

UNITED LABORATORIES, INC.
Opposer,

Versus

WYETH LLC,
HOLDING) B.V.
Respondent-Applicant
X-----X

IPC No. 14-2011-00161

Opposition to:
Appln. Serial No. 4-2010-011634
Date Filed: 22 October 2010
Trademark: ENERCAL PLUS
Decision No. 2011-85

DECISION
BASED ON COMPROMISE AGREEMENT

UNITED LABORATORIES, INC. ("Opposer") filed on 25 April 2011 an opposition to Trademark Application Serial No. 4-2010-011634. The application filed by WYETH LLC ("Respondent-Applicant") covers the mark "ENERCAL PLUS" for use on goods under Classes 5 and 29. The opposition is anchored on Sec., 123.1 (d) of Rep. Act No. 8293, also known as the Intellectual Code of the Philippines.

Pursuant to the Regulations on Inter Partes Proceedings, this Bureau issued a Notice to Answer and served a copy thereof to Respondent-Applicant on 02 June 2011. Instead of filing an answer, the Respondent-Applicant with the Opposer, filed on 21 October 2011 a joint Motion for Judgment Based on Compromise Agreement. The agreement states among other things:

"NOW THEREFORE, the Parties have agreed to enter into as they hereby agree and enter into the following terms and conditions for the amicable settlement of Inter Partes Cases No, 14-2011-00161 and No, 14-2011-00163.

1. Respondent agrees to exclude "nutritional supplement" from the goods covered by its application for ENERCAL and ENERCAL PLUS.
2. Respondent agrees not to put any restraint on Opposer's use of the mark ENERVON-C in the Philippines in respect of the goods covered by Trademark Registration No, 14854 on the basis of Wyeth's ENERCAL marks and in this regard, shall not commence any opposition or cancellation action based on Wyeth's ENERCAL marks against any trademark application or registration which Opposer has filed, may decide to file or has obtained in the Philippines for the mark ENERVON C in connection with "nutritional supplements"
3. Opposer agrees not to commence any opposition or cancellation action against any or trademark application or registration which respondent has filed, may decide to file, or has obtained for the trademark ENERCAL and ENERCAL PLUS in connection with "dietary supplement" in the nature of a nutritional beverage" in Class 5 and "milk and milk-based, products, powdered milk, powdered preparations for making milk beverages milk-based, drinks, milk on Class 29."
4. The parties mutually recognize their respective rights to the concurrent use of their respective marks for their goods and business in the Philippines as mentioned above and accordingly waive any cause of actions that other party may have against the other for the use and registration of said marks in the Philippines up until the date of this Agreement,
5. This Agreement shall not be considered as to bind the parties to agree to the concurrent use of the trademarks ENERVON C, ENERCAL and ENERCAL PLUS in other jurisdictions.

6. The parties agree to file a joint Motion for judgment based on this Agreement to effect the dismissal of Inter Parties Cases No. 14-2011-00163.
7. The Parties shall cooperate in good faith to avoid any possibility of confusion resulting from the coexistence of their respective trademarks in the Philippines and shall take all commercially reasonable steps to cure any confusion that may occur.
8. Upon the execution of this Agreement the parties irrevocably release and forever discharge each other and each of their respective affiliates, partners, divisions, departments, directors, officers, employees, agents shareholders, accountants and attorneys and their heirs, successors and assigns from all claims, demands causes of actions, costs, expenses attorney's fees, obligations, indebtedness, liabilities, indemnities, claims over any and all obligations relating to or arising out of the use by either party of their respective marks up until the date of this Agreement,
9. This Agreement is the entire agreement between the parties and constitutes the complete. Final and exclusive embodiments of their agreement with respect to the subject matter hereof. This Agreement may not be amended except by written agreement executed by both parties.
10. Each person signing the Agreement on behalf of the party warrants that he or she has full authority to do so on behalf of that party and to bind said party to the terms and conditions of this Agreement.
11. This Agreement is executed without reliance upon any promise, warranty or representation by any party or any representative of any party other than those expressly contained herein
12. This Agreement shall bind and insure to the benefit of each party and its directors, officers, employees, parent corporations, subsidiaries, affiliates, predecessors, successors, licensees, agents and assigns.
13. In the event of any breach of this Agreement the non-breaching party shall be entitled to recover its reasonable attorney's fees in addition to any other remedies it may have at law or to equity.
14. Whenever possible each provision of this Agreement shall be interpreted in such a manner as to be effected and valid under applicable laws but if any provision of this Agreement should be held valid or enforceable under applicable laws, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement
15. The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither the failure nor any delay by any party in exercising any right, power or privilege under this Agreement shall operate as a waiver, of such right, power or privilege and no single or partial exercise of any such right, power shall preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege.
16. This Agreement may be executed in counterparts.”

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.

A 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 become 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 unless the agreement receives the approval of court where the litigation is pending and compliance with the terms and agreement is decreed.

WHEREFORE, premises considered, the submitted Compromise Agreement is hereby APPROVED. Accordingly, the instant oppositions is hereby DISMISSED and with the approved Agreement having the force and effect of a decision or judgment, the parties are enjoined to faithfully comply with the terms set forth therein, 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 27 October 2011.