



BURGER KING CORPORATION,  
Opposer,

-versus-

NUTRITIVE SNACK CORPORATION,  
Respondent-Applicant.

X-----X

}  
} IPC No. 14-2011-00070  
} Opposition to:  
} Appln. Serial No. 4-2010-003706  
} Filing Date: 08 April 2010  
} Trademark: "WHOPEE"  
}

**NOTICE OF DECISION**

**BETITA CABILAO CASUELA SARMIENTO**  
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**ESCAÑO SARMIENTO & PARTNERS LAW OFFICES**  
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Suite 1605, The Taipan Place  
F. Ortigas Jr. Road, Ortigas Business District  
Pasig City

**GREETINGS:**

Please be informed that Decision No. 2012 – 152 dated August 28, 2012 ( copy enclosed) was promulgated in the above entitled case.

Taguig City, August 28, 2012.

For the Director:

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

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MARILYN E. RETUTAL



**BURGER KING CORPORATION,**  
*Opposer,*

*-versus-*

**NUTRITIVE SNACK CORPORATION,**  
*Respondent-Applicant.*

x-----x

**IPC NO. 14-2011-00070**

Case Filed: 23 Feb 2011

**Opposition to:**

Appln. No. 4-2010-003706

Date Filed: 08 Apr. 2010

TM : **"WHOPEE"**

**Decision No. 2012 - 152**

**DECISION BASED ON  
COMPROMISE AGREEMENT**

BURGER KING CORPORATION ("Opposer"), filed on 23 February 2011 an opposition to Trademark Application Serial No. 4-2010-003706. The application filed by NUTRITIVE SNACK CORPORATION ("Respondent-Applicant"), covers the mark "WHOPEE" for use on goods under Class 30. The opposition is anchored on Sections 123.1 (d), (e) and (f) of R.A. 8293 otherwise known as the Intellectual Property Code of the Philippines.

This Bureau issued a Notice to Answer dated 22 March 2011 and served upon a copy thereof to Respondent-Applicant on 14 April 2011. The Respondent-Applicant filed its Answer on 17 August 2011.

On 23 August 2011 this Bureau issued Order No. 2011-264 referring the case for Mediation. However, the parties failed to reach a settlement within the Mediation period. The Preliminary Conference was initially set on 09 January 2012 wherein the parties requested for more time for them to reach an agreement. The request was granted by this Bureau.

On 14 June 2012, the parties submitted with this Bureau a Joint Motion to Render Judgment Based on Compromise Agreement. The pertinent portions of the Agreement read, as follows;

1. Nutritive Snack Food acknowledges BKC's worldwide and exclusive rights in and to the mark WHOPPER, together with all the goodwill associated therewith.
2. Nutritive Snack Food agrees and undertakes to refrain from using, registering or seeking to register, and/or claiming or asserting any right to own, to use or register in the Philippines or anywhere in the world the mark WHOPPER or variants using or incorporating the term WHOPPER thereof in relation to any goods or services, and particularly on the following goods in Class 30:

Sandwiches; hot sandwiches; hamburger sandwiches; chicken sandwiches; fish sandwiches; bread; bread-filled products;

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*Maryn E. Gerutal*  
MARYN E. GERUTAL

filled buns and sandwiches; burgers included in Class 30; wraps; condiments; mustard; ketchup; mayonnaise, salad dressings; bakery desserts; biscuits containing chocolate-flavored ingredients; mousses; sorbets; dairy-based desserts; dessert bars; dessert puddings; dessert soufflés; flavored, sweetened gelatin desserts; ice cream and ice cream products; chilled and frozen confections and desserts; prepared desserts; flavoring in the form of concentrated sauces.

3. Nutritive Snack Food shall not commence any opposition, cancellation action, or any type of legal proceeding in the Philippines or anywhere in the world against any other trademark application or registration that BKC may decide to file or obtain for the mark WHOPPER, particularly for the following goods:

Sandwiches; hot sandwiches; hamburger sandwiches; chicken sandwiches; fish sandwiches; bread; bread-filled products; filled buns and sandwiches; burgers included in Class 30; wraps; condiments; mustard; ketchup; mayonnaise, salad dressings; bakery desserts; biscuits containing chocolate-flavored ingredients; mousses; sorbets; dairy-based desserts; dessert bars; dessert puddings; dessert soufflés; flavored, sweetened gelatin desserts; ice cream and ice cream products; chilled and frozen confections and desserts; prepared desserts; flavoring in the form of concentrated sauces.

4. BKC shall not commence or maintain any opposition, cancellation action, or any type of legal proceeding with the Philippine Intellectual Property Office against Nutritive Snack Food's Application No. 4-2010-003706, and any registration resulting therefrom.

5. Nutritive Snack Food agrees, warrants and undertakes to use its mark WHOPEE exclusively on "corn and flour based snack chips" in Nice Class 30, to the exclusion of all goods and services. For the avoidance of doubt, Nutritive Snack Food agrees and warrants to perpetually refrain from using and registering its WHOPEE mark and variants thereof, such as stylized versions and versions containing the word WHOPEE in combination with devices, on the following goods in Class 30:

Sandwiches; hot sandwiches; hamburger sandwiches; chicken sandwiches; fish sandwiches; bread; bread-filled products; filled buns and sandwiches; burgers included in Class 30; wraps; condiments; mustard; ketchup; mayonnaise, salad dressings; bakery desserts; biscuits containing chocolate-flavored ingredients; mousses; sorbets; dairy-based desserts; dessert bars; dessert puddings; dessert soufflés; flavored, sweetened gelatin desserts; ice cream and ice cream products; chilled and frozen confections and desserts; prepared desserts; flavoring in the form of concentrated sauces.

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*Handwritten signature*

6. Nutritive Snack Food agrees and undertakes to inform BKC, or its authorized representatives, on a best efforts basis, and as soon as practicable of any change, medication or revision in the style, appearance, color and/or design of its packaging for the WHOPEE product. In case such change, modification or revision would, in the opinion of the BKC, likely cause consumer confusion with any of BKC's products or business, Nutritive Snack Food and BKC agree to meet as soon as practicable and resolve such matter amicably.

7. Nutritive Snack Food and BKC agree to jointly move for the submission of this Agreement for the approval of the IPO and, upon such approval, render judgment in IPC No. 14-2011-00070 based on the terms and conditions of this Agreement and dismiss the IPC No. 14-2011-00070.

8. The parties acknowledge that their respective signatories have full authority and/or have secured the necessary approvals to execute, and do execute, this Agreement on behalf of their principals and those acting under their principal's authority and that the parties have the authority to comply with the promises, obligations, undertaking and acknowledgments made in this Agreement voluntarily with full knowledge of its consequences under the law.

9. This Agreement shall be binding upon and inure to the benefit of the parties and their employees and officers and assigns or successors in the interest. The terms and conditions of this Agreement may be amended, waived or modified only by agreement in writing signed by the parties or their respective assigns or successors' interest.

10. Except to the extent that the Parties will submit this Agreement to the IPO for approval, both parties shall not disclose to any third party or publicly disseminate any information relating to the transactions or negotiations between them and/or their representatives with respect to this Agreement.

This Bureau evaluated the COMPROMISE & COEXISTENCE 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.<sup>1</sup>

**WHEREFORE**, premises considered, the parties' COMPROMISE & COEXISTENCE AGREEMENT is hereby **APPROVED**. Accordingly, the Compromise & Coexistence 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 filer wrapper of Trademark Application Serial No. 4-2010-003706 be returned, together with a copy of this Decision, to the Bureau of Trademarks (BOT) for information and appropriate action.

<sup>1</sup> Office Order No. 154 Series of 2010

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MARILYN F. RETUAL

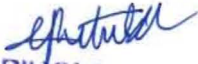
**SO ORDERED.**

Taguig City, 28 August 2012.



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

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MARILYN F. RETUTAL  
IPRS IV, Bureau of Legal Affairs, IP 