

THE BODY SHOP INTERNATIONAL PLC

IPC NO. 10-2006-00015

Complainant,

-versus-

For: Unfair Competition  
Damages with Prayer for  
Application of Temporary  
Restraining Order and  
Preliminary Injunction

D.S.S. TRADING AND EVER BILENA  
COSMETICS, INC.

Respondents.

x-----x

Decision No. 2011- 08

DECISION  
BASED ON COMPROMISE AGREEMENT

THE BODY SHOP INTERNATIONAL PLC (“Complainant”) filed on 20 July 2006 a complaint for unfair competition with prayer for preliminary injunction. This Bureau issued a Notice to Answer and served a copy thereof upon D.S.S TRADING and EVER BILENA COSMETICS, INC. (“Respondent”) on 21 July 2006. The Respondent filed their Answer on 20 November 2011.

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’), this bureau issued on 07 February 2011 Order No. 2011-84 referring the case to mediation.

On 12 April 2011, this bureau received a “COMPROMISE AGREEMENT” signed by the parties and the Mediator assigned to the case. Attached to the COMPROMISE AGREEMENT are the parties’ “JOINT MOTION TO DISMISS” and “CO-EXISTENCE AGREEMENT”. The pertinent portions of the CO-EXISTENCE AGREEMENT read, as follows:

“1. The Body Shop will move for the dismissal of all its cases pending against Ever Bilena namely:

- a. The Body Shop vs. DSS Trading docketed as IPC No. 12-2006-00097;
- b. The Body Shop vs. Ever Bilena AND DSS trading docketed as IPV Case No. 10-2006-00015; and
- c. The Body Shop vs. Ever Bilena docketed as IPC No. 13-2008-000173.

“2. Ever Bilena/DSS Trading will also move for the dismissal of all counterclaims against. The Body Shop in the above mentioned cases.

“3. DSS Trading will continue to be the registered owner of the ‘BODY BUTTER’ mark under Trademark Registration No. 4-2004-005969. Notwithstanding this and the dismissal of the trademark cancellation case against DSS Trading docketed as IPC No. 12-2006-00097, ownership over the ‘BODY BUTTER’ marks is not conceded by The Body Shop to DSS Trading.

“4. Ever Bilena will continue to be the registered owner of the industrial design for a cosmetic container used for Ever Bilena’s Lip & Cheek Tint’ product under Design Registration No. 3-2006-000103. Notwithstanding this and the dismissal of the design cancellation case against Ever Bilena docketed as IPC No. 13-2008-00013, ownership over the cosmetic container design covered by Design Registration No. 3-2006-000103 is not conceded by The Body Shop to DSS Trading.

“5. DSS Trading shall not object to The Body Shop’s right to use the mark ‘BODY BUTTER’ in the Philippines and elsewhere for The Body Shop’s cosmetics products.

“6. Ever Bilena/DSS Trading undertakes not to launch products which are confusingly similar to products of the Body Shop. The products will be deemed confusingly similar if the products are the same nature, contained in similar containers and have similar names/marks.

“7. Ever Bilena/DSS Trading undertakes that it will conduct due diligence on which mark, brand or container to use before launching a new product to avoid any similar issues with The Body Shop.

“8 Each party bears its own cost and expenses incurred in carrying out each of their respective undertakings and obligations required under this Agreement.

“9. This Agreement shall be binding upon and inure to the benefit of the parties, their affiliates, successors and assigns. The terms and conditions of this Agreement may be amended, waived or modified only by agreement in writing signed by the parties of their respective assigns or successors in interest.

“10. This Agreement shall be interpreted and construed exclusively under Philippines laws. Any suit arising out of this Agreement shall be exclusively filed in the proper court of city of Makati.”

This Bureau evaluated the aforementioned COMPROMISE AGREEMENT and/or CO-EXISTENCE AGREEMENT and finds that the same have been duly entered into by the parties with the terms and conditions thereof not contrary to law, morals, good customs, public order or public policy.

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 Intellectual Property Office of the Philippines and the Rules of Court.

WHEREFORE, premises considered, the parties’ COMPROMISE AGREEMENT and/or CO-EXISTENCE AGREEMENT is hereby APPROVED. Accordingly, the COMPROMISE AGREEMENT and/or CO-EXISTENCE AGREEMENT having the force and effect of a decision or judgment, the parties are hereby enjoined to comply with the terms and conditions set forth therein.

SO ORDERED.

Taguig City, 29 July 2011