's trademark 'LLANOL', i.e., Class 05 of the International Classification of Goods for 'pharmaceuticals - xanthine oxidase inhibitor tablet, capsule, syrup, suspension, solution, injection' or allopurinol.

"9. The registration of the mark 'ALUNOL' in the name of the Respondent-Applicant will violate Sec. 123.1 (d) of the IP Code, which provides, in part, that 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;**

<sup>1</sup> A domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with office address at Bonaventure Plaza, Greenhills, San Juan, Metro Manila.

<sup>2</sup> With office address at Unit 703, AIC Burgundy Empire Tower, ADB Avenue, Ortigas Center, Pasig City.

<sup>3</sup> 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.



x x x" (Emphasis supplied)

"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 'ALUNOL' will diminish the distinctiveness of Opposer's trademark 'LLANOL'."

The Opposer's evidence consists of the following:

1. Pertinent page of the IPO E-Gazette;
2. Certified true copy (Ctc) of the Principal Register No. 20420 for LLANOL;
3. Ctc of the Petition for Renewal of Registration;
4. Ctcs of the Affidavits of Use;
5. Sample product label bearing the trademark LLANOL;
6. Ctc of the Certification and sales performance; and,
7. Ctc of Certificate of Product Registration No. DR-7571 for LLANOL.

This Bureau issued and served upon the Respondent-Applicant an Alias Notice to Answer dated 14 November 2014 which was duly received 18 November 2014. On 20 November 2014, this Bureau received a letter from the Respondent-Applicant<sup>4</sup> that it did not receive a copy of the Verified Notice of Opposition. Thereafter, this Bureau directed the Opposer to furnish the Respondent-Applicant a copy of the said Opposition<sup>5</sup>, which was duly complied by the Opposer.<sup>6</sup> However, despite service by registered mail, Respondent-Applicant still failed to submit an Answer. Thus, Respondent-Applicant is declared in default and this case is deemed submitted for decision.

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

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.

The records and evidence show that at the time the Respondent-Applicant filed its trademark application on 12 September 2013<sup>7</sup>, the Opposer has already an existing trademark registration for the mark LLANOL bearing Principal Register No. 20420 as early as 19 October 1973 falling under Class 05 for Allopurinol, an antihyperuricemic agent<sup>8</sup> or anti-gout preparations. Unquestionably, the Opposer's application and registration preceded that of Respondent-Applicant's.

<sup>4</sup> Letter dated 19 November 2014 signed by Jeevah Kumar, Admin and Finance Head.

<sup>5</sup> Order No. 2014-1499 dated 27 November 2014.

<sup>6</sup> Compliance dated 06 January 2015.

<sup>7</sup> Filewrapper records.

<sup>8</sup> Exhibit "B" and "C" of Opposer.



The contending marks are depicted below:

**Llanol**

Opposer's Trademark

**ALUNOL**

Respondent-Applicant's Trademark

Whether Respondent-Applicant's applied mark has a distinctive appearance for trademark registration cannot solely be based on the similarity of the prefix/suffix, but must be determined of the origin or source of its name.

There is sufficient reason to infer or conclude that Respondent-Applicant's trademark contain the syllables "A/LU" and/or "NOL" which are obviously derived from the generic word "ALLOPURINOL" which is the product covered by the Opposer's and Respondent-Applicant's respective marks. This observation is supported by the product samples submitted by the Opposer as evidence, which indicates the generic name of the pharmaceutical "LLANOL" covers; and the goods covered<sup>9</sup> by Respondent-Applicant's "ALUNOL", as indicated in its trademark application form. A trademark that consists of, ends or begins with such which are merely derived from a generic name is a suggestive mark and, therefore, a weak mark. There is no real creativity or ingenuity in the adoption of the mark "ALUNOL" as it merely dropped the middle letters/syllables from "ALLOPURINOL". The mark or brand name itself suggests or tells the consumers the goods or service it covers and/or the kind, use, purpose or nature thereof.

Descriptive terms, which may be used to describe the product adequately, cannot be monopolized by a single user and are available to all. It is only natural that the trade will prefer those marks which bear some reference to the article itself.<sup>10</sup>

But even if "ALUNOL" is considered not descriptive, the Respondent-Applicant's trademark application should not be allowed. "ALUNOL" contains all the letters in "LLANOL". When pronounced the two (2) marks can hardly be distinguished from one another. The contending marks have identical sounds which make it not easy for one to distinguish one mark from the other. 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. This is the application of the *idem sonans rule*

<sup>9</sup> Xanthine Oxidase Inhibitor tablet, capsule, syrup, suspension, solution, injection.  
PMC U.S. National Library of Medicine, available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2233605/> (last accessed 27 June 2016).

"The prototypical xanthine oxidase (XO) inhibitor allopurinol, has been the cornerstone of the clinical management of gout and conditions associated with hyperuricemia for several decades. More recent data indicate that XO also plays an important role in various forms of ischemic and other types of tissue and vascular injuries, inflammatory diseases, and chronic heart failure. Allopurinol and its active metabolite oxypurinol showed considerable promise in the treatment of these conditions both in experimental animals and in small-scale human clinical trials."

<sup>10</sup> Ong Ai Gui v. Director of Philippines Patent Office, G.R. No. L-6235, 28 March 1955.

as held in the case of Sapolin Co. v. Balmaceda<sup>11</sup> which provides that confusion is likely to arise between contending marks which when pronounced sounds alike.

Hence, the registration of ALUNOL is proscribed by Sec. 123.1 (d) of the IP Code.

**WHEREFORE**, premises considered, the instant opposition is hereby SUSTAINED. Let the filewrapper of Trademark Application Serial No. 4-2013-00010996 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City **30 JUN 2016**

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

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<sup>11</sup>

67 Phil. 795.