



WESTMONT PHARMACEUTICALS, INC.,
Opposer,

-versus-

RECKITT AND COLMAN (OVERSEAS) LIMITED,
Respondent –Applicant.

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IPC No. 14-2013-00294
Opposition to:
Appln. Serial No. 4-2013-500214
Date Filed: 22 January 2013
TM: "NUROFEN"

NOTICE OF DECISION

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GREETINGS:

Please be informed that Decision No. 2014 - 54 dated February 24, 2014 (copy enclosed) was promulgated in the above entitled case.

Taguig City, February 24, 2014.

For the Director:


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



WESTMONT PHARMACEUTICALS, INC.,	}	IPC NO. 14-2013-00294
Opposer,	}	
	}	Opposition to:
- versus -	}	Application Serial No. 4-2013-500214
	}	Date Filed: 22 January 2013
RECKITT AND COLMAN (OVERSEAS) LIMITED,	}	Trademark: NUROFEN
Respondent-Applicant.	}	
x-----x		Decision No. 2014 - <u>54</u>

**DECISION
BASED ON COMPROMISE AGREEMENT**

WESTMONT PHARMACEUTICALS, INC., (“Opposer”) filed an opposition to Trademark Application Serial No. 4-2013-500214. The application filed by RECKITT AND COLMAN (OVERSEAS) LIMITED (“Respondent-Applicant”) covers the mark NUROFEN for use on goods under Class 05. The opposition is anchored on Section 123.1 (d) of R.A. 8293 otherwise known as The Intellectual Property Code of the Philippines.

On 26 September 2013, the Respondent-Applicant filed its Answer refuting the material allegations of the Opposer.

In compliance to Office Order No. 154, s. 2012 (“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 04 October 2013 Order No. 2013-233 referring the case to mediation.

On 12 February 2014, the ADR Services of this Bureau submitted a Mediation Report indicating a settlement by the parties. Attached to the report is the parties' COMPROMISE AGREEMENT, 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 the Pending Case under the following terms and conditions:

- “1. RECKITT shall:
 - a. limit its use of the Trademark 'NUROFEN' to the following goods: 'Pharmaceutical preparations and substances having anti-inflammatory, anti-pyretic and analgesic properties'.

b. immediately upon the execution of this Agreement, amend its Trademark Application of the trademark 'NUROFEN' with the IPOPHL to limit the goods covered to '*Pharmaceutical preparations and substances having inflammatory, anti-pyretic and analgesic properties*'.

For the avoidance of doubt, the term 'Trademark' as used in this paragraph shall include trademarks, trade names, service marks and corporate names.

"2. WESTMONT shall undertake not to use its 'NEUROGEN-E' mark on products/goods that are in competition with the 'NUROFEN' goods, *i.e.*, '*Pharmaceutical preparations and substances having anti-inflammatory, anti-pyretic and analgesic properties*'.

"3. In consideration of the foregoing undertakings of RECKITT, WESTMONT agrees to file a Joint Motion for Approval of this Agreement with the Bureau of Legal Affairs of the IPOPHL, immediately upon the execution of this Agreement by both parties.

"4. Each Party shall bear its own costs and expenses incurred in carrying out each of their respective undertakings and obligations required in this Agreement.

"5. This Agreement and any other documents delivered pursuant to this Agreement (a) contains the entire agreement between the Parties and constitutes the complete, final and exclusive embodiment of their agreement, and (b) supersedes all prior agreements, arrangements, understanding, promises, covenants, representations and communications between the Parties, whether written or oral, with respect to the subject matter hereof. This Agreement may not be amended except by written agreement executed by both Parties.

"6. Each Party represents and warrants that it has full authority and legal capacity to enter into this Agreement and has the capacity to carry out all undertakings, obligations, requirements and acknowledgments herein.

"7. Each Party represents and warrants that it has duly authorized each person signing this Agreement to do so on behalf of that Party and to bind said Party to the terms and conditions of this Agreement.

"8. Each Party represents and warrants that entry into this Agreement does not violate any other agreements executed or entered into by the Party or on its behalf.

"9. Each Party represents and warrants that it has not and shall not enter into any contracts or agreements, whether in verbal or in writing, or take

any action, which conflicts with this Agreement.

"10. This Agreement is executed without reliance upon any promise, warranty or representation by any Party or any representative of any Party other than those expressly contained herein.

"11. 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.

"12. 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.

"13. 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 remedies it may have at law or in equity.

"14. 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.

"15. 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 other right, power, or privilege.

"16. 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 (Sec. 5, Office Order No. 154, s. 2010).

WHEREFORE, premises considered, the parties' COMPROMISE AGREEMENT is hereby **APPROVED**. Accordingly, the Compromise Agreement having the force and effect of a decision or judgment, the parties are hereby enjoined to comply with the terms and conditions set forth therein. Let the filewrapper of Trademark Application Serial No. 4-2013-500214 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 24 February 2014.


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

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