

BEIERSDORF AG,	}	IPC No. 14-2008-00360
<i>Opposer,</i>	}	Opposition to:
	}	
-versus-	}	Appln. Serial No. 4-2008-006167
	}	Date Filed: 27 May 2008
PAUL IAN WONG CHAN,	}	Trademark: HAPPY TIME AND
<i>Respondent-Applicant.</i>	}	CHINESE CHARACTERS
x-----x	}	Decision No. 2009-107

JUDGMENT BASED ON SETTLEMENT AGREEMENT

For this Bureau's consideration is the parties' Settlement Agreement filed on 03 September 2009.

In the Settlement Agreement entered into and executed by the parties, Opposer BEIERSDORF AG (hereinafter referred to as "BEIERSDORF") and Respondent-Applicant PAUL IAN WONG CHAN agreed as follows:

"1. PAUL IAN WONG CHAN hereby fully and unconditionally recognizes the rights, title and interests of BEIERSDORF to the trademark "HAPPY TIME" and its variations. BEIERSDORF undertakes to withdraw its opposition lodged against Trademark Application No. 4-2008-006167 for the mark "HAPPY TIME AND CHINESE CHARACTERS", denominated as Inter Partes Case No. 14-2008-00360."

"2. PAUL IAN WONG CHAN, on the other hand, covenants to voluntarily withdraw Trademark Application 4-2008-006167 for the mark "HAPPY TIME AND CHINESE CHARACTERS"."

"3. Immediately upon the signing of this Settlement Agreement, PAUL IAN WONG CHAN shall cease all use of the mark and the general term "HAPPY TIME AND CHINESE CHARACTERS" and any variations thereof,"

"4. PAUL IAN WONG CHAN shall also undertake not to file applications for registration, directly or indirectly, of any trademarks identical or confusingly similar to the "HAPPY TIME" trademark or any other trademark of BEIERSDORF."

"5. PAUL IAN WONG CHAN shall also undertake not to sell, directly or indirectly, products bearing mark identical or confusingly similar to the mark "HAPPY TIME" trademark or any other trademark of BEIERSDORF."

"6. The afore-mentioned regulations shall be binding for PAUL IAN WONG CHAN acting as a private person as well as for any third parties and/or companies PAUL IAN WONG CHAN is related to in any way, e.g. acting as an employee or shareholder."

"7. A breach of the mentioned undertakings by any of the parties herein shall allow the aggrieved party to take appropriate legal actions before the appropriate forum against the other."

"8. This Agreement shall become effective, as of the date first set forth above, upon its execution by the parties herein."

"9. This Agreement constitutes the complete and entire statement of all terms, conditions and representations of the agreement between BEIERSDORF and PAUL IAN WONG CHAN with respect to its subject matter and is deemed to supersede all prior negotiations,

conversations, agreements or undertakings, whether written or oral, that are inconsistent herewith.”

“10. This Agreement shall be binding on the parties, their heirs, successors-in-interest and assigns. The parties acknowledge that they have executed this Agreement voluntarily with full knowledge of its consequences under the law.”

“11. If any provision of this Agreement is held to be unenforceable, in whole or in part, by a tribunal of competent jurisdiction, such holding shall not affect the validity of the other provisions of this Agreement.”

“12. The construction, validity, performance and enforcement of this Agreement shall be governed by, and interpreted in accordance with the laws of the Philippines. The parties hereby submit to the exclusive jurisdiction of the Courts of the Republic of the Philippines.”

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 order, the same is hereby APPROVED. Accordingly, Application Serial No. 4-2008-006167 for the registration of the trademark “HAPPY TIME AND CHINESE CHARACTERS” is considered VOLUNTARILY WITHDRAWN subject to the terms and conditions of the Settlement Agreement. 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.

Let the file wrapper of the trademark “HAPPY TIME AND CHINESE CHARACTERS” subject matter of this case together with this Decision be forwarded to the Bureau of Trademarks (BOT) for appropriate action.

SO ORDERED.

Makati City, 09 September 2009.

ESTRELLITA BELTRAN-ABELARDO
Director, Bureau of Legal Affairs
Intellectual Property Office