

CONSUMER PRODUCTS, INC.,

Opposers,

- versus -

LLOYDS LABORATORIES, INC.,

Respondent-Applicant.

X-----X

IPC NO. 14-2014-00480

Appln. No. 4-2013-012805

Date Filed: 24 October 2013

TM – “PURIGEN”

NOTICE OF DECISION

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GREETINGS:

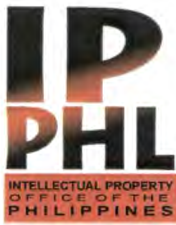
Please be informed that Decision No. 2016 - 370 dated October 10, 2016 (copy enclosed) was promulgated in the above entitled case.

Taguig City, October 10, 2016.


MARILYN F. RETUAL
IPRS IV
Bureau of Legal Affairs

Republic of the Philippines
INTELLECTUAL PROPERTY OFFICE

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IPC NO. 14-2014-00480

Opposition to:

Appln. Ser. No. 4-2013-012805

Filing Date: 24 October 2013

Trademark: **PURIGEN**

Decision No. 2016 - 370

DECISION

CONSUMER PRODUCTS, INC.¹ ("Opposer") filed an Opposition to Trademark Application Serial No. 4-2013-012805. The application, filed by LLOYD LABORATORIES, INC.² ("Respondent-Applicant") covers the mark PURIGEN for use on "*medical preparations to treat ailments of humans*" under Class 5 of the International Classification of goods³.

The Opposer alleges that the mark PURIGEN of Respondent-Applicant so resembles the trademark PURIGEL owned by Opposer and duly registered with the IPO prior to the publication for opposition of the mark PURIGEN. According to Opposer, the mark PURIGEN will likely cause confusion, mistake and deception on the part of the purchasing public, most especially considering that the opposed trademark PURIGEN is applied for the same class of goods, in violation of Sec. 123 of the IP Code which prohibits the registration of a mark similar to a prior registered mark for similar or related goods.

The Opposer's evidence consists of the following:

1. Exhibit "A" - Copy of the pertinent page of IPO e-Gazette dated 29 September 2014; and
2. Exhibits "B" - Copy of Certificate of Registration No. 4-1999-006294 for the mark PURIGEL;

On 10 November 2014, this Bureau issued a Notice to Answer and personally served it to Respondent-Applicant on 19 November 2014. Despite the receipt of Notice, Respondent-Applicant failed to file an answer. On 06 April 2015, an Order was issued declaring the Respondent-Applicant in default. Accordingly, the case is deemed submitted for decision on the basis of the opposition, the affidavits of witnesses, if any, and the documentary evidence submitted by the Opposer.

Should the Respondent-Applicant be allowed to register the mark PURIGEN?

¹ A corporation duly organized and existing under the laws of the Philippines with principal office located at Bonaventure Plaza, Ortigas Avenue, Greenhills, San Juan City.

² A domestic corporation with address at 73 Scout Fernandez Street, Quezon City.

³ The Nice Classification is a classification of goods and services for the purpose of registering trademark and service 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.

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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.⁴ Thus, Sec. 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 or a mark with an earlier filing or priority date, in respect of the same goods or services or closely related goods or services or if it nearly resembles such a mark as to be likely to deceive or cause confusion.

The records show that at the time the Respondent-Applicant filed its application for the mark PURIGEN on 24 October 2013, the Opposer already has an existing registration for the trademark PURIGEL issued on 10 March 2006, covering goods falling under Class 05, namely, "anti-bacterial hand sanitizer". Respondent-Applicant's mark PURIGEN is used in goods also falling under Class 05, as such the goods are related.

But are the marks of the parties similar as to likely cause confusion, mistake or deception on the public?

The competing marks are reproduced below:

PuriGel

Opposer's Mark

PURIGEN

Respondent-Applicant's Mark

Opposer's and Respondent-Applicant's marks consist of three syllables, "PU-RI-GEL" and "PU-RI-GEN". Their first and second syllables are the same and they only differ in the last syllable "GEL" and "GEN". Respondent-Applicant copied the six (6) letters in Opposer's mark and change the last letter "L" to "N" to form its mark PURIGEN. Although the marks are not entirely the same because in the PURIGEL mark, the last syllable "GEL" is written in stylized manner while in the PURIGEN mark, the last syllable "GEN" is written in plain uppercase letters, there are no other appreciable disparities between the two marks so as to avoid the likelihood of confusing one for the other.

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 other⁵. Colorable imitation does not mean such similitude as amounts 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 trade name with that of the other mark or trade name 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 article⁶.

Furthermore, when Respondent-Applicant's PURIGEN mark is pronounced, it produces

⁴See *Pribhdas J. Mirpuri v. Court of Appeals*, G. R. No. 114508, 19 Nov. 1999.

⁵See *Societe Des Produits Nestle, S.A v. Court of Appeals*, G.R. No.112012, 4 Apr. 2001, 356 SCRA 207, 217.

⁶See *Emerald Garment Manufacturing Corp. v. Court of Appeals*. G.R. No. 100098, 29 Dec. 1995.

the same sound as that of Opposer's mark PURIGEL such that to the ears they are indistinguishable from one 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 is practically replicated when one pronounces the Respondent-Applicant's mark. Similarity of sound is sufficient ground to rule that two marks are confusingly similar when applied to merchandise of same descriptive properties. In fact, the Supreme Court has in many cases took into account the aural effects of the words and letters contained in the marks in determining the issue of confusing similarity. In *Marvex Commercial Co., Inc. v Petra Hawpia & Co., et al.*⁷, the Court held:

The following random list of confusingly similar sounds in the matter of trademarks, culled from Nims, Unfair Competition and Trade Marks, 1947, vol. 1, will reinforce our view that "SALONPAS" and "LIONPAS" are confusingly similar in sound: "Gold Dust" and "Gold Drop"; "Jantzen" and "Jazz-Sea"; "Silver Flash" and "Supper-Flash"; "Cascarete" and "Celborite"; "Celluloid" and "Cellonite"; "Chartreuse" and "Charseurs"; "Cutex" and "Cuticlean"; "Hebe" and "Meje"; "Kotex" and "Femetex"; "Zuso" and "Hoo Hoo". Leon Amdur, in his book "TradeMark Law and Practice", pp. 419-421, cites, as coming within the purview of the idem sonans rule, "Yusea" and "U-C-A", "Steinway Pianos" and "Steinberg Pianos", and "Seven-Up" and "Lemon-Up". In *Co Tiong vs. Director of Patents*, this Court unequivocally said that "Celdura" and "Cordura" are confusingly similar in sound; this Court held in *Sapolin Co. vs. Balmaceda*, 67 Phil. 795 that the name "Lusolin" is an infringement of the trademark "Sapolin", as the sound of the two names is almost the same." (*Emphasis supplied*)


Thus, the use by the Respondent-Applicant of the trademark PURIGEN is likely to give rise to confusion or wrong belief that its products bearing the mark originated from, manufactured or sponsored by the Opposer or vice-versa.

Accordingly, this Bureau finds that the Respondent-Applicant's trademark application 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. 4-2013-012805, together with a copy of this Decision, be returned to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, **10 OCT 2016**


MARLITA V. DAGSA
Adjudication Officer
Bureau of Legal Affairs

⁷ G.R. No. L-19297. December 22, 1966 cited in *McDonald's Corporation v. L.C. Big Mak Burger, Inc.*, G.R. No. 143993. August 18, 2004.