



THERAPHARMA INC.,
Opposer,

-versus-

ZUETICA INC.,
Respondent - Applicant.

}
} IPC No. 14-2014-00131
} Opposition to:
} Appln. Serial No. 4-2013-013079
} Date filed: 30 October 2013
} TM: "TORVASTIN"
}
}
}
}

X-----X

NOTICE OF DECISION

OCHAVE & ESCALONA

Counsel for Opposer
No. 66 United Street
Mandaluyong City

ZUETICA, INC.

Respondent-Applicant
Unit 110 Regalia Park Towers
P. Tuazon, Cubao
Quezon City

GREETINGS:

Please be informed that Decision No. 2014 - 268 dated October 27, 2014 (copy enclosed) was promulgated in the above entitled case.

Taguig City, October 27, 2014.

For the Director:


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



THERAPHARMA INC.,	}	IPC NO. 14-2014-00131
Opposer,	}	Opposition to:
	}	Application Serial No. 4-2013-013079
- versus -	}	Date Filed: 30 October 2013
	}	Trademark: TORVASTIN
ZUETICA INC.,	}	
Respondent-Applicant.	}	
x-----x		Decision No. 2014 - <u>268</u>

**DECISION
BASED ON COMPROMISE AGREEMENT**

THERAPHARMA INC. ("Opposer"), filed on 26 March 2014 an opposition to Trademark Application Serial No. 4-2013-013079. The application filed by ZUETICA INC. ("Respondent-Applicant") covers the mark **TORVASTIN** for use on goods under Class 05. The opposition is anchored on Sections 123.1 (h) and (j) of Republic Act 8293 also known as The Intellectual Property Code of the Philippines ("IP Code").

On 07 May 2014, the Respondent-Applicant filed its Answer refuting the material allegations of the Opposer.

Pursuant to Office Order No. 154, s. 2010, this Bureau issued on 18 June 2014 Order No. 2014-92 referring the case to mediation. However, the parties refused to mediate and, as a consequence, the records were returned to the Bureau proper for the resumption of the adjudication proceedings.

Nevertheless, on 20 August 2014, the parties filed a Joint Motion to Approve Compromise Agreement praying that the attached Compromise Agreement be approved by this Honorable Bureau and that judgment be rendered on the basis thereof, the pertinent portion of which reads:

"NOW THEREFORE, for and in consideration of the premises and mutual covenants herein set forth, the Parties agree to an amicable settlement of INTER PARTES CASE NO. 14-2014-00131 under the following terms and conditions:

"1. ZEUTICA undertakes to:

(a) immediately upon the execution of this Agreement, cause the withdrawal of its Trademark Application with Application Serial No. 4-2013-00013079, for goods in Class 05 of the International Classification of Goods as '*PHARMACEUTICAL PREPARATION – 40MG FILM-COATED TABLET*' for the mark '*TORVASTIN*' with the Bureau of Trademarks of the IPOPPhl; and

(b) not apply in the future for the registration of the mark '*TORVASTIN*' for any class and goods with the IPOPPhl.

"2. In consideration of the foregoing undertakings and subject to the faithful performance by ZEUTICA of its undertaking set forth above, THERAPHARMA hereby:

(a) grants ZEUTICA the right to exhaust and sell its remaining stocks of the products bearing the mark 'TORVASTIN' for a maximum period of three (3) years, or until 20 August 2017 ('Exhaustion Period'). Thereafter, ZEUTICA undertakes to cause the withdrawal from the market any and all of its products bearing the mark 'TORVASTIN', including all materials, listings, brochures, labels, inserts, flyers, and other paraphernalia, whether in physical or electronic form bearing the mark 'TORVASTIN' and further undertakes not to use the mark 'TORVASTIN' for any purpose thereafter.

(b) agrees that it will not oppose ZEUTICA's application for the registration of the trademark 'TORVASTINOL' for goods in Class 05 of the International Classification of Goods as '*PHARMACEUTICAL PREPARATION – 40MG FILM COATED TABLET*' should ZEUTICA proceed to apply for its registration with the IPOPhl.

"3. Immediately upon the execution of this Agreement, the Parties agree to file a Joint Motion for the Approval of this Compromise Agreement with the Bureau of Legal Affairs; *provided*, that ZEUTICA 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 in carrying out each of their respective undertakings and obligations required by this Agreement, including but not limited to, attorney's fees and filing fees, incurred in relation to this Case.

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

"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 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 damages and 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 or the remaining provisions of this Agreement.

"11. 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.

"12. 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.


"13. This Agreement shall become effective and enforceable immediately upon approval of the IPOPHl 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.

WHEREFORE, premises considered, the parties' Joint Motion to Approve Compromise Agreement is hereby **APPROVED**. An approved Compromise Agreement having the effect of a decision or judgment on the case, the parties are enjoined to comply with the terms and conditions thereof. Let the filewrapper of Trademark Application Serial No. 4-2013-013079 be returned, together with a copy of this Decision to the Bureau of Trademarks (BOT) for information and appropriate action.

SO ORDERED.

Taguig City, 27 October 2014.


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