

AM- EUROPHARMA CORP.
Opposer,

-Versus-

VIDA-NUTRISCIENCE, INC.
Respondent-Applicant
X-----X

IPC No. 14-2009-00192

Opposition to:
Appln. Serial No. 4-2007-012090
Date Filed: 30 October 2007
Trademark: "GLUTAWHITE"
Decision No. 2011-65

DECISION
BASED ON COMPROMISE AGREEMENT

AM- EUROPHARMA CORP ("Petitioner") filed on 07 July 2009 a petition for the cancellation to Trademark Registration No. 4-2007-012090. The registration issued to VIDA NUTRISCIENCE, Inc. ("Respondent-Registrant") covers the mark GLUTAWHITE for use on goods under Class 03. The petition for cancellation is anchored on Section 123 of Republic Act N, 8293, also known as the Intellectual Property Code of the Philippines.

This Bureau issued on 24 August 2009 a Notice to Answer, a copy of which was served upon the Respondent-Registrant on 18 September 2009. Respondent-Registrant filed its Answer on 16 October 2009

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 Settlement Period") this Bureau issued on 29 December 2010 Order No. 2011-06 referring the case to mediation.

On 13 July 2011 the Mediation Office submitted a Mediation Report indicating a settlement by the parties in this case. Attached to the report is the parties' SETTLEMENT AGREEMENT" the pertinent portions of which read as follows:

1. The portion hereby acknowledge and agree that each shall have the right to retain, use and exploit the propriety rights of their respective trademarks, "GLUTAWHITE" by AM-EUROPHARMA and "GLUTAWHITE" by VID NUTRISCIENCE, in rem and in perpetuity and in accordance with the terms and conditions set forth herein, Neither of the parties shall object to nor oppose or otherwise work to limit in any each of the parties' exercise of their proprietary rights except in the manner set forth under this agreement.]
2. AM-EUROPHARMA hereby agrees not to extend coverage of their mark "GLUTAWHITE" to products other than the following
 - a) Gluta-White Food Supplement Capsule 500mg Capsule
 - b) Gluta-White Food Supplement Capsule 100mg Capsule
3. VIDA NUTRISCIENCE agrees not use the trademark "GLUTAWHITE" for FOOD/DIETARY SUPPLEMENT CAPSULE products containing glutathione
4. AM-EUROPHARMA agrees not to provide proportionate contribution to the cost of GLUTAWHIRE advertisement and/or sales/promotional campaign by VIDA NUTRISCIENCE provided the advertisement and / or sales/ promotional campaign includes or covers AM-EUROPHARMA GLUTAWHITE products above mentioned. The inclusion of AM-EUROPHARMA GLUTAWHITE products in the advertisement and/or sales/promotional campaign by VIDA NUTRISCIENCE shall require prior consultation of AM-EUROPHARMA but not its prior approval.

5. VIDA NUTRISCIENCE retains the right not to include in its advertisement and / or sales/promotional campaign AM-EUROPHARMA GLUTAWHITE products abovementioned:
6. AM-EUROPHARMA retains the right not to participate in any advertisement and/or sales/promotional campaign by VIDA NUTRISCIENCE and/or sales/promotional contribution to the cost thereof in the event of lack of prior consultation and/or if AM-EUROPHARMA finds that the advertisement and/or sales/promotional campaign will insufficiently represent its products.
7. The Parties shall abide by the terms and conditions of this Agreement in utmost good faith and to this and shall not issue state of make any derogatory, malicious or negative statements, announcements or press release with respect to the other Party;
8. VIDA NUTRISCIENCE shall disclose, and AM-EUROPHARMA hereby gives its consent to such disclosure the subject matter of this Agreement with respect to AM-EUROPHARMA GLUTAWHITE trademark to the business entity DERMAPHARMA in view of the legal controversy between them and VIDA NUTRISCIENCE involving the mark GLUTAWHITE for any other instance or purpose. Parties shall divulge or disclose any facts relating to this Agreement including its existence and its specific terms and conditions to any third parties without the written consent of the other Party. Notwithstanding the foregoing, the Parties are allowed to inform their employees and offices who have a need to know and their respective legal counsel, regarding the existence and terms of the Agreement;
9. Each Party shall bear its own cost and expenses incurred in carrying out each of their respective undertakings and obligations required by this Agreement;
10. The Parties acknowledged that their respective signatories have full authority and/or have secured the necessary approvals to execute and to execute, this Agreement on behalf of their principals and that the Parties have the authority to comply with the promises, obligations, undertaking and acknowledgements, made in this Agreement, The Parties hereto further acknowledge that they have executed this Agreement voluntarily with full knowledge of its consequences under the law;
11. This Agreement shall be binding upon and insure the benefit of the Parties, their affiliates, successors and assigns, The terms and conditions of this Agreement may be amended, waived or modified only by agreement in writing signed by the Parties or their respective assigns or successors in interest.
12. The Parties acknowledged that they have read and understood the contents of this Agreement and that they have signed the same willingly, voluntarily, and with full knowledge of their rights and obligations.

This Bureau evaluated the SETTLEMENT AGREEMENT and finds that this same 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. The Petitioner has no trademark registration for the mark GLUTA-WHITE. Hence in this instance, there are no identical or confusingly similar marks registered or appearing in the Trademark Registry that belong to two (2) different entities. The Petitioner does not even have a pending trademark application for the mark. Also, the manner of use, advertisement or promotion of the parties' products as laid down in the agreement sufficiently discloses to the consumers the origins thereof, and thus not prejudicial to the public interest or damaging to the parties,

Accordingly, an approved Settlement 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.

WHEREFORE premises considered the parties JOINT MOTION TO APPROVE SETTLEMENT AGREEMENT is hereby APPROVED. Accordingly the SETTLEMENT AGREEMENT having the force and effect of a decision of judgment the parties are hereby enjoined with the terms and conditions set forth therein.

SO ORDERED.

Taguig City, 15 July 2011