

L'OREAL
Complainant,

-Versus-

IPV No. 10-2008-00008

For: "Unfair Competition"

EVER BILENA COSMETICS, INC.
And D.S.S. TRADING
Respondent-Applicant
X-----X

Decision No. 2011-09

DECISION
BASED ON SETTLEMENT AGREEMENT

L'OREAL, ("Opposer") filed on 01 April 2008 a Complaint for unfair competition. This Bureau issued a Notice to Answer dated 16 April 2008 and served upon a copy thereof to EVER BILENA COSMETICS, INC. and D.S.S. TRADING ("Respondent") on 14 February 2011. The Respondent-Applicant filed its Answer on 05 May 2008.

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 03 February 2011 Order No. 2011-74 referring the case to mediation.

On 14 September 2011 the Mediation Office submitted a Mediation Report indicating a settlement by the parties' of a case. Attached to the report is the parties' JOINT MOTION TO DISMISS and SETTLEMENT AGREEMENT. The pertinent portions of the Agreement, read as follows:

1. Simultaneously with the obligation of EVER BILENA/DSS Trading under Section 2 hereof, L' OREAL will move for the dismissal of all cases pending against EVER BILENA, namely:
 - a. L' OREAL and EVER BILENA DSS Trading docketed as C.A. G.R. S.P. No. 112426;
 - b. L' OREAL and EVER BILENA DSS Trading docketed as Appeal No. 14-09-46;
 - c. L' OREAL and EVER BILENA DSS Trading docketed as Appeal No.-14-2010-00002; and
 - d. L' OREAL and EVER BILENA DSS Trading docketed as IPV No. 10-2008-00008.
2. Simultaneously with the obligations of L'OREAL under Sec. 1 hereof, EVER BILENA and DSS Trading will also move for the dismissal of all counterclaims against L'OREAL and the above-mentioned cases.
3. The Parties shall jointly prepare and submit relevant motion to perform each of their obligations under Sections 1 and 2 above.
4. EVER BILENA will continue to be the registered applicant and/or owner of the following industrial designs but will no longer renew these designs once these expires:
 - a) Registration No. 3-2006-000105
 - b) Registration No. 3-2006-000104
 - c) Application No. 3-2007-000326; and
 - d) Registration No. 3-2008-000124.

5. EVER BILENA and DSS Trading shall put out the following products from the market within three months from signing this Agreement:
 - a) Ever Bilena Advance Glamour Shine;
 - b) Ever Bilena Advance Dazzling Shine; and
 - c) Ever Bilena Volume Exact Mascara.
6. EVER BILENA and DSS Trading may continue to distribute Ever Bilena Extreme Lipstick in its current shape, design and color.
7. EVER BILENA and DSS Trading undertake not to launch products which are confusingly similar products to L'OREAL. The product will be deemed confusingly similar if the products are of the same nature, contained in similar containers and have the similar names and / or trademarks.
8. EVER BILENA and DSS Trading undertake that it will conduct a due diligence on which marks, brand or container to use before launching new products to avoid similar issues with L'OREAL.
9. Each Party shall bear its own cost and expenses incurred in carrying out its respective undertakings and obligations required under this Agreement.
10. The Parties acknowledge that they or their respective signatories have full authority have secured the necessary corporate approvals to execute, and do execute this agreement of behalf of their principals and those acting under their principals' authority to observe the promises, obligations, undertaking and acknowledge made in this Agreement. The Parties further acknowledge that they have executed this agreement voluntarily with full knowledge of its consequences under the law.
11. 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 maybe amended, waived or modified only by Agreement in writing signed by the parties or by their respective assigns or successors in interest.
12. The parties agree that this Agreement is entered into solely because of a desire on the part of all concerned to amicably resolve all disputes between them and to avoid further or future litigation, and nothing contained herein with respect to this Agreement shall ever be treated as, or claimed or construed to be, an admission by any Party of any fault, wrongdoing, liability, injury or damages, or of the other's right, title or interest in any of the trademarks, trade names, industrial designs, logos, emblems or other intellectual property rights mentioned in this agreement. All rights not expressly granted in this agreement are reserved by the parties.
13. This Agreement shall be interpreted in construed exclusively under Philippine laws."

This Bureau evaluated the agreement and finds that the same has been duly entered by into by the Parties with the terms and conditions thereof not contrary to law, morals, good customs, public order or public policy.

WHEREFORE, premises considered the Parties' JOINT MOTION TO DISMISS is hereby GRANTED. Accordingly, the case including the respondent's counterclaims is DISMISSED. The parties are hereby enjoined to comply with the terms and condition set forth in the Settlement Agreement.

SO ORDERED.

Taguig City, 28 September 2011.