

ARANETA CENTER, INC.,
Complainant,
- versus

IPV NO. 10-2009-00011

For: False Designation of Origin
with Prayer for Temporary
Restraining Order and/or
Injunction

ERICO PEREZ @ SUPER PEREZ,
Respondent.

X-----X

Decision No. 2011-12

DECISION

Araneta center, Inc. ("Complainant") filed a complaint against Erico Perez @ Super Perez, ("Respondent") for "False Designation of Origin" for violation of Sec.169 of Rep. Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code"). The complainant alleges among other things, the following:

1. Incorporated more than half a century ago, on November 14, 1955, the complainant Araneta Center, Inc. (formerly Progressive Development Corporation), is a stock corporation substantially owned by the Araneta family and is duly organized and existing under and by virtue of the laws of the Philippines, with office address at 16th-18th floors Aurora Tower, Araneta Center, Quezon City.

2. The complainant is the owner and the operator of the Araneta Center, a 35-hectare mixed-use commercial complex for shopping, dining and entertainment located in Araneta Center, Quezon City. As such, it has used the trade name 'Araneta Center' in the conduct and promotion of its business since its incorporation and conceptualization of the Araneta Coliseum. Attached as Annexes 'B' and 'B-1' are newspaper clippings from The Manila Times September 24, 1958 issue and the Daily Mirror's December 12, 1958 issue, respectively, in connection with the proposed multi-million Araneta Coliseum. Likewise, attached and marked as annexes 'B-2', 'B-3', 'B-4', 'B-5', 'B-6', 'B-7' and 'B-8' are newspaper articles regarding certain international shows at the Araneta Coliseum in the early 1960s. Attached and marked as annex 'B-9' is a computer print-out of the Our Lady of Perpetual Help established on 12 September 1962, indicating 'Araneta Center' as one of its boundaries.

3. In the December 20, 1957 issue of the Manila times, an article with the 'All roads lead to Araneta Center' was published showing that complainant used and is using in the conduct of its business 'Araneta Center' and has established goodwill in the name 'Araneta Center' for the past several decades. Copy of the December 20, 1967 'The Manila Times' issue is hereto attached and marked as Annex 'B-10' and made an integral part hereof. Other newspaper articles in the late 1960s showing that complainant used 'Araneta Center' in the conduct of its business are hereto attached and marked as Annexes 'B-11', 'B-12' and 'B-13'. Likewise, attached and marked as Annex 'B-14' is the 20th Annual Report of complainant (formerly Progressive Development Corp. ['PDC' for brevity]) wherein 'Araneta Center' was reported to be owned and managed by complainant (formerly PDC) and used as an address by the complainant in the conduct of its business. Annex 'N-15' is the Annual report for 1977 wherein the 'upgrading and developing the existing facilities in the Araneta Center' including the construction of the 5-storey Shoemart Department store in the heart of Araneta Center was mentioned in the 'President's Report' and 'Araneta Center' was used as an address by the complainant; Annex 'B-16' is a flyer of the 8th Men's World basketball Championships; and Annex 'B-17' is a computer printout of an article in the Manila Bulletin written by Rikki Jimenez entitled 'Remembering the Araneta Center during Dekada '70 (Second of three parts)' showing that complainant has established good will in the name 'Araneta Center'.

4. This Honorable Office may also take judicial notice of the case entitled 'Ignacio Domalanta, et al. vs. Court of Appeals, et al.', G.R. No. L-55932, March 16, 1987 wherein the Supreme Court recognized 'Araneta Center' when it stated 'x x x petitioners attached a certification dated October 16, 1980 of postmaster Gonzalo Bernardino of the Araneta Center Post Office, Quezon City 3001 that the copy of the decision x x x'. (Underlining ours) A computer printout of said case is hereto attached and marked as Annex 'B-18' and made an integral part hereof.

5. Further, attached and marked as Annex 'B-19' is a newspaper article in the Philippine Star, December 17, 1993 issue entitled 'Christmas at the ARANETA CENTER'; Annex 'B-20', an article in the Philippine Daily Inquirer, October 27, 1995 issue entitled 'Araneta Center turns 40'; Annexes 'B-21', 'B-22' and 'B-23' are computer print outs of news articles shoeing that complainant continues to use 'Araneta Center' in the conduct of its business.

6. As the result of the complainant's exclusive and continuous use of the trade name 'Araneta Center' for more than 50 years, the name 'Araneta Center' has always been associated by consumers and the rest of the business community with no other entity but the complainant.

7. The complainant has trademark registrations for Araneta Center and Device with the Intellectual Property Office, namely Registration No. 4-2006-006136 (January 22, 2007) and Registration No. 4-2006-006717 (December 17, 2007), attached and marked hereto as Annexes 'C', 'C-1', 'D' and 'D-1', respectively. These trademarks are used by complainants for its various business transactions and commercial activities.

8. Being a commercial corporation and owner of the Araneta Center, the complainant in 2007 desired to register 'aranetacenter.com' in its name. However, it was prevented from doing so by respondent's prior unlawful registration in bad faith of this domain name in his name and his continued use of the same in bad faith.

9. (sic) Without the complainant's prior knowledge and consent, respondent caused in bad faith the registration of the domain name 'aranetacenter.com' in his name and caused the creation of and has since maintained as he continues to maintain a website on the 'World Wide Web' or Internet using this domain name or address. According to respondent's WHOIS database, he originally registered the domain name on March 23, 2000 with Enom, Inc., which registration he renewed until March 23, 2010, a printed copy of respondent's WHOIS database is hereto attached and marked as Annex 'E' and made an integral part hereof.

10. (sic) Respondent has made an unauthorized reproduction and use of complainant's registered mark by using 'aranetacenter.com' in commerce as a domain name for his website promoting his business at the Araneta Center, particularly his family's optical shop. Worse, respondent who is not an owner of Araneta Center has offered for sale at Sedo.com, a global market place for domains, the domain name, 'aranetacenter.com'. A printed copy of Sedo's domain acquisition is hereto attached and marked as Annex 'F' and made an integral part hereof.

11. (sic) As a result of respondent's unauthorized and illegal appropriation, registration and use in bad faith of 'aranetacenter.com' as a domain name, the complainant's attempt to use its own trade name and mark 'Araneta Center' as a domain name failed. Worse, internet users who enter the complainant's name 'Araneta Center' in the internet search programs or 'search engines' are linked or referred to the respondent's website.

12. (sic) Respondent's website also presents articles which, while directly derogatory to or discrediting the complainant, nevertheless advocates views that the

complainant does not subscribe to or endorse. As a result of the respondent's unauthorized and illegal use of the domain name 'aranetacenter.com', the public is misled into believing that the complainant sponsors not only those views, but also respondent's website itself.

13. (sic) Since complainant's discovery in the year 2007 of respondent's unauthorized and illegal appropriation, registration and use in bad faith of 'aranetacenter.com' as a domain name, complainant has been trying all legal avenues to communicate and convince respondent to amicably transfer the domain name 'aranetacenter.com' and to transfer the registration of the domain name 'aranetacenter.com' from respondent's name to that of complainant's name. Respondent did not bother to reply. Copies of the demand letters sent to respondent's different addresses are hereto attached and marked as Annexes 'G', 'G-1' and 'G-2' and made integral parts hereof.

14. (sic) Unfortunately, respondent would not budge and continues in bad faith to use the domain name 'aranetacenter.com'. Hence, the present complaint.

ARGUMENTS

- I. Respondent committed and continues to commit the offense of false designation of origin by clandestinely registering as a domain name a registered trade owned by complainant.
 - A. Owning and operating a website for the promotion of one's own business and the business of others is an act of commerce.
 - B. Respondent, in connection with his website, uses in commerce the words or name 'Araneta Center', which is likely to cause confusion, or to cause mistake, or to deceive as his or his site's affiliation, connection or association with complainant, or as to the origin, sponsorship, or approval of his goods, services or commercial activities by complainant.
 - C. Given complainant's prior use of 'Araneta Center' (Annexes 'A' and submarkings hereof) and its registration with the Intellectual Property office under Certificate of Registration No. 4-2006-006136 and 4-2006-006717 (Annexes 'B' and 'C' hereof) respondent made an unauthorized reproduction and use of complainant's registered mark by using it in commerce as a domain name.
 - D. Respondent has no right or legitimate interest in the subject domain name.
- II. A temporary restraining order and/or a preliminary injunction must be issued against respondent to restrain respondent from further maintaining, and updating his website, and more importantly to restrain him from making his website accessible to the public pending the resolution of this case.
 - A. A preliminary mandatory injunction must be issued against respondent ordering him to take down his website and make it unavailable to the public, and more importantly hold the domain 'aranetacenter.com' in his name in trust for complainant pending the resolution of this case.
 - a. A final mandatory injunction must be issued against respondent to transfer the registration of the domain 'aranetacenter.com' from his name to complainant's name.
- III. Complainant entitled to actual damages in such amount to be determined by this Honorable Office but in no case less than Two Hundred Thousand Pesos (Php200,000.00), moral damages amounting to Two Hundred Thousand Pesos

(Php200,000.00), exemplary damages amounting to One Hundred Thousand Pesos (Php200,000.00) and attorney's fees and litigation expenses of One Hundred Thousand Pesos (Php200,000.00).

The Respondent filed his Answer on March 2010 via registered mail, alleging among other things, the following:

1. He admits paragraphs 1, 2 and 3 of the complaint.
2. He denies paragraphs 4, 5, 6, 7 and 8 of the complaint for lack of knowledge or information sufficient to form a belief as to the truth or falsity of the averments contained therein.
3. With regard to the paragraphs numbered 9 and 10, respondent would like to point out that there are two (2) each number in the complaint. His answer to said paragraphs is as follows:

Paragraphs numbered '9':

- a. With respect to the first paragraph numbered '9' pertaining to the alleged trademark registration, respondent denies the same for lack of knowledge or information sufficient to form a belief as to the truth or falsity of the matters stated therein.
- b. With regard second paragraph numbered '9' pertaining to the registration and use of the domain name 'aranetacenter.com', respondent denies the same the truth being that states in the affirmative defenses below.

Paragraphs numbered '10':

- a. Respondent denies the first paragraph numbered 10 (appearing on page 4 of the complaint) for lack of knowledge or information sufficient to form a belief as to the truth or falsity of the allegations therein.
 - b. Respondent likewise denies the second paragraph that was numbered '10' in the Complaint, the truth being that stated in the affirmative defenses below.
4. Respondent denies paragraphs 11, 12 and 13 for the following reasons: first, for being baseless and erroneous conclusions of law and second, for lack of knowledge or information sufficient to form a belief as to the truth of the factual allegations contained therein.
 5. With regard to paragraph 14 of the complaint, respondent admits that he continues to own and use domain name, but he denies that the same is in bad faith.
 6. With regard to the statements appearing on page 6 of the complaint, particularly those under the heading 'ISSUES', respondent hereby IGNORES the same for not being statements of ultimate facts.
 7. With regard to the averments appearing on page 6 and 7 of the complaint, particularly those under the heading 'ARGUMENTS', respondent hereby denies them for being baseless and defenses portion of this answer.

x x x

8. Respondent has not committed the alleged violation of Section 169 of Republic Act No. 8293 otherwise known as the Intellectual Property Code.

9. Respondent has not used 'aranetacenter.com' in commerce as he never earned any income from it. He has not used said domain name in connection with any goods or services or any container for goods. Neither has he used said domain name to designate the origin of any goods or services nor to mislead or misrepresent any fact in connection with any goods or service.
10. Respondent's ownership of the domain name 'aranetacenter.com' for his website are lawful and in good faith, He has used, and is using said domain name and website for his personal blogs which is a legitimation purpose.
11. Respondent never misrepresented his website as belonging to complainant. Previous versions of the website, clearly indicated that it was respondent's blog.
12. He is not selling, neither has he authorized any person or entity to sell, said domain name,

x x x

13. Complainant does not have, and has not shown, any clear and actual right over the domain name 'aranetacenter.com' which will entitle it to a temporary restraining orders, preliminary injunction and mandatory injunction.
14. Even assuming for the sake of argument that complainant has registered certain trademarks containing the words 'aranetacenter.com' , said trademark registration by itself does not give complainant the right to exclude the respondent or the rest of the world for that matter, from using the words 'araneta center'.
15. Furthermore, based on the copies of the certification of registration of complainant's alleged trademarks, it is clear that complainant acquired the right to these trademarks recently , specifically in 2006 and 2007, compared to respondent's right to the 'aranetacenter.com' domain name which is acquired in 2000.
16. The opinions ad views posted on respondent's website do not prejudice complainant and are constitutionally protected free speech. Respondent would highlight that complainant itself admits that the articles posted on the website are not directly derogatory to or discrediting the complainant.
17. The rules require that a complainant contain a concise statement of only ultimate facts constituting the cause of action. Consequently, the other allegations under complainant's Second Cause of Action which are baseless and/or erroneous conclusions of law are therefore hereby ignored.

x x x

18 As stated earlier, respondent has not committed the alleged, violation of Section 169 of the Intellectual Property Code. Neither has the respondent committed any violation of complainant's right.

19 Consequently, respondent is not liable for the damages being claimed by complainant in its Third, Fourth, Fifth and Sixth Causes of Action.

SPECIAL AND AFFIRMATIVE DEFENSES

20 The foregoing paragraphs are repleaded herein by reference.

21. The Honorable Officer has not jurisdiction over the subject matter of the complaint.

- a. Pursuant to section 10 (a) of the Intellectual Property Code jurisdiction of the Bureau of Legal Affairs of the Intellectual Office covers cases 'involving intellectual property rights'. Complainant's alleged right over the words 'araneta center' is not an 'intellectual property right' as the latter term is defined by Section 4.1 of the Intellectual Property Code.
- b. Although the complaint alleges a violation of section of the Intellectual Property Code, there is no intellectual property right that is actually involved. Stripped of its erroneous and baseless conclusions of law, the complaint is essentially one involving either trade name or business competition.
- c. Moreover, since the case is an action under Section 169 of the Intellectual Property Code, the case should have been brought before the regular courts pursuant to the provision of Article 163 of the same law. Said article 163 provides:

x x x

Clearly, it is the regular courts, and not the Bureau of Legal Affairs of the Intellectual Property officer, that has jurisdiction over the present complaint.

"25. Complainant has no cause of action against the respondent because the complainant's alleged trademark was only recently obtained and it does not give it any right to exclude respondent or other persons from using the words 'araneta center'. Furthermore, respondent committed no violation of complainant's alleged trademark.

"26. Respondent is the registered owner of the domain name 'aranetacenter.com' and consequently, has the right to use and enjoy the same.

"27. Furthermore, respondent obtained registration of, and has been using domain name in good faith and for legitimate purposes as early as the year 2000.

"28. As respondent has invested a lot of resources in legitimately creating, developing, and maintaining his website from 2000 up to the present, the grant of the relief which complainant prays for would cause great prejudice or injury to respondent and would be tantamount to an unlawful taking of private property.

"29. Respondent has the constitutionally protected right to free speech and his website is one of the means by which he exercises said right. The injunction sought by the complainant would violate respondent's right to free speech.

"30. Complainant is guilty of laches and therefore its complaint should be dismissed.

- a. Complainant knew as early as 2002 that respondent had registered, and was using, 'aranetacenter.com'. And, sometime in 2004, complainant, through its vice President Raul Alvarez, communicated with the respondent and offered to acquire the website. However, for reasons unknown to respondent, complainant suddenly ceases to communicate with him.
- b. Since 2002, complainant had ample opportunity to take action against respondent's registration of 'aranetacenter.com' but, prior to the present case, it never did.

COMPULSORY COUNTERCLAIMS

"31. The foregoing paragraphs are repleaded herein by reference.

“32. As a result of the filing of this malicious and baseless complaint, respondent suffered sleepless nights, mental anguish, moral shock, wounded feelings, and public humiliation which entitles him to payment of moral damages in an amount not less than TWO HUNDRED THOUSAND PESOS (P200,00000).

“33. In order to defend himself against the unfounded claims of complainant, respondent was compelled to engage the services of undersigned counsel at an agreed fee of THREE HUDNRED THOUSAND PESOS (P300, 000.00).

“34. In order to serve as an example for the public good, and in order to deter the filing of similarly baseless claims, complainant should be ordered to pay respondent exemplary damages in the amount of ONE HUNDRED THOUSAND PESOS (P100, 000.00).”

On 01 April 2010, the Respondent filed a Motion for Preliminary Hearing alleging that this Bureau and the Intellectual Property Office of the Philippines do not have jurisdiction over the case. This Bureau denied the motion in its Order No. 2010-67, issued by the Hearing Officer on 04 August 2010. The Respondent filed on 16 August 2010 a Motion for Reconsideration which the Hearing Officer also denied in Resolution No. 2010-01, dated 20 September 2010.

Meanwhile, this Bureau issued on 13 October 2010 Order No. 2010-92 granting the Complainant’s application for the issuance of a Temporary Restraining Order (“TRO”). Subsequently, this Bureau granted the Complainant’s application for the issuance of writ of preliminary injunction through Order No. 2010-103, dated 14 December 2010. The Respondent was enjoined from further maintaining and updating his website and from making the same available to the public for ninety days from service.

As a result of non-appearance during the scheduled Pre-Trial Conference, the Respondent was declared in default in the Order No. 2011-31 issued by the Hearing Officer on 02 June 2011. The Hearing Officer subsequently issued on 04 July 2011 Order No. 2011-39 denying the Respondent’s “Urgent Omnibus Motion Ad Cautelam”, which sought the resetting of the hearing scheduled on 29 June 2011 and that he be allowed to cross examine the Complainant’s witnesses.

Accordingly, the Complainant presented and offered in evidence the following:

1. Promotional write-ups and home page of www.aranetacenter.com as maintained by the Respondent (Exh. “A” to “E” and “D” to “E”)
2. Judicial Affidavit of Reynald A. Reynaldo (Exh. “F”)
3. Certificate of Filing of Amended Articles of Incorporation & Amended Articles of Incorporation (Exh. “G” to “G-1”)
4. Progressive Development Corporation 20th Annual Report year 1993 (Exh. “H” to “E” and “H-3”)
5. Progressive Development Corporation Annual Report year 1977 (Exh. “1” to “1-E”)
6. Complaint of Reynald A. Reynaldo (Exh. “J”)
7. Secretary’s Certificate (Exh. “K” to “K-1”)
8. Printed page of the whole website (Exh. “1”)
9. Demand letter dated 9 Nov. (Exh. “M” to “M-2”)

10. Affidavit-testimony of Reynald A. Reynaldo (Exh. "N")
11. The printed webpage of Sedo (Exh. "P");
12. Newspaper clipping dated 24 Sept. 1958 of Manila Times entitled "Biggest Dome arena planned" (Exh. "Q");
13. Newspaper clipping dated 12 Dec. 1958 of Daily Mirror entitled "1st Lays Araneta Coliseum Cornerstone" (Exh. "R");
14. Newspaper clippings entitled "Local talents complement foreign stars at Araneta", "Araneta Donates Entire Fights Card Receipts to Charity", "Page Rodgers show ends tomorrow at Araneta", "Araneta slates new show Sept. 15", "Holiday on Ice Coming at dome", "Coliseum 1962 programs bared", "All roads lead to Araneta Center", "Wild West Rodeo due at the Big Dome soon", "Newest Attraction at Araneta Center", "World Beauties at Big Dome", "Benefit Musical Presentation", "Comedy Circus extended to Mar. 9", and a Miss Universe 1968 article and picture (Exh. "S" to "S-10");
15. "Our Lady of Perpetual Help Parish", "Remembering the Araneta Center during the Dekada '70", "Rizal High Wins Araneta Center chorale contest (Metro and National News)", "Yuletide tradition continues at Araneta Center", "The Holiday Tradition Continues at Araneta Center" (Exh. "T" to "T-4");
16. A newspaper clipping from the Philippine Star, dated 17 Dec. 1993, entitled "Christmas at the Araneta Center" (Exh. "U" to "U-1");
17. A newspaper clipping from the Philippine Daily Inquirer, dated 27 Oct. 1995, entitled "Araneta turns 40" (Exh. "V");
18. Cert. of Reg. No. 4-2006-006136 of Araneta Center and Device (Exh. "W" to "W-1");
19. Cert. of Reg. No. 4-2006-006717 of Araneta Center and Device (Exh. "X" to "X-1");
20. A flyer for the 8th Men's World Basketball Championship year 1978 (Exh. "Y"); and
21. A printed webpage of the Whole website (Exh. "Z").

The Complainant submitted its Memorandum on 11 October 2010.

Records and evidence show the Complainant's legal personality, financial position history and invariable growth over the year. Its corporate name, "Araneta Center", was even duly registered as trademark. It has also proof with respect to promotion advertisement, and use of the name or mark "Araneta Center".

The Complainant now claims that Respondent's use of "Araneta Center", which the Respondent does not dispute, constitutes "False Designation of Origin" as defined in Sec. 169 of the IP Code, to wit:

Sec. 169. False Designation of Origin; False Description or Representation- 169.1. Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination

thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which:

- (a) Is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person; or
- (b) In commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services or commercial activities, shall be liable to a civil action for damages and injunction provided in Sections 156 and 157 of this Act by any person who believes that he or she is or likely to be damaged by such act.

A scrutiny of the printed home page of the Respondent's www.aranetacenter.com website, reveals that the website page address of the said party contains the name or words "araneta center". The domain name has incorporated the complainant's distinctive and exclusively owned name "Araneta Center".

In this regard, that the Respondent uses the words "Araneta center" to comprise a domain name for his website is of no moment in determining if the said party committed the infractions complained of Sec. 169 of the IP Code is not restrictive as to the manner or form of use of the objected words or names. The critical issues instead are, first, whether the Respondent uses in commerce the words or name "Araneta center", and second, whether such use likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person; or in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services or commercial activities.

The evidence on hand shows that the Respondent has used the words "Araneta center" in commerce or business. An inspection of the contents of his website shows that the Respondent himself admits that he "developed the domain name as a means to promote the businesses in the area, particularly ours", referring to the said party's main branch of Perez Optical. Further, a web page reveals that he has offered to sell the domain name, "aranetacenter.com" for a list price of 3,000 \$ US.

Succinctly, this Bureau finds that such use by the Respondent of the name "Araneta center" is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of the Respondent with the Complainant, or as to be origin, sponsorship, or approval of his goods, services, or commercial activities by the Complainant.

A domain name is more than a mere "Internet address". It identifies the Internet site to those who reach it much like a company's name identifies a specific company. Thus, to appropriate a domain name which is identical to the name of a corporation will likely cause confusion, mistake, and even misrepresentation or deception, that the Respondent is affiliated, connected, related, or agent or representative of the Complainant. This is particularly true because the act the respondent in maintaining the domain name is of commercial use of the complainant's trademarks and his conduct inferred a commercial association to the complainant especially that consumers frequently expect that a website or email address consisting of or encompassing a trademark used in the physical world is sponsored by or associated with the complainant, the registered owner of the trademark. If one reads the contents of the websites, he or she would likely assume that the website is an official website reveals that they have assumed that it an official website of the Complainant, to wit:

1. Posted on 13 December 2007

I would like to inform you about how you assign people manning your Ticket net counter at Gateway Cinema. Last Tuesday, as early as 11:15 AM, there is only one ticket counter that is open with a long queue of moviegoers waiting in line. I was there for the first screening of "Bourne Ultimatum" scheduled as 11:35 AM. Your personnel assigned there started coming in one at a time and I as able to get my ticket around 11:40 AM and was not able to view the beginning of the said movie.

2. Comment by GUEST on 2009-04-20 02:07:00

This is regarding last week, kase merong guard sa Shopwise na parang inaabuso ang pagiging guard nya. xxx kung hindi niyo bibigyan ng aksyon agad to makakarating sa pinaka-mataas.

3. Comment by GUEST on 2009-05-12 08:29:11

Araneta Human Resources Department,

Good day, I would like to inform you that I am employ under Starline Security Agency Alimall Detachment for over five years now. I would just like to raise an issue regarding to the still ongoing deduction of our agency from us everyday with amount of five hundred pesos which was started on March 05, 2008 up to now.

x x x

We, as under our agency were afraid to complain against them for the person "na baka pag initan kami" and we could not just resign because we will not get our cash bond because we are debt with them.

Hoping for your kind consideration to investigate and positive action on your side.

Accordingly, with the findings that the Respondent is guilty of False Designation of Origin as defined under Sec. 169 of the IP Code, this Bureau may award damages pursuant to Sec. 10.2 (b) of the IP Code.

The records and evidence are insufficient to establish the actual amount of pecuniary loss incurred by the Complainant. This Bureau, however, is convinced that the Complainant suffered pecuniary loss arising out of the Respondent's unauthorized use of the name "Araneta center". The Respondent's website attracted visitors to the website which the Respondent took advantage of by advertising its own business, without compensating the Complainant which has intellectual and proprietary rights over the name "Araneta Center". Hence, it is deemed proper to award to the Complainant temperate damages lieu of actual or compensatory damages.

By the way of deterrence against infringement of intellectual property rights and unfair competition, the Respondent should be assessed exemplary damages. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages. Exemplary damages are designed to permit courts to mould behavior that has socially deleterious consequences, and its imposition is required by public policy to suppress the wanton acts of an offender. Moreover, because the Complainant was constrained to take legal action to protect its right, said party is entitled to an award of attorney's fees.

This Bureau, however, finds no basis to award moral damages.

WHEREFORE, premises considered, this Bureau finds the Respondent guilty of False Designation of Origin as defined in Sec. 169 of the IP Code. Accordingly, the Complainant is hereby ordered to immediately:

1. cease and desist from maintaining a website with or under the domain name "aranetacenter.com", and
2. pay the complainant the following:
 - a. Temperate damages in the amount of Php 100,000.00
 - b. Exemplary damages in the amount of Php 50,000.00, and
 - c. Attorney's fees in the amount of Php 50,000.00

SO ORDERED.

Taguig City, 15 November 2011