



KENNETH C. COBONPUE,
Complainant,

- versus -

JOANNE ANDRES FLORES,
doing business under the names and styles
SHACK and/or SHACK FURNITURE,
Respondent.

} IPV NO. 10-2011-00006

} For: Copyright Infringement,
Injunction and Damages
with Prayer for a Writ of
Preliminary Injunction

x-----x Decision No. 2012 - 03

**DECISION
BASED ON COMPROMISE AGREEMENT**

KENNETH C. COBONPUE ("Complainant"), filed on 23 May 2011, a complaint against JOANNE ANDRES FLORES doing business under the name and styles SHACK and/or SHACK FURNITURE ("Respondent"), for alleged Copyright Infringement, Injunction and Damages with Prayer for a Writ of Preliminary Injunction. The Complainant alleged that Respondent is guilty of copyright infringement for manufacturing, exhibiting, advertising for sale, and selling products which infringe on the copyright-protected designs of the Complainant's furniture products.

The Respondent filed his Answer on 10 June 2011 refuting the material allegations of the Complainant.

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 13 December 2011 Order No. 2011-331 referring the case to mediation.

On 06 February 2012, 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:

"1. The parties have agreed to settle this case amicably under the following terms and conditions:

"a) The Respondent undertakes that she shall **not**, at any time in the future, in the Philippines or elsewhere, whether by herself or through the instrumentality of corporations, partnerships, sole proprietorships or any business vehicle where she is a part of in whatever capacity, directly or indirectly, or through her employees, servants, agents, business partners, contractors, subcontractors, or any of them or otherwise whosoever, directly or indirectly:

(i) Infringe on any and all of the Complainant's copyright-protected designs and furniture items, and other intellectual property rights and, in particular, shall not copy, reproduce, duplicate, manufacture, offer for sale, sell, supply, distribute, export, import or otherwise deal in any counterfeit or unauthorized reproduction of the Complainant's furniture products, or furniture that is inspired by the Complainant's designs/products, or altered versions of the Complainant's designs/products. The Respondent shall not manufacture or sell any and all of the Complainant's furniture designs and products, including, but not limited to the furniture designs and products subject of this case, namely: Yin & Yang easy armchair and loveseat, Yoda easy chair, Voyage bed, Matilda sofa and armchair and Pigalle armchair;

(ii) Otherwise commit the acts mentioned in (i) or attempt to infringe, or cause, assist or enable others to infringe on the Complainant's intellectual property rights;

(iii) Otherwise pass off, attempt to pass off, or cause, assist or enable others to pass off furniture items not of the manufacture of the Complainant as the latter's products or purchase, buy, exchange, or otherwise deal with such infringing products; and

(iv) Authorize or allow any other party to do any of the above acts;

“(b) The Respondent also hereby undertakes that she shall destroy all existing furniture products in her possession that infringe on the Complainant's furniture designs and products as well as brochures or any form of advertisement containing designs which infringe on the Complainant's own designs as well as to change the contents of her websites, if any, as to designs infringing on the Complainant's.

“(c) The Respondent likewise undertakes that in the event of a breach whether by herself or through the instrumentality of corporations, partnerships, sole proprietorships, or any business vehicle where she is a part of in whatever capacity, directly or indirectly, or through their stockholders, directors, officers, employees, servants, agents, business partners, contractors, subcontractors or any of them, of any term of this Agreement, she shall pay to the Complainant, by way of liquidated damages, the sum of Five Million Pesos (P5,000,000.00), Philippine Currency, for each act in breach of this Agreement. These liquidated damages are enforceable in this case through writs of execution. Should there be a

need for the Complainant to enforce any of the terms of this Agreement, the Respondent shall fully indemnify the Complainant for all legal fees and costs incurred in acting against the Respondent.

“(d) The Respondent hereby grants the Complainant or his duly authorized representatives the right, power and authority to inspect her respective business premises and storage facilities at any time, without need of prior notice, to determine and confirm compliance with this Agreement and to photograph and/or take video footage of the compliance or non-compliance with this Agreement. The right to inspect does not preclude or limit any rights or remedies that the Complainant shall be entitled to under the circumstances by law and jurisprudence. The Respondent agrees to surrender to the Complainant or his representatives, without compensation therefor, any counterfeit or unauthorized reproduction of the Complainant's furniture designs/products, or furniture that is inspired by the Complainant's designs, or altered version of the Complainant's designs/products discovered during any such inspection conducted pursuant to this paragraph. Ownership over any such infringing items shall automatically be transferred to the Complainant.

“(e) Immediately after the execution of this Agreement, the Respondent shall permit the Complainant or his duly authorized representatives to inspect her business premises and storage facilities to determine if there are still any finished or unfinished furniture products therein that infringe on the Complainant's designs. Any complete or partially complete infringing items seen by the Complainant or his representatives shall be surrendered by the Respondent to the Complainant and the latter has the absolute discretion on what to do with or how to dispose of such infringing items, without paying any compensation therefore to the Respondent. Ownership over any such infringing items shall automatically be deemed transferred to the Complainant without further legal action.

“(f) The Respondent hereby interposes no objection to and agrees that there shall be no limit to the exercise of the right to the Complainant to publicly disseminate information regarding the filing of this case and this Settlement Agreement and the subsequent proceedings and events thereafter.

“(g) This Agreement shall bind the Respondent, her employees, servants, agents, business partners, contractors, subcontractors, representatives, successors, and assigns.



"2. The parties hereby mutually and voluntarily stipulate that nothing in the foregoing is contrary to law, morals, good customs, public order or public policy.

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 custom, public order or public policy.

In this regard, an approved Compromise Agreement shall have the effect of a decision or judgment on the case and shall be enforced in accordance with the pertinent rules of Intellectual Property Office of the Philippines and the Rules of Court. (Sec. 5, Office Order No. 154, s. 2010)

WHEREFORE, premises considered, the parties' COMPROMISE AGREEMENT is hereby **APPROVED**. Accordingly, with the approved COMPROMISE AGREEMENT having the force and effect of a decision or judgment, the parties are enjoined to faithfully comply with the terms set forth therein.

SO ORDERED.

Taguig City, 30 March 2012.


Atty. **NATHANIEL S. AREVALO**
Director IV
Bureau of Legal Affairs 

mivd/cpb