

PEDIATRICA, INC.,  
Opposer,

- versus -

XL LABORATORIES, PVT. LTD.,  
Respondent-Applicant.

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IPC No. 14-2009-00135  
Opposition to:

Appln. Serial No. 4-2008-011990  
Date Filed: 02 October 2008

Trademark: CIPFAST

Decision No. 2010-72

DECISION  
BASED ON COMPROMISE AGREEMENT

PEDIATRICA, INC. ("Opposer") filed a Verified Opposition on 14 May 2009 to Trademark Application Serial No. 4-2008-011990. The application filed by XL LABORATORIES ("Respondent-Applicant") on 02 October 2008 covers the mark "CIPFAST" for use on pharmaceutical product under class 5 of the International Classification. The Opposer alleges that the mark is confusingly similar to the opposer's mark "ZEEPLUS".

On 28 August 2010, the Respondent-Applicant filed its Answer, rebutting among other things, the allegation that its trademark is confusingly similar to the Opposer's.

The preliminary conference that was initially scheduled on 28 October 2009 was reset several times on the ground that the parties were exploring means of settling the case amicably.

During the preliminary conference on 05 June 2010, the parties manifested that they have reached a settlement although they are still finalizing the draft of the agreement. Subsequently, on 12 August 2010, the parties submitted copies of their agreement to this Bureau, for the rendering of a decision on the case on the basis thereof. The "COMPROMISE AGREEMENT" signed by their respective counsels as duly authorized representatives reads:

"1. The parties recognize and acknowledge each other's right to use, apply for, register and maintain their trademarks 'ZEEPLUS' and 'CIPFAST' in connection with their respective goods as so stipulated in this Agreement.

"2. XL hereby undertakes that:

- (a) The use and registration of its 'CIPFAST' trademark in relation to goods under Class 5 covering 'ciprofloxacin', shall be limited to what is enumerated and depicted in its Trademark Application No. 4-2008-011990.
- (b) XL shall neither oppose any application that PEDIATRICA will file with the IPO for the registration of PEDIATRICA's 'ZEEPLUS' trademark nor seek the cancellation of PEDIATRICA's existing registration for 'ZEEPLUS' trademark.
- (c) XL shall pay PEDIATRICA the amount of Twelve Thousand Three Hundred Twenty Two Pesos (Php12, 322.00).

"3. PEDIATRICA, on the other hand, agrees:

- (a) to allow the registration of the trademark CIPFAST but limited only to class 5; anti bacterial/antibiotic;

"4. This Compromise Agreement shall be limited to the territory of the Philippines and shall bind the Parties, their assignees or successors-in-interest exclusively.

“5. The parties hereby release, waive and quitclaim any and all claims or cause of action against each other related to or involved in any of the matters alleged in IPC No. 14-2009-00135.

“6. The parties undertake to observe the terms and conditions of this Agreement in utmost good faith.

“7. Each party shall bear its respective expenses incurred in this case.

“8. This Agreement shall become effective and enforceable immediately upon approval by this Honorable Office of a duly signed copy thereof.”

This Bureau finds that the COMPROMISE AGREEMENT 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, 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 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’ COMPROMISE AGREEMENT is hereby APPROVED. Accordingly, the COMPROMISE 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.

Makati City, 17 November 2010.

NATHANIEL S. AREVALO  
Director, Bureau of Legal Affairs  
Intellectual Property Office