

WINTRADE SALES CORPORATION
Opposer,

Versus

DARWIN S. TAN,
Respondent Applicant

IPC No. 14-2011-00053

Opposition to:
Appln. Serial No. 4-2010-010988
Date Filed: 06 October 2010
Trademark: SEAHORSE &
SEAHORSE DEVICE
Decision No. 2012-04

DECISION
BASED ON COMPROMISE AGREEMENT

WINTRADE INDUSTRIAL, SALES CORP. ("Opposer") filed on 18 February 2011 an opposition to Trademark Application Serial No. 4-2010-0102088. The application filed by DARWIN S. TAN, ("Respondent Applicant") covers the mark SEAHORSE & SEAHORSE DEVICE for use on goods under Classes 6, 21, 22, 23 and 28. The opposition is anchored on the following grounds:

1. The approval of the applications in question is contrary to Section 123. 1 (d) and 138 of Republic Act No. 8293.
2. Any registered owner of the trademarks HIPOLITO & SEAHORSE DEVICE, HIPOLITO & SEAHORSE & TRIANGULAR DEVICE, and SEAHORSE AND REPRESENTATION OF A SEAHORSE BETWEEN THE WORDS SEA AND HORSE, the approval of the application in question will violate Opposer's right to the exclusive use of its registered trademarks and cause great and irreparable damage and injury to it.
3. Respondent filed Appln. SN 4-2010-010988 in bad faith.

The Respondent-Applicant filed its Answer on 19 July 2011 refuting the material allegations of the Opposer.

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 and Settlement Period*") this Bureau issued on 08 August 2011 Order No. 2011-238 referring the case to mediation.

On 29 November 2011, this Bureau received a "MEDIATOR's REPORT" indicating the successful mediation of the instant case. Attached to the report is the parties' "COMPROMISE AGREEMENT" submitted to this Bureau for approval. The Agreement states among other things:

NOW THEREFORE, the Parties agreed by way of amicable settlement as follows:

1. As evidence of authority on the part of the undersigned President of Opposer Wintrafe Industrial Sales Corp. to sign in the instant compromise agreement, Ms. Hua C. Uychiyong has attached hereto as Annex "A" and made an integral hereto is the appropriate Notarized Secretary's Certificate.
2. Opposer hereby assigns in favor of the respondent-applicant Darwin S. Tan Registration No. 4-2007-002038 issued on November 19, 2007 for the trademark "SEAHORSE AND REPRESENTATION OF A SEAHORSE BETWEEN THE WORDS SEA AND HORSE" for use on sprayer, burner, fishing device, twine, plastic netter, plastic reels falling under Cases 8, 11, 22 and 28 now subject of IPC No. 14-2008-00047.

3. Opposer further assigns in favor of Respondent-Applicant Registration No. 4-2003-0006567 issued on March 20, 2005 for the trademark "SEAHORSE AND REPRESENTATION OF A SEAHORSE BETWEEN THE WORDS SEA AND HORSE" for use on telephone apparatus, calculators, computer, monitor, starter, socket, flat irons, ranges, ballast, lamp holder, lamps, water heaters, refrigerators, and lanterns falling under Classes 9 and 11.

Attached hereto as Annexes "B" and "C" and made integral parts hereof are the duly signed and notarized Deeds of Assignment and appropriate Secretary's Certificate.

4. The assignment of the above trademark registration shall include the goodwill associated thereto.
5. Respondent-Applicant hereby accepts the foregoing assignment and undertakes to have it duly recorded with the Bureau of Trademarks.
6. As a consequence of the foregoing Opposer hereby withdraws its opposition to Respondent-Applicant's Application SN 4-2010-008317 (IPC No, 14-2011-00050) SN 4-2010-011830 (IPC No. 14-2011-00051); SN 4-2010-0008315 (IPC No. 14-2011-00052: SN 4-2010-010988 (IPC No. 14-2011-00053): SN 4-2010-008316 (IPC No. 14-2011-00209): and 4-2010-010980 (IPC No, 14-2011-00222) and has no more objection for their final approval. Furthermore, Opposer hereby assumes payment of the mediation fee for all there eight (8) cases.

Opposer also hereby withdraws its opposition to Respondent-Applicant's Application SN 4-2004-005342, which is the subject of IP No, 14-2007-00260.

7. In turn, Respondent-Applicant hereby recognizes the issuances, existence and validity of the following registrations issued in favor of the Opposer, namely:
 - a. Registration No, 27964 issued on December 20, 1979 and renewed on December 20, 1999 for the trademark "HIPOLITO & SEAHORSE AND TRIANGULAR DEVICE" for use on coolers, flashlights, batteries, flat irons, lamp and water heaters, fishing line, net wine, float and book, refrigerators, ranges, stoves, burners, gas regulators, mantles and wicks, lanterns falling under Classes 9, 11 and 28;
 - b. Registration No, SR-2929 issued on August 18, 1977 and renewed on August 18, 1997 for the trademark "HIPOLITO & SEAHORSE DEVICE" for use on heating and lighting fixtures and parts, flashlights, batteries, flat irons, lamps, lanterns, water heater and cooler, refrigerators and parts thereof, either fueled by LP gas, kerosene or electricity, fishing line, net twine, float and hook, falling under Classes 9, 11 and 22; and
 - c. Registration No. 4-2003-000766 issued on July 8, 2001 for the trademark "HIPOLITO & SEAHORSE DEVICE" for use on lockset, padlock, drawer, lock, electric motor, diesel engine, generator, paper, shredder, copy machines, scales, transformers, communication equipment, telephone apparatus, calculator, computer, monitor, bulbs, fluorescent tube, starter, ballast, insulating materials i.e., tube, plate and rod, socket, lampholder, lighting fixture, electric wiring devices falling under Classes 6, 7, 9, 11, 12 and 17.
8. Opposer further agrees not to use the marks "SEAHORSE AND SEAHORSE DEVICE," "SEAHORSE AND REPRESENTATION OF A SEAHORSE BETWEEN THE WORDS SEA AND HORSE," "SEAHORSE AND

SEAHORSE DEVICE INSIDE A CIRCLE” or any of its variations. However, Opposer may use the SEAHORSE DEVICE only if Opposer’s mark includes the “HIPOLITO” word only.

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 the effect of decision or judgment on the case and shall be enforced accordingly in accordance with the pertinent rules of IPO and the Rules of Court, (Sec. 5. Office Order No. 154, s. 2010)

WHEREFORE, premises considered, the submitted Compromise Agreement is hereby APPROVED. Accordingly the instant opposition case is hereby DISMISSED. Let the filewrapper of the subject trademark application be returned, together with a copy of this Decision to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 02 January 2012