



**SOCIETE DES PRODUITS NESTLE S.A.,
and NESTLE PHILIPPINES, INC.,**

Opposers,

-versus-

**MARKETVENTURE DISTRIBUTOR
SALES, INC.,**

Respondent –Applicant.

X-----X

IPC No. 14-2011-00300

Opposition to:

Appln. Serial No. 4-2009-008689

Date Filed: 13 October 2010

TM: "HONEY AND DEVICE"

NOTICE OF ORDER

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GREETINGS:

Please be informed that Order No. 2014 - 50 (D) dated March 04, 2014 (copy enclosed) was promulgated in the above entitled case.

Taguig City, March 04, 2014.

For the Director:


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



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x-----x		

ORDER

SOCIETE DES PRODUITS NESTLE S.A. and NESTLE PHILIPPINES, INC., ("Opposers"), filed on 28 September 2011 an opposition to Trademark Application Serial No.4-2009-008689. The application, filed by MARKETVENTURE DISTRIBUTOR SALES, INC., ("Respondent-Applicant"), covers the mark "HONEY AND DEVICE" for use on goods under International Classes 29, 30 and 32.

This Bureau issued a Notice to Answer dated 06 October 2011 and served a copy thereof to Respondent-Applicant on 13 October 2011. The Respondent-Applicant filed its Answer on 11 November 2011.

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 25 November 2011 Order No. 2011-325 referring the case to mediation. On 14 May 2012, the ADR Services of this Bureau submitted a Mediation Report submitting a copy of the parties' Agreement and Quitclaim. The pertinent portions of the Agreement and Quitclaim reads, as follows:

NOW, THEREFORE, in consideration of the foregoing, the Parties have agreed on the following compromise subject to the terms and conditions set forth below:

"1. **Undertaking.** The First Party undertakes to :

a. Delete the goods involving 'flour and preparation made for cereal' in the Applications and limit its registration to goods such as pastry, confectionery, honey, sugar, yeast, baking powder and salt under Nice Classification 30 and to milk and other dairy products under Nice Classification 29.

b. Disclaim the word 'Honey' in the Applications.

"2. **Withdrawal of Oppositions.** The Second Party hereby agrees to, and shall cause the withdrawal, with prejudice, of the above-captioned Opposition cases, and undertake not to file any similar case, whether civil, administrative or criminal, or any kind or nature whatsoever, arising from the same facts, incident, or Applications. Provided, however, that the Second Party shall only withdraw the subject opposition cases upon approval by the Bureau of Trademarks of the deletion of goods and disclaimer of the word "HONEY" as provided under paragraphs 1 (a) and 1 (b) of this Agreement and Quitclaim.

"3. **Release and Quitclaim.** Subject to paragraphs 1 and 2 hereof, the Parties hereby mutually, irrevocably, and voluntarily release and discharge one another, the officers, directors, employees, successors-in-interest of the other party, from any and all action, damages, liability, responsibility or obligation arising directly or indirectly from the facts and circumstances giving rise to, surrounding, or arising from the above-captioned Opposition cases, all of which are hereby abandoned and waived.

"4. **Admission.** This Agreement shall not in any way be construed as an admission on the part of any party of any fault, negligence or liability, of whatever kind and nature, in connection with the foregoing cases.

"5. **Remedy.** In case of material breach of the terms and conditions of this Agreement, the non-defaulting party is hereby authorized to apply for a writ of execution in the foregoing cases for the purpose of compelling compliance with the terms and conditions of this Agreement.

"6. **Execution.** Each Party acknowledges and warrants that its execution of this Agreement and Release is free and voluntary. All Parties and signatories to this Agreement acknowledge and agree that the terms are contractual and not mere recital, and all Parties and signatories represent and warrant that they have carefully read this Agreement, have fully reviewed its provisions with their respective counsels, and know and understand its contents.

"7. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties. No part of this Agreement may be amended or modified in any way unless such amendment or modification is expressed in writing and signed by all Parties to this Agreement.

"8. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument."

On 23 May 2012, the Respondent-Applicant filed a request to the Bureau of Trademarks to amend Trademark Application No.4-2009-008689 for "HONEY AND DEVICE". Subsequently, on 28 February 2014, the Opposers filed a Withdrawal of Opposition.


Accordingly, with the withdrawal by the Opposers of their opposition, there is no more reason nor basis to proceed with this case.

WHEREFORE, premises considered, the instant opposition case is hereby **DISMISSED**.

Let the filewrapper of Trademark Application Serial No. 4-2009-008689 be returned, together with a copy of this Order to the Bureau of Trademarks (BOT) for information and appropriate action.

SO ORDERED.

Taguig City, 04 March 2014.


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