



Therapharma, Inc.,
Opposer,

-versus-

Pharma Nutria N.A., Inc.,
Respondent-Applicant.

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} IPC No. 14-2013-00379
} Opposition to:
} Appln. Serial No. 4-2013-002546
} Date Filed: 07 March 2013
} TM: "POLYNERV"
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}
}

NOTICE OF DECISION

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GREETINGS:

Please be informed that Decision No. 2014 - 126 dated May 05, 2014 (copy enclosed) was promulgated in the above entitled case.

Taguig City, May 05, 2014.

For the Director:


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



THERAPHARMA, INC.,	}	IPC No. 14-2013-00379
Opposer,	}	
	}	Opposition to:
- versus -	}	Appln. Serial No. 4-2013-002546
	}	Date Filed: 07 March 2013
PHARMA NUTRIA N.A., INC.,	}	Trademark: POLYNERV
Respondent-Applicant.	}	
x-----x	x	Decision No. 2014- <u>126</u>

DECISION BASED ON COMPROMISE AGREEMENT

THERAPHARMA, INC. ("Opposer"), filed an opposition to Trademark Application Serial No. 4-2013-002546. The application, filed by PHARMA NUTRIA N.A., INC. (Respondent-Applicant), covers the mark POLYNERV for use on goods under Class 5. The opposition is anchored on Section 123. 1 (d) of Republic Act 8293 also known as The Intellectual Property Code of the Philippines ("IP Code").

On 25 November 2013, the Respondent-Applicant filed its Answer refuting the material allegations of the Opposer.

Pursuant 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 12 December 2013 Order No. 2013-257 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 portions of which read:

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

1. THERAPHARMA agrees to withdraw its opposition to PHARMA NUTRIA's Trademark Application No. 4-2013-002546 for the mark POLYNERV and consents to the registration of the same subject to the faithful compliance by PHARMA NUTRIA of the terms and conditions set forth below:

1a. PHARMA NUTRIA undertakes to limit the use of its mark POLYNERV to the following goods under Class 05 of the International Classification of Goods:

'Class 05 – Pharmaceutical preparation containing B-Complex Vitamins (Vitamin B1+B6+B12) and a combination with other essential vitamins and minerals, an adjuvant or support in the treatment of neuropathies; multivitamins, minerals, lecithin and paracetamol.'

- 1b. Further, PHARMA NUTRIA undertakes to use the mark POLYNERV specifically for goods under Class 5 only of the International Classification of Goods. PHARMA NUTRIA shall not apply in the future for the registration of the mark POLYNERV for any other classes and goods other than those described above.
- 1c. Finally, PHARMA NUTRIA undertakes not to challenge the registration, application or use by THERAPHARMA of the trademark 'CHOLINERV'.
2. By virtue of this Agreement, each Party therefore recognizes each other's ownership of their respective trademarks.
 3. Each Party shall bear its own costs and expenses incurred in carrying out each of their respective undertakings and obligations required by this Agreement.
 4. 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.
 5. 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.
 6. 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.
 7. This Agreement shall constitute the entire agreement between the Parties, and supersedes all prior communications and understanding relating to the subject matter, whether oral or written.
 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 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.

Under Sec. 5 of Office Order No. 154, s. 2010, an approved Compromise Agreement shall have the effect of a decision or judgment on the case and shall be enforced accordingly.

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. 4-2013-002546 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 05 May 2014.



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

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