

TELUS CORPORATION,)	IPC No. 14-2011-00238
<i>Opposer,</i>)	Case filed: 24 June 2011
)	Opposition to:
-versus -)	
)	Appln. No. 4-2010-011403
TELUPAY (PHILIPPINES), INC.,)	Date Filed: 18 Oct. 2010
<i>Respondent-Applicant.</i>)	Title: "TELUSEND"
)	DECISION No. 2012-11
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DECISION BASED ON
COMPROMISE AGREEMENT

TELUS CORPORATION, ("Opposer") filed on 24 June 2011 an Opposition to Application No. 4-2010-011403. This Bureau issued a Notice to Answer dated 11 July 2011 and served upon a copy thereof to TELUPAY (PHILIPPINES), INC., ("Respondent-Applicant") on 21 July 2011. The Respondent-Applicant timely filed its Answer on 19 September 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 referred the case for mediation on 05 October 2011.

On 16 December 2011 the Mediation Office submitted a Mediation report indicating a settlement by the parties of the case. Attached to the report is the parties' CO-EXISTENCE AGREEMENT the pertinent portions of which read, as follows:

- "1. The parties warrant that the recitals in this Agreement are accurate and the representations contained therein form part of this Agreement.
- "2. TELUS consents to the use and registration in the Philippines of the TELUPAY trade-marks by TELUPAY in connection with the TELUPAY Services, and covenants not to challenge, object to or otherwise oppose such use and registration.
- "3. TELUPAY consents to the continued use in the Philippines of the TELUS Trade-mark by TELUS in connection with the TELUS Services and covenants not to challenge or otherwise oppose such use, or petition to cancel the registration of the TELUS Trade-mark.
- "4. TELUPAY agrees not to use, and agrees on behalf of its affiliates that none of its affiliates will use the TELUPAY trade-marks or any other mark which contains the letters "T-E-L-U-S" collectively, in connection with services offered by TELUPAY or its affiliates in the Philippines which are the same as, or substantially similar to the TELUS Services. Nothing contained in this section will be interpreted so as to limit the consent provided by TELUS in section 2 of this Agreement relating to the TELUPAY Services.
- "5. TELUS shall execute such additional documentation as may be required by the Intellectual Property office of the Philippines to express its consent to the use and registration of the TELUPAY Trade-marks by TELUPAY, and TELUPAY shall execute such additional documentation as may be required to acknowledge and confirm its consent to the continued use and registration of the TEKLU Trade-mark by TELUS.

- “6. The parties covenant not to make any representation or take any other action that might lead the public to conclude that the goods or services of one party emanate from or are sponsored, endorsed, or approved by the other party. The parties shall use best commercial efforts to avoid any likelihood of confusion.
- “7. No modification or amendment of this Agreement shall be effective unless in writing and signed by the parties hereto.
- “8. This Agreement shall be binding upon the parties, and each of their respective successors, affiliates and assigns.
- “9. This Agreement is the entire agreement between the parties with respect to the subject matter herein. No representation or warranty has been made by either party to the other except as expressly set forth in this Agreement. Neither of the parties shall resile before the other from any representation of warranty expressed in this Agreement, but otherwise nothing herein shall constitute an admission with respect to any issue of law or fact.
- “10. This Agreement may be executed by electronic exchange of signatures, under separate counterparts, thereby constituting the binding agreement between them.
- “11. This Agreement shall be governed by the laws of the Philippines. The parties attorn to the exclusive jurisdiction of the courts of the Philippines.

This Bureau evaluated the CO-EXISTENCE AGREEMENT and finds that the same 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.

WHEREFORE, premises considered, the parties' CO-EXISTENCE AGREEMENT is hereby APPROVED. Accordingly, the 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. Let the filewrapper of trademark Application Serial No. 4-2010-011403 be returned, together with a copy of this Order to the Bureau of Trademarks (BOT) for information and appropriate action.

SO ORDERED.

Taguig City, 10 January 2012.

ATTY. NATHANIEL S. AREVALO
Director IV
Bureau of Legal Affairs