

CATHERINE SALES DY,	}	IPC No. 14-2008-00215
Opposer,	}	Case Filed: 22 September 2008
	}	Opposition to:
	}	
	}	Appln. Ser. No. 4-2007-005398
-versus-	}	Date filed: 29 May 2007
	}	TM: "NITTO"
SOUTHWIND AUTOMOTIVE	}	
PARTS, INC.,	}	
Respondent-Applicant,	}	
x-----x	}	DECISION NO. 2009-49

JUDGMENT  
 BASED ON COMPROMISE AGREEMENT

For this Bureau's consideration is the parties' Compromise Agreement filed on April 02, 2009.

The Compromise Agreement executed by and between Opposer, Catherine Sales Dy and Respondent-Applicant Southwind Automotive Parts, Inc. represented by their respective duly authorized counsel, provides, to wit:

"1. Respondent-Applicant admits and recognizes the due issuance and continued existence of Opposer's Registration No. 4-2004-001855 issued June 16, 2006 for the trademark NITTOO for use on gasoline and diesel engines other than for land vehicles under Class 7.

"2. Respondent-Applicant undertakes to respect Opposer's Registration No. 4-2004-001855 and will not import, manufacture, sell and otherwise deal with gasoline and diesel engines other than for land vehicles under Class 7, including parts and accessories thereof.

On the other hand, Opposer will limit the use of her registered trademark "NITTOO" to gasoline and diesel engines other than for land vehicles under Class 7, including parts and accessories thereof.

"3. Respondent-Applicant undertakes to limit the use of its opposed mark NITTO to the goods enumerated in its Application Serial No. 4-2007-005398 which are clearly listed and understood to cover only oil, air and filters for automobiles, trucks, and tractors falling under Class 7, and vehicle parts and accessories falling under Class 12.

Respondent-Applicant further undertakes not to alter the presentation of its mark other than what is applied for under Application Serial No. 4-2007-005398 without the express written consent of Opposer.

"4. In consideration of the foregoing, Opposer hereby agrees to withdraw, as she hereby withdraws her Notice of Opposition to Respondent-Applicant's Application Serial No. 4-2007-005398 and to recognize and respect the same.

"5. The parties hereby mutual agree that any breach or violation of this Compromise Agreement once approved by the BLA Director, shall entitle the aggrieved party to sue for damages.

WHEREFORE, finding the parties' Compromise Agreement to have been duly execute and signed by the parties and the terms and conditions thereof to be in consonance with law, morals, good customs, public policy or public order, the same is hereby GRANTED. Accordingly, Application Serial No. 4-2007-005398 filed by Respondent-Applicant Southwind Automotive Parts, Inc., on May 29, 2007 for the trademark "NITTO" is GIVEN DUE COURSE subject to the terms and conditions of the Compromise Agreement. Consequently, the parties are hereby enjoined to faithfully comply with the terms and conditions of the Compromise Agreement, failure of which shall be cause for the erring party to be cited for indirect contempt after proper charge and hearing.

Let the filewrapper of the trademark "NITTO" subject matter under consideration together with a copy of this Decision be forwarded to the Bureau of Trademarks (BOT) for appropriate action.

SO ORDERED.

Makati City, 24 April 2009

ESTRELLITA BELTRAN-ABELARDO  
Director, Bureau of Legal Affairs  
Intellectual Property Office