



**COLGATE-PALMOLIVE COMPANY
and COLGATE PALMOLIVE
PHILIPPINES, INC.,**
Complainants,

-versus-

LAMOYAN CORPORATION,
Respondent.

X-----X

IPV No. 10-2013-00003

**For: Infringement of Trademark
Registrations No. 4-2007-013937
and No. 4-2007-013938; Unfair
Competition and Damages**

NOTICE OF DECISION

SYCIP SALAZAR HERNANDEZ & GATMAITAN

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Counsel for Respondent
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GREETINGS:

Please be informed that Decision No. 2014 - 02 - dated March 18, 2014 (copy enclosed) was promulgated in the above entitled case.

Taguig City, March 18, 2014.

For the Director:


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



COLGATE-PALMOLIVE COMPANY	}	IPV NO. 10-2013-00003
and COLGATE PALMOLIVE	}	
PHILIPPINES, INC.,	}	For : Infringement of Trademark
Complainants,	}	Registrations No. 4-2007-013937
	}	and No. 4-2007-013938; Unfair
-versus -	}	Competition and Damages
	}	
LAMOYAN CORPORATION,	}	
Respondent.	}	
x-----x		Decision No. 2014- <u>02</u>

DECISION BASED ON COMPROMISE AGREEMENT

COLGATE-PALMOLIVE COMPANY and COLGATE PALMOLIVE PHILIPPINES, INC. ("Complainants") filed on 11 February 2013, a complaint against LAMOYAN CORPORATION ("Respondent") for alleged Infringement of Trademark Registrations No. 4-2007-013937 and No. 4-2007-013938 and Unfair Competition. The Complainants assail the Respondent's alleged unauthorized making, using, offering for sale, selling, promoting and/or distributing toothpaste products under the "Hapee" brand with a trade dress/package design that has the general appearance of those of the Complainants' identical goods.

This Bureau issued a Notice to Answer and served a copy thereof to Respondent on 21 February 2013. The Respondent filed its Answer on 04 March 2013 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 Settlement Period*"), this Bureau issued on 07 March 2013 Order No. 2013-72 referring the case to mediation.

On 07 March 2014, the ADR Services of this Bureau submitted a Mediation Report submitting a copy of the parties' Compromise Agreement. The pertinent portions of the COMPROMISE AGREEMENT reads, as follows:

NOW, THEREFORE, for and in consideration of the parties' respective concessions herein below enumerated, COLGATE and LAMOYAN, by way of compromise, mutually agree as follows:

"1. Effective on the date of this Agreement, LAMOYAN shall cease production of all packaging adopting its Hapee Classic White Designs set forth in Annexes A and B (hereinafter "Hapee Classic White Designs") and shall refrain from using either Design in the future. In addition, LAMOYAN shall modify its label designs to implement the following changes, as follows:

- a. Change the hue and/or pantone of the blue portion of the Classic White Design; and
- b. Change the orientation, position and color of the arc device.

A prototype of the revised design is attached hereto as Annex "C". COLGATE has no objection to LAMOYAN's use of the prototype set forth in Annex C. However, should LAMOYAN use a design that is different from the prototype in Annex C, COLGATE reserves the right to object to such use.

"2. LAMOYAN shall be allowed to continue to sell and distribute its Hapee products using the Hapee Classic White Designs only until all stocks in the Philippine market have been exhausted, which in no case shall be later than sixty (60) days from the execution of this Agreement. After such period, LAMOYAN shall cease the sale and distribution of its Hapee products using the Hapee Classic White Designs, and also the use of the same in any of its advertising materials. The pull-out of said packaging designs and advertising materials shall be for the sole account of LAMOYAN. Any inventory remaining of products bearing the Hapee Classic White Designs at the end of the sell-off period shall either be destroyed; or, if preferred, donated within the Philippines.

2.1 The foregoing phase-out period shall apply exclusively to the sale by Lamoian of products bearing the first two versions of the "Hapee Classic White Designs" to its middlemen or retailers and does not apply to the further sale by middlemen or retailers to the public over which Lamoian has no control.

"3. LAMOYAN agrees to undertake the foregoing in order to foster a peaceful co-existence between CLOGATE and LAMOYAN. The foregoing undertaking does not, in any way, indicate any admission of guilt for trademark infringement on the part of LAMOYAN.

"4. Each party shall bear its own costs and expenses in connection with IPV No. 10-2013-00003, the Agreement, including implementation thereof, and the transactions contemplated thereby.

"5. This Agreement shall also apply to and be binding upon the parties' related or associated companies, including the parties' subsidiaries or affiliates, their legal successors or assigns, and their respective licensees in the Philippines.

"6. This Agreement shall be governed by the law of the Philippines.

"7. This Agreement may be executed in counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same agreement."

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.¹

¹ Office Order No. 154 Series of 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, 18 March 2014.


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

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