

PEDIATRICA, INC.
Opposer,

IPC No. 14—2010-00138
Opposition to:

Versus

Appln, No. 4-2009-010083
Date Filed: 08 October 2009
Title: "NOTRIENE"

ACTAVIS GROUP PTC, EHF
Respondent-Applicant
X-----X

Decision No. 2011-54

DECISION
BASED ON CO-EXISTENCE AGREEMENT

PEDIATRICA INC. ("Opposer") filed on 12 July 2010 an opposition to Trademark Application Serial No. 4-2009-010083. This Bureau issued a Notice to Answer and served upon a copy thereof to ACTAVIS GROUP, EHF, and ("Respondent-Applicant") on 12 August 2010. The Respondent-Applicant filed two motions for extension of time to file the answer, both of which were granted by this Bureau.

This Bureau noticed, however that no Respondent-Applicant filed on 09 December 2010 a MANIFESTATION stating that it will no longer file a Verified Answer since the Opposer and the Respondent-Applicant agreed to settle the instant case amicably and will jointly file a motion for judgment based on a "Co-existence Agreement"

On 23 May 2011, the parties filed a JOINT MOTION FOR JUDGMENT BASED ON A CO-EXISTENCE AGREEMENT: the pertinent portions of which read, as follows:

1. PEDIATRICA shall withdraw its opposition against ACTAVIS pending Trademark Application No.4-2009-010083 for the mark "Notriene" and consent to the registration of the same;
2. Within five (5) days from the execution of this Agreement, ACTAVIS shall amend and limit as application in Philippine Trademark Agreement No. 4-2009-010083 for the mark 'Notriene' for the following goods;
3. ACTAVIS shall use the mark 'Notriene' only for pharmaceuticals for the treatment of asthma and seasonal allergies;
4. ACTAVIS undertakes that it shall not advertise its goods bearing the 'Notriene' mark directly to consumers through tri-media (print, broadcast and web);
5. However ACTAVIS can advertise its goods bearing the "Notriene" mark directly to medical professionals;
6. ACTAVIS shall not apply in the future for the negotiation of the mark "Notriene" for goods other than pharmaceuticals for the treatment or asthma and seasonal allergies;
7. This Agreement is applicable in the Philippines only;
8. This Agreement shall apply to and be 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 impose the obligations under this Agreement upon any of their legal successors or assigns;
9. After a judicious evaluation of the Co-EXISTENCE AGREEMENT , this Bureau 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 or public policy.

In this regard, an approved Compromise Agreement intended to resolve a matter already under litigation is 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 a mere contract between the parties or it becomes a judgment that is subject to execution in accordance with the Rules of Court. 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 under the agreement receives the approval of the court where the litigation is pending and compliance with the terms of the agreement is decreed,

WHEREFORE, premises considered, the parties' CO-EXISTENCE AGREEMENT is hereby APPROVED. Accordingly, the CO-EXISTENCE 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 herein. Let the filewrapper of the subject Trademark Application Serial No. 4-2009-010083 be returned together with a copy of this Decision to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 13 June 2011.