



ViiV HEALTHCARE UK LIMITED,
Opposer,

-versus-

RAPHAEL PUBLISHING LIMITED
(formerly CAREGGI PUBLISHING LIMITED),
Respondent-Applicant.

x-----x

} IPC No. 14-2012-00234
} Opposition to:
} Appln. Serial No. 4-2012-000025
} Date filed: 02 January 2012
} TM: "VIVAHEALTHCARE"

NOTICE OF DECISION

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GREETINGS:

Please be informed that Decision No. 2013 - 167 dated August 14, 2013 (copy enclosed) was promulgated in the above entitled case.

Taguig City, August 14, 2013.

For the Director:


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



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<i>Opposer,</i>	}	
	}	Opposition to:
-versus-	}	Appln. No. : 4-2012-000025
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RAPHAEL PUBLISHING LIMITED	}	TM: VIVAHEALTHCARE
(formerly CAREGGI PUBLISHING	}	
LIMITED),	}	
<i>Respondent-Applicant.</i>	}	
x-----x	}	Decision No. 2013- <u>167</u>

DECISION BASED ON COMPROMISE AGREEMENT

ViiV HEALTHCARE UK LIMITED ("Opposer") filed on 12 September 2012 an opposition to Trademark Application Serial No. 4-2012-000025. The application, filed by RAPHAEL PUBLISHING LIMITED (formerly CAREGGI PUBLISHING LIMITED) ("Respondent-Applicant"), covers the mark "VIVAHEALTHCARE" for use on goods under Class 04.

This Bureau issued a Notice to Answer dated 27 July 2012 and served upon a copy thereof to Respondent-Applicant on 10 August 2012. The Respondent-Applicant filed its Answer on 08 November 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 04 December 2012 Order No. 2012-223 referring the case to mediation.

On 07 August 2013, the ADR Services of this Bureau submitted a Mediation Report submitting a copy of the parties' Settlement Agreement. The pertinent portions of the SETTLEMENT AGREEMENT reads, as follows:

THE PARTIES HEREBY AGREE, AS FOLLOWS:

" Section 1. Raphael Publishing, its heirs, assigns, successors-in-title, licensees, representatives or any person acting under its authority undertakes:

"(a) Not to use and apply for registration of the trademarks "VIVAHEALTHCARE" and " VIVAHEALTHCARE AND DEVICE" in the Philippines for goods and services under Classes 5, 10, 41 and 42, namely:

Class 5: *Pharmaceutical and medical medicinal preparations and substances; vaccines;*

Class 10: *Medical and surgical apparatus and instruments, inhalers, parts and fittings for all the aforesaid goods;*

Class 41: *Educational services, namely conducting seminars regarding health and health awareness and dissemination of materials in connection therewith; and*

Class 42: *Research and development services in the fields of drug discovery, drug discovery products, pharmaceuticals, medicinal diagnostics, biological products, medical apparatus, devices and instruments; conducting clinical trials; scientific consulting; supply of information in the area of laboratory technology; medical laboratory services; provision of scientific information via internet portals.*

(b) To limit the application, registration and use of the trademarks "VIVAHEALTHCARE" and "VIVAHEALTHCARE AND DEVICE" for services under Class 44, specifically for *"medical clinics; dentistry; health care; hospices; hospitals; medical assistance; midwife services; nursing homes; nursing, medical; opticians' services; pharmacist' services to make up prescriptions; pharmacy advice; physical therapy; physiotherapy"*.

"Section 2. In consideration of Section 1 hereof, Viiv Healthcare, its heirs, assigns, representatives or any person acting under its authority undertakes:

(a) To withdraw its oppositions to Raphael Publishing's Philippine Trademark Application Nos. 4-2012-000025 and 4-2012-000030 for the marks "VIVAHEALTHCARE" and "VIVAHEALTHCARE AND DEVICE" under IPC Nos. 14-2012-00234 and 14-2012-00297, respectively.

(b) To allow Raphael Publishing's Philippine Trademark Application Nos. 4-2012-000025 and 4-2012-000030 for "VIVAHEALTHCARE" and "VIVAHEALTHCARE AND DEVICE", respectively, to proceed to registration for class 44, to wit:

"medical clinics; dentistry; health care; hospices; hospitals; medical assistance; midwife services; nursing homes; nursing, medical; opticians' services; pharmacist' services to make up prescriptions; pharmacy advice; physical therapy; physiotherapy".

(c) To allow the use of the trademarks "VIVAHEALTHCARE" and "VIVAHEALTHCARE AND DEVICE" in connection with hospitals and clinics in class 44.

(d) For services in class 44, to limit the use of the trademarks "VIIV HEALTHCARE" and "VIIV HEALTHCARE AND DEVICE" for *"providing health and medical information about medical disorders; counselling and charitable services, namely providing information and assistance with respect to health and health awareness; provision of medical information via internet portals; all the aforesaid consultations and services also provided by means of a database"*.

"Section 3. Both parties shall jointly move for the approval of this Agreement and the dismissal of IPC Nos. 14-2012-00234 and 14-2012-00297.

"Section 4. Each party shall bear its own costs and expenses, including attorney's fees, incurred in connection with the oppositions.

"Section 5. This Agreement shall take effect immediately upon execution by both parties.

"Section 6. This Agreement shall bind both parties and their respective representatives, heirs, assigns, successors-in-title, licensees and representatives.

"Section 7. The parties can make amendments and supplements to this Agreement in writing. The amendment, agreements and supplementary agreements that have been signed by the parties and that relate to this Agreement shall form an integral part of this Agreement and shall have the same legal effect and validity as this Agreement.

"Section 8. Further, this Agreement shall constitute the entire agreement between the parties, and supersedes all prior communications and understanding relating to the subject matter, whether oral or written.

"Section 9. This Agreement shall be governed by the laws of the Republic of the Philippines.

"Section 10. All notices under this Agreement must be in writing. Any such notice shall be deemed to have been duly served (if delivered personally or given or made by facsimile) immediately or (if given or made by letter) forty-eight (48) hours after posting and proving the same, it shall be sufficient to show that personal delivery was made or that the envelope containing the same was duly addressed, stamped and posted or that the facsimile transmission was properly addressed and dispatched."


This Bureau evaluated the SETTLEMENT 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' Settlement Agreement is hereby APPROVED. Accordingly, the instant opposition case is hereby DISMISSED. Let the filewrapper of Trademark Application Serial No. 4-2012-000025 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 14 August 2013.


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

/s/anj

¹ Office Order No. 154 Series of 2010.