

NISSIN FOOD HOLDINGS CO., LTD.
(formerly known as NISSIN SHOKUHIN
KABUSHIKI KAISHA)

Opposer,
-versus-

IPC NO. 14-2009-00185

Opposition to:
Appln. No. 4-2008-011026
Date Filed: 09 November 2008
Trademark: SHOMEN CUP NOODLES

ZESTO CORPORATION,
Respondent-Applicant.

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Decision No. 2011- 62

DECISION
BASED ON COMPROMISE AGREEMENT

NISSIN FOOD HOLDINGS CO., LTD. (formerly known as NISSIN SHOKUHIN KABUSHIKI KAISHA) (“Opposer”) filed on 24 July 2009 an opposition to Trademark Application Serial No. 4-2008-011026. The application filed by ZESTO CORPORATION (“Respondent-Applicant”) covers the mark SHOMEN CUP NOODLES for use on goods under Class 30. The opposition is anchored on Sec. 123.1 (d) and (e) of Rep. Act No. 8293, also known as the Intellectual Property Code of the Philippines.

The Respondent-Applicant filed its Answer on 04 January 2010 refuting the material allegations of the Opposer.

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 and Settlement Period”), this Bureau issued on 29 December 2010 Order No. 2011-01 referring the case to mediation.

On 15 July 2011, this Bureau received a “MEDIATOR’S REPORT” indicating the successful mediation of the instant case. Attached to the report is the parties’ “COMPROMISE AGREEMENT” submitted to this Bureau for approval. The Agreement states, among other things:

“NOW, THEREFORE, for in consideration of the foregoing premises and of the terms and conditions set forth herein, the PARTIES HEREBY AGREE, as follows:

“1. ZESTO CORPORATION hereby warrants that it is no longer manufacturing products bearing the mark SHOMEN CUP NOODLES. ZESTO CORPORATION is now in the final process of disposing all the remaining stocks in its inventory bearing the mark SHOMEN CUP NOODLES. ZESTO CORPORATION undertakes to dispose all its remaining stocks by the end of November 2011;

“2. ZESTO CORPORATION hereby undertakes to withdraw the application for registration of the trademark SHOMEN CUP NOODLES under Application No. 4-2008-011026 within two (2) weeks from the date of signing of the instant Compromise Agreement and to send copies of documents filed for the said withdrawal to NISSIN FOODS HOLDINGS CO., LTD. Immediately after withdrawal;

“3. ZESTO CORPORATION undertakes NOT to:

- (i) Attack the validity of the internationally well-known trademark CUP NOODLES belonging to NISSIN FOODS HOLDINGS CO., LTD.

- (ii) Use the mark and wording CUP NOODLES, either in plain word mark or stylized or in combination with other word(s) and/or device(s), in relation to any of its products and/or services, and
- (iii) Apply for registration of the mark CUP NOODLES or any mark containing the word CUP NOODLES in any international Class in the Philippines and/or in any other country;

“4. In consideration of the amicable settlement of this case, NISSIN FOODS HOLDINGS CO., LTD., is withdrawing its opposition to the application for registration by ZESTO CORPORATION of the trademark SHOMEN CUP NOODLES under Application No. 4-2008-011026 filed on September 11, 2008”

This Bureau finds that the Agreement has been duly entered into by the parties with the terms and conditions thereof not contrary to law, morals, good custom, public order or public policy.

In this regard, 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 submitted Compromise Agreement is hereby APPROVED. Accordingly, the instant opposition case is hereby DISMISSED. Let the filewrapper of the subject trademark application be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 19 July 2011