



BIOMEDIS INC.,
Opposer,

-versus-

BESINS HEALTHCARE LUXEMBOURG, S.A.R.L.,
Respondent-Applicant.

X-----X

} IPC No. 14-2011-00247
} Opposition to:
} Appln. Serial No. 4-2010-011783
} Date Filed: 28 October 2010
} TM: "ANDROGEL"
}

NOTICE OF DECISION

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GREETINGS:

Please be informed that Decision No. 2013 - 219 dated November 12, 2013 (copy enclosed) was promulgated in the above entitled case.

Taguig City, November 12, 2013.

For the Director:


Atty. EDWIN DANILO A. DATING
Director III
Bureau of Legal Affairs



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Decision No. 2013- 219

**DECISION BASED ON
COMPROMISE AGREEMENT**

BIOMEDIS INC., ("Opposer") filed on 29 June 2013 an opposition to Trademark Application Serial No. 4-2010-011783. The application filed by **BESINS HEALTHCARE LUXEMBORG, S.A.R.L.**, ("Respondent-Applicant") covers the mark "**ANDROGEL**" for use on goods under Class 05.

This Bureau issued a Notice to Answer dated 11 July 2011 and served a copy thereof upon the Respondent-Applicant on 21 July 2013. The Respondent-Applicant filed his Answer on 18 November 2013.

In compliance to Office Order No. 154, s. 2010 (*"Rules of Procedure for IPO Mediation Proceedings"*) and Office Order No. 197, s. 2010 (*"Mechanics for IPO Mediation and Settlement Period"*), this Bureau issued on 11 April 2013 Order No. 2013-97 referring the case to mediation.

On 11 November 2013, this Bureau received a "MEDIATOR'S REPORT" indicating the successful mediation of the instant case. Attached to the report is the parties' "COMPROMISE AGREEMENT" submitted to this Bureau for approval. The Agreement states, among other things:

"NOW THEREFORE, for and in consideration of the Parties' respective concessions herein below enumerated, by way of a compromise, mutually agree as follows:

- "1. Upon the execution of this Agreement, **BESINS HEALTHCARE** undertakes to amend its Trademark Application No. 4-2010-011783 with the Bureau of Trademarks and limit the use of the mark "**ANDROGEL**" in the Philippines to the following goods under Class 05 of the International Classification of Goods:

Class 05 - Pharmaceutical preparations for testosterone replacement therapy.

"2. BESINS HEALTHCARE undertakes to use the mark "ANDROGEL" in the Philippines specifically only for the above-described goods under Class 05 of the International Classification of Goods. As long as the trademark "ANDROS" remains duly registered in the Philippines, BESINS HEALTHCARE shall not apply in the future the registration of the mark "ANDROGEL" in the Philippines for any other class and goods other than those above-described.

"3. In consideration of the foregoing undertakings, BIOMEDIS agrees to withdraw its Verified Opposition to BESINS HEALTHCARE's Trademark Application No. 4-2010-011783 for the mark "ANDROGEL" and consent to the registration of the same subject to the faithful compliance by BESINS HEALTHCARE of its undertakings set forth above.

"4. Each Party shall bear its own costs and expenses incurred in carrying out each of their respective undertakings and obligations required by this Agreement.

"5. The Parties acknowledge that their respective signatories have full authority and/or have secured the necessary approvals to execute, and do execute, this Agreement on behalf of their principals and that the Parties have the authority to comply with the undertakings, obligations and acknowledgments made in this Agreement. The Parties hereto further acknowledge that they have executed this Agreement voluntarily with full knowledge of its consequences under the law.

"6. This Agreement shall apply to and be binding upon the Parties' related or associated companies, including the Parties' subsidiaries or affiliates. Further, the Parties also undertake to impose the undertakings and obligations under this Agreement upon any of their legal successors or assigns.

"7. The terms and conditions of this Compromise Agreement entered into by the Parties are not contrary to law, morals, good customs, public order or public policy.

"8. The Parties acknowledge that they have read and understood the contents of this Agreement and that they have signed the same willingly, voluntarily and with full knowledge of their rights and obligations.

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 custom, public order or public policy.

In this regard, an approved Compromise Agreement shall have the effect of a decision or judgment on the case and shall be enforced accordingly in accordance with the pertinent Rules of IPO and the Rules of Court. (Sec. 5, Office Order No. 154, s. 2010).

WHEREFORE, premises considered, the parties' Compromise Agreement is hereby **APPROVED**. Accordingly, the instant opposition case is hereby **DISMISSED**. Let the filewrapper of Trademark Application Serial No. 4-2010-011783 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 12 November 2013.


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