



FREMANTLE MEDIA LIMITED,  
Opposer,

-versus-

SAN MIGUEL CORPORATION,  
Respondent- Applicant.

X-----X

} IPC No. 14-2011-00519  
} Opposition to:  
} Appln. Serial No. 4-2011-00948  
} Date filed: 27 January 2011  
} TM: "G.S.M. BLUE FLAIR  
} IDOL AND DESIGN"

### NOTICE OF DECISION

#### TAW & ASSOCIATES

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#### GREETINGS:

Please be informed that Decision No. 2013 - 120 dated July 09, 2013 (copy enclosed) was promulgated in the above entitled case.

Taguig City, July 09, 2013.

For the Director:

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



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Opposer,

-versus-

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**IPC NO. 14-2011-00519**

Opposition to:

Appln. Ser. No. 4-2011-000948

Date Filed: 27 January 2011

Trademark: **G.S.M. BLUE FLAIR  
IDOL AND DESIGN**

Decision No. 2013- 120

### **DECISION BASED ON COMPROMISE AGREEMENT**

**FREMANTLE LIMITED**, ("Opposer") filed on 17 January 2012 an opposition to Trademark Application Serial No. 4-2011-000948. The application filed by **SAN MIGUEL CORPORATION** ("Respondent-Applicant") covers the mark **G.S.M BLUE FLAIR IDOL AND DESIGN** for use on goods under Class 41. The opposition is anchored on Sections 123.1 (d) and (f) of R.A. 8293 otherwise known as The Intellectual Property Code of the Philippines.

On 07 May 2012, the Respondent-Applicant filed its Answer refuting the material allegations of the Opposer.

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 and Settlement Period*"), this Bureau issued on 17 June 2012 Order No. 2012-108 referring the case to mediation.

On 06 June 2013, this Bureau received a "MEDIATOR'S REPORT" indicating the successful mediation of the instant case. Attached to the report is the parties' "COMPROMISE AGREEMENT" submitted to this Bureau for approval. The Agreement states, among other things:

"1. After seriously considering that a protracted litigation is not beneficial to their respective interests, the parties hereto have mutually decided to amicably settle with finality their trademark dispute in Inter Partes Case No. 14-2011-00519 entitled "FremantleMedia Limited v. San Miguel Corporation" (hereinafter called Inter Partes Case) which involves SMC's application for the registration of the trademark "G.S.M. BLUE FLAIR IDOL AND DESIGN" bearing application No. 4-2011- 000948 in relation to the opposition thereto filed by Fremantle, under the terms and conditions hereinafter set forth.

"2. SMC undertakes to file with the Intellectual Property Office (hereinafter called IPO) of the Philippines the corresponding request for the amendment of its Application No. 4-2011-000948 to cover the following services (the "Covered Services"):

*"Providing of training and education in relation to or in connection with flirtending; flirtending competitions, and promotional, entertainment, and cultural activities related or incidental to or in connection with flirtending competitions, excluding entertainment in the form of musical talent competitions."*

"3. In the event that such request for amendment is not accepted/ approved by the IPO Examiner, SMC undertakes to withdraw its Application No. 4-2011-000948, and file a new trademark application, under its name or under the name of Ginebra San Miguel Inc. (hereinafter referred to as "GSMI") for the mark "G.S.M. BLUE FLAIR IDOL AND DESIGN" for the following Covered Services under Class 41:

*"Providing of training and education in relation to or in connection with flirtending; flirtending competitions, and promotional, entertainment, and cultural activities related or incidental to or in connection with flirtending competitions, excluding entertainment in the form of musical talents."*

If the above case occurs, Fremantle agrees not to oppose, file any opposition against, seek the cancellation, claim any infringement or unfair competition against SMC's/ GSMI's aforementioned new trademark application for the same mark and design for the Covered Services under Class 41, as modified above. Fremantle further agrees that it has no cause of action against SMC's application, registration, and use of the said new trademark application.

"4. SMC/GSMI agree to use the IDOL mark always as part of the composite trademarks "G.S.M. BLUE FLAIR IDOL", "GSMI BLUE FLAIR IDOL", "GINEBRA SAN MIGUEL BLUE FLAIR IDOL" and "GINEBRA SAN MIGUEL, INC. BLUE FAIR IDOL" and never as a stand-alone mark or the dominant portion of any mark and in connection with the Covered Services.

"5. Fremantle, its successors, assigns, affiliates, subsidiaries, and related companies, will not object to, or otherwise legally challenge, the use or registration of the mark "G.S.M. BLUE FLAIR IDOL AND DESIGN" or use of the IDOL MARK as part of the composite trademarks as stipulated in Section 4 above and never as a stand-alone mark or the dominant portion of any mark in connection with the Covered Services:  
*"Providing of training and education in relation to or in connection with flirtending; flirtending competitions, and promotional, entertainment, and cultural activities related or incidental to or in connection with*

*flairtending competitions, excluding entertainment in the form of musical talent competitions*" by SMC and/or GSMI and further agrees that such use by SMC and/or GSMI will not constitute an infringement or unfair competition of Fremantle's various "IDOL" marks, nor will such give rise to any cause of action by Fremantle against SMC and/or GSMI.

"6. Fremantle, its successors, assigns, affiliates, subsidiaries, and related companies, will not object to, or otherwise legally challenge, an assignment of all or any of the rights of SMC in the trademark "G.S.M. BLUE FLAIR IDOL AND DESIGN" bearing Application No. 4-2011-000948 to GSMI or such other company; or the trademark application contemplated in Section 3 above, whether or not the same is filed by SMC or GSMI.

"7. SMC, its successors, assigns, affiliates, subsidiaries, and related companies, will not object to, or otherwise legally challenge, Fremantle's use or registration of the various "IDOL" marks as described and/or listed in Fremantle's Notice of Opposition dated 17 January 2012 and its annexes, and in Fremantle's Compliance dated 17 January 2012 and its annexes, both filed in the Inter Partes Case and summarized in the attached **Annex "A"** in connection with "entertainment services", "musical talent competitions", and such other goods and services for which they are applied and/or registered in the Philippines and further agrees that such use by Fremantle will not constitute an infringement or unfair competition of SMC's "G.S.M. BLUE FLAIR IDOL AND DESIGN" mark.

"8. On the basis of this Agreement, the Parties jointly seek the dismissal of Inter Partes Case No. 14-2011-00519 and the issuance of the corresponding Order approving the terms of this Agreement.

"9. The Parties hereby agree that each shall shoulder their respective expenses and costs incurred in Inter Partes Case No. 14-2011-00519, including, without limitation, all attorney's fees and costs.

"10. The parties mutually acknowledge and agree that this Agreement does not in any manner constitute an admission of liability or fault whatsoever by either Party and is made solely for the purpose of amicably settling the dispute between the Parties.

"11. This Agreement shall enter into force when the same has been executed by both Parties and shall continue in full force and effect until this Agreement is terminated by a subsequent agreement of the Parties.

"12. This Agreement shall be binding upon, inure to the benefit of, and be enforceable by the Parties and their respective affiliates, subsidiaries, branches, divisions, agents, parents, and those persons

and/or entities over whom they exercise control or by whom they are controlled, and the respective successors and assigns of each Party.

"13. The Parties mutually acknowledge that this Agreement contains the entire understanding of the Parties with respect to the subject matter hereof, and that there are no other agreements or understanding, written or oral, between the Parties with respect to its subject matter; nor have there been any representations, express or implied, as to the subject matter herein. This Agreement may be amended, varied, or modified only by written document executed by the Parties.

"14. This Agreement shall be enforceable upon the exchange of facsimile signatures and effective on the date of the last signature.

"15. This Agreement shall be construed and enforced in accordance with applicable laws of the Philippines.

This Bureau finds that the Compromise Agreement has been duly entered into by the parties with the terms and conditions thereof not contrary to law, morals, good custom, public order or public policy.

In this regard, 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**. 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, 09 July 2013.

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