



**GBSI MANAGEMENT CORP.,**  
Opposer,

**-versus-**

**TOMS GRUPPEN A/S,**  
Respondent-Applicant.

X-----X

} **IPC No. 14-2012-00567**  
} Opposition to:  
} Appln. Serial No. 4-2011-501936  
} Date filed: 22 December 2011  
} **TM: "SWEET MOMENTS"**

**NOTICE OF DECISION**

**ANGARA ABELLO CONCEPCION REGALA & CRUZ**  
Counsel for the Opposer  
ACCRA LAW TOWER, 22<sup>nd</sup> Floor  
Second Avenue corner 30<sup>th</sup> Street  
Crescent Park West, Bonifacio Global City  
Taguig City

**DEL ROSARIO & DEL ROSARIO**  
Counsel for the Respondent-Applicant  
5<sup>th</sup> Floor, Pacific Star Building  
Makati Avenue corner Sen. Gil Puyat Avenue  
1200 Makati City

**GREETINGS:**

Please be informed that Decision No. 2013 - 192 dated October 09, 2013 (copy enclosed) was promulgated in the above entitled case.

Taguig City, October 09, 2013.

For the Director:

**Atty. PAUSI U. SAPAK**  
Hearing Officer  
Bureau of Legal Affairs



GBSI MANAGEMENT CORP.,	}	IPC No. 14-2012-00567
Opposer,	}	Opposition to:
- versus -	}	Appln. Serial No. 4-2011-501936
TOMS GRUPPEN A/S,	}	Date Filed: 22 December 2011
Respondent-Applicant.	}	Trademark: SWEET MOMENTS
x-----x	x	Decision No. 2013 - <u>192</u>

### DECISION BASED ON COMPROMISE AGREEMENT

GBSI MANAGEMENT CORPORATION ("Opposer") filed on 04 February 2013 an opposition to Trademark Application No. 4-2011-501936. The application, filed by TOMS GRUPPEN A/S ("Respondent-Applicant"), covers the mark SWEET MOMENTS for use on goods under Classes 29 and 30 of the International Classification of goods.

This Bureau issued a Notice to Answer dated 06 February 2013 and served a copy thereof to Respondent-Applicant on 18 February 2013. The Respondent-Applicant filed its Answer on 06 May 2013.

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 24 May 2013 Order No. 2013-122 referring the case to mediation.

On 03 September 2013, 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:

"The Parties agree to the co-existence of GBSI's Trademark and Toms Gruppen's Trademark in the Philippines ("Territory") under the terms and conditions of this Agreement in order to avoid future disputes regarding use and registration of the Parties' trademarks.

"The Parties have agreed as follows:

"1. The Parties mutually acknowledge and confirm that GBSI has the prior right over the mark "SWEET MOMENTS" by virtue of its trademark registration bearing Registration No. 4-2009-001206.

"2. Apart from its application for the mark "SWEET MOMENTS" bearing Application No. 4-2011-501936, Toms Gruppen represents and warrants that it has no other pending application and/or registration for any other mark that is identical to, or confusingly similar with, GBSI's "SWEET MOMENTS" mark in the Philippines.

"3. After seriously considering that protracted litigation is not beneficial to their interests, the Parties have mutually decided to amicably settle, with finality, their trademark dispute subject of Inter Partes Case No. 14-2012-00567 entitled "*GBSI Management Corporation v. Toms Gruppen A/S*" pending before the Bureau of Legal Affairs of the Intellectual Property Office, which involves Toms Gruppen's application for the registration of the mark "SWEET MOMENTS", under the terms and conditions set forth:

a. Toms Gruppen shall not use its "SWEET MOMENTS" mark in isolation but always in conjunction with the name "ANTHON BERG" and a crown logo, as shown in Annex "C" of this Agreement;

b. Toms Gruppen undertakes to immediately file a request to amend the list of Class 30 goods covered by Trademark Application No. 4-2011-501936, by replacing the term "CHOCOLATE PRODUCTS" with "CHOCOLATE PRODUCTS NOT INCLUDING CHOCOLATE CAKES, CHOCOLATE COOKIES, AND CHOCOLATE BAKED GOODS" with the Bureau of Trademarks;

c. On the basis of this Compromise Agreement, Toms Gruppen and GBSI shall file a Joint Motion to Dismiss the opposition case (IPC No. 14-2012-00567) and shall jointly seek the issuance of the corresponding Order approving the terms of this Agreement;

d. From the effective date of this Agreement, Toms Gruppen may register and use Toms Gruppen's Trademark in the Territory as a trademark and business identifier for any and all goods of International Classes 29 and 30, except for CHOCOLATE CAKES, CHOCOLATE COOKIES, AND CHOCOLATE BAKED GOODS. GBSI shall not object to, lodge any opposition against, or seek cancellation of Toms Gruppen's Trademark or in other ways attempt to prevent Toms Gruppen from registering, using and/or renewing Toms Gruppen's Trademark as a trademark or other kind of business identifier, in connection with any and all goods of International Classes 29 and 30 in the Territory. On Toms Gruppen's request, GBSI shall sign any such document that public authorities may require in the context of Toms Gruppen's registration or renewal of Toms Gruppen's Trademark and within the Territory.

"4. The Parties hereby agree that each shall shoulder their respective expenses and costs incurred in Inter Partes Case No. 14-2012-00567, if any, including, without limitation, all attorneys' fees and costs.

"5. The Parties mutually acknowledge and agree that this Compromise 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 trademark dispute between the Parties.

"6. This Agreement shall be valid as long as and in so far as the Toms Gruppen's Trademark and GBSI's Trademark are valid and in force, and may only be terminated or modified if both Parties agree hereto. An agreement to suspend or modify the rights and obligations of the Parties must be made in writing.

"7. This Compromise Agreement shall be binding upon, inure to the benefit of, and be enforceable by the Parties, their affiliates, divisions, agents, parents, and those persons and/or entities over whom they exercise control or by whom they are controlled, and the successors and assigns of each Party.

"8. The Parties mutually acknowledge that this Compromise Agreement, together with its attached Annexes, contain 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 Compromise Agreement may be amended, varied, or modified only by a written document executed by the Parties.

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

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, goods 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.

**WHEREFORE**, premises considered, the parties' Compromise Agreement is hereby **APPROVED**. Accordingly, the instant opposition case is hereby **DISMISSED**. Let the filewrapper of Trademark Application Serial No. 4-2011-501936 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

**SO ORDERED.**

Taguig City, 09 October 2013.

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