



PEDIATRICA, INC.,
Opposer,

-versus-

ABBOT LABORATORIES,
Respondent-Applicant.

X-----X

}
} IPC No. 14-2012-00198
} Opposition to:
} Appln No. 4-2011-013579
} Date filed: 11 November 2011
} TM: "GROW WITH AN EDGE"

NOTICE OF DECISION

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GREETINGS:

Please be informed that Decision No. 2014 - 290 dated October 31, 2014 (copy enclosed) was promulgated in the above entitled case.

Taguig City, October 31, 2014.

For the Director:

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



PEDIATRICA, INC.,	}	IPC No. 14-2012-00198
Opposer,	}	
	}	Opposition to:
- versus -	}	Application Serial No. 4-2011-013579
	}	Date Filed: 11 November 2011
ABBOT LABORATORIES,	}	Trademark: GROW WITH AN EDGE!
Respondent-Applicant.	}	
x-----x		Decision No. 2014 - <u>290</u>

**DECISION
BASED ON COMPROMISE AGREEMENT**

PEDIATRICA, INC (“Opposer”), filed an opposition to Trademark Application Serial No. 4-2011-013579. The application, filed by ABBOT LABORATORIES (Respondent-Applicant), covers the mark **GROW WITH AN EDGE!** for use on goods under Classes 5 and 29. The opposition is anchored on Section 123. 1 (d) (h) and (j) of Republic Act 8293 also known as The Intellectual Property Code of the Philippines (“IP Code”).

On 09 August 2012, 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 21 March 2014 Order No. 2014-48 referring the case to mediation.

On 25 September 2014, the ADR Services of this Bureau submitted a Mediation Report indicating a settlement by the parties. Attached to the report is the parties' Joint Motion to Approve Compromise Agreement dated 20 August 2014 and the Compromise Agreement, the pertinent portions of which read:

“NOW, THEREFORE, for and in consideration of the premises and mutual covenants herein set forth, the Parties agree to an amicable settlement of the Case under the following terms and conditions:

1. Within fifteen (15) days from the execution of this Agreement, ABBOTT undertakes to amend Abbott's Trademark Application with the Bureau of Trademarks and limit the use of the mark 'GROW WITH AN EDGE!' to the following goods and classes of the International Classification of Goods:

'CLASS 5: NUTRITIONAL PREPARATIONS, NAMELY, INFANT FORMULA
'CLASS 29: PRODUCTS THAT INCLUDE MILK, MILK POWDER OR MILK
FLAVORING'

2. ABBOTT undertakes to use the mark 'GROW WITH AN EDGE!' only for the above-described goods and only under the foregoing classes of the International Classification of Goods. ABBOTT shall not apply in the future for the registration of the mark 'GROW WITH AN EDGE!' for any other class and goods other than those above-described.
3. In consideration of the foregoing undertakings and subject to the faithful compliance by ABBOTT of its undertakings set forth above, the parties agree to file a Joint Motion for the Approval of this Compromise Agreement with the Bureau of Legal Affairs of the IPOPhl within fifteen (15) days from the date ABBOTT filed its amendment to Abbott's Trademark Application with the Bureau of Trademarks pursuant to Section 1 of this Agreement; *provided*, that ABBOTT shall shoulder the cost of filing the Joint Motion for the Approval of this Compromise Agreement.
4. Subject to Section 3 above, 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 agree to submit this Agreement to the mediator assigned to the Case for the approval by the Bureau of Legal Affairs of the IPOPhl immediately upon the execution of this Agreement.
6. 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.
7. This Agreement shall bind and inure to the benefit of each Party and its directors, officers, employees, parent corporations, subsidiaries, affiliates, predecessors, successors, licensees, agents and assigns. Further, the Parties also undertake to impose the undertakings, obligations and requirements under this Agreement upon any of their legal successors or assigns.
8. The terms and conditions of this Agreement entered into by the Parties are not contrary to law, morals, good customs, public order or public policy.
9. In the event of any breach of any of the terms and conditions of this Agreement, the non-breaching Party shall be entitled to recover its reasonable attorney's fees in addition to any other remedies it may have at law or in equity.
10. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable laws, but if

any provision of this Agreement should be held invalid or enforceable under applicable laws, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision of the remaining provisions of this Agreement.

11. The rights and remedies of the Parties to this Agreement are cumulative and not alternative. Neither the failure nor any delay by any Party in exercising any right, power, or privilege under this Agreement shall operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege shall preclude any other or further exercise of such right, power, or privilege or the exercise of any right, power, or privilege.
12. This Agreement is the entire agreement between the Parties and constitutes the complete, final and exclusive embodiment of their agreement with respect to the subject matter hereof. This Agreement may not be amended except by written agreement executed by both Parties.
13. 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.

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**. Accordingly, the instant opposition case is hereby **DISMISSED**. Let the filewrapper of Trademark Application Serial No. 4-2011-013579 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 31 October 2014.


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

cpb

¹ Office Order No. 154, Series of 2010.