

**MA. SHARMAINE R. MEDINA/ RACKEY CRYSTAL TOP CORP.,
(ASSIGNEE), PETITIONER, VS. GLOBAL QUEST VENTURES, INC.,
RESPONDENT.**

Ponente: VILLON, J.

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VILLON, J.:

This is a petition for review under Rule 43 of the 1997 Rules of Civil Procedure, as amended, from the decision[1] dated May 28, 2012 of the Office of the Director General, Intellectual Property Office (IPO) in Appeal No. 14-2011-0014 affirming the decision[2] dated December 14, 2009 of the IPO Bureau of Legal Affairs (BLA) in IPC No. 14-2007-00112.

The factual and procedural antecedents of the case are hardly in dispute.

On February 24, 2006, petitioner Ma. Sharmaine R. Medina filed an application for registration of the trademark “Megalicious Mr. Gulaman Jelly Powder Mix and Device” before the IPO.[3] After examination of the application and its supporting documents by the IPO, the same was duly published in the manner prescribed by law. On April 22, 2007, respondent Global Quest Ventures, Inc. interposed an opposition thereto.

Invoking prior use, respondent averred that it already owned the subject trademark, having acquired the same from one Benjamin Irao, Jr. through a Deed of Assignment[4] dated February 14, 2005. It appeared that Irao had earlier secured a Certificate of Copyright Registration covering the copyright claim entitled “Mr. Gulaman” with logo and design on September 13, 1996.[5] Respondent likewise had pending applications[6] for the trademark registrations of “Megalicious Mr. Gulaman Label Mark” and “Mr. Gulaman and devise” when it learned of petitioner's action. It also presented before the BLA, sales invoices[7] dating back to the year 2000.

On the other hand, petitioner claimed that she had been doing business under the trade name “Mr. Gulaman” as early as 2004, as evidenced by delivery receipts[8] issued to her customers in the same year. She posited that “copyright” and “trademark” are distinct and different from each other, hence Irao's Certificate of Copyright Registration did not constitute sufficient basis for prior use or ownership over the trademark “Megalicious Mr. Gulaman.”

On December 14, 2009, the BLA rendered a decision against petitioner, disposing as follows:

“WHEREFORE, premises considered, the Notice of Verified Opposition filed by Opposer, GLOBAL QUEST VENTURES, INC. against Respondent-Applicant SHARMAINE MEDINA is, as it is hereby SUSTAINED. Consequently, the trademark Application for mark “MEGALICIOUS MR. GULAMAN & DEVICE” bearing Serial No. 4-2006-002157 filed on 24 February 2006 by Respondent-Applicant for powder based jelly dessert under Class 29 of the international classification of goods is, as it is hereby, REJECTED.

Let the filewrapper of “MEGALICIOUS MR. GULAMAN & DEVICE” subject matter of the instant case together with a copy of this Decision be forwarded to the Bureau of Trademarks (BOT) for appropriate action.

SO ORDERED.”[9]

Petitioner sought a reconsideration[10] of the above decision but the same was denied in a BLA resolution[11] dated July 29, 2011. Aggrieved, petitioner raised the matter to the Office of the Director General of the IPO by way of appeal.[12] On May 28, 2012, the Director General rendered the assailed decision, the decretal part of which reads:

“WHEREFORE, premises considered, the appeal is hereby DISMISSED. Let a copy of this Decision, as well as records be furnished and returned to the Director of the Bureau of Legal Affairs for appropriate action. Further, let also the Director of the Bureau of Trademarks and the library of the Documentation, Information and Technology Transfer Bureau be furnished a copy of this Decision for information, guidance and records purposes.

SO ORDERED.”[13]

Hence the present recourse, petitioner raising the following issues, to wit:

I.

WHETHER OR NOT THE DIRECTOR GENERAL ERRED IN DISREGARDING THE LETTER OF RESPONDENT GLOBAL QUEST TO THE DIRECTOR GENERAL DATED FEBRUARY 20, 2006 ATTACHED TO THE VERIFIED OPPOSITION ADMITTING THEREIN THAT IT BEGAN TO USE THE MARK, “MR. GULAMAN” IN FEBRUARY 14, 2005 AND NOT EARLIER THAN THE SAID DATE

II.

WHETHER OR NOT THE DIRECTOR GENERAL ERRED IN HOLDING THAT THE A) CERTIFICATE OF COPYRIGHT REGISTRATION IN THE NAME OF A CERTAIN BENJAMIN IRAO, B) ALLEGED DEED OF ASSIGNMENT DATED FEBRUARY 14, 2005 ISSUED TO RESPONDENT, AND; C) SALES INVOICES WITH ADDITIONS, ALTERATIONS, ERASURES AND SUPERIMPOSITIONS ARE ADEQUATE TO JUSTIFY THE CONCLUSION OF FIRST USE[14]

Petitioner contends that in a letter[15] dated February 20, 2006, respondent admitted that it only began using the disputed trademark on the date it was transferred to it by way of a Deed of Assignment dated February 14, 2005; thus, respondent cannot have a valid claim of prior use against petitioner; and that the said Deed of Assignment had no probative value because it was not included in the report of the Notary Public who notarized it. Petitioner likewise contends that respondent's sales invoices must not be given any evidentiary weight since they contain alterations, additions, erasures and insertions.

The petition is bereft of merit.

A trademark is any visible sign capable of distinguishing the goods (trademark) or services (service mark) of an enterprise and shall include a stamped or marked container of goods. In relation thereto, a trade name means the name or designation identifying or distinguishing an enterprise.[16] A trademark device is susceptible to registration if it is crafted fancifully or arbitrarily and is capable of identifying and distinguishing the goods of one manufacturer or seller from those of another. Apart from its commercial utility, the benchmark of trademark registrability is distinctiveness.[17] The scope of protection afforded to registered trademark owners is not limited to protection from infringers with identical goods. The scope of protection extends to protection from infringers with related goods, and to market areas that are the normal expansion of business of the registered trademark owners.[18] The protection of trademarks as intellectual property is intended not only to preserve the goodwill and reputation of the business established on the goods bearing the mark through actual use over a period of time, but also to safeguard the public as consumers against confusion on these goods.[19]

The ownership of a trademark is acquired by its registration and its actual use by the manufacturer or distributor of the goods made available to the purchasing public. Section 122[20] of Republic Act No. 8293, otherwise known as the Intellectual Property Code of the Philippines, provides that the rights in a mark shall be acquired by means of its valid registration with the IPO.[21] Nevertheless, prior use by one will controvert a claim of legal appropriation by subsequent users.[22] Evidence of prior and continuous use of the mark or trade name by another can overcome the presumptive ownership of the registrant and may very well entitle the former to be declared owner in an appropriate case.[23]

It appears that in affirming the decision of the BLA, the IPO Director General did not rely solely on the letter dated February 20, 2006, wherein respondent allegedly admitted that it began using the subject trademark only on February 14, 2005 or the year that the same was assigned by Irao to it. Indeed, there are sufficient evidence showing that the said trademark was much earlier being used by respondent.

The finding of respondent's prior use was based, among others, on the sales invoices that it issued starting in the year 2000. Thus, the BLA ratiocinated:

“In claiming ownership and priority of rights over the herein subject mark, Opposer[24] presented a Certificate of Copyright Registration in the name of a certain Benjamin Irao, Jr., whom it had asked in 1996 to design the Mr. Gulaman and Design mark. While Respondent-Applicant[25] is correct in saying that copyright ownership is entirely different from trademark ownership, Opposer's right of ownership over the trademark was not solely based on the copyright acquired through the Deed of Assignment but from the use of the Mr. Gulaman & Device mark by Opposer in its gulaman jelly powder mix since 1997, with the consent of the copyright owner who created the Mr. Gulaman design. Aside from presenting the copyright registration of Mr. Irao (later on transferred to herein Opposer), sample sales invoices dating back to 2000, among others, were also presented by Opposer to show that indeed it has used in commerce as a trademark in the gulaman jelly powder mix product the copyrighted Mr. Gulaman and Design created by Mr. Irao. These evidence of sales dating back to 2000 corroborates Opposer's claim of use of the mark even before the copyright registration of the MR. GULAMAN design was assigned to it in 2005.”[26] (underscoring Ours)

No rule is more entrenched in this jurisdiction than that the findings of facts of administrative bodies, if based on substantial evidence, are controlling on the reviewing authority.[27] Here, We sustain the finding of the IPO Director General holding that respondent was able to prove by substantial evidence its prior use of the subject mark. Sales invoices provide the best proof that there were actual sales of one's products in the country and that there was actual use for a protracted period of one's trademark or part thereof through these sales.[28] In this regard, a party who alleges a fact has the burden of proving it. Whoever alleges fraud or mistake affecting a transaction, as petitioner has in this case, must substantiate it, since it is presumed that a person takes ordinary care of his concerns, and that private transactions have been fair and regular.[29] Good faith is always presumed unless convincing evidence to the contrary is adduced. It is incumbent upon the party alleging bad faith to sufficiently prove such allegation. Absent enough proof thereof, the presumption of good faith prevails.[30] Without a clear and persuasive substantiation of bad faith, the presumption of good faith in favor of respondent stands.[31] Hence, We cannot sustain the bare allegation of petitioner that respondent is claiming “ownership of the trademark 'Mr. Gulaman' or 'Megalicious Mr. Gulaman and Device' through the use of fraudulent and deceitful means or by tampering with the sales invoices to make the generic 'gulaman' item appeared (sic) as 'Mr. Gulaman.’”[32]

It must be noted that respondent filed its application for registration of the “Megalicious Mr. Gulaman Label Mark” on January 13, 2006 while petitioner applied for registration of “Megalicious Mr. Gulaman Jelly Powder Mix and Device” only on February 24, 2006. Hence, respondent was the first party to file its application for registration aside from the fact that it was also the first party to use the subject mark. We quote with approval, the

findings and conclusion of the IPO Director General, to wit:

“Lastly, it is indeed surprising how the Appellant and the Appellee can both come up with a similar mark written in the same stylized form, color and design. As stated by the Supreme Court in one case:

Of course, as in all other cases of colorable imitations, the unanswered riddle is why, of the millions of terms and combinations of letters and designs available, the appellee had to choose those so closely similar to another's trademark if there was no intent to take advantage of the goodwill generated by the other mark.”[33]

Finally, it is the submission of petitioner that the Certificate of Copyright Registration in the name of Irao failed to show any illustration of the disputed marks; that the Deed of Assignment dated February 14, 2005 is unreliable because it was not registered in the Notarial Register; and that the sales invoices attesting to the use of the disputed marks were tampered. We reject these contentions.

The records[34] belie the assertion that Irao's Certificate of Copyright Registration was not accompanied by an illustration of his design. Undoubtedly, a copy of Irao's illustration was duly registered with the National Library. On the other hand, the absence of the February 14, 2005 Deed of Assignment in the Notarial Register is an omission the consequences of which the notary public is solely responsible. It is settled that it is the notary public who is personally accountable for the accuracy of the entries in his Notarial Register.[35] The fact remains that the said Deed of Assignment was acknowledged before a duly appointed notary public. Then, too, petitioner's mere claim that respondent's sales receipts were tampered cannot stand. Bare allegations which are not supported by any evidence, documentary or otherwise, sufficient to support a claim, fall short to satisfy the degree of proof needed[36] under our rules.

Administrative agencies, such as the IPO, by reason of their special knowledge and expertise over matters falling under their jurisdiction, are in a better position to pass judgment thereon. Thus, their findings of fact in that regard are generally accorded great respect, if not finality by the courts, as long as they are supported by substantial evidence, even if such evidence might not be overwhelming or even preponderant. It is not the task of the appellate court to weigh once more the evidence submitted before the administrative body and to substitute its own judgment for that of the administrative agency in respect to sufficiency of evidence.[37]

WHEREFORE, in light of all the foregoing, the petition is hereby **DISMISSED** for lack of merit. The assailed decision of the Director General of the Intellectual Property Office dated May 28, 2012 is hereby **AFFIRMED**.

SO ORDERED.

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Macalino, F.S., and Corales, P.B., JJ., concur.

[1] Rollo, pp. 48-54.

[2] Rollo, pp. 57-68.

[3] Rollo, pp. 72-74.

[4] Rollo, pp. 91-92.

[5] Rollo, p. 88.

[6] Rollo, pp. 93-95, 96-98.

[7] Rollo, pp. 103-113.

[8] Rollo, pp. 125-126.

[9] Rollo, p. 68.

[10] Rollo, pp. 139-155.

[11] Rollo, p. 71.

[12] Rollo, pp. 166-189.

[13] Rollo, p. 54.

[14] Rollo, p. 21.

[15] Rollo, pp. 114-115. Part of the letter states:

“GLOBAL QUEST VENTURES, INC. has been using 'MR. GULAMAN' and devise (sic) on its products from the date of assignment up to the present. xxx”

[16] Elidad C. Kho v. Court of Appeals, G.R. No. 115758, March 19, 2002 citing Sections 121.1 and 121.3 of Republic Act No. 8293.

[17] Great White Shark Enterprises, Inc. v. Danilo M. Caralde, Jr., G.R. No. 192294, November 21, 2012.

[18] Societe Des Produits Nestle, S.A. v. Martin T. Dy, Jr., G.R. No. 172276, August 8, 2010.

[19] Skechers U.S.A., Inc. v. Inter Pacific Industrial Trading Corp., G.R. No. 164321, March 23, 2011.

[20] Sec. 122. How Marks are Acquired.—The rights in a mark shall be acquired through registration made validly in accordance with the provisions of this law.

[21] Berris Agricultural Co., Inc. v. Norvy Abyadang, G.R. No. 183404, October 13, 2010.

[22] Unno Commercial Enterprises, Incorporated v. General Milling Corporation, G.R. No. L-28554, February 28, 1983.

[23] Shangri-La International Hotel Management, Ltd. v. Developers Group of Companies, Inc., G.R. No. 159938, March 31, 2006.

[24] Respondent herein.

[25] Petitioner herein.

[26] Rollo, pp. 66-67.

[27] Alejandro V. Donato, Jr. v. Civil Service Commission Regional Office No. 1, G.R. No. 165788, February 7, 2007.

[28] Converse Rubber Corporation v. Universal Rubber Products, Inc., G.R. No. L-27906, January 8, 1987.

[29] Dutch Boy Philippines, Inc. v. Ronald Seniel, G.R. No. 170008, January 19, 2009.

[30] Virginia M. Andrade v. Court of Appeals, G.R. No. 127932, December 7, 2001.

[31] Heirs of Severa P. Gregoria

[32] Rollo, p. 37; Petition, p. 29.

[33] American Wire & Cable Company v. Director of Patents, G.R. No. L-26557, February 18, 1970.

[34] Rollo, pp. 423-424.

[35] Mariano Agadan v. Atty. Richard Baltazar Kilaan, A.C. No. 9385, November 11, 2013.

[36] LNS International Manpower Services v. Armando C. Pua, Jr., G.R. No. 179792, March 5, 2010.

[37] Berris Agricultural Co., Inc. v. Norvy Abyadang, *supra*.

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