

MEDICAL CENTER TRADING,  
CORPORATION

Opposer,

-versus-

MAX MARA FASHION GROUP S.r.l,  
Respondent-Applicant.  
X-----X

IPC NO. 14-2010-00076

Opposition to:

Appl.No.4-2009-002334  
Date Filed: 05 March 2009  
Trademark: "PERSONA"  
Order No.2011-35

DECISION  
BASED ON COMPROMISE AGREEMENT

MEDICAL CENTER TRADING CORPORATION ("Opposer") filed on 25 March 2010 an opposition to Trademark Application Serial No. 4-2009-002334. The application filed by MAX MARA FASHION GROUP s.R. 1 ("Respondent- Applicant") covers the mark PERSONA for use on "jackets, shirts, dresses, skirts, trousers, shorts, blouses, t-shirts, coats, raincoats, belts, cardigans, mantles, tailleurs, pullovers, stockings, underwear, nightwear, swimwear, hats and caps, shoes, boots, slippers, all being for women, men and children" under Class 25. 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 13 September 2010 refuting the material allegations of the Opposer.

In compliance to Office Order No. 154, s. 2010 ( "*Rules of Procedure for IPO Mediation Proceedings*") an Office Order No. 197 s. 2010 ( "*Mechanics for IPO Mediation and Settlement Period*") this Bureau issued on 07 February 2011 order No, 2011-110 referring the case to Mediation.

On 30 March 2011, the Mediation Office submitted a MEDIATOR's REPORT indicating the "successful mediation of the instant. Attached to the report is the Parties' CO-EXISTENCE AGREEMENT" submitted to this Bureau for approval. The Agreement states among other things:

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

1. Max Mara shall limit the use and registration of its mark to specifically cover only over-sized women's clothing and expressly exclude the goods 'waist shapes' pregnancy support belt and stomach warmer in Class 25, which are covered by MCTC's registration; and
2. Max Mara undertakes not to use and register at any time the mark PERSONA in respect of undergarment with a medical or injury prevention purpose such as sports bras, supportive hosiery to prevent or alleviates varicose veins and other similar products with a medical or injury prevention purpose.
3. MCTC agree to take no action against the present and future Max Mara's application/registration of the PERSONA mark for "jackets, shirts, dresses, skirts, trousers, shorts, blouses, t-shirts, coats, raincoats, belts, cardigans, mantles, tailleurs, pullovers, stockings, underwear, nightwear, swimwear, hats and caps, shoes, boots, slippers, all being for women, men and children" in Class 25 and for any other goods in Class 25 subject to the fact that the application/registration expressly exclude waist shaper, pregnancy support belt and stomach warmer and undergarments with a medical or injury prevention purpose.

4. MCTC undertakes never to use and/or register the PERSONA mark for or in relation to “jackets, shirts, dresses, skirts, trousers, shorts, blouses, t-shirts, coats, raincoats, belts, cardigans, mantles, tailleurs, pullovers, stockings, underwear, nightwear, swimwear, hats and caps, shoes, boots, slippers, all being for women, men and children” in Class 25 and for or in relation to other goods in Class 25 which do not expressly have a medical or injury prevention purpose.

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 customs, public order or public policy,

In this regard, an approved Compromise Agreement shall have 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 the Court (Sec. 5, Office Order No., 154, s. 2010)

WHEREFORE, premises considered the submitted AGREEMENT is hereby APPROVED. Accordingly, instant opposition case is DISMISSED. Let the filewrapper of the subject Trademark Application be returned together with a copy of this Decision for the Bureau of Trademark (BOT) for information and appropriate action.

SO ORDERED.

Taguig City, 31 March 2011.

NATHANIEL S. AREVALO  
Director, Bureau of Legal Affairs  
Intellectual Property Office