



BLUEWATER DAY SPA, INC.,  
Opposer,

-versus-

SM HOTELS AND CONVENTION CORP.,  
Respondent-Applicant.

X-----X

}  
} IPC No. 14-2011-00492  
} Opposition to:  
} Appln. Serial No. 4-2010-013590  
} Date Filed: 15 December 2010  
} TM: "THE BLUE SPA"

**NOTICE OF DECISION**

**SAPALO VELEZ BUNDANG & BULILAN**

Counsel for Opposer  
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6776 Ayala Avenue, Makati City

**ATTY. MODESTO M. ALEJANDRO, JR.**

Counsel for the Respondent-Applicant  
Harbor Drive, Mall of Asia Complex  
CBP-IA, Pasay City 1300

**GREETINGS:**

Please be informed that Decision No. 2013 - 23 dated February 01, 2013 ( copy enclosed) was promulgated in the above entitled case.

Taguig City, February 01, 2013.

For the Director:

  
**Atty. EDWIN DANILO A. DATING**  
Director III  
Bureau of Legal Affairs



<b>BLUEWATER DAY SPA, INC.,</b>	}	<b>IPC No. 14-2011-00492</b>
Opposer,	}	Opposition to:
	}	
- versus -	}	<b>Application Serial No. 4-2010-013590</b>
	}	Date Filed: 15 December 2010
<b>SM HOTELS AND CONVENTION CORP.,</b>	}	Trademark: <b>THE BLUE SPA</b>
Respondent-Applicant.	}	
x-----x		Decision No. 2013 - <u>23</u>

**DECISION  
BASED ON COMPROMISE AGREEMENT**

**BLUEWATER DAY SPA, INC.** ("Opposer") filed on 27 December 2011 an opposition to Trademark Application Serial No. 4-2010-013590. The application filed by **SM HOTELS AND CONVENTION CORP.** ("Respondent-Applicant") covers the mark **THE BLUE SPA** for use on goods under Class 44.

This Bureau issued a Notice to Answer dated 11 January 2012 and served upon a copy thereof to Respondent-Applicant on 01 February 2012. The Respondent-Registrant filed its Answer on 30 April 2012.

In compliance to Office Order No. 154, s. 2012 ("*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 10 May 2012 Order No. 2012-102 referring the case to mediation.

On 09 January 2013, the ADR Services of this Bureau submitted a Mediation Report indicating a settlement by the parties. Attached to the report is the parties' COMPROMISE AGREEMENT, the pertinent portions of which reads:

"NOW, THEREFORE, in view of the above premises and for other good and valid considerations, the Parties hereby agree as follows:

"1. SMHCC recognizes and acknowledges BWDSI's exclusive rights and sole ownership over the 'BLUEWATER DAY SPA' under Registration No. 4-2006-009303 in connection with the corresponding services so stipulated in the registration.

"2. SMHCC hereby undertakes and agrees to immediately withdraw its pending Application No. 4-2010-013590 for the 'THE BLUE SPA' mark.

"3. Subject to SMHCC's compliance with its undertaking under the immediately preceding paragraph, BWDSI will allow SMHCC to continue with its current use of 'THE BLUE SPA' mark in its Radisson Blu Hotel, Cebu, Philippines only until December 30, 2013 without further extension and

under the following limitations:

a. SMHCC will use the 'THE BLUE SPA' mark only as depicted in its Trademark Application No. 4-2010-013590 subject of withdrawal as per paragraph 2 hereof, specifically with respect to appearance, style, color, arrangement and font as shown below:



b. Any change in the spelling or variation in the words comprising SMHCC's 'THE BLUE SPA' mark is prohibited.

c. SMHCC will use the 'THE BLUE SPA' mark for 'hygienic and beauty care services' only under class 44.

d. SMHCC will use the 'THE BLUE SPA' mark solely for the advertisement or promotion of the spa services of The Blue Spa of the Radisson Blu Hotel, Cebu.

e. Particularly, SMHCC will advertise 'THE BLUE SPA' mark only through its present methods or media, specifically, (i) Treatment Menus, Room Compendium, and Hotel Loyalty Card Brochures, (ii) Signages/Digital Signages (iii) Print Ads, (iv) Calling Cards, (v) Website, and (vi) Magazine Articles and Advertorials, only for the Radisson Blu Hotel, Cebu.

f. SMHCC will not file at anytime any application for registration of a trademark that may be identical or confusingly similar to BWDSI's 'BLUEWATER DAY SPA' trademark.

"4. BWDSI shall withdraw the subject opposition case docketed as Ipc No. 14-2011-00492 once the Application No. 4-2010-013590 of SMHCC's 'THE BLUE SPA' mark is withdrawn.

"5. The parties hereby mutually release, waive and quitclaim any and all claims or causes of action against each other related to or involved in any of the matters alleged in IPC No. 14-2011-00492.

"6. The parties undertake to observe the terms and conditions of this Agreement in utmost good faith.

"7. Each party shall bear its respective expenses incurred in this case.

"8. This Agreement shall become effective and enforceable in the Philippines immediately upon approval by this Honorable Office of a duly signed copy thereof."

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.

Accordingly, 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 (Sec. 5, Office Order No. 154, s. 2010).

**WHEREFORE**, premises considered, the parties' COMPROMISE AGREEMENT is hereby **APPROVED**. With the approval of the Compromise Agreement, this case is hereby **DISMISSED** without need for the Opposer to file a withdrawal of its opposition. Let the filewrapper of Trademark Application Serial No. 4-2010-013590 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

**SO ORDERED.**

Taguig City, 01 February 2013.

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