



KAI TAK LAO,
Opposer,

-versus-

ELTON SIOCO,
Respondent-Applicant.

}
} IPC No. 14-2013-00183
} Opposition to:
} Appln No. 4-2012-014806
} Date filed: 07 December 2012
} TM: "RYDER"
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NOTICE OF ORDER

OFFICE OF BAGAY-VILLAMOR AND FABIOSA

Counsel for the Opposer
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No. 880 A.S. Fortuna Street, Banilad
Mandaue City, Cebu

ATTY. EDISON LEE NG

Counsel for Respondent-Applicant
10 Gen Malvar St.,
Caloocan City

GREETINGS:

Please be informed that Order No. 2014 - 95 (D) dated June 30, 2014 (copy enclosed) was promulgated in the above entitled case.

Taguig City, June 30, 2014.

For the Director:


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



KAI TAK LAO,

Opposer,

IPC NO. 14 – 2013 - 00183

Case Filed on: 7 May 2013

- versus -

Opposition to:

Application Serial No. 4-2012-014806

Registration Date: 7 December 2012

TM: "RYDER"

ELTON SIOCO,

Respondent,

Order No. 2014 - 95 (D)

X-----X

ORDER

On 18 September 2013, respondent – applicant filed a Motion to Dismiss due to the failure of the opposer to appear at the mediation conference scheduled on 5 September 2013.

On 30 September 2013, opposer filed an Opposition to the Motion to Dismiss averring that the opposer attended the proceeding through its paralegal who brought with him a Manifestation dated 5 September 2013 which states that lawyers of the law firm already had previous commitments and would not be able to attend. The same manifestation also states that the opposer does not see the possibility of any settlement in this case since the opposer is intent on pursuing the instant opposition. Further, the opposer requested for the termination of the mediation proceedings and the case to be returned to the Bureau of Legal Affairs.

On the Motion to Dismiss, the respondent pointed out that the paralegal who appeared for the opposer during the mediation proceeding did not present any special power of attorney or authority from the opposer. This fact was supported by the notation of the mediator found in the mediator's report, indicating that questions was raised by the respondent-applicant's counsel regarding the appearance of opposer's paralegal without the required Special Power of Attorney. Notably, the above fact was not refuted by the opposer. Instead, the opposer argued that the presence of the paralegal during the mediation proceeding and his submission of a manifestation were enough to be considered as appearance by the opposer. This Bureau rules otherwise.

Verily, one of the requirements of mediation is for the parties to be present during the proceedings. Only as an exception, a representative may be allowed but he must present a proof of authority. In fact, even if the counsels were present during the

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proceeding, they could still not be allowed to appear in behalf of the parties, unless they have a special power of attorney, specifically, authorizing them to appear in the said mediation and empowering them to offer, negotiate, accept, decide and enter into a compromise agreement. Thus, in the absence of the required proof of authority, the said party will be considered absent.

Section 8 of Office Order 154 series of 2010 states, as follows:

Section 8. Effect of the failure of parties to appear during the mediation – *The failure of the party who initiated the case, such as the opposer, petitioner or complainant, to appear for mediation, including the meeting before the mediation office in accordance with Section 3 hereof, is a ground for the dismissal of the case. On the other hand, if respondent fails to appear, he may be declared in default.*

If circumstances warrant and on proper motion to the Mediation Head, a party absent in the succeeding mediation may be required to reimburse the other party up to treble the costs incurred, together with attorney's fees, for that day.

A party shall also be considered absent if the representative fails to show the appropriate and valid authorization. [Emphasis Supplied]

The last paragraph of the above provision expressly provides that a party will be considered absent if the representative fails to show the appropriate and valid authorization. In view of the findings of this Bureau that the opposer's representative failed to present the requisite proof of authority when asked by the adverse party, the respondent – applicant's Motion to Dismiss is hereby granted.

WHEREFORE, premises considered, the Opposition is hereby **DISMISSED** for failure to appear in the mediation proceeding. Let the filewrapper of Trademark Application Serial No. 42012014806 be returned together with a copy of this **ORDER** to the Bureau of Trademarks (BOT) for appropriate action.

SO ORDERED.

Taguig City, 30 June 2014


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