

SANOFI- AVENTIS,  
Opposer,

-versus-

CATHAY YSS DISTRIBUTORS CO. INC.,  
Respondent-Applicant.

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IPC No. 14-2011-00074  
Opposition to:

Appln. Serial No. 4-2009-004259  
Date Filed: 04 April 2009  
Trademark: MUCOCIL

Decision No. 2011-28

DECISION  
BASED ON COMPROMISE AGREEMENT

SANOFI- AVENTIS ("Opposer") filed on 23 February 2010 an opposition to CATHAY YSS DISTRIBUTORS CO. INC.'s ("Respondent-Applicant") Trademark Application Serial No. 4-2009-004259. The Opposer alleges that its mark MUSCORIL and the Respondent-Applicant's mark MUSCOCIL are confusingly similar.

On 15 June 2010, the Respondent-Applicant filed its Answer refuting the Opposer's allegations and seeking the dismissal of the opposition for being devoid of merit.

During the preliminary conference on 16 August 2010, the parties manifested that they are amenable to settle the case amicably. The conference was reset a number of times upon requests by the parties on account of the then on-going negotiation for an amicable settlement.

On 22 March 2011, the parties find a JOINT MOTION TO DISMISS, submitting copies of their "COMPROMISE AGREEMENT". The pertinent of the document reads:

NOW THEREFORE, in view of the above premises and for other good and valid consideration, the Parties hereby agree as follows:

1. The PARTIES recognize and acknowledge each other's right to use, apply for, register and maintain their trademarks MUSCORIL and MUCOCIL in convictions with their respective goods as so stipulated to this Agreement.
2. CATHAY hereby undertake that:
  - a.) The use and registration of its MUCOCIL trademark in relation to goods under Class 5 covering 'mucolytic' shall be limited to what is enumerated and depicted in its Trademark Application No. 4-2008-004259.
  - b.) CATHAY or its subsidiaries will not use and/or apply for registration of the mark MUCOCIL, for goods other than MUCOLYTICS.
  - c.) CATHAY will provide, SANOFI for the latter's approval and comments copies of the proposed labels for products using the MUCOCIL trademark as soon as the designs are available.
3. SANOFI on the other hand, agrees:
  - a.) To withdraw its opposition to and allow the registration of the trademark MYCOCIL in Class 5 limited to mucolytic.
4. This Compromise Agreement shall be limited to the territory of the Philippines and shall bind the Parties, their assignees or successors-in interest exclusively;

5. The Parties hereby release, waive and quitclaim any all claims or causes of action against each other related to or involved in any of the matters alleged in IPC No. 14-2010-00051.
6. The Parties undertake to observe the terms and conditions of this Agreement in utmost good faith.
7. Each Party shall bear its respective expenses, including but not limited tom attorney's fees and filing fees, incurred in this case.
8. This Agreement shall become effective and enforceable immediately open approval by the IP Phil of a duly signed copy thereof.

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

A COMPROMISE AGREEMENT intended to resolve a matter already under litigation in a judicial compromise. Having judicial mandate and entered as its determination of the controversy. It has the force and effect of a judgment, it transcends its identity as mere contract between the parties or it becomes a judgment that is subject to execution in accordance with the Rules of Courts. Thus, a Compromise Agreement that has been made and duly approved by the court attains the effect and authority of res judicata, although no execution may be issued unless the agreement receives the approval of court where the litigation is pending and compliance with the terms and agreements decreed.

WHEREFORE, premises considered, the parties' COMPROMISE AGREEMENT is hereby APPROVED. Accordingly, the COMPROMISE AGREEMENT having the force and effect of a decision or judgment, the parties are hereby enjoined to faithfully comply with the terms and conditions set forth herein.

SO ORDERED.

Makati City, 31 March 2011.