

ONE TOUCH GMBH,	}	IPC No. 14-2005-00127
Opposer,	}	
	}	Opposition to:
-versus-	}	App. Ser. No. : 4-2003-007352
	}	Filed : 13 August 2003
Q.S. Manufacturing and Marketing	}	Class : 18 & 25
Corporation	}	Trademark : "ONE"
Respondent-Applicant.	}	
x-----x		Decision No. 2007 – 07

DECISION

For this Bureau's consideration is the parties' Joint Motion to Dismiss based on Compromise Agreement executed on November 8, 2006 and filed on November 10, 2006.

The Compromise Agreement executed by and between Opposer, One Touch GmbH and Respondent-Applicant Q.S. Manufacturing and Marketing Corp., contains among others the following terms and conditions:

1. Respondent acknowledges Opposer's ownership of the trademark ONE TOUCH & DEVICE per Certificate of Registration No. 4-2003-007590 issued by the Intellectual Property Office and all the intellectual property rights attached thereto.
2. Opposer recognizes Respondent's ownership over the mark ONE per Application Serial No. 4-2003-007352 for the use on the following goods to wit:
 - a. COINPURSE, WALLET, TRAVELING LUGGAGE, SUITCASES, TRAVELING BAGS, ATTACHE CASES, SCHOOL BAGS, SHOULDER BAGS, CLUTCH BAGS, OVERNIGHT BAGS, PILOT CASES and
 - b. T-SHIRTS, POLO SHIRTS, POLO, PANTS, JEANS, SLACKS, SOCKS, COATS, SUSPENDER, VESTS, SWEATSHIRTS, JOGGING, SUITS, JACKETS, BRIEFS, PANTIES, SWIMMING TRUNKS, SWIMSUITS, SHORTS, SKIRTS, SHOES, SLIPPERS, BOOTS, SANDALS, BELTS, CAPS, BLOUSES.
3. Respondent undertakes to use the trademark ONE together with the word "THE" and DEVICE/LOGO which is a representation of a man wearing a sweatshirt with a hood at all times. The facsimile image of which is attached as Annex "A".
4. Respondent undertakes that every time it shall use its trademark, ONE, including but not limited to use in all its products, product packaging, signage, receipts, sales invoice and all marketing and advertising materials, it shall do so in a manner represented in Annex "A", which use of the trademark "ONE" shall be made together with the word "THE" and DEVICE/LOGO which is a representation of a man wearing a sweatshirt with

a hood. In no instance shall Respondent use the trademark ONE alone and without the DEVICE/LOGO and the word "THE" or any other manner different from what appears in the annex "A".

5. Respondent shall respect and shall not question, oppose, dispute or seek the cancellation of Opposer's trademark registration for the marks "ONE TOUCH & DEVICE" and other variations thereof under Certificate of Registration No. 4-2003-007590. Further, Respondent shall not oppose trademark applications and any other applications for "ONE TOUCH", "ONE TOUCH & DEVICE" and other variations thereof filed or to be filed by the Opposer.

6. Likewise, Opposer shall not question, oppose, dispute or otherwise sue against Respondent's trademark application for "ONE" under Application Serial No. 4-2003-007352 or seek the cancellation thereof upon registration, so long as it complies with paragraphs 3, 4, and 5 of this Compromise Agreement.

7. This Agreement shall bind the parties, successor-in-interest, agents, associates, representatives or assigns. It shall likewise bind any other persons or corporations related to it and such other persons or entities acting for or on its behalf.

8. In the event of a breach of any term of this Assignment by any parties themselves or by any of their successor-in-interest, agents, associates, representatives or assigns, the innocent party shall be entitled to an automatic relief of Injunction and damages that may be proven before the appropriate authority or court of law without prejudice to whatever other remedies may be available under the law.

9. The parties acknowledge that they or their respective signatories have full authority and have secured the necessary corporate approvals to execute, and do execute this Agreement, on behalf of their principals and those acting under their principals authority to observe the promises, obligations, undertakings, and acknowledgments made in this Agreement. The parties further acknowledge that they have executed the Agreement voluntarily with full knowledge of its consequences under the law. Attached herein as Annexes "B" and "C" are the respective Special Power of Attorney/Secretary's Certificate executed by the parties in favor of counsels.

10. This Agreement and all of its provisions and premises shall be governed by and construed in accordance with the laws of the Republic of the Philippines. In any provisions of this Agreement, or the application of any such provision to any person or circumstances shall be held invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof or the validity of this Agreement.

WHEREFORE, finding the parties' Compromise Agreement to have been duly executed 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 APPROVED. Accordingly, Application Serial No. 4-2003-007352 filed by Respondent-Applicant Q.S. Manufacturing and Marketing Corp. on August 13, 2003 for the

trademark "ONE" 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 "ONE" 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, January 29, 2007.

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