

GLAXOSMITHKLINE PHILIPPINES, INC

Complainant,
-versus-

INTERNATIONAL APEX
PHARMACEUTICALS, INC.

Respondent,

x-----x

IPV NO. 10-2008-00011

For: Trademark Infringement and
Unfair Competition, and Damages

Decision No. 2011- 06

DECISION
BASED ON COMPROMISE AGREEMENT

GLOXOSMITHKLINE PHILIPPINES, INC. ("Complainant") filed on 20 August 2008, a complaint against INTERNATIONAL APEX PHARMACEUTICALS, INC., ("RESPONDENT") for alleged trademark infringement and unfair competition. The complainant assails the Respondent's alleged unauthorized appropriation and use of the brand VAKOCIL is confusingly similar to Complainant's VANCOCIN trademark.

The Respondent filed its Answer on 13 October 2008 refuting the material allegations of the Complainant.

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 and Settlement Period"), this Bureau issued on 21 January 2011 Order No. 2011-34 referring the case to mediation.

On 29 June 2011, this Bureau received a "MEDIATOR'S REPORT" indicating the successful mediation of the instant case. Attached to the report is the parties' "COMPROMISE AGREEMENT" submitted to this Bureau for approval. The Agreement states, among other things:

"NOW, THEREFORE, for in consideration of the foregoing premises and the covenants set forth hereunder, the PARTIES agree as follows:

"1. The SECOND PARTY acknowledges the ownership [and exclusive right of use, in any manner, of the FIRST PARTIES in and to the trademark "VANCOCIN", which is registered, among others, under Philippine Certificate of Registration No.4-2006-010077 issued on 21 May 2007. The SECOND PARTY further acknowledges the ownership and exclusive right of use by the FIRST PARTIES of the dominant features of the trademark 'VANCOCIN'.

"2. THE SECOND PARTY agrees that upon execution of this Agreement, it will no longer use the mark 'VAKOCIL' in any manner. The SECOND PARTY also agrees to not adopt any mark that is similar to VANCOCIN for use in connection with vancomycin hydrochloride or any other product.

"3. With the execution of this Agreement and compliance by the PARTIES with their respective undertakings herein, each of the PARTIES hereby waive, renounce and quitclaim any and all claims, causes of action or complaints which they may have against the other PARTY, its officers, agents, employees, stockholders, and/or its attorneys, legal and paralegal assistants in relation to the SECOND PARTY's used of the 'VAKOCIL' mark.

"4. The terms of this Agreement are confidential and neither party shall disclose any portion thereof without a written consent from the other, except for any necessary disclosure to the courts, or administrative agencies as may be required by law.

“5. This Agreement shall be binding upon and inure to the benefit of the PARTIES hereto and to their successors and/or assigns, and shall take effect and be binding on both PARTIES upon execution of the same.

“6. The PARTIES finally agree to faithfully and fully comply with the terms and conditions of this Agreement.

“7. Both PARTIES have carefully read this Agreement and all its terms and conditions and acknowledge that they entered into the same free of duress, force, misrepresentation, intimidation and any and all other forms of vice of consent.”

This Bureau finds that the Agreement has been duly entered into by the parties with the terms and conditions thereof not contrary to law, morals, good custom, public order or public policy.

In this regard, an approved Compromise Agreement shall have the effect of a decision or judgment on the case and shall be enforced in accordance with the pertinent rules of Intellectual Property office of the Philippines and the Rules of Court. (Sec. 5, Office Order No. 154, s. 2010)

WHEREFORE, premises considered, the parties ‘COMPROMISE AGREEMENT is hereby APPROVED. Accordingly, with the approved COMPROMISE AGREEMENT having the force and effect of a decision or judgment, the parties are enjoined to faithfully comply with the terms set forth therein.

SO ORDERED.

Taguig City, 06 July 2011