

MYRA PHARMACEUTICALS INC.,
Opposer,

-versus-

INTERPHIL LABORATORIES INC.
Respondent-Applicant.

IPC NO. 14-2010-00249
Opposition to:

Appln.No.4-2010-000991
Date Filed: 20 January 2010
Trademark: DERMACTIN
Decision No.2011-67

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DECISION
BASED ON COMPROMISE AGREEMENT

MYRA PHARMACEUTICALS INC., (“Opposer”) filed on 26 October 2010 an opposition to Trademark Application Serial No, 4-2010-000991. The application filed by INTERPHIL LABORATORIES, INC. (“Respondent-Applicant”) covers the mark DERMACTIN for use in goods under Class 05. The opposition is anchored on Sec, 123 of Rep. Act. No. 8293, also known as the Intellectual Property Code of the Philippines.

The Respondent-Applicant filed its Answer on 02 February 2011 refuting the material allegations of the Opposer.

In compliance to Office Order No. 154, s. 2010 (“Rules of Procedure for IPO Mediation Proceedings”) and Officer Order No, 197, s. 2010 (“Mechanics for IPO Mediation and Settlement Period”_ this Bureau issued on 10 February 2011 Order No. 2011-118 referring the case to mediation.

On 22 July 2011, this Bureau received a “MEDIATOR’S REPORT” indicating the successful mediation of the instant case. Attached to the report is the parties’ ”COMPROMISE AGREEMENT” submitted to this Bureau for approval. The Agreement states among other things:

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

1. The parties recognize and acknowledge each other’s right to use, apply for and register and maintain their trademarks “DERMALIN and “DERMACTIN” in connection with their respective goods as so stipulated in this Agreement.
2. INTERPHIL hereby undertakes that:
 - a. The use and registration of its “DERMACTIN| trademark in relation to goods under Class 5 shall be limited to pharmaceutical preparations with generic name “TOLNAFTATE”.
 - b. INTERPHIL shall neither oppose any application that NIVEA will file with the IPO for the registration of MYRA’s DERMALIN trademark nor seek the cancellation of MYRA’s existing registration for DERMALIN trademark
3. MYRA on the other hand, agrees:

A to allow the registration of the trademark DERMACTIN but limited only to Class 5; for pharmaceutical preparation with generic name “TOLNAFTATE”
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. 14-2010-000249,
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 incurred in this case.
8. The Agreement shall become effective and enforceable immediately upon approval by this Honorable Office of a duly singed copy thereof”

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 custom, public order or 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 Intellectual Property Office of the Philippines and the Rules of Court (Sec. 5, Office Order No, 154, s. 2010)

WHEREFORE premises considered the submitted Compromise Agreement is hereby APPROVED. The parties are hereby enjoined to faithfully comply with the terms laid down in the Compromise Agreement. Let the filewrapper of 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, 29 July 2011