



JBC FOOD CORPORATION,
Complainant,

-versus-

S & W FOOD PHILIPPINES,
Respondent.

IPV NO. 10-2014-00014

For: Infringement of Trademark

X-----X

NOTICE OF ORDER

Atty. BENJAMIN L. RABO
Counsel for the Complainant
1148 EDSA Balintawak
Quezon City

S & W FOOD PHILIPPINES
Respondent
Brgy. Tiaong Guiguinto
Bulacan

GREETINGS:

Please be informed that Order No. 2015 - 02 (D) dated May 20, 2015 (copy enclosed) was promulgated in the above entitled case.

Taguig City, May 20, 2015.

For the Director:

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



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ORDER

JBC FOOD CORPORATION ("Complainant"), filed a complaint against S & W FOOD PHILIPPINES ("Respondent) for Trademark Infringement on 03 July 2014.

Complainant alleges, among others, that it is the registered owner of the trademark "HAPPY" used on "less grease peanuts" under Registration No. 4-2014-002652 issued on 03 March 2014. According to the Complainant, on 11 March 2014, through their counsel, they sent a cease and desist letter to Respondent to stop it from using the colors of the containers of its ENJOY hot and spicy garlic flavor peanut as its color is identical with their packaging container for their "HAPPY" barbeque and original garlic flavor peanuts. Despite their repeated notices and demands, the Respondent continued to sell, distribute and offer for sale ENJOY peanuts which is identical in color to their HAPPY peanuts. Complainant further states that their product and that of Respondent's are sold in the same counter so that the big possibility of confusion is present considering that the purchasers are mostly children who would often not bother to look into the trademarks of the product they are buying. Furthermore, the Complainant claims that the HAPPY trademark has created a tremendous goodwill and popularity accepted by the consuming public because of the excellent quality of the product produced by a prestigious manufacturer of food products which trademark is already registered in the Intellectual Property Office.

On 08 July 2014, this Bureau issued a Notice directing Respondent to file its answer and served the same at Respondent's address thru private courier DHL on 12 August 2014. Respondent, however, failed to file its answer within the reglementary period. On 09 January 2015, this Bureau issued Order No. 2015-04 declaring Respondent in default for failure to file the answer.

On 19 May 2015, during the scheduled hearing for Complainant's *ex parte* presentation of its evidence, its counsel manifested that after verifying the status of the trademark HAPPY, they found out that it is not yet registered contrary to their allegation in their complaint. Also, counsel manifested that the Respondent appearing in the complainant is not also the right Respondent but another one. Counsel then moved in **open court** that they are withdrawing the complaint so they can re-file it.

WHEREFORE, premises considered, the motion to withdraw the complaint is hereby **GRANTED**. Accordingly, the instant case is hereby **DISMISSED**.

SO ORDERED.

20 May 2015, Taguig City.


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