



THERAPHARMA, INC.,
Opposer,

-versus-

THE CATHAY DRUG COMPANY, INC.,
Respondent-Applicant.

X-----X

} IPC No. 14-2012-00273
}
} Opposition to:
} Appln. Serial No. 4-2012-000213
} Date Filed: 06 Jan. 2012
} TM: "AZEMAX"
}
}
}

NOTICE OF DECISION

OCHAVE & ESCALONA
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Mandaluyong City

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Counsel for Respondent-Applicant
6th Floor, SOL Building, 122 Amorsolo St.,
Legaspi Village, 1229 Makati City

GREETINGS:

Please be informed that Decision No. 2013 - 49 dated March 06, 2013 (copy enclosed)
was promulgated in the above entitled case.

Taguig City, March 06, 2013.

For the Director:

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

CERTIFIED TRUE COPY

Marilyn F. Retual
MARILYN F. RETUAL



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Decision No. 2013- 49

**DECISION BASED ON
COMPROMISE AGREEMENT**

THERAPHARMA, INC. ("Opposer") filed on 13 June 2012 an Opposition to Trademark Application Serial No. 4-2012-000213. This Bureau issued a Notice to Answer dated 28 June 2012 and served a copy thereof upon THE CATHAY DRUG COMPANY, INC. ("Respondent-Applicant"), on 11 July 2011. The Respondent-Applicant filed its Answer on 09 August 2012.

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 Settlement Period"*), this Bureau issued on 03 September 2012 Order No. 2012-175 referring the case to mediation.

On 15 February 2012 the Alternative Dispute Resolution Services of this Bureau submitted a Mediator's Report indicating a settlement by the parties' of the case. Attached to the report is the parties' COMPROMISE AGREEMENT, the pertinent portions of which read, as follows:

- "1. CATHAY hereby undertakes that:
 - a.) The use and registration of its 'AZEMAX' trademark in relation to goods under Class 5 shall be limited to 'AZITHROMYCIN'
 - b.) It shall not use on its labels, packaging, advertisements and other documents for its AZEMAX products fonts, colors and designs similar to, or which may cause confusion with, THERAPHARMA'S product "AVAMAX"
- "2. THERAPHARMA, on the other hand, agrees:
 - a.) To allow the registration of the trademark "AZEMAX" of CATHAY but limited only to 'AZITHROMYCIN'
- "3. This Compromise Agreement shall be limited to the territory of the Philippines and shall bind the Parties, their assignees or successors-in-interest exclusively.

"4. The parties hereby release, wave and quitclaim any and all claims or causes of actions against each other related to or involved in any of the matters alleged in IPC 14-2012-00273.

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

"6. Each party shall bear its respective expenses incurred in this case.

"7. This Agreement shall become effective and enforceable immediately upon approval by to this Honorable Office of a duly signed copy thereof."

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.¹

WHEREFORE, premises considered, the parties' **COMPROMISE AGREEMENT** is hereby **APPROVED**. The parties are hereby enjoined to comply with the terms and conditions set forth therein. Let the filewrapper of trademark Application Serial No. 4-2012-000213 be returned, together with a copy of this Decision to the Bureau of Trademarks (BOT) for information and appropriate action.

SO ORDERED.

Taguig City, 06 March 2013.


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

¹ Office Order No. 154 Series of 2010