



**PFIZER INC., PFIZER PRODUCTS INC., }
and PFIZER, INC., }**

Complainants, }

-versus- }

**TANDUAY DISTILLERS, INC., }
Respondent. }**

x-----x

IPV NO. 10-2003-00013

For: Infringement of Patent with
Prayer for the Issuance of a
Temporary Restraining Order/
Preliminary Injunction

Decision No. 2009- *06*

JUDGEMENT BASED ON COMPROMISE AGREEMENT

For this Bureau's consideration is the parties' Settlement Agreement filed on 15 October 2009.

In the Settlement Agreement entered into and executed by Complainants PFIZER INC., PFIZER PRODUCTS INC., and PFIZER, INC. and Respondent TANDUAY DISTILLERS, INC., the parties agree as follows:

- "1. Tanduary acknowledges that Pfizer Products Inc. is the registered owner of the well-known trademark VIAGRA."

- "2. Tanduary hereby voluntary agrees to the following:
 - 2.1. Tanduary shall immediately cease and desist from using the mark VINO VIAGRO, or any similar mark, or any mark similar to Pfizer's mark VIAGRA, in connection with its business and the goods that it sells, distributes or manufactures in the Philippines and elsewhere;

 - 2.2. Tanduary shall immediately recall all of its products bearing the mark VINO VIAGRO from all the markets, within the Philippines or elsewhere, in which the said products have been offered for sale and/or sold, and remove and destroy all materials bearing the mark VINO VIAGRO, including but not limited to, labels, decals, product containers, product packaging, boxes, crates, flyers, advertisements, placards, streamers, posters and the like. Tanduary undertakes to provide Pfizer with evidence of the destruction of these materials within thirty (30) days from the signing of this agreement;

- 2.3. Tanduary undertakes to retrieve and to deliver to Pfizer for destruction within thirty (30) days from the signing of this agreement, printing plates, dies, moulds, casts, patterns and the like that are used in marking, stamping, molding, printing and manufacturing, labels, decals, product containers, product packaging, boxes, crates, flyers, advertisements, placards, streamers, posters and the like bearing the mark VINO VIAGRO;
- 2.4. Tanduary undertakes that it will not at any time in the future, in the Philippines or elsewhere, whether by itself or through the instrumentality of its directors, officers, employees, servants, agents while still working with, or under the employ of Tanduary, re-file a trademark application for "VINO VIAGRO" in any jurisdiction, and that it would not file a trademark application for the mark "VIAGRA", "VIAGRO", "VINO VIAGRA" "VINO VIAGRO" or any other mark remotely similar to Pfizer's trademark "VIAGRA" in any jurisdiction;"
- "3. For and in consideration of the above undertakings, Pfizer releases, waives, and forever discharges Tanduary from any and all claims, demands and/or causes of action of whatever nature (criminal, civil or administrative) arising from and/or relating to the IPV case."
- "4. Tanduary likewise releases, waives and forever discharges Pfizer, its agents and representatives, and the law firm of Quisumbing Torres and/or any of its lawyers from any and all counterclaims, demands, and/or causes of action of whatever nature (criminal, civil, or administrative) arising from and/or relating to the IPV Case."
- "5. Pursuant to the preceding provisions and after compliance, by Tanduary, with its particular undertakings outlined in sections 2.2 and 2.3 of this agreement, the parties agree to execute a Joint Motion to Withdraw the IPV Case and file the same with the IPO. "
- "6. Tanduary agree that in the event of breach by it and/or its officers, employees, servants, or agents of any term of this Settlement Agreement, it will pay to Pfizer, by way of liquidated damages the sum of US\$100,000 (One Hundred Thousand US Dollars) and that it will fully indemnify Pfizer for all of its legal fees and costs incurred in acting against it and/or its directors, officers, employees, servants, or agents in relation to any matter or in enforcing the terms hereof. Furthermore, Pfizer shall be entitled to an immediate injunction from the courts to ensure compliance with the provisions of this agreement without prejudice to other remedies available under the circumstances."
- "7. This Agreement shall bind Tanduary, Tanduary's directors, officers, employees, servants, agents, representatives, successors and assigns under the control or management of Tanduary."
- "8. Any and all expenses incurred by the parties shall be for their sole and exclusive account unless otherwise herein provided."



- "9. The parties acknowledge that their respective signatories have full authority and have secured the necessary corporate approvals to execute, and do execute this Agreement, on behalf of their principals and those acting under their principal's authority to observe the promises, obligations, undertakings and acknowledgments made in this Agreement."
- "10. If any provision of this Agreement or the application of any such provision to any person or circumstance shall be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof or the validity of this Agreement."

WHEREFORE, finding the parties' Settlement Agreement to have been duly executed and signed by the parties and the terms and conditions thereof to be in consonance with law, morals, good customs, public policy or public order, the same is hereby **APPROVED**. Accordingly, the above captioned case is **DISMISSED for being moot and academic**. Consequently, the parties are hereby enjoined to faithfully comply with the terms and conditions of the Settlement Agreement, failure of which shall be cause for erring party to be cited for indirect contempt after proper charge and hearing.

SO ORDERED.

Makati City, 28 October 2009.


ESTRELLITA BELTRAN-ABELARDO
Director, Bureau of Legal Affairs