

BIOMEDIS INC.  
Opposer,  
-versus-

IPC NO. 14-2010-00071

NOVARTIS AG  
Respondent-Applicant.  
X-----X

Opposition to:

Appl.No.4-2009-008515  
Date Filed: 25 August 2009  
Trademark: "SERVIZOL"  
Decision No. 2011-73

DECISION  
BASED ON COMPROMISE AGREEMENT

BIOMEDIS INC. ("Opposer") filed on 19 March 2010 an opposition to Trademark Application Serial No. 4-2009-008515. The application filed by NOVARTIS AG (Respondent-Applicant) covers the mark SERVIZOL, for use on goods under class 05. The opposition is anchored on Section 123.1 (d) of Republic Act 8293, also known as the Intellectual Property Code of the Philippines.

The Respondent-Applicant filed its Answer on 09 September 2010 refuting the material allegations of the Opposer;

In compliance to Office Order No. 154, s. 2010 ("*Rules of Procedure for IPO Mediation Proceedings*") and Office Order No. 197 s. 2010 ("*Mechanics for IPO Mediation and Settlement Period*"). This Bureau issued on 20 January 2011 Order No. 2011-30 refuting the case to Mediation.

On 02 September 2011, this received a "Mediator's Report" indicating the successful mediation of the instant case. Attached to the report is the parties' COMPROMISE AGREEMENT CO-EXISTENCE" submitted to this Bureau for approval. This Agreement state among other things"

"NOW THEREFORE, for and in consideration of the Parties respective concessions herein below enumerated BIOMEDIS and NOVARTIS by way of a compromise, mutually agree as follows:

1. BIOMEDIS shall withdraw its opposition against NOVARTIS pending Trademark Application No. 4-2009-008515 for the mark 'SERVIZOL' and consent to the registration of the same.
2. Within fifteen (15) days from the execution of this Agreement NOVARTIS shall amend and limit its trademark Application No. 4-2009-008515 for the mark 'SERVIZOL' for the following goods.

For the treatment of urogenital trachomoniasis, nonspecific vaginitis, all forms of amoebiasis including amoebic liver abscess, giardiasis and treatment or prevention of anaerobic infections.

3. NOVARTIS shall use the mark 'SERVIZOL' specifically only for the above-described goods.
4. NOVARTIS shall not apply in the future the registration of the mark 'SERVIZOL' for goods other than those above-described goods
5. Each Party shall bear its own costs and expenses incurred in carrying out each of their respective undertakings and obligations required by this Agreement.

6. The Parties acknowledge that their respective signatories have full authority and/or have secured the necessary approvals to execute and do execute, this Agreement on behalf of their principals and that the Parties have the authority to comply with the premises, obligations, undertaking and acknowledge that they have executed this Agreement voluntarily with full knowledge of its consequences under the law.
7. This Agreement shall apply to and binding upon the Parties' related or associated companies, including the Parties subsidiaries or affiliates and their respective licensees in the Philippines. Further the parties also undertake to impose the obligations under the Agreement upon any of their legal successors or assigns.
8. The terms and conditions of this Agreement may be amended, waived or modified only by the Agreement in writing signed by the Parties or their respective assigns or successors-in-interest.
9. The Parties acknowledge that they have read and understood the contents of this Agreement and that they have signed the same willingly, voluntarily and will full knowledge of their rights and obligations.”

This Bureau finds that the agreement has been duly entered into by the parties with the terms and conditions thereof not contrary to law, morals, good customs, public order and public policy.

In this regard, an approved Compromise Agreement shall have the effect of a Decision or judgment on the case and shall be enforced accordingly in accordance with the pertinent rules of IPO and the Rules of Court (Sec. 5, Office Order No. 154, s. 2010)

WHEREFORE, premises considered the submitted Compromise Agreement having the force and effect of decision or judgment, the parties are enjoined to faithfully comply with the terms set forth therein. Let the filewrapper pf the subject trademark application be returned together with a copy of this Decision to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 19 September 2011.