

MUNDIPHARMA AG,	}	IPC No. 14-2008-00234
<i>Opposer,</i>	}	Opposition to:
	}	
-versus-	}	Appln. Serial No. 4-2007-009653
	}	Date filed: 03 September 2007
GLAXO GROUP LTD.,	}	
<i>Respondent-Applicant.</i>	}	Trademark: BETAPEN
x-----x	}	Decision No. 2008-216

JUDGMENT BASED ON COMPROMISE AGREEMENT

Submitted for consideration is the parties' Joint Manifestation and Motion for Approval of Compromise Agreement filed on 04 December 2008.

The Compromise Agreement executed by and between Opposer MUNDIPHARMA AG and Respondent-Applicant GLAXO GROUP LTD. provides for the following terms and conditions, to wit:

"3.1. For and in consideration of MUNDIPHARMA's desistance from pursuing its Verified Notice of Opposition against GLAXO's trademark application for "BETAPEN", GLAXO voluntarily agrees to the amendment of the description of the goods of the trademark application for "BETAPEN" with Serial No. 4-2007-009653 as follows:

Previous description:

CLASS	GOODS
5	Pharmaceutical and medical preparations for human use, namely, anti-infective preparations

AMENDED DESCRIPTION:

CLASS	GOODS
5	<u>ANTIBIOTIC PREPARATIONS</u> <u>ADMINISTERED INTRAVENOUSLY</u>

"3.2 The PARTIES agree that with GLAXO's voluntary amendment of the description of the goods from "pharmaceutical and medical preparations for human use, namely, anti-infective preparations" to "ANTIBIOTIC PREPARATIONS ADMINISTERED INTRAVENOUSLY" covered by GLAXO's trademark application with Serial No. 4-2007-009653, the Opposition filed by MUNDIPHARMA AG be moot and academic."

"3.3 This COMPROMISE AGREEMENT shall bind the PARTIES, their affiliates, successors, assignee and licensees. This Agreement shall further bind the subsidiaries, partners, officers, employees, representatives and agents of the PARTIES."

"3.4 The terms and conditions of this COMPROMISE AGREEMENT may be amended, waived or modified only by agreement in writing signed by and between MUNDIPHARMA and GLAXO, or any successor or successors-in-interest of either or both parties."

“3.5 This COMPROMISE AGREEMENT shall apply in the jurisdiction of the Republic of the Philippines, and shall be governed by and interpreted pursuant to the laws of the Republic of the Philippines.”

“3.6 The PARTIES hereby warrant that their representatives have been duly authorized and empowered by their Board of Directors to enter into this Compromise Agreement with full power to agree to all the provisions, undertakings and obligations herein contained.”

“3.7. If any provision of this COMPROMISE AGREEMENT or the application of any such provision to any person or circumstance shall be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof or the validity of this COMPROMISE AGREEMENT.”

“3.8 This COMPROMISE AGREEMENT constitutes and embodies the entire and complete agreement between the PARTIES, and no other terms and conditions not expressly contained above shall serve to affect, change, modify or alter the provisions herein agreed upon, unless the same is stipulated in writing and signed by the Parties.”

WHEREFORE, finding the parties' Compromise Agreement to have been duly executed and signed by the parties and the terms and conditions thereof to be in consonance with law, morals, and good customs, public policy or public order, the same is hereby APPROVED. Consequently, the parties are hereby enjoined to faithfully comply with the terms and conditions of the Amended Compromise Agreement, failure of which shall be cause for erring party to be cited for indirect contempt after proper charge and hearing.

Let the filewrapper of the trademark “BETAPEN” subject matter of this case together with this Decision be forwarded to the Bureau of Trademarks (BOT) for appropriate action.

SO ORDERED.

Makati City, 15 December 2008.

ESTRELLITA BELTRAN-ABELARDO
Director, Bureau of Legal Affairs
Intellectual Property Office