



THE SMILEY COMPANY,
Opposer,

IPC NO. 14-2011-00484
Opposition to:

- versus -

JOSIE MARIE GAQUIT,
Respondent-Applicant.

Appln. Serial No. 4-2011-710084
(Filing Date: 17 June 2011)
TM: HAPPY, SINANDOMENG
PREMIUM WHITE RICE AND
LABEL

X-----X

Order No. 2012- 114 (b)

ORDER

Records show that the subject trademark application was published for opposition in the "IPO E-Gazette" on 26 September 2011. Thus, the Opposer had until 26 October 2011 to file its Verified Notice of Opposition to the application. The Opposer, however, filed on 26 October 2011 a motion for extension of the period within which to file the opposition. Finding the motion meritorious, this Bureau issued Order No. 2011-1582 giving the Opposer until 25 November 2011 within which to file the Verified Notice of Opposition. A second motion for extension was filed by the Opposer which this Bureau also granted per Order No. 2011-1635 giving the Opposer a final extension of up to 25 December 2011.

The Opposer filed on 27 December 2011 its Verified Notice of Opposition. This Bureau, however, noticed that the documents on the authority of the signatory to the required verification and certification of non-forum shopping, particularly, the Special Power of Attorney and the Director's Certificate, are mere photocopies. Hence, pursuant to Rule 2, Sec. 8, par. (c) of the Amended Rules and Regulations on Inter Partes Proceedings (promulgated through Office Order No. 99, s. 2011), this Bureau issued Order No. 2012-71 directing the Opposer to submit within five days from receipt of the order the originals of the aforementioned documents with a warning that "*Failure to do so shall cause the dismissal of the case*". Instead of complying with the order, the Opposer filed on 24 January 2012 an "Urgent Motion for Extension of Time to Submit Compliance" seeking an additional five days from 22 January 2012 within which to make the submissions. Another motion was filed by the Opposer on 27 January 2012 requesting an extra period of up to 06 February 2012, followed by a third one on 06 February 2012 seeking up to 16 February 2012 within which to comply with Order No. 2012-71.

On 09 February 2012, This Bureau issued Order No. 2012-258, stating:

"WHEREFORE, the Opposer is hereby directed to submit proof that the Special Power of Attorney and Director's Certificate were already submitted for authentication abroad and are still in transit from London within three (3) days from receipt of this Order. The said proof will be considered in the resolution of the pending Motion for Extension of Time to Submit Compliance."

The Opposer instead submitted on 20 February 2012 photocopies of the supposedly notarized and legalized Special Power of Attorney and Director's Certificate and manifested that it is ready to present the original documents for comparison during the preliminary conference.

This Bureau noticed that the Opposer failed to comply with the orders of this Bureau. Sec. 8, par. (c) of Rule 2 of the Rules explicitly states, among other things, that the "*Failure to complete or cure the defect shall cause the dismissal of the case*". This was emphasized in this

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SHARON S. ALCANTARA

Records Officer II

Bureau of Legal Affairs, IPO

Republic of the Philippines
INTELLECTUAL PROPERTY OFFICE

Intellectual Property Center, 388 Unsan-Makiling Road, Makati, Metro Manila, Philippines

Bureau's Order No. 2012-71. The submissions made on 20 February 2012 can hardly be considered as compliance to this Bureau's orders. The documents submitted are merely photocopies. And even if the same were originals, there is still no compliance on the part of the Opposer. The purported notarizations and authentications of the Special Power of Attorney and the Director's Certificate by the Philippine Consular Office in London, United Kingdom of Great Britain and Northern Ireland, show that these were done or issued only on 07 February 2012 and 13 February 2012, respectively. In this regard, Sec. 7, par (b) of Rule 2, states:

(b) The opposer or petitioner shall attach to the opposition or petition the affidavits of witnesses, documentary or object evidence, which must be duly-marked starting from Exhibit "A", and other supporting documents mentioned in the notice of opposition or petition together with the translation in English, if not in the English language. The verification and certification of non-forum shopping as well as the documents showing the authority of the signatory or signatories thereto, affidavits and other supporting documents, if executed and notarized abroad, must have been authenticated by the appropriate Philippine diplomatic or consular office. **The execution and authentication of these documents must have been done before the filing of the opposition or petition.** (Emphasis supplied)

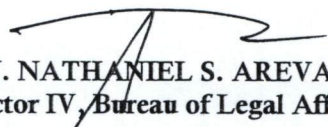
This Bureau, in the interest of justice and to the extent allowed by the Rules, has accorded the Opposer ample liberality and opportunity to pursue its opposition. The Opposer was granted two extensions of the period within which to file the Verified Notice of Opposition, which was equivalent to ninety (90) days from the publication of the subject trademark application. In addition, this Bureau also gave several chances for the Opposer to complete or cure the defects in the requirements.

Thus, the Opposer had ample time to prepare and secure all the requirements in filing the opposition. In fact, the 30-day reglementary period within which to file the Verified Notice of Opposition, which on meritorious reasons could be extended twice for a total of 90 days, is precisely designed to give the Opposer, especially foreign entity or principal, sufficient time to prepare the requirements for an opposition case.

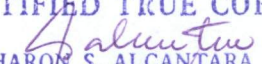
WHEREFORE, premises considered, the instant opposition is hereby **DISMISSED**. Let the filewrapper of Trademark Application Serial No. 4-2011-710084 be returned, together with a copy of this Order, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 28 June 2012.


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

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SHARON S. ALCANTARA
Records Officer II
Bureau of Legal Affairs, IPO

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