

PEDIATRICA, INC.,	}	IPC NO. 14-2008-00229
<i>Opposer,</i>	}	Opposition to:
	}	
- versus -	}	Appln. Serial No. 4-2008-006540
	}	Date Filed: 04 June 2008
ABBOTT LABORATORIES,	}	
<i>Respondent-Applicant.</i>	}	Trademark: "GROW"
x-----x	}	Decision No. 2009-38

JUDGMENT BASED ON CO-EXISTENCE AGREEMENT

For this Bureau's consideration is the parties' Joint Motion for Judgment Based on Compromise Agreement filed on 20 March 2009.

In the Co-Existence Agreement entered into and executed by the parties, PEDIATRICA, INC., (Opposer) and ABBOTT LABORATORIES (Respondent-Applicant) agreed into the following terms and conditions:

"1. Respondent agrees to limit its use, in the Philippines, of the trademark GROW in connection with milk products.

"2. Respondent agrees not to put any restraint on Opposer's use of the mark GROWEE in the Philippines and in this regard, shall not to commence any opposition or cancellation action against any trademark application or registration which Opposer has filed, may decide to file, or has obtained in the Philippines for the GROWEE mark in connection with "dietary supplement to normal growth and development in children food supplement".

"3. Opposer agrees not to commence any opposition or cancellation action against any trademark application or registration which Respondent has filed, may decide to file, or has obtained for the trademark GROW in connection with "milk products".

"4. The parties mutually recognize their respective rights to the concurrent use of their respective marks for their respective goods and business in the Philippines as mentioned above and accordingly waive any cause of action that either party may have against the other for the use and registration of said marks in the Philippines.

"5. This Agreement shall not be construed as to bind the parties to agree to the concurrent use of the trademark GROW and the GROWEE mark in other jurisdictions.

"6. The parties agree to file a Joint Motion for Judgment based on this Agreement to effect the dismissal of Inter Partes Case No. 14-2008-00229.

"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. The parties agree to refrain from making in any manner whatsoever any statement or representation or performing any act or using any name, mark, symbol or the like which (a) leads the public to believe that one party or its business, products or services, is in any manner, directly or indirectly, associated or connected with or authorized, franchised or approved by the other party; or (b) causes confusion, mistake, or deception as to the source or sponsorship of any of the party's businesses, products and/or services.

"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 action, costs, expenses, attorneys' fees, obligations, indebtedness, liabilities, indemnities, claims over and 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. The parties covenant and agree to prepare, execute, acknowledge, file, record, publish and deliver to the other party such other instruments, documents and statements, and take such other action as may be reasonably necessary or convenient in the discretion of the requesting party, to carry out more effectively the purposes of this Agreement.

"10. This Agreement is the entire agreement between the parties and constitutes the complete, final and exclusive embodiment of their agreement with respect of the subject matter hereof. This Agreement may not be amended except by written agreement executed by both parties.

"11. Each person signing the Agreement on behalf of a 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.

"12. 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.

"13. This Agreement shall bind and inure to the benefit of each party and its directors, officers, employees, parent corporations, subsidiaries, affiliates, predecessors, successors, licensees, agents and assigns.

"14. 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 in equity.

"15. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable laws, but if any provision of this Agreement should be held invalid or unenforceable under applicable laws, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision of the remaining provisions of this Agreement.

"16. 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, or privilege shall preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege".

WHEREFORE, finding the parties' Co-Existence Agreement to have been duly executed and signed by the parties and the terms and conditions thereof to be in consonance with law, morals, good customs, public policy or public order, the same is hereby APPROVED. Accordingly, Application Serial No. 4-2008-006540 for the registration of the trademark "GROW" shall be GIVEN DUE COURSE subject to the terms and conditions of the Co-Existence Agreement. Consequently, the parties are hereby enjoined to faithfully comply with the terms and

conditions of the 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 "GROW" subject matter of this case together with this Decision be forwarded to the Bureau of Trademarks (BOT) for appropriate action.

SO ORDERED.

Makati City, 27 March 2009.

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