



NOVARTIS AG,	}	IPC No. 14-2013-00035
Opposer,	}	Opposition to:
	}	
- versus -	}	Application Serial No. 4-2012-011604
	}	Date Filed: 20 September 2012
ROCKGLEN NUTRI-PHARMA, INC.,	}	Trademark: EXCELLEN-CEE
Respondent-Applicant.	}	
x-----x	x	Decision No. 2014 - <u>20</u>

### DECISION BASED ON COMPROMISE AGREEMENT

NOVARTIS AG ("Opposer") filed an opposition to Trademark Application Serial No. 4-2012-011604. The application filed by ROCKGLEN NUTRI-PHARMA, INC. ("Respondent-Applicant") covers the mark EXCELLEN-CEE for use on goods under Class 05. The opposition is anchored on Sections 123.1 (d) of R.A. 8293 otherwise known as The Intellectual Property Code of the Philippines.

On 17 May 2013, the Respondent-Applicant filed its Answer refuting the material allegations of the Opposer.

In compliance to Office Order No. 154, s. 2012 (*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 07 June 2013 Order No. 2013-131 referring the case to mediation.

On 22 January 2014, the ADR Services of this Bureau submitted a Mediation Report indicating a settlement by the parties. Attached to the report is the parties' Compromise Agreement, the pertinent portion of which reads:

"NOW, THEREFORE, in view of the above premises and for other good and valid considerations, the parties hereby agree as follows:

"1. Rock-glen Nutri-Pharma, Inc. hereby undertakes and warrants that it will amend its trademark application No. 4-2012-011604 for EXCELLEN-CEE by modifying the goods covered by the mark to 'food supplements' only and exclusively. Thus, the application for registration for the mark EXCELLEN-CEE in the name of Rock-Glen Nutri-Pharma, Inc. under Application No. 4-2012-01164 will be amended to cover only the following goods and to read:

Class 05: Food supplement

"2. Rock-glen Nutri-Pharma, Inc. hereby commits to distribute the products only through multi-level marketing and wholly outside conventional retail outlets such as drugstores, supermarkets etc.

"3. Rock-glen Nutri-Pharma, Inc. hereby undertakes not to institute and/or file cancellation or opposition proceedings or otherwise object to Novartis AG's use, application and/or registration of the EXCILLIN mark, or any similar or derivative word as EXCILLIN;

"4. In consideration of the amicable settlement of this case, Novartis AG is withdrawing its opposition to the application for registration by Rock-glen Nutri-Pharma, Inc. of the trademark EXCELLEN-CEE under Application No. 4-2012-011604 for the goods 'food supplement' under Class 05 dated 20 September 2012;

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

"6. The parties hereby release, waive and quitclaim any and all claims or causes of action against each other related to or involved in any of the matters alleged in IPC No. 14-2013-00035.

"7. The parties undertake to observe the terms and conditions of this Compromise Agreement in utmost good faith.

"8. Each Party shall bear its own costs, including attorney's fees, incurred in the prosecution or defense of the case, and in the execution of this Agreement.

"9. This Agreement shall become effective and enforceable upon signature of the parties' respective authorized representatives."

This Bureau evaluated the COMPROMISE AGREEMENT and finds that the same 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.

Accordingly, 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 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. Let the filewrapper of Trademark Application Serial No. 4-2012-011604 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

**SO ORDERED.**

Taguig City, 28 January 2014.



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

*zpl/cpb*