



NUTRI-ASIA , INC.,
Opposer,

-versus-

MICHAEL KHO,
Respondent- Applicant.

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}
} IPC No. 14-2012-00327
} Opposition to:
} Appln. Serial No. 4-2012-000403
} Date filed: 11 January 2012
} TM: "DATING PUTI"
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}
}

NOTICE OF DECISION

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GREETINGS:

Please be informed that Decision No. 2013 - 86 dated May 22, 2013 (copy enclosed) was promulgated in the above entitled case.

Taguig City, May 22, 2013.

For the Director:

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



NUTRI-ASIA, INC.,
Opposer,

-versus-

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IPC NO. 14-2012-00327
Opposition to:

Appln. Ser. No.: 4-2012-000403
Date Filed: 11 January 2012

Trademark: **DATING PUTI**
Decision No. 2013- 86

**DECISION
BASED ON COMPROMISE AGREEMENT**

NUTRI-ASIA, INC., ("Opposer") filed on 17 September 2012 an opposition to Trademark Application Serial No. 4-2012-000403. The application filed by **MICHAEL KHO** ("Respondent-Applicant") covers the mark **DATING PUTI** for use on goods under Class 30. 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 14 November 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 04 December 2012 Order No. 2012-221 referring the case to mediation.

On 01 March 2013, however, the parties filed a Joint Motion for Judgment Based on Compromise. The pertinent portions of the Agreement read, as follows;

Section One
Undertakings

- "1. The SECOND PARTY acknowledges the FIRST PARTY's trademarks which incorporate the mark "DATU PUTI" and manifests that he has no objections to these trademarks. The SECOND PARTY undertakes not to use in the Philippines, or elsewhere in the world, any mark incorporating "DATU PUTI", or the words "DATU" and "PUTI" as components of any trademark and device, or any colorable imitation thereof, in connection with any goods or services. The SECOND PARTY further undertakes not to use in the Philippines, or elsewhere in the world, any mark incorporating "DATING PUTI" or any derivative thereof in connection with any goods or services.

"2. For avoidance of doubt, the term "use" includes any application for trademark registration with the IPOPHIL or with the intellectual property office of any other country. Hence, the SECOND PARTY undertakes to withdraw his trademark application subject of the case, to be prayed for in a Joint Motion for Judgment Based on Compromise substantially in the form provided here in as Annex "B"

"3. In consideration of the performance by the SECOND PARTY of his undertakings mentioned herein, the FIRST PARTY has agreed to cause the dismissal of the Case by filing a Joint Motion for Judgment Based on Compromise substantially in the form provided herein as Annex "B".

Section Two Release of Claims

"1. In consideration of the foregoing undertakings, each Party hereby discharges and releases the other Party from all claims, demands, damages, actions and causes of action, of any nature, whether civil, criminal or administrative, now pending, or which may arise, directly or indirectly, in connection with claims arising from or covered by the case.

"2. Likewise, in consideration of the foregoing undertakings, each Party shall refrain from instituting or prosecuting any claim, demand, action, cause of action, of any nature, whether civil, criminal or administrative, or from aiding, abetting, or in any way assisting any third person not a party to this Agreement in the bringing of any action or the prosecution of any claim or demand of whatever kind or nature, whether civil, criminal, or administrative, against the other Party, for any matter, fact circumstance, happening, or thing whatsoever, whether developed or undeveloped, known or unknown, past, present, or future, directly or indirectly in connection with claims arising from or covered by the case.

Section Three Non-admission of Liability

This agreement is executed by the Parties for the sole purpose of amicably compromising and settling the matters involved in the case to avoid further litigation. It is expressly understood and agreed, as a condition hereof, that this Agreement shall not constitute or be construed as an admission by any of the Parties, or as evidencing or indicating in any degree an admission, of the truth, correctness or validity of any claims asserted against them.

Section Four Default

If a Party ("**Defaulting Party**") fails to fulfill any of its/his obligations under this Agreement ("**Default**"), the other Party ("**Non-Defaulting Party**") shall notify the Defaulting Party of the occurrence of such Default and give it/him a period of sixty days within which to remedy such Default and/or for the Parties to settle any dispute amicably by mutual consultations. However, if the Default remains unremedied or the dispute is not resolved amicably after the expiry of the said sixty-day period, the Non-Defaulting Party may resort to any remedy available to it/him as may be provided by law. The Defaulting Party shall be liable to the Non-Defaulting Party for any and all damages and losses suffered by the latter arising from or in connection with the Default.

Section Five Effect on Affiliates

Each Party shall ensure that its/his undertakings under this Agreement shall be respected and shall not be violated by its/his affiliates or affiliated companies. Any violation committed by an affiliate or affiliated company shall be considered as violation by the Party to which it is affiliated.

For purposes of this Agreement, an affiliate or affiliated company is any of the following:

- (1) any company in which the Party holds fifty percent (50%) or more of the shares;
- (2) any company which holds fifty percent (50%) or more of the Party's shares;
- (3) any company affiliated by the same definition in (1) or (2) to an affiliated company of the Party;
- (4) any company which, directly or indirectly is controlled by or controls, or is under common control by the Party;
- (5) any shareholder or group of shareholders of the Party or of an affiliated company; or
- (6) any individual or group of individuals in the employment of the Party or of any affiliated company.

Control means the power exercisable, directly or indirectly, to direct or cause the direction of the management and policies of a company exercised by any other company and shall include the right to exercise control or power to acquire control directly or indirectly, over the company's affairs and the power to acquire not less than fifty percent (50%) of the share capital or voting power of the Party.

Section Six
Costs

Each Party shall bear its/his own costs, including attorney's fees, incurred in the prosecution or defense of the case, and in the execution of this Agreement.

Section Seven
Waiver/Amendment of Terms

"1. Any waiver or amendment of any of the terms of this Agreement shall not be valid unless it is in writing and signed by both Parties. The failure of any of the Parties to enforce at any time any of the provisions of the Agreement, or to required performance by the other of any of the provisions, shall not in any way be construed as a waiver of such provisions or to affect the validity of any part of this Agreement.

"2. Waiver of any breach of this Agreement shall not be held to be a waiver of any subsequent breach of the Agreement.

Section Eight
Entire Agreement

This Agreement embodies the entire agreement of the Parties respecting the subject matter. There are no promises, terms, conditions, or obligations other than those contained in this Agreement. This document supersedes all previous communications, representations, or agreements, either verbal or written, between the Parties.

Section Nine
Preparation of Agreement

"1. This Agreement has been prepared by the combined efforts of the Parties and their respective counsel

"2. The Parties herein manifest that the terms of settlement embodied in this Agreement are fair and not prejudicial or disadvantageous to either Party, and have been arrived at after a full and comprehensive examination of the circumstances of their dispute and of the law.

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 merits and is immediately executory.

WHEREFORE, premises considered, the submitted JOINT MOTION FOR JUDGMENT BASED ON COMPROMISE is hereby **APPROVED**. Accordingly, the instant opposition case is hereby **DISMISSED**. Let the filewrapper of Trademark Application Serial No. 4-2012-000403 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 22 May 2013.



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