



SUYEN CORPORATION AND FUTURE
STATE INC.,
Petitioner,

-versus-

GANDANG KALIKASAN, INC.,
Respondent- Registrant.

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IPC No. 14-2012-00597
Cancellation of:
Regn. No. 4-2009-000060
Date Issued: 25 March 2010
TM: "HUMAN NATURE
AND HEART DEVICE"

X-----X

NOTICE OF DECISION

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Bonifacio Triangle
Bonifacio Global City, Taguig City

GREETINGS:

Please be informed that Decision No. 2013 - 242 dated December 09, 2013 (copy enclosed) was promulgated in the above entitled case.

Taguig City, December 09, 2013.

For the Director:


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



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-versus-	}	Cancellation of:
	}	Regn. No. : 4-2009-000060
	}	Date Issued: 25 March 2010
GANDANG KALIKASAN, INC., <i>Respondent-Registrant.</i>	}	TM: HUMAN NATURE AND HEART DEVICE
x-----x	}	Decision No. 2013- <u>242</u>

DECISION BASED ON COMPROMISE AGREEMENT

SUYEN CORPORATION AND FUTURE STATE INC. ("Petitioner") filed on 26 December 2012 a petition for cancellation of Trademark Registration No. 4-2009-000060. The registration issued on 25 March 2010 in favor of GANDANG KALIKASAN, INC. ("Respondent-Registrant") covers the mark **HUMAN NATURE AND HEART DEVICE** for use on *shampoo, conditioner, hair mask, facial wash, facial scrub, facial oil, day cream, night cream, toner, lotion, massage oil, hand/foot salve, hand soap, body butter, bath oil, lip balm, solid perfume, bug spray, hand sanitizer* under Class 03.

This Bureau issued a Notice to Answer dated 16 January 2013 and served a copy thereof to Respondent-Registrant on 23 January 2013. The Respondent-Registrant filed its Answer on 23 April 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 06 May 2013 Order No. 2013-109 referring the case to mediation.

On 28 November 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:

NOW THEREFORE, for and in consideration of the Parties' respective concessions hereinbelow enumerated, Suyen and Future State on one hand and Gandang Kalikasan on the other, by way of compromise, mutually agree as follows:

"1. Co-Existence Agreement. - Suyen and Future State agree that its marks "Human" and its derivatives and Gandang Kalikasan marks "Human Nature" and its derivatives shall co-exist in Philippine commerce provided that upon execution of this Agreement and in accordance with the Compliance Period indicated herein, Gandang Kalikasan changes the representation of its marks so as the word "Human" will always be of equal prominence with the word "Nature", in that the word "Human" will always

have the same font, font size, thickness, and color as the word "Nature" and Gandang Kalikasan will always use a "Heart Device" in conjunction with the words "Human Nature". (hereinafter, "the Amended Marks")

"1.1 Gandang Kalikasan agrees that after the execution of the Agreement and in accordance with the Compliance Period indicated herein, it shall always use its *Amended Marks* as composite marks and all the elements thereof, namely the words "Human", "Nature" and a "Heart Device" shall always be used collectively for its products, packaging, containers, labels, signages, brochures and other printed marketing materials. Nevertheless, in view of the inherent difficulty of utilizing the "Heart Device" in written text such as in letters, emails, press releases, news articles and such other documents where the Heart Device is not readily available, Gandang Kalikasan's use of the words "Human Nature" in such documents shall not be deemed a violation of this Agreement, unless the said materials use Gandang Kalikasan's mark, in which case the Amended Marks shall be used or displayed.

"1.2 Gandang Kalikasan further agrees that, after the execution of this Agreement and in accordance with the Compliance Period indicated herein, it shall cease and desist from using a trademark where the word "Human" does not have the same font, font size, thickness and color as the word "Nature", or where said marks are used other than in the same manner as the Amended Marks (hereinafter, "Non-Compliant Mark") in connection with its products, business, labels, packaging, containers, signages, brochures and other materials (collectively "Products and Materials").

"1.3 In view of the prospective effectivity of this Agreement, the parties agree that items bearing the old Subject Mark that are already existing prior to the execution of this Agreement such as mugs, pens, T-shirts, old photos, award certificates or certificates of recognition and such other items on display shall not be deemed a violation of this Agreement.

"1.4 In consideration thereof, Suyen and Future State agree that they shall no longer challenge the use and ownership of Gandang Kalikasan's Human Nature marks when presented as the Amended Marks in accordance with this Agreement, and shall dismiss all pending cases against Gandang Kalikasan and desist from further filing or proceeding with any case against Gandang Kalikasan's ownership and use of its Human Nature marks, unless such ownership and use is contrary to this Agreement, including, but not limited to, the following cases:

- a. IPC No. 14-2012-00597 entitled "*Suyen Corporation and Future State, Inc. vs. Gandang Kalikasan, Inc.*"
- b. IPC No. 14-2011-00227 entitled "*Suyen Corporation vs. Gandang Kalikasan, Inc.*"

The parties shall, within five (5) days from execution of this Agreement, file Joint Motions for Judgment based on this Compromise Agreement in the foregoing cases praying for judgment approving this Agreement and for dismissal of IPC No. 14-2011-00227 and IPC No. 14-2012-00597 in accordance herewith.


"1.5 Suyen and Future State further agree that they shall not, either individually or collectively or together with or through any other person or entity, apply for a Philippine trademark registration of any mark using the word "Human" presented together or in conjunction with "Nature" or "Natural" or any close derivatives thereof.

"1.6 Gandang Kalikasan agree that it will not, either individually or together with or through any other person or entity, apply for a Philippine trademark registration of any Mark using the word "Human" that does not conform to the Amended Mark.

"2. Compliance Period. - Gandang Kalikasan binds itself to use its *Amended Marks* for its external signages used in its company store located at 463 commonwealth Ave., Brgy. Matandang Balara, Quezon City and the twenty-four franchised stores as well as for the other internal and display materials in its company store and the twenty-four franchised stores by 28 February 2014 (the "Compliance Period"). The addresses of the twenty-four franchised stores are attached as Annex "A". Gandang Kalikasan shall also notify Suyen and Future State in writing of any new company-owned or franchise stores and their addresses no later than fifteen (15) days after the opening of the franchise or company-owned store. Gandang Kalikasan shall also have until 28 February 2014 to sell-off all Products and Materials bearing Non-Compliant Marks.

"3. Third Party and Independent Distributors. - Gandang Kalikasan agrees that upon approval of this Agreement by the Bureau of Legal Affairs of the IPO in IPC No. 14-2012-00597 and IPC No. 14-2011-00227, Gandang Kalikasan shall cease the manufacture or production of new labels, containers, packaging and other materials which bear the Non-Compliant Marks. Gandang Kalikasan can however sell-off existing inventory of Products and Materials including labels, packaging and containers bearing the old Subject Mark until the 28 February 2014 Compliance Period. After the 28 February 2014 Compliance Period, it shall no longer supply its third party and independent distributors with the Products and Materials that contain any Non-Compliant Marks. In the event that a third party or independent distributor continues to use Non-compliant Marks, Suyen and Future State shall inform Gandang Kalikasan in writing of the name and address of such distributor and the particulars of the use of the Non-Compliant Marks. Thereafter, Gandang Kalikasan shall inform third party and independent distributor of this Agreement and to cease and desist from its use of the Non-Compliant Marks. This notification, however, shall in no manner be construed as to require Gandang Kalikasan to ensure that the third party and independent distributor comply with such a demand since Gandang Kalikasan does not have control over such third party distributors.

"4. Breach. - Should Suyen and/or Future State receive any information of any supposed breach by Gandang Kalikasan of this Agreement, they shall inform Gandang Kalikasan of the same in writing addressed to the President of Gandang Kalikasan and personally delivered at the address of Gandang Kalikasan stated above. Gandang Kalikasan shall then have a period of thirty (30) days from receipt of the notice to reply to the said notice and/or to cure and/or remedy the said breach. The thirty (30) day period may be extended for good cause by agreement of the parties. In the event Gandang Kalikasan fails to cure or remedy the said breach after the thirty (30) day curative period or any extension thereof, Gandang Kalikasan shall cause the cancellation of its registration for the Subject Mark by surrendering its Certificate of Registration No. 4-2009-000060 in accordance with Section 140 of the Intellectual Property Code.



"5. Good Faith and Resolution of Differences. - Each Party shall act in good faith and shall exert every effort to implement and give full effect to the transactions contemplated under this Agreement, and execute such documents, take such further action, and give such other assurances as may be necessary to give full effect to the objectives of this Agreement.

In the event of any dispute or difference arising out of or relating to this Agreement, or with respect to a breach thereof, including any issue as to the validity and enforceability of this Agreement, the Parties shall use their best efforts to settle such dispute or difference or to remedy the breach before the filing of any action or complaint against the other party. To this effect, the Parties shall consult and negotiate with each other in good faith and with understanding of their mutual interests, to reach a just and equitable solution satisfactory to each.

"6. Notices. - Any notice, demand or other communication to be given or made under this Agreement shall be in writing and delivered or sent to each Party during office hours on a business day by personal delivery at its address set out above, or such other address as the addressee has by three (3) days prior notice specified to the other Party.

"7. Effect of Agreement. - This Agreement, including the foregoing releases, shall inure to the benefit of, and shall be binding upon, the Parties and their respective predecessors, successors, parent companies, subsidiaries, affiliates, attorneys, representatives, officers, directors, agents, employees and assigns, whether past, present or future.

"8. Amendments. - This Agreement may not be altered, amended, modified or otherwise changed in any respect except by a writing duly executed by the Parties or the authorized representative of each Party.

"9. No Admission of Liability. - Neither the terms of this Agreement nor the fact it has been made shall in any way be construed as an admission of liability on the part of the Parties.

"10. Counterparts. This Agreement may be signed in any number of counterparts. Any single counterpart or a set of counterparts signed, in either case, by the parties hereto shall constitute a full and original agreement for all purposes."

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

¹ Office Order No. 154 Series of 2010.

WHEREFORE, premises considered, the parties' Compromise Agreement is hereby **APPROVED**. Accordingly, the instant opposition case is hereby **DISMISSED**. Let the filewrapper of Trademark Registration No. 4-2009-000060 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 09 December 2013.


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

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