



**PROCTER & GAMBLE
MANUFACTURING COLOGNE GMBH,**
Opposer,

-versus-

DIMENSION10, INC.,
Respondent-Applicant.

} **IPC No. 14-2012-00331**
} Opposition to:
} Appln. Serial No. 4-2011-001521
} Date Filed: 11 February 2011
} **TM: "PINK DESIRE"**

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NOTICE OF DECISION

QUISUMBING TORRES

Counsel for the Opposer
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Taguig, Metro Manila

GALANG JORVINA MUÑEZ & ASSOCIATES LAW OFFICES


Counsel for Respondent-Applicant
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Ortigas Center, Pasig City

GREETINGS:

Please be informed that Decision No. 2013 - 76 dated April 29, 2013 (copy enclosed)
was promulgated in the above entitled case.

Taguig City, April 29, 2013.

For the Director:


ATTY. PAUSI U. SAPAK
Hearing Officer
Bureau of Legal Affairs



PROCTER & GAMBLE MANUFACTURING } COLOGNE GMBH, } <i>Opposer,</i> }	IPC No. 14-2012-00331
- versus - }	Opposition to:
DIMENSION10, INC., }	Appln. No. 4-2011-001521
<i>Respondent-Applicant.</i> }	Date Filed: 11 February 2011
x-----x }	Trademark: PINK DESIRE
	Decision No. 2013- <u>76</u>

**DECISION BASED ON
COMPROMISE AGREEMENT**

PROCTER & GAMBLE MANUFACTURING COLOGNE GMBH ("Opposer"), filed on 17 September 2012 an opposition to Trademark Application Serial No. 4-2011-001521 on the ground that the subject mark "PINK DESIRE" is confusingly similar to the Opposer's registered "DESIRE" mark.

This Bureau issued a Notice to Answer and served upon a copy thereof to Respondent-Applicant on 10 December 2012. The Respondent-Applicant filed its Answer on 09 January 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 31 January 2013 Order No. 2012-154 referring the case to mediation.

On 24 April 2013, the ADR Services of this Bureau submitted a Mediation Report indicating a settlement by the parties' of the case. Attached to the report is the parties' COMPROMISE AGREEMENT, the pertinent portions of which read, as follows:

"NOW, THEREFORE, for and in consideration of the foregoing premises and mutual covenants contained in this Agreement, the Parties hereby agree as follows:

"1. D-10 recognizes and acknowledges P&G's ownership of and goodwill over the trademark DESIRE. D-10 also recognizes that P&G has the exclusive right to use the trademark DESIRE not only in Class 3, but also in other personal care products and in classes within the realm of beauty care services bearing the trademark DESIRE.

"2. D-10 hereby undertakes the following:

"2.1. It will withdraw its trademark applications for ^{pink} ~~desire~~ under Application No. 4-2011-001521 and ^{pink} ~~desire~~ under Application No. 4-2011-003410;

"2.2. It will never apply for registration of the trademark DESIRE or any other trademark containing the word DESIRE in Class 3 and other related classes;

"2.3. It will never use the word DESIRE in relation to any of its products under Class 3 and other related classes; and

"2.4. It will dispose of all its products bearing the trademarks ^{pink} ~~desire~~ and ^{pink} ~~desire~~ until the end of August 2013, and will no longer use the said marks thereafter.

"3. In consideration of D-10's foregoing undertakings, P&G will no longer pursue the opposition against the former's Trademark Application No. 4-2011-001521 covering Class 3 goods.

"4. This Agreement shall bind the Parties, their affiliates, employees, agents, assignees, and/or successors-in-interest exclusively. The terms and conditions of this Agreement may be amended, waived or modified only by agreement in writing signed by the parties or their respective assignees or successors-in-interest.

"5. The Parties hereby release, waive and quitclaim any and all claims or causes of action against each other related to or involved in any of the matters alleged in IPC No. 14-2012-00331.

"6. Each Party shall bear its own costs and expenses incurred in the opposition case and in carrying out each of their respective undertakings and obligations required by this Agreement.

"7. The Parties undertake to observe the terms and conditions of this Agreement in utmost good faith.

"8. The Parties agree that in the event of a breach of any term of this Agreement by them or by their associates, employees, servants, agents, assignees or successors-in-interest, they will pay the innocent party, by way of liquidated damages, the sum of Twenty-Five Thousand US Dollars (US\$25,000.00) and fully indemnify the innocent party and/or its principals and/or affiliates, for all legal fees and costs which may be incurred in acting against any or all of them, their associates, employees, servants, agents, assignees or successors-in-interest for such breach in relation thereto or in enforcing the terms hereof. Furthermore, the innocent party shall be entitled to an immediate injunction from the courts to ensure compliance with the provisions of this Agreement without prejudice to other remedies available under the circumstances and to such damages as may be proven.

"9. The Parties hereto acknowledge that they have executed this Agreement voluntarily with full knowledge of the consequences under the law.

"10. This Agreement shall be interpreted and construed exclusively under Philippine laws."

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

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. 4-2011-001521 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 29 April 2013.


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



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¹ Office Order No. 154 Series of 2010.