

ABBOTT LABORATORIES,
Opposer,

-versus-

ENDURE MEDICAL INCORPORATED,
Respondent-Applicant.

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IPC No. 14-2016-00656

Opposition to:

Appln. Serial No. 4-2016-00504175

Date Filed: 16 August 2016

TM: ENDURE

X-----X

**NOTICE OF DECISION
(DECISION BASED ON COMPROMISE AGREEMENT)**

QUISUMBING TORRES
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Taguig City

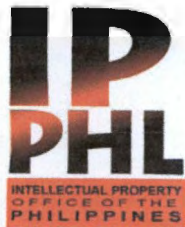
ENDURE MEDICAL INC.
Respondent- Applicant
17 A, 17th Floor Belvedere Tower
San Miguel Avenue, Ortigas Center
Pasig City 1605

GREETINGS:

Please be informed that Decision No. 2017 - 295 dated 10 July 2017 (copy enclosed) was promulgated in the above entitled case.

Taguig City, 10 July 2017.


MARILYN F. RETUAL
IPRS IV
Bureau of Legal Affairs



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| ABBOTT LABORATORIES, | } | IPC No. 14-2016-000656 |
| Opposer, | } | Opposition to: |
| | } | |
| -versus- | } | Appln. Serial No. 4-2016-00504175 |
| | } | Date Filed: 16 August 2016 |
| | } | |
| ENDURE MEDICAL | } | |
| INCORPORATED, | } | |
| Respondent-Applicant. | } | Trademark: ENDURE |
| | } | |
| x-----x | } | Decision No. 2017 - <u>295</u> |

DECISION BASED ON COMPROMISE AGREEMENT

ABBOTT LABORATORIES ("Opposer") filed a verified Notice of Opposition to Trademark Application No. 4-2016-00504175. The application, filed by ENDURE MEDICAL INCORPORATED ("Respondent-Applicant"), covers the mark ENDURE for goods in Class 5 & 10 of International Classification of Goods.

The Bureau issued a Notice to Answer and served a copy thereof upon the Respondent-Applicant on 10 February 2017. The Respondent-Applicant filed a Verified Answer on 13 March 2017.

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 16 March 2017 Order No. 2017-065 referring the case to mediation.

On 03 July 2017, the Alternative Dispute Resolution Services ("ADRS") of this Bureau submitted a Mediation Report indicating a settlement by the parties. Attached to the report is a copy of the parties Compromise Agreement, the pertinent portions of which reads, as follows:

"NOW, THEREFORE, for and in consideration of the foregoing premises and mutual covenants contained in this Agreement, the Parties hereby agree as follows:

1. ENDURE MEDICAL hereby undertakes the following:
 - 1.1. It will limit the coverage of Trademark Application No. 4/2016/00504175 to cover Class 10 goods only;
 - 1.2. It will delete and withdraw Class 5 goods from the coverage of Trademark Application No. 4/2016/00504175;
 - 1.3. It will limit its use of the ENDURE mark to goods in Class 10;
 - 1.4. It voluntarily undertakes to cease and desist from reproducing and using the ENDURE mark on any and all goods in Class 5;
 - 1.5. It will not use the ENDURE Mark or anything confusingly similar with the ENSURE Marks or any other ABBOTT owned or registered marks, except as provided in Section 1.3;
 - 1.6. It will not directly or indirectly challenge ABBOTT's current and future trademark applications/registrations and current and future use of the ENSURE Marks in any form and for any class of goods and/or services; and
2. In consideration of the foregoing, ABBOTT hereby undertakes the following:
 - 2.1. It will no longer pursue the Opposition Case against the ENDURE Mark.
3. This Agreement shall bind and inure to the benefit of the Parties, their affiliates, employees, agents, assignees, and/or successors-in-interest exclusively. The terms and conditions of this Agreement may be amended, waived or modified only by agreement in writing signed by the Parties or their respective assignees or successors-in-interest.
4. 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 the Opposition Case.
5. Each Party shall bear its own costs and expenses incurred in the Opposition Case and in carrying out each of their respective undertakings and obligations required under this Agreement.
6. The Parties undertake to observe the terms and conditions of this Agreement in utmost good faith.
7. The Parties shall keep all the terms and conditions of this Agreement in utmost confidence.
8. The Parties shall not issue or make any derogatory, malicious or negative statements or press releases with respect to each other.

9. The Parties hereto acknowledge that their respective signatories have full authority or have secured the necessary approvals to execute this Agreement on behalf of their principals and that the Parties have the authority to comply with the promises, obligations, undertakings and acknowledgments made in this Agreement. The Parties further acknowledge that this Agreement is entered into voluntarily and with full knowledge of the consequences under the law.
10. The terms and conditions of this Agreement shall apply, not only in the Philippines, but worldwide.
11. This Agreement can be terminated by prior written notice by either Party to the other in the event that the other Party is in material breach of any of the covenants herein and shall have failed to remedy such breach within a period of 30 days of being given written notice of such breach by the Party giving notice of termination.
12. If any provision, clause or sub-clause of this Agreement is declared invalid by any competent court or authority, all other provisions, clauses, and sub-clauses of this Agreement shall continue in full force and effect.
13. This Agreement constitutes the entire Agreement between the Parties and supersedes any prior understandings and agreements between the Parties with respect to the subject matter of this Agreement.
14. Any notice or other communication given in connection with this Agreement shall be in writing and shall be given by personal delivery or by registered or ordinary first class mail or express courier addressed to the recipient as follows:

ABBOTT LABORATORIES
1100 Abbott Park Road,
Abbott Park, Illinois 60064-3500,
United States of America
For the attention of: -----

ENDURE MEDICAL, INC.
17-A, 17th floor, Belvedere Tower
San Miguel Avenue,
Ortigas Center
Pasig City
For the attention of: -----

15. This Agreement shall be interpreted and construed exclusively under Philippine laws. Any dispute arising out of or in connection with this Agreement shall be referred to and finally resolved by arbitration in accordance with the Arbitration Law of the Philippines by one arbitrator appointed in accordance with the implementing rules. The language of the arbitration shall be English, and unless otherwise agreed, the arbitration shall be conducted in Metro Manila."

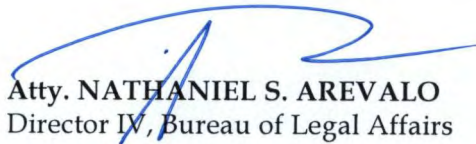
This Bureau evaluated the COMPROMISE AGREEMENT and finds that the same have been duly entered into by the parties with the terms and conditions thereof not contrary to law, morals, good customs, public order or public policy.

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 Rules of Court. ¹

WHEREFORE, premises considered, the parties' Compromise Agreement is hereby APPROVED. Let the filewrapper of Trademark Application No. 4-2016-00504175 be returned, together with a copy of this Decision, to the Bureau of Trademarks for appropriate action subject to the Respondent-Applicant's filing of an amendment to the application pursuant to the Compromise Agreement and payment of the required fees.

SO ORDERED.

Taguig City, **10 JUL 2017**


Atty. NATHANIEL S. AREVALO
Director IV, Bureau of Legal Affairs

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Office Order No. 154 Series of 2010