MYRA PHARMACEUTICALS, INC. Opposer, -versus- **ECE PHARMACEUTICALS, INC.,** Respondent-Applicant.	} } } } } } } } }	**IPC NO. 14-2015-00612** Opposition to: App.Serial No. 4-2015-0010813 Date Filed: 17 September 2015 **TM: "C-MAX"**

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NOTICE OF DECISION

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No. 66 United Street
Mandaluyong City

ECE PHARMACEUTICALS
Respondent- Applicant
91 V. Luna Road corner Maningning St.
Brgy. Sikatuna Central, Quezon City

GREETINGS:

Please be informed that Decision No. 2016 -330 dated 28 September 2016 (copy enclosed) was promulgated in the above entitled case.

Taguig City, 28 September 2016.

Atty. MARLITA V. DAGSA
Adjudication Hearing Officer
Bureau of Legal Affairs

MYRA PHARMACEUTICALS, INC. Opposer, -versus- **ECE PHARMACEUTICALS, INC.,** Respondent-Applicant.	}	**IPC NO. 14-2015-00612** Opposition to: App.Serial No. 4-2015-0010813 Date Filed: 17 September 2015 **TM: "C-MAX"** **Decision No. 2016-** 330

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DECISION

MYRA PHARMACEUTICALS, INC. ("Opposer"),[1] filed an opposition to the Trademark Application Serial No. 4- 2015-0010813. The application filed by ECE PHARMACEUTICALS, INC., ("Respondent-Applicant")[2], covers the mark "C-MAX" for use on *"pharmaceuticals"* under Class 05 of the International Classification of Goods.[3]

The Opposer alleges that the mark C-MAX filed by Respondent-Applicant so resembles the trademark MAX owned by Opposer and duly registered with the Intellectual Property Office. Opposer argues that the mark C-MAX will likely cause confusion, mistake and deception on the part of the purchasing public, most especially considering that the opposed mark C-MAX is applied for the same class of goods as that of the Opposer's mark MAX, in violation of Section 123.1 (d) of the Intellectual Property Code of the Philippines.

Opposer's evidence consists of the following:

1. Exhibit "A" – Copy of the pertinent page of IPO e-Gazette dated 1 December 2015; and
2. Exhibit "B" – certified copy of the Trademark Registration No. 4-2007-007139 for the mark MAX issued on 18 February 2008;

This Bureau issued on 25 January 2016 a Notice to Answer and personally served a copy thereof to the Respondent-Applicant on 29 January 2015. Despite the receipt of Notice, Respondent-Applicant did not file the answer. Consequently, an Order was issued on 14 July 2016 declaring Respondent-Applicant in default. Hence, this case is submitted for decision on the basis of the opposition, the affidavits of witnesses, if any, and the documentary evidence submitted by the Opposer pursuant to Rule 2 Section 10 of the Rules and Regulations on Inter Partes Proceedings, as amended.

Should the Respondent-Applicant be allowed to register the mark **C-MAX**?

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

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[1] *A domestic corporation with principal office address at 4th Floor Bonaventure Plaza Bldg., Ortigas Avenue, Greenhills, San Juan City.*
[2] *A domestic corporation with address at 91 V. Luna corner Maningning Street, Brgy. Sikatuna Central, Quezon City*
[3] *The Nice Classification is a classification of goods and services for the purpose of registering trademarks and service marks based on a multilateral treaty administered by the World Intellectual Property Organization. This treaty is called the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of Registration of Marks concluded in 1957.*

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 will show that at the time Respondent-Applicant filed its application for registration of the mark C-MAX on 17 September 2015, Opposer has already an existing registration of the mark MAX issued way back in 18 February 2008, or eight (8) years earlier. Opposer's mark is used on "*multivitamins/food supplement pharmaceutical preparation*" under Class 5 while Respondent-Applicant's mark is being applied for use on "*pharmaceutical preparations*" also under Class 5. As such, the goods of the parties are similar or related.

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

The mark of Respondent-Applicant is reproduced below:

Max	**C-MAX**
Opposer's Mark	Respondent-Applicant's Mark

It appears that Opposer's **MAX** and Respondent-Applicant's **C-MAX** are confusingly similar. Respondent-Applicant's adopted and copied the word MAX which is the mark of Opposer and just added the letter "C" before the word MAX to form its C-MAX mark. Both marks are also written in plain letters. While Respondent's mark uses the uppercase letters and a different font in contrast to Opposer's mark wherein only the first letter is capitalized, these differences is blurred because of the presence of the word MAX. When one sees the mark, what strikes the eye is the word MAX such that it will likely cause confusion, mistake or even deception on the part of the consumers into believing that the Respondent-Applicant's mark is just a variation of Opposer's mark which has been existing and used in commerce since 2008.

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 other[5]. 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 article[6].

The likelihood of confusion between the marks of the parties are made more evident because both marks are used on the similar or related goods. Because of this, there is likelihood that any impression, perception or information about the goods advertised under the mark C-MAX may be unfairly attributed or confused with Opposer's mark MAX, and vice versa.

4See *Pribhdas J. Mirpuri v. Court of Appeals*, G. R. No. 114508, 19 Nov. 1999.
5 See *Societe Des Produits Nestle, S.A v. Court of Appeals*, G.R. No.112012, 4 Apr. 2001, 356 SCRA 207, 217.
6 See *Emerald Garment Manufacturing Corp. v. Court of Appeals*. G.R. No. 100098, 29 Dec. 1995.

It has been held time and again that in cases of grave doubt between a newcomer who by the confusion has nothing to lose and everything to gain and one who by honest dealing has already achieved favour with the public, any doubt should be resolved against the newcomer in as much as the field from which he can select a desirable trademark to indicate the origin of his product is obviously a large one.[7]

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. 4-2015-0010813, together with a copy of this Decision, be returned to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 28 SEP 2016

MARLITA V. DAGSA
Adjudication Officer
Bureau of Legal Affairs

7 See *Del Monte Corporation et. al. v. Court of Appeals*, GR No. 78325, 25 Jan. 1990.