

THE BORDEN COMPANY, PETITIONER, VS. DOCTORS PHARMACEUTICALS INC., AND CELEDONIO AGRAVA, DIRECTOR OF PATENTS, RESPONDENTS.

G.R .No. L-4199. November 29, 1951

Ponente: PADILLA, J.

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PADILLA, J.:

The petitioner prays the respondent Director of Patents be directed—

(a) to forward and certify to the clerk of this Court the record of Opposition No. 3, Series of 1949 entitled "The Borden Company, Opposer-Registrant vs. Doctors Pharmaceuticals, Inc., Respondent-Applicant so that the decision of said Director of Patents of August 31, 1950 may be reviewed by this Court; and

(b) that the decision of the Director of Patents of August 31, 1950, be vacated and set aside.

In the decision referred to, the respondent Director of Patents overruled the objection of the petitioner to the registration of "Hemo—Vim" as trademark for a drug in liquid form for the cure of hypochromic, nutritional or secondary anemias, beri-beri, preventive chronic blood loss, and as tonic and stomachic prepared by the respondent Doctors Pharmaceuticals Inc.

The petitioner's opposition to the registration of the "Hemo-Vim" as trade-mark alleges that on 17 June 1947 it had previously registered the trade-mark "Hemo" for a vitamin and mineral fortified preparation for malted food drinks in powder form under certificate No. 2012 issued under the provisions of Act No. 666, which was surrendered to the Patent Office pursuant to sec. 21 (a) of Rep. Act No. 166 and in lieu thereof a new certificate No. 658-S was issued on 23 September 194# by the respondent Director of Patents.

In the caption of the petition the following words appear: "CERTIORARI UNDER RULE 67, RULES OF COURT." It was filed on 12 October 1950. On 29 November, a motion to dismiss was filed by the respondent Doctors Pharmaceuticals Inc. on the ground that, under the provisions of Rep. Acts Nos. 165 and 166, the petitioner has no right to appeal from the decision of the Director of Patents, and if the petitioner had such right it lost it for failing to file a notice of appeal and to pay the required appeal fee with the Director of Patents within 30 days from notice of the decision, as provided for in sec. 63 of Rep. Act No. 165. On 4 December, this Court directed the respondents to answer the petition within ten days from notice. On 13 December, the respondent Doctors Pharmaceuticals Inc. filed its answer. On 16 December, the Director of Patents also filed his answer. On & January 1951, the hearing of the case was set for the 15th of the same month, but on 12 January, attorneys for the petitioner filed a motion for withdrawal of the petition pursuant to instructions of their client. This motion is objected to by the respondent Doctors Pharmaceuticals Inc., unless the petitioner reimburse the respondent Doctors Pharmaceuticals Inc. for what it had paid and agreed to pay for attorney's fees amounting to P1,500, and the dismissal of the petition be with prejudice.

The first question is whether the dismissal asked by the petitioner should be with terms, as prayed for by the

respondent Doctors Pharmaceuticals Inc., and the second is whether such dismissal should be with prejudice.

Under the facts and circumstances of the case we do not believe that the respondent Doctors Pharmaceuticals Inc. is entitled [1]

Whether the dismissal of the petition should be with prejudice, as we have not reviewed the decision of the Director of Patents we are not in a position to express our opinion as to whether the dismissal of the petition should be with prejudice. Section 25 of Rep. Act No. 166 authorizes the bringing of an action to cancel registered trade-marks and trade names. If an action be brought by the petitioner for the cancellation of the registered trade-mark of the respondent Doctors Pharmaceuticals Inc., then the competent court would be in a position to determine whether the dismissal of this petition was with or without prejudice.

The petition is dismissed, with costs against petitioner.

Paras, C. J., Feria, Pablo, Bengzon, Tuason, Reyes, Jugo and Baustista Angelo, JJ., concur.

[1] Tan Ti vs. Alvear, 26 Phil., 566, 571.

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