

BINALOT FIESTA FOODS INC.,
Opposer

IPC NO. 14-2010-00092
Opposition to:

-versus-

Appln. Ser. No. 4-2008-014419

RAFAEL L. CHU
Respondent-Applicant

TM: "NID'S EXPRESS BALOT SA
DAHON AND DESIGN"

x-----x

BINALOT FIESTA FOODS INC.,
Opposer

IPC NO.14-2010-00119
Opposition to:

-versus-

Appln. Ser. No. 4-2008-014418

RAFAEL L CHU
Respondent-Applicant

TM: "ID'S EXPRESS BALOT SA
DAHON LUGAWAN
DESIGN"

ATRP, AND

x-----x

Decision No. 2011-46

DECISION

BASED ON COMPROMISE AGREEMENT BINALOT FIESTA FOODS INC., ("Opposer") filed separate oppositions to Trademark Application Serial Nos. 4-2008-014418 and 4-2008 14419, both filed by RAFAEL L. CHU, ("Respondent-Applicant"). The Opposer alleges that the trademark applications are proscribed under Sec. 123.1 (d), Rep. Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code").

After the Respondent-Applicant filed his Answers to the opposition, the parties moved in open court that the cases be consolidated for having the same issues and parties. Accordingly, this Bureau issued on 21 January 2011 Order No. 2011-078 consolidating the opposition cases.

On 03 February 2011, this Bureau 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"), issued Order No. 2011-71 referring the case to mediation.

On 05 May 2011, this Bureau received a "MEDIATOR'S REPORT" and the parties' "COMPROMISE AGREEMENT" submitted to this Bureau for approval. The Agreement states, among other things:

"1. Respondent-Appellant hereby withdraws its appeal from the Bureau of Legal Affairs' Decision No. 2009-05 promulgated on 27 November 2009. Accordingly, respondent-appellant hereby undertakes to cease and desist from using the trademark/trade name/business name NID'S EXPRESS BINA.LOT, a copy of which is attached as Annex "1" hereof, and to compensate complainant-appellee the total amount of P200, 000.00 as full reimbursement of the litigation expenses and attorney's fees;

In turn, complainant-appellee hereby waives the award of P1, 000,000.00 as actual damages.

"2. Respondent-Applicant hereby agrees to revise the trade name "NID'S EXPRESS B'LOT SA DAHON AND DESIGN", subject of his Application No. 4-2008-014419 and TPC 14-2010- 00092 to:

“NID’S EXPRESS B’LOT ‘N BILAO AND DESIGN”

as shown in Annex “2”

In turn, opposer hereby agrees to withdraw its Notice of Opposition to Application SN 4-2008-014419 of respondent-applicant and offers no opposition for the approval for registration of the revised trade name “NID’S B’LOT ‘N BILAO ANT) DESIGN” as shown in Annex “2” hereof.

“3. Respondent-Applicant hereby agrees to revise the trade name “NID’S EXPRESS B’LOT SA DAHON LUGAWAN ATBP AND DESIGN”, subject of Application SN 4-2010-014418 and IPC No. 14-2010-00119 to:

“NID’S EXPRESS B’LOT ‘N BILAO DESIGN”

as shown in Annex “3” hereof.

In turn, opposer hereby agrees to withdraw its Notice of Opposition to Application SN 4-2010-014418 of respondent-applicant and offers no opposition for the approval for registration of the revised trade name “NID’S B’LOT ‘N BILAO AND DESIGN” as shown in Annex “3” hereof.

“4. The Parties agree to abide by this Compromise Agreement in good faith and further agree, that in event of any violation of the terms and conditions thereof, the aggrieved party shall be entitled to a writ of execution to enforce the term and/or condition violated.”

This Bureau noticed that the COMPROMISE AGREEMENT covers Intellectual Property Rights Violation (“IPV”) Case No. 10-2007-00013 which was decided already by this Bureau way back on 27 November 2009 (Decision No. 09-05) and now on appeal to the Director General (Appeal No. 10-2011-0001). Having been divested of jurisdiction over the IPV case, this Bureau shall consider the COMPROMISE AGREEMENT only in so far as the Inter Partes cases are concerned.

After evaluation of the COMPROMISE AGREEMENT, this Bureau finds that:

1. The contents thereof insofar as the Inter Partes cases are concerned are not contrary to law, morals, good customs, public order or public policy, and
2. The any unfavorable actions on the agreement with respect to the IPV case will not affect the agreement on the Inter Partes cases.

Accordingly, Sec. 5 of the Rules of Procedure for IPO Mediation Proceedings (Office Order No. 154, s. 2010) states, among other things, that 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 the IPO and the Rules of Court.”

WHEREFORE, premises considered, the parties’ COMPROMISE AGREEMENT is hereby APPROVED in so far as Inter Partes Case Nos. 14-2010-00092 and 14-2010-00119 are concerned. Accordingly, the instant opposition cases are hereby DISMISSED. Let the filewrappers of the subject trademark applications be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 27 May 2011.