



ASTRAZENECA AB and ASTRAZENECA PHARMACEUTICALS (PHILS.). }
 Complainants, }
 -versus- }
CRISTITO APUYA MIGUEL }
operation and doing business under }
name and style of CRIS PHARMA }
HOUSE, }
 Respondent. }

x-----x

IPV NO. 10-2012-00008
 For: Patent Infringement
 Damages and Injunction with
 Application for Preliminary
 Injunction

Decision No. 2013- 08

**Decision Based on
 Compromise Agreement**

ASTRAZENECA AB and ASTRAZENECA PHARMACEUTICALS (PHILS.) ("Complainant"), filed on 08 May 2012, a complaint against **CRISTITO APUYA MIGUEL operation and doing business under name and style of CRIS PHARMA HOUSE** ("Respondent") for alleged patent infringement. The Complainant assails the Respondent's alleged illegal acts of importing, exporting, manufacturing, promoting, using or offering for sale, or distributing Esomeprazole Sodium products, including but not limited to Esonium.

On 21 May 2012, the Respondent filed its Answer refuting the material allegations of the Complainant.

On 31 May 2013 a Joint Motion to Render Judgment Based On Compromise duly signed by the parties was submitted for the approval of this Bureau. The pertinent portion of the COMPROMISE AGREEMENT reads, as follows:

"1. CHRIS PHARMA admits that that the Esomeprazole Sodium Patent and Esomeprazole patents are valid and enforceable. CRIS PHARMA also recognizes, respects and will respect and not violate the First Party's exclusive right to use, register, license and maintain the Esomeprazole Sodium Patent and Esomeprazole Patents in the Philippines.

"2. In consideration of the First Party's agreement not to pursue its claim for damages in its infringement case against CRIS PHARMA, CHRIS PHARMA agrees as follows:

a. CRIS PHARMA shall not manufacture, use, import, export, market, sell, license or otherwise distribute products containing the compounds protected by the *Esomeprazole* Patents or *Esomeprazole Sodium Patents* in the Philippines without prior written authorization from the First Party;

- b. CRIS PHARMA shall recall from the market all *Esomeprazole* or *Esomeprazole Sodium* products that it sold and distributed, including the materials used in the promotion, sales and distribution of said *Esomeprazole* or *Esomeprazole Sodium* products, to be disposed of in such manner as may be deemed appropriate by the First Party;
- c. Within 5 days from the signing of this Agreement, CRIS PHARMA Shall cause the cancellation of its Certificates of Products Registration for *Esomeprazole* or *Esomeprazole* products issued by the FDA;
- d. CRIS PHARMA shall not renew, seek to register, obtain a registration for or maintain a registration for *Esomeprazole* or *Esomeprazole Sodium* products with the FDA or the IPO prior to the expiration of the last to expire of the *Esomeprazole* Patents and the *Esomeprazole Sodium* Patents.
- e. CRIS PHARMA shall not challenge the use of, nor seek to invalidate the registration of, or file or pursue any opposition to any registration or application for the intellectual property registrations owned by AZAB or its affiliates in relation to *Esomeprazole* or *Esomeprazole Sodium* products; and
- f. As soon as commercially reasonable, and in no event later than sixty (10) days after the execution of this Agreement, CRIS PHARMA shall: (i) remove from all internet websites under its control, or over which it may reasonably exercise control, all references to any designation that consist of or contains *Esomeprazole* or *Esomeprazole Sodium* products, including any references that may be contained in metatext; and (ii) cancel all registrations in its possession or under its control for domain names that consist of or contain the term *Esomeprazole* or *Esomeprazole Sodium*.

"3. In case of breach of any of the terms as described above by CRIS PHARMA or any of its officers, agents, or assigns, CRIS PHARMA shall pay or cause to be paid to the First Party the sum of FIVE MILLION PESOS (P5,000,000.00) as and by way of non-exclusive liquidated damages, without prejudice to any other available legal remedies.

"4. The parties agree that the preliminary injunction issued by the IPO against CRIS PHARMA be made permanent until such time as AZAB's LP No. 1-2001-02405 expires.

"5. The parties hereby undertake to file the necessary motion for judgment in IPV Case No. 10-2012-0008 based on this Compromise Agreement, and the Parties agree that this Agreement shall form the basis of an appropriate judgment to be entered in said action. The parties

further obligate themselves to do any and all necessary action to cause the approval of this Agreement by the Bureau of Legal affairs (BLA) Director.

"6. The Parties warrant that the signatories hereto have been duly authorized and granted full power and authority to compromise or settle and execute this Agreement and all documents necessary in connection therewith as shown by the attached Secretary's Certificates and Special Power of Attorney which are hereby made integral parts of this Agreement.

"7. The Parties represent that they entered into this Agreement freely, voluntarily, in good faith, and with full knowledge and understanding of their rights and obligations hereunder.

"8. The Parties agree to be bound by the terms and conditions of this Agreement, and agree to impose the obligations under this Agreement upon their respective agents, employees, affiliates, subsidiaries, related companies, licensees, successors in rights and assignees. The parties undertake to transmit the obligations resulting hereof to their respective agents, employees, affiliates, subsidiaries, related companies, licensees, successors in rights and assignees.

"9. The Parties agree that each will bear its own costs and attorney's fees in this matter.

"10. This Agreement has been prepared by the combined efforts of all the Parties and their respective attorneys and may only be amended in writing by a document so designated and executed by the Parties hereto.

"11. There are no representations, promises, warranties, covenants or undertakings other than those expressly set forth herein and this writing represents the entire understanding of the parties. In the event that any portion of this Agreement is adjudged invalid or unenforceable, then the surviving portion of this Agreement shall constitute the Agreement, unless such surviving portions fail to retain the essential understanding between the parties, whereupon the Agreement shall be treated as terminated by mutual consent of the parties.

"12. Waiver by a party of any breach, or failure by a party to enforce the terms and conditions of this Agreement, at any time, shall not in any way affect, limit or waive the right of that party to enforce strict compliance by another party with respect to any other or further breach of any term or condition hereof.

This Bureau finds that the Joint Motion to Render Judgment Based on Compromise 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.

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In this regard, an approved Joint Motion to Render Judgment Based on Compromise shall have the effect of a decision or judgment on the case.

WHEREFORE, premises considered, the parties' JOINT MOTION TO RENDER JUDGMENT BASED ON COMPROMISE is hereby **APPROVED**. Accordingly, with the approved JOINT MOTION TO RENDER JUDGMENT BASED ON COMPROMISE having the force and effect of a decision or judgment, the parties are enjoined to faithfully comply with the terms set forth therein.

SO ORDERED.

Taguig City, 21 June 2013.


ATTY. NATHANIEL S. AREVALO
Director IV
Bureau of Legal Affairs