

**WESTMONT PHARMACEUTICALS, INC.,**  
*Opposer,*

**-versus-**

**ULTRAMED PHARMA, INC.,**  
*Respondent-Applicant.*

x-----x

**IPC No. 14-2014-00132**

Opposition to:

Appln. Serial No. 4-2013-013761

Date Filed: 18 November 2013

**TM: AM-VESART**

**NOTICE OF DECISION**

**OCHAVE & ESCALONA**

*Counsel for Opposer*  
No. 66 United Street  
Mandaluyong City

**ULTRAMED PHARMA, INC.**

*Respondent- Applicant*  
141 Scout de Guia Street,  
Kamunig, Quezon City

**GREETINGS:**

Please be informed that Decision No. 2016 - 387 dated October 20, 2016 (copy enclosed) was promulgated in the above entitled case.

Taguig City, 20 October 2016.

**MARILYN F. RETUAL**

IPRS IV

Bureau of Legal Affairs

**Republic of the Philippines**  
**INTELLECTUAL PROPERTY OFFICE**

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IPC No. 14-2014-00132

Opposition to Trademark

Application No. 4-2013-013761

Date Filed: 18 November 2013

TM: "AM-VESART"

Decision No. 2016- 387

**DECISION**

Westmont Pharmaceuticals, Inc.<sup>1</sup> ("Opposer") filed an opposition to Trademark Application Serial No. 4-2013-013761. The application, filed by Ultramed Pharma, Inc.<sup>2</sup> ("Respondent-Applicant"), covers the mark "AM-VESART" for use on "*pharmaceutical*" under Class 05 of the International Classification of Goods<sup>3</sup>.

The Opposer anchors its Opposition on Section 123.1 (d) of R.A. No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code"). It contends that "AM-VESART" so resembles its own mark "VERSANT" as to likely cause confusion, mistake and deception on the part of the purchasing public, most especially as both marks are to be applied for the same class of goods. It asserts that to allow the Respondent-Applicant to use the applied mark undermines its right to use "VERSANT." In support of its Opposition, the Opposer submitted the following as evidence:<sup>4</sup>

1. pertinent page of the IPO E-Gazette;
2. copy of Certificate of Registration No. 4-2003-001760;
3. copy of Assignment of Registered Trademark dated 17 November 2008;
4. sample product label bearing the mark "VERSANT";
5. certification and sales performance issued by the Intercontinental Marketing Services (IMS); and
6. copy of Certificate of Product Registration No. DR-XY29088.

This Bureau issued a Notice to Answer and served a copy thereof upon the Respondent-Applicant on 10 April 2014. The Respondent-Applicant, however, failed to file an Answer on time. Accordingly, the Hearing Officer issued on 24 September

<sup>1</sup> A corporation duly organized and existing under and by virtue of the laws of the Philippines, with office address at 4<sup>th</sup> Floor Bonaventure Plaza, Greenhills, San Juan.

<sup>2</sup> Appears to be a Philippine corporation, with office address at 141 Scout de Guia St., Kamuning, Quezon City.

<sup>3</sup> 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.

<sup>4</sup> Marked as Exhibits "A" to "F".



2014 Order No. 2014-1266 declaring the Respondent-Applicant in default and the case deemed submitted for decision.

The primordial issue in this case is whether the trademark application for the mark "AM-VESART" should be allowed.

Records reveal that the Opposer's mark "VERSANT" was issued registration on 20 March 2005 under Certificate of Registration No. 4-2003-001760.<sup>5</sup> The Respondent-Applicant, on the other hand, filed the contested application for the mark "AM-VESART" only on 18 November 2013.

Section 123.1. (d) of the IP Code provides that a mark cannot be registered if it:

"xxx

***(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; x x x"***

To determine whether the marks are confusingly similar, the two are depicted below for comparison:

Versant

AM-VESART

*Opposer's mark*

*Respondent-Applicant's mark*

Perusing the competing marks, it appears that the Respondent-Applicant merely omitted the letter "R" in the first syllable of the Opposer's mark and substituted the letter "N" in the second syllable for the letter "R" in arriving at the mark "AM-VESART". The Opposer's sample label<sup>6</sup> shows that "VERSANT" has no connection to the product covered by its mark, which is a calcium channel blocker/antihypertensive" medicine with a generic name *felopidine*. As such, the

<sup>5</sup> Exhibit "B".

<sup>6</sup> Exhibit "D".

mark is considered distinctive. Therefore, it is highly unlikely that the Respondent-Applicant came up with a confusingly similar mark by mere coincidence. Even with the addition of the prefix "AM-" in the Respondent-Applicant's mark, the competing marks remain confusingly similar in presentation and connotation. After all, 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 purchased as to cause him to purchase the one supposing it to be the other.<sup>7</sup> As held by the Supreme Court in the case of **Del Monte Corporation vs. Court of Appeals**<sup>8</sup>:

*"It has been correctly held that side-by-side comparison is not the final test of similarity. Such comparison requires a careful scrutiny to determine in what points the labels of the products differ, as was done by the trial judge. The ordinary buyer does not usually make such scrutiny nor does he usually have the time to do so. The average shopper is usually in a hurry and does not inspect every product on the shelf as if he were browsing in a library. Where the housewife has to return home as soon as possible to her baby or the working woman has to make quick purchases during her off hours, she is apt to be confused by similar labels even if they do have minute differences. The male shopper is worse as he usually does not bother about such distinctions.*

*The question is not whether the two articles are distinguishable by their label when set side by side but whether the general confusion made by the article upon the eye of the casual purchaser who is unsuspecting and off his guard, is such as to likely result in his confounding it with the original. As observed in several cases, the general impression of the ordinary purchaser, buying under the normally prevalent conditions in trade and giving the attention such purchasers usually give in buying that class of goods is the touchstone."*

Moreover, since the competing marks reverberate practically the same sound when pronounced, the ruling in **Marvex Commercial Co. vs. Peter Hawpia**<sup>9</sup> applies, to wit:

*"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.*

<sup>7</sup> Societe des Produits Nestle,S.A. vs. Court of Appeals, GR No. 112012, 04 April 2001.

<sup>8</sup> G.R. No. L-78325, 25 January 1990.

<sup>9</sup> G.R. No. L-19297, 22 December 1966.



***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.***

***In the case at bar, 'SALONPAS' and 'LIONPAS', when spoken, sound very much alike. Similarity of sound is sufficient ground for this Court to rule that the two marks are confusingly similar when applied to merchandise of the same descriptive properties (see Celanese Corporation of America vs. E. I. Du Pont, 154 F. 2d. 146, 148)."***

Noteworthy, the trademarks "VERSANT" and "AM-VESART" both refer to goods under Class 05. The Opposer's trademark registration pertains to "*antihypertensive/calcium channel blocker pharmaceutical preparation*", which is also covered by Respondent-Applicant's application. Thus, even assuming that consumers takes extra caution in buying pharmaceutical products as not to confuse one for the other, there is still possibility of deception such that they may be led to believe that both goods originate from the same source.

Succinctly, it is settled that the likelihood of confusion extends not only as to the purchaser's perception of the goods but likewise on its origin. 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 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 the belief that there is some connection between the plaintiff and defendant which, in fact, does not exist."<sup>10</sup> As mentioned above, the "VERSANT" has no connection or relation to the products involved. Thus, the consumers may have the notion that Opposer expanded business and manufactured a new product by the name "AM-VESART", which could be mistakenly assumed a derivative or variation of "VERSANT".

Finally, 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

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<sup>10</sup> Societe des Produits Nestle, S.A. vs. Dy, G.R. No. 172276, 08 August 2010.


manufacturer against substitution and sale of an inferior and different article as his product.<sup>11</sup> The Respondent-Applicant's trademark fell short in meeting this function.

Accordingly, this Bureau finds and concludes 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. 4-2013-013761 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

**SO ORDERED.**

Taguig City, 20 OCT 2016 .

  
**Atty. Z'SA MAY B. SUBEJANO-PE LIM**  
Adjudication Officer  
Bureau of Legal Affairs

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<sup>11</sup> Pribhdas J. Mirpuri vs. Court of Appeals, G.R. No. 114508, 19 November 1999.