

NOVARTIS AG,
Opposer,
-versus-

IPC NO. 14-2010-00189

HIMALAYA GLOBAL HOLDINGS, LTD.
Respondent-Applicant.
X-----X

Opposition to:

Appl.No.4-2009-012923
Date Filed: 17 December 2009
Trademark: "DIAREX"
Decision No. 2011-58

DECISION
BASED ON COMPROMISE AGREEMENT

NOVARTIS AG ("Opposer") filed on 23 August 2010 an opposition to Trademark Application Serial No. 4-2009-012923. The application filed by HIMALAYA GLOBAL HOLDINGS LTD., (Respondent-Applicant") covers the mark DIAREX for use on goods under class 05. The opposition is anchored on Section 023 of Republic Act 8293, also known as the Intellectual Property Code of the Philippines.

This Bureau issued on 28 September 2010 a Notice to Answer copies of which were served upon and received by Respondent-Applicant on 06 October 2010. The Respondent-Applicant filed a Motion for Extension of Time to File Answer. On 05 November 2010, praying that it given until 05 December 2010 to file its answer. Respondent-Applicant filed its Answer on 08 December 2010.

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 21 January 2011 Order No, 2011-217 referring the case to Mediation.

On 08 July 2011, the Mediation Office submitted a Mediation Report indicating a settlement by the Parties' of the case. Attached to the report is the parties' SETTLEMENT AGREEMENT the pertinent portions of which read, follows:

1. Himalaya Global Holdings, Lt. will limit the scope of the goods covered by the Trademark Applications No. 4-2009-012923 for DIAREX for goods in Class 5 from:

PHARMACEUTICALS PREPARATIONS AND DIETETIC SUBSTANCES FOR MEDICAL USE"

To:

PHARMACEUTICAL PREPARATIONS FOR THE TREATMENT OF ACUTE AND CHRONIC DIARRHEA. AMOEBIC DYSENTERY AND ADJUVANT TO THE TREATMENT OF IRRITABLE BOWEL SYNDROME"

Only:

2. Himalaya Global Holdings, Ltd. Will limit the use of the mark DIAREX to the goods, *pharmaceutical preparations for the treatment of acute and chronic diarrhea. amoebic dysentery and adjuvant to the treatment of irritable bowel syndrome" only;*
3. In consideration of the foregoing invitations of goods Novartis AG believes that conclusion in the minds of the purchasing public between its trademark

DILAHX and Himalaya Global Holdings Ltd.'s trademark DIAREX will be effectively avoided;

4. In consideration of the amicable settlement of the case, Novartis AG is hereby withdrawing its Opposition to the Application for Registration by Himalaya Global Holdings, Ltd. Of the Trademark 'DIAREX' under Application No, 4-2009-012923 filed on 17 December 2009;
5. Novartis AG agrees henceforth not to raise directly or indirectly any opposition or objections to the mark 'DIAREX' designating the goods, pharmaceutical preparations for the treatment of acute and chronic diarrhea. amoebic dysentery and adjuvant to the treatment of irritable bowel syndrome" upon signing of this Settlement Agreement;
6. Nothing herein shall constitute an admission on the part of Himalaya Holdings Ltd. That the mark 'DIAREX' in anyway resemble, is confusingly similar to or infringes upon the trademark 'DILAHX'.

This Bureau evaluated the SETTLEMENT AGREEMENT and finds that the same 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

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 submitted the parties' JOINT MOTION TO APPROVED SETTLEMENT AGREEMENT is hereby APPROVED. Accordingly, the SETTLEMENT AGREEMENT having the force and effect of a decision or judgment the parties are hereby enjoined to comply with the terms and conditions set forth therein.

SO ORDERED.

Taguig City, 12 July 2011.