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| BIGBY'S QUALITY FOOD CORP., | } | IPC No. 14-2012-00585 |
| <i>Opposer,</i> | } | |
| | } | Opposition to: |
| -versus- | } | Appln. No. : 4-2012-007136 |
| | } | Date Filed: 14 June 2012 |
| SPENCER FOODS CORPORATION, | } | |
| <i>Respondent-Applicant.</i> | } | TM: BIBBY'S MIXES DRINKS LABEL |
| x-----x | x | Decision No. 2014- 103 |

DECISION

BIGBY'S QUALITY FOOD CORP. ("Opposer") filed on 21 December 2012 an opposition to Trademark Application Serial No. 4-2012-007136. The application, filed by SPENCER FOODS CORPORATION, ("Respondent-Applicant"), covers the mark "BIBBY'S MIXES DRINKS LABEL" for use on goods under International Class 32.

This Bureau issued a Notice to Answer dated 16 January 2013 and served a copy thereof to Respondent-Applicant on 24 January 2013. The Respondent-Applicant filed its Answer on 24 April 2013.

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 issued on 30 April 2013 Order No. 2013-108 referring the case to mediation.

On 02 April 2014, the ADR Services of this Bureau submitted a Mediation Report indicating the successful mediation of the instant case. Attached to the report is the parties' COMPROMISE AGREEMENT, the pertinent portions thereof reads, as follows:

NOW, THEREFORE, the parties hereby freely agree to the following terms and conditions of a compromise agreement with full knowledge of the consequences thereof:

"1. SPENCER voluntarily and knowingly agrees to fully comply with the following obligations:

- a. Its "BIBBY'S MIXED DRINKS LABEL" shall be applied, registered, and used for Class 32 for fruit drinks and fruit juices. It shall not apply, register, use, promote, or market the mark "BIBBY'S" for services related to providing foods and drinks such as but not limited to restaurants, food kiosk, food stalls, and the like; and
- b. SPENCER shall not object to or challenge any use by BIGBY'S whether in the past, present, or future, of the "BIBBY'S" mark as well as any trademark and service mark that include the word "BIBBY'S" for services related to providing foods and drinks, such as but not not limited to restaurants, food kiosks, food stalls, and the like.

"2. "BIBBY'S" on the other hand, voluntarily and knowingly agrees to fully comply with the following obligations:

- a. "BIBBY'S" shall not object to or challenge any use by SPENCER

whether in the past, present or future, of the "BIBBY'S MIXED DRINKS LABEL" mark as well as any trademark and service mark that includes the word BIBBY'S for Class 32 covering fruit drinks and fruit juices.

"3. In the event that either of the parties violates or circumvents any provision of this Compromise Agreement or commits any breach or default of its obligations as provided herein, it shall be liable to pay any and all damages that the other incurs arising from or in connection with such violation, circumvention, breach or default.

"4. Each Party represents and warrants that:

i. It has duly secured and obtained all corporate authorizations necessary in connection with the execution and delivery of this Compromise Agreement; and

ii. The execution of this Compromise Agreement is a valid and legal act and the transaction does not violate any existing law or regulation applicable to each Party.

"5. This Compromise Agreement and any and all of its terms, conditions and obligations shall be binding against each party, its officers, directors as well as its successors, assigns, subsidiaries and other affiliated companies. Breach of any of the foregoing terms shall be cause for the breaching party to be cited in contempt by the Intellectual Property Office, after proper charge and hearing, without prejudice to the non-breaching party's right to avail of any other available legal remedies for such breach, including but not limited to filing any proper action for damages, injunction, or any other relief.

"6. This Compromise Agreement shall be the basis of a Judgment/Decision based on a Compromise Agreement to be issued by the Bureau of Legal Affairs of the Intellectual Property Office.


This Bureau evaluated the COMPROMISE 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.

An approved Compromise Agreement shall have the effect of a decision or judgment on the case and shall be enforced accordingly in accordance with the pertinent rules of IPO and the Rules of Court.¹

WHEREFORE, premises considered, premises considered, the parties' Compromise Agreement is hereby **APPROVED**. Accordingly, the instant opposition case is hereby **DISMISSED**. Let the filer wrapper of Trademark Application No. 4-2012-007136 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 11 April 2014.


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

¹ Office Order No. 154 Series of 2010.