ELIDAD KHO AND VIOLETA KHO, PETITIONERS, VS. HON. ENRICO LANZANAS, PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF MANILA – BRANCH 7 AND SUMMERVILLE GENERAL MERCHANDISING, RESPON...

G.R. NO. 150877. May 04, 2006

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Culled from the records are the following antecedent facts:

Shun Yih Chemistry Factory (SYCF), a business existing and operating in Taiwan and engaged in the manufacture and sale of Chin Chun Su Creams/Cosmetics, appointed Young Factor Enterprises in the Philippines, owned and operated by Quintin Cheng also known as Kho Seng Hiok, as its distributor of Chin Chun Su products in the Philippines for a term of two years beginning 1978.[1] Quintin Cheng registered with the Bureau of Food and Drugs (BFAD) as distributor of Chin Chun Su products. Quintin Cheng subsequently secured a supplemental registration for Chin Chun Su and device.[2] This supplemental registration was ordered cancelled by the Bureau of Patents, Trademarks and Technology Transfer[3] on the ground of failure of the registrant to file the required affidavit of non-use as required by Section 12 of Republic Act No. 166, as amended.[4]

Notwithstanding this cancellation, Quintin Cheng executed on 30 January 1990 an Assignment of a Registered Trademark[5] and a Supplementary Deed of Assignment[6] dated 25 November 1991 wherein he sold all his right, title, interest and goodwill in the trademark Chin Chun Su and device to petitioner Elidad Kho.

In the meantime, animosity arose between SYCF and Quintin Cheng resulting in the termination of their distributorship agreement on 30 October 1990.[7]

Consequently, on 30 November 1990, SYCF appointed respondent Summerville General Merchandising, represented by Ang Tiam Chay and Victor Chua, as its exclusive importer, re-packer and distributor of Chin Chun Su products in the Philippines[8] for a period of five years or until May 2005.

SYCF further executed a Special Power of Attorney dated 11 September 1991 in favor of Summerville General Merchandising granting it the authority to file complaints against usurpers of Chin Chun Su trademarks/tradename.[9]

From the foregoing incidents arose several judicial and quasi-judicial proceedings.

1) Civil Case No. Q-91-10926 before the Regional Trial Court (RTC) of Quezon City, Branch 90

On 20 December 1991, Elidad Kho/KEC Laboratory filed a Complaint for Injunction and Damages against Ang Tiam Chay and Summerville General Merchandising before the RTC of Quezon City, Branch 90, docketed as Civil Case No. Q-91-10926. Plaintiff therein Elidad Kho/KEC Laboratory sought to enjoin defendants Ang Tiam Chay and Summerville General Merchandising from using the name Chin Chun Su in their cream products.

On 22 January 1993, a decision in Civil Case No. Q-91-10926 was rendered, the dispositive portion of which provides:

> ACCORDINGLY, judgment is hereby rendered:
>
> - Declaring that plaintiff is not legally authorized to use the trademark "CHIN CHUN SU" and upholding the right of defendant Summerville General Merchandising & Co. to use said trademark as authorized by Shun Yih Chemistry Factory of Taiwan;
>
> - Declaring plaintiff to have the right to use the copyright claim on "OVAL FACIAL CREAM CONTAINER/CASE" by virtue of Certificate of Copyright Registration No. 3687 issued by the National Library on May 23, 1991;
>
> - No award of damages;
>
> - Counsels for plaintiff and defendants are awarded P75,000.00 each as attorney's fees; and
>
> - Both parties to pay proportionate fees.[10]

Both parties appealed the RTC decision to the Court of Appeals, docketed as CA-G.R. CV NO. 48043 entitled, "Elidad C. Kho, doing business under the style of KEC Cosmetic Laboratory v. Summerville General Merchandising and Co., et al." In a decision[11] dated 22 November 1999, the appellate court affirmed in toto the decision of the trial court.[12] Elidad Kho elevated the case to this Court, docketed as G.R. No. 144100. In a resolution dated 28 August 2000, we denied the petition. We held that:

> The issue is who, between petitioner Elidad C. Kho and respondent Summerville General Merchandising and Company has the better right to use the trademark "Chin Chun Su" on their facial cream product?
>
> We agree with both the Court of Appeals and the trial court that Summerville General Merchandising and Company has the better right to use the trademark "Chin Chun Su" on its facial cream product by virtue of the exclusive importation and distribution rights given to it by Shun Yih Chemistry Factory of Taiwan on November 20, 1990 after the latter cancelled and terminated on October 30, 1990 its Sole Distributorship Agreement with one Quintin Cheng, who assigned and transferred his rights under said agreement to petitioner Elidad C. Kho on January 31, 1990.
>
> As correctly held by the Court of Appeals, petitioner Kho is not the author of the trademark "Chin Chun Su" and his only claim to the use of the trademark is based on the Deed of Agreement executed in his favor by Quintin Cheng. By virtue thereof, he registered the trademark in his name. The registration was a patent nullity because petitioner is not the creator of the trademark "Chin Chun Su" and, therefore, has no right to register the same in his name. Furthermore, the authority of Quintin Cheng to be the sole distributor of Chin Chun Su in the Philippines had already been terminated by Shun Yih Chemistry of Taiwan. Withal, he had no right to assign or to transfer the same to petitioner Kho.
>
> WHEREFORE, the instant petition is hereby denied due course.[13]

2) BFAD Cosmetic Case No. CM-040-91

At the other end of the spectrum, due to the proliferation of fake Chin Chun Su products, Summerville General Merchandising filed a Complaint[14] before the BFAD against KEC Cosmetic Laboratory owned by Elidad Kho.

In a resolution of the BFAD dated 4 February 1992, it ruled that:

> WHEREFORE, the brand name clearance of CCS in favor of KEC is recalled and cosmetic registration number DR-X6113-78 dtd 11/17/78 is TEMPORARILY CANCELLED until KEC applies to change or amend the brand name CCS it is now using. For this purpose, KEC is hereby ordered to retrieve all locally produced

> Chin Chun Su Pearl Cream for relabelling as soon as the amendment of its brand name has been approved by this Bureau with the corresponding amended Certificate of Registration.
>
> Summerville's application to register (renew or reinstate) CCS Medicated Cream under DR-X6113-78 in the name of Shun Yih Chemistry Factory is herewith approved for processing at BFAD-Product Services Division.[15]

3) Criminal Case No. 00-183261 before the RTC of Manila, Branch 1

This is the case filed before the RTC of Manila, Branch 1, entitled, "People of the Philippines v. Elidad and Violeta Kho and Roger Kho," pursuant to the DOJ Resolution in I.S. No. 00A-02396 and I.S. No. 00B-10973, ordering the filing of a criminal complaint against Elidad, Roger and Violeta Kho.[16]

Prior to the filing of Criminal Case No. 00-183261 before the RTC of Manila, Branch 1, on 18 January 2000, Victor Chua, representing Summerville General Merchandising, filed a Complaint for Unfair Competition, docketed as I.S. No. 00A-02396 entitled, "Summerville General Merchandising, represented by Victor Chua v. Elidad and Violeta Kho," before the Office of the City Prosecutor of Manila.

Elidad and Violeta Kho filed their counter-affidavit in the Complaint for Unfair Competition which served as their countercharge against Ang Tiam Chay and Victor Chua, likewise for Unfair Competition, docketed as I.S. No. OOB-10973.

On 29 March 2000, the Office of the City Prosecutor granted the consolidation of both I.S. No. 00A-02396 and I.S. No. 00B-10973. On 25 April 2000, Assistant City Prosecutor Rector Macapagal rendered a joint resolution dismissing both the Complaint and countercharge. This resolution of dismissal was reversed by the review resolution[17] dated 31 May 2000 issued by Assistant City Prosecutor Elmer Calledo who directed the filing of an information against Elidad Kho, Roger Kho and Violeta Kho for violation of Section 168.3(a) in relation to Sections 168 and 170, Republic Act No. 8293 (The Intellectual Property Code).[18] On 17 August 2000, Department of Justice (DOJ) Undersecretary Regis Puno issued a resolution[19] dismissing the petition for review filed by Elidad and Violeta Kho and upholding the ruling of Assistant City Prosecutor Calledo, directing the filing of charges against the Khos. Elidad and Violeta Kho filed a motion for reconsideration, and in a complete turnabout, on 28 September 2001, a resolution[20] was issued by then DOJ Secretary Hernando Perez again dismissing the Complaint and countercharge in I.S. No. 00A-02396 and I.S. No. 00B-10973 for lack of merit. Summerville General Merchandising accordingly filed a motion for reconsideration of this DOJ resolution dated 20 September 2001.

In view of the latest DOJ resolution ordering the dismissal of the complaint of Summerville General Merchandising against the Khos, the RTC of Manila, Branch 1, issued an Order dated 24 October 2001 directing the dismissal of the Complaint in Criminal Case No. 00-183261.[21] Summerville General Merchandising filed with the RTC of Manila, Branch 1, a motion for reconsideration of its Order of dismissal of Criminal Case No. 00-183261. For their part, Elidad and Violeta Kho also filed with the same court a supplemental motion insisting that the Order dismissing Criminal Case No. 00-183261 cannot be set aside because to do so would, in effect, reinstate the said criminal case and would already constitute double jeopardy. Acting on these motions, the RTC of Manila, Branch 1, issued an Order dated 21 August 2002 resolving the motions in the following manner:

> The foregoing duly established facts indubitably supports accused's contention that a re-filing [o]f the Information would put them in double jeopardy. As ruled by the Supreme Court in Marcelo v. Court of Appeals, 235 SCRA 39, upon withdrawal of the Information, which is the logical consequence of the grant of the Motion to Withdraw, there no longer remained any case to dismiss.
>
> Accordingly, finding merit in the Motion for Reconsideration, the same is hereby granted.

> The information against accused is hereby dismissed.
>
> The Clerk of Court is hereby directed to return to the accused the cash bonds posted by the latter for their provisional liberty upon presentation of the requisite receipts.
>
> The ruling renders the remaining incidents moot and academic.[22]

Thereafter, on 17 September 2002, the DOJ Secretary, Hernando B. Perez, granted the pending motion of Summerville General Merchandising for reconsideration of the DOJ resolution[23] dated 28 September 2001, which dismissed the Complaint of movant Summerville General Merchandising in I.S. No. 00A-02396, and accordingly issued another resolution vacating the questioned 28 September 2001 resolution and directing the City Prosecutor of Manila to continue with the criminal prosecution of the Khos for Unfair Competition.

Elidad and Violeta Kho filed a motion for reconsideration of the resolution dated 17 September 2002 before the DOJ. The DOJ,[24] thru the new Secretary Simeon A. Datumanong denied that double jeopardy lies, in a resolution dated 17 July 2003, declared that:

> After an evaluation of the record, we resolve to deny the motion for reconsideration. For double jeopardy to attach, the following requirements must be present: (1) upon a valid indictment; (2) before a competent court; (3) after arraignment; (4) when a valid plea has been entered; and (5) when the defendant was convicted, acquitted, or the case was dismissed or otherwise terminated without the express consent of the accused. (People v. Court of Appeals, 308 SCRA 687). In the instant case, it appears that the case was terminated with the express consent of the respondent, as the criminal case was dismissed upon the express application of the accused. Her action in having the case dismissed constitutes a waiver of her constitutional prerogative against double jeopardy as she thereby prevented the court from proceeding to trial on the merits and rendering a judgment of conviction against her.[25]

At odds with the final DOJ resolution, the RTC of Manila, Branch 1, handling Criminal Case No. 00-183261, held in its Order dated 2 April 2003 that:

> Considering the tenors of the orders of dismissal, whatever maybe the merits of the Motion for Reconsideration, revival of the case is now barred by the impregnable wall of double jeopardy.
>
> ACCORDINGLY, the Motion for Reconsideration dated September 10, 2002 filed by the private prosecutor and subject of the Motion to Resolve is hereby denied with finality.
>
> The Clerk of Court is hereby directed to return to the accused the cash bond posted by them for their provisional liberty upon presentation of the required receipts.[26]

Thus, Summerville General Merchandising raised its case to the Court of Appeals, docketed as CA-G.R. SP No. 77180, assailing the Order dated 24 October 2001 of the RTC of Manila, Branch 1, dismissing Criminal Case No. 00-183261, as well as the Orders dated 21 August 2002 and 2 April 2003 of the same court affirming its previous order of dismissal.

In a decision of the Court of Appeals dated 26 May 2004 in CA-G.R. SP No. 77180,[27] the Court denied due course to the petition of Summerville General Merchandising and affirmed the ruling of the trial court that, indeed, double jeopardy has set in.

The decision of the Court of Appeals in CA-G.R. SP No. 77180 is now the subject of a Petition for Review before this Court, docketed as G.R. No. 163741 entitled, Summerville General Merchandising and Co., Inc. v. Elidad Kho."[28]

4) Search Warrant No. 99-1520 before the RTC of Manila, Branch 7

Shortly before instituting Criminal Case No. 00-183261 against the Khos, or on 7 January 2000, Summerville General Merchandising applied for the issuance of a search warrant against the Spouses Elidad and Violeta Kho and Roger Kho, since they persisted in manufacturing and selling Chin Chun Su products despite the BFAD order directing them to refrain from doing so. The application was docketed as Search Warrant No. 99-1520 before the RTC of Manila, Branch 7, which was presided over by respondent herein, Judge Enrico A. Lanzanas. A hearing on the application was held on 10 January 2000[29] and the search warrant was issued against Elidad, Violeta and Roger Kho on the same day.[30] Its enforcement led to the seizure of several Chin Chun Su products.[31]

On 17 January 2000, Elidad, Violeta and Roger Kho filed before the RTC of Manila, Branch 7, a motion to quash the search warrant and for the return of the items unlawfully seized. The motion was opposed by Summerville General Merchandising.

In an Order[32] dated 3 April 2000, the RTC of Manila, Branch 7, denied Elidad and Violeta Kho's motion to quash and to return the seized articles for lack of merit.[33] Elidad and Violeta Kho filed a motion for reconsideration and motion to transfer the proceedings in RTC of Manila, Branch 7, to RTC of Manila, Branch 1, citing Supreme Court Administrative Order 113-95[34] designating the RTC of Manila, Branch 1, as an Intellectual Property Court. The RTC of Manila, Branch 7, denied these motions in an Order dated 5 June 2000,[35] explaining that:

> Anent the Motion to Compel this Branch to transfer the case to Branch 1 of this Court, suffice it to say that the cases for violation of Arts. 188 and 189 of the Revised Penal Code (now under the Intellectual Property Law) are those that are already filed in court after the proper preliminary investigation and not cases for application for search warrant involving probable violation of said law. Supreme Court Administrative Circular No. 113-95 itself designates the alluded court or branch thereof to try and decide which clearly excludes cases/applications for search warrant which obviously does not involve trying and deciding case for violation of the Intellectual Property law.
>
> On respondent's Motion for Reconsideration, the Court finds their arguments therein a rehash of the issues and arguments raised in their Motion to Quash.
>
> WHEREFORE, for lack of merit, respondents' Motion for Reconsideration and Motion to Transfer, are hereby DENIED.[36]

Elidad and Violeta Kho filed a Petition for Certiorari and Preliminary Mandatory Injunction,[37] docketed as CA-G.R. SP No. 60084, before the Court of Appeals questioning the aforementioned Orders of the RTC of Manila, Branch 7. A decision dated 6 August 2001[38] was rendered by the Court of Appeals denying the petition. It upheld Search Warrant No. 99-1520 as having been validly issued and properly executed and, thus, there is no basis for the return of the goods seized. A motion for reconsideration filed by the Khos was denied by the Court of Appeals in an Order dated 16 November 2001.[39]

Elidad and Violeta Kho filed a supplement to their Motion for Reconsideration dated 20 November 2001[40] before the Court of Appeals in CA-G.R. SP No. 60084, reiterating their prayer for the quashal of Search Warrant No. 99-1520 and the return of the seized items. The Court of Appeals, in a resolution dated 4 December 2001,[41] merely noted the motion in view of its earlier resolution rendered on 16 November 2001 already denying Elidad and Violeta Kho's Motion for Reconsideration.

Pained by the decisions and orders of the trial court and appellate court, petitioners Elidad and Violeta Kho filed the present petition praying that the decision of the Court of Appeals in CA-G.R. SP No. 60084 dated 6 August 2001 be reversed and set aside, and a new decision be issued granting the quashal of Search Warrant No. 99-1520 and ordering the return of the items unlawfully seized.[42]

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In their Memorandum, petitioners raise the following issues for resolution:

> WHETHER OR NOT THE COURT OF APPEALS ERRED IN DISREGARDING THE WITHDRAWAL OF THE INFORMATION FOR UNFAIR COMPETITION AGAINST THE PETITIONERS IN BRANCH 1 OF RTC-MANILA AS A RESULT OF THE RESOLUTION OF THE DEPARTMENT OF JUSTICE FINDING NO PROBABLE CAUSE.
>
> WHETHER OR NOT THE COURT OF APPEALS ERRED IN FINDING THAT NO GRAVE ABUSE OF DISCRETION WAS COMMITTED BY HONORABLE JUDGE ENRICO LANZANAS IN FINDING THAT PROBABLE CAUSE EXISTED AGAINST THE PETITIONERS FOR THE ISSUANCE OF SEARCH WARRANT NO. 99-1520.
>
> WHETHER OR NOT THE COURT OF APPEALS ERRED IN FINDING THAT BRANCH 7 OF THE REGIONAL TRIAL COURT OF MANILA HAD JURISDICTION TO ISSUE SEARCH WARRANT NO. 99-1520.
>
> WHETHER OR NOT THE COURT OF APPEALS ERRED IN FINDING THAT NO GRAVE ABUSE OF DISCRETION WAS COMMITTED BY HONORABLE JUDGE ENRICO LANZANAS IN RULING THAT SEARCH WARRANT NO. 99-1520 WAS LAWFULLY EXECUTED.
>
> WHETHER OR NOT THE COURT OF APPEALS ERRED IN FINDING THAT NO GRAVE ABUSE OF DISCRETION WAS COMMITTED BY HONORABLE JUDGE ENRICO LANZANAS IN NOT ORDERING THE RETURN OF THE ITEMS SEIZED UNDER SEARCH WARRANT NO. 99-1520.[43]

The petition is devoid of merit.

As to the first issue, it must be noted that the dismissal of Criminal Case No. 00-183261 by the RTC of Manila, Branch 1, was initially by virtue of the resolution of the DOJ dated 28 September 2001[44] ordering the dismissal of the criminal case for unfair competition.

This order of dismissal, however, was again set aside by the DOJ in its resolution dated 17 September 2002[45] directing that appropriate information for Unfair Competition be filed against the Khos. The motion for reconsideration of Elidad and Violeta Kho was denied by the DOJ in its resolution dated 17 July 2003.[46] This is the latest existing resolution of the DOJ on the matter, dated 17 July 2003, which affirmed the resolution of the then DOJ Secretary Hernando B. Perez directing the City Prosecutor of Manila to file the appropriate information against Elidad and Violeta Kho for Unfair Competition as defined and penalized under Section 168.3(a), in relation to Sections 168 and 170 of Rep. Act No. 8293 or The Intellectual Property Code of the Philippines. Therefore, at the time of the dismissal of Criminal Case No. 00-183261 by the RTC of Manila, Branch 1, on 24 October 2001, the DOJ resolution on I.S. No. 00A-02396 on which Criminal Case No. 00-183261 is based has not been written finis as yet.

Taking into consideration these circumstances, the Court of Appeals did not err in affirming the Order of the RTC of Manila, Branch 7, denying the motion to quash filed by the herein petitioners because, subsequently, the DOJ still ordered the filing of charges against Elidad and Violeta Kho.

As to whether the RTC of Manila, Branch 1, properly dismissed the criminal case against the Khos despite the resolution of the DOJ ordering their criminal prosecution, we cannot dwell more on the issue because it is already the subject of G.R. No. 163741 before another division of this Court.

Issues two, three and four, on the other hand, boil down to the central issue of whether or not the Court of Appeals erred in upholding the RTC of Manila, Branch 7, in its findings of probable cause to issue a search warrant. Also resting on how we shall resolve the foregoing issue is the fifth and last issue in the Petition at bar which questions

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the refusal by both the Court of Appeals and the RTC of Manila, Branch 7, to return the seized items.

The issuance of Search Warrants is governed by Rule 126 of the Revised Rules of Court reproduced below:

> SECTION 1. Search warrant defined. - A search warrant is an order in writing issued in the name of the People of the Philippines, signed by a judge and directed to a peace officer, commanding him to search for personal property described therein and bring it before the court.
>
> SEC. 2. Court where application for search warrant shall be filed. - An application for search warrant shall be filed with the following:
>
> a) Any court within whose territorial jurisdiction a crime was committed.
>
> b) For compelling reasons stated in the application, any court within the judicial region where the crime was committed if the place of the commission of the crime is known, or any court within the judicial region where the warrant shall be enforced.
>
> However, if the criminal action has already been filed, the application shall only be made in the court where the criminal action is pending.
>
> SEC. 3. Personal property to be seized. - A search warrant may be issued for the search and seizure of personal property:
>
> (a) Subject of the offense;
>
> (b) Stolen or embezzled and other proceeds or fruits of the offense; or
>
> (c) Used or intended to be used as the means of committing an offense.
>
> SEC. 4. Requisites for issuing search warrant. - A search warrant shall not issue except upon probable cause in connection with one specific offense to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the things to be seized which may be anywhere in the Philippines.
>
> SEC.5. Examination of complainant; record. - The judge must, before issuing the warrant, personally examine in the form of searching questions and answers, in writing and under oath, the complainant and the witnesses he may produce on facts personally known to them and attach to the record their sworn statements together with the affidavits submitted.
>
> SEC. 6. Issuance and form of search warrant. - If the judge is satisfied of the existence of facts upon which the application is based or that there is probable cause to believe that they exist, he shall issue the warrant, which must be substantially in the form prescribed by these Rules.

What constitutes "probable cause" is well settled. In Microsoft Corporation v. Maxicorp, Inc.,[47] we defined probable cause as follows:

> Probable cause means "such reasons, supported by facts and circumstances as will warrant a cautious man in the belief that his action and the means taken in prosecuting it are legally just and proper." Thus, probable cause for a search warrant requires such facts and circumstances that would lead a reasonably prudent man to believe that an offense has been committed and the objects sought in connection with that offense are in the place to be searched.
>
> x x x x
>
> The determination of probable cause does not call for the application of rules and standards of proof that a judgment of conviction requires after trial on the merits. As implied by the words themselves, "probable cause"

> is concerned with probability, not absolute or even moral certainty. The prosecution need not present at this stage proof beyond reasonable doubt. The standards of judgment are those of a reasonably prudent man, not the exacting calibrations of a judge after a full-blown trial.
>
> No law or rule states that probable cause requires a specific kind of evidence. No formula or fixed rule for its determination exists. Probable cause is determined in the light of conditions obtaining in a given situation. xxx

In Columbia Pictures, Inc. v. Court of Appeals,[48] we explained further that:

> Although the term "probable cause" has been said to have a well-defined meaning in the law, the term is exceedingly difficult to define, in this case, with any degree of precision; indeed, no definition of it which would justify the issuance of a search warrant can be formulated which would cover every state of facts which might arise, and no formula or standard, or hard and fast rule, may be laid down which may be applied to the facts of every situation. As to what acts constitute probable cause seem incapable of definition. There is, of necessity, no exact test.
>
> At best, the term "probable cause" has been understood to mean a reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious man in the belief that the person accused is guilty of the offense with which he is charged; or the existence of such facts and circumstances as would excite an honest belief in a reasonable mind acting on all the facts and circumstances within the knowledge of the magistrate that the charge made by the applicant for the warrant is true.
>
> Probable cause does not mean actual and positive cause, nor does it import absolute certainty. The determination of the existence of probable cause is not concerned with the question of whether the offense charged has been or is being committed in fact, or whether the accused is guilty or innocent, but only whether the affiant has reasonable grounds for his belief. The requirement is less than certainty or proof, but more than suspicion or possibility.
>
> In Philippine jurisprudence, probable cause has been uniformly defined as such facts and circumstances which would lead a reasonable, discreet and prudent man to believe that an offense has been committed, and that the objects sought in connection with the offense are in the place sought to be searched. It being the duty of the issuing officer to issue, or refuse to issue, the warrant as soon as practicable after the application therefor is filed, the facts warranting the conclusion of probable cause must be assessed at the time of such judicial determination by necessarily using legal standards then set forth in law and jurisprudence, and not those that have yet to be crafted thereafter.

We also declared in People v. Chiu,[49] citing Malaloan v. Court of Appeals,[50] that a search warrant is merely a judicial process designed by the Rules to respond only to an incident in the main case, if one has already been instituted, or in anticipation thereof.

It bears repeating that the proceedings before the RTC of Manila, Branch 7, was solely for the issuance of Search Warrant No. 99-1520, while the main case against Elidad and Violeta Kho for violation of The Intellectual Property Code was instituted only later on as Criminal Case No. 00-183261 before the RTC of Manila, Branch 1. What is before us in the Petition at bar is the validity of the search warrant issued in the proceedings in Search Warrant No. 99-1520.

A perspicacious examination of the records reveal that the RTC of Manila, Branch 7, followed the prescribed procedure for the issuance of Search Warrant No. 99-1520, namely, (1) the examination under oath or affirmation of the Complainant and his witnesses and, in this case, Judge Enrico A. Lanzanas personally examined complainant-policewoman SPO4 Nedita Alvario Balagbis, and Mr. Victor Chua, the representative/officer of Summerville General Merchandising, at the hearing on the application for Search Warrant No. 99-1520 held on 10 January 2000; (2) an examination personally conducted by then Presiding Judge Lanzanas, in the form of

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searching questions and answers, in writing and under oath, of the complainant and witnesses on facts personally known to them; and (3) the taking of sworn statements, together with the affidavits submitted, which were duly attached to the records.[51]

In determining probable cause in the issuance of a search warrant, the oath required must refer to the truth of the facts within the personal knowledge of the applicant or his witnesses, because the purpose thereof is to convince the committing magistrate, not the individual making the affidavit and seeking the issuance of the warrant, of the existence of probable cause.[52]

From the affidavit dated 7 January 2000 of SPO4 Nedita Balagbis, in support of the application for search warrant, she stated that Summerville General Merchandising represented by Mr. Victor Chua sought the assistance of their police station in connection with the proliferation of fake Chin Chun Su products. With Victor Chua, they made a surveillance of two places, namely 2407 Topacio Street and 2412 Raymundo Street both in San Andres, Manila. Through this, they were able to verify that plastic containers were being labeled with Chin Chun Su stickers filled with cream at 2407 Topacio Street. On the other hand, in the affidavit dated 7 January 2000 of Victor Chua, he stated that Summerville General Merchandising, being the exclusive importer, distributor and dealer of Chin Chun Su products received reliable information that persons going by the name of Elidad, Violeta and Roger Kho were engaged in the illegal manufacture and sale of these products. From the surveillance conducted with the help of SPO4 Balagbis, they saw a tricycle full of containers taken to a house at 2412 Raymundo Street, San Andres, Manila. It was at this address that Chin Chun Su stickers were being affixed. The containers were thereafter taken to 2407 Topacio Street to be filled with the cream product.

Clearly, probable cause existed for the issuance of the warrant as shown by the affidavits of the above affiants who had personal knowledge of facts indicating that an offense involving violation of intellectual property rights was being committed and that the objects sought in connection with the offense are in the place sought to be searched. The surveillance conducted by SPO4 Nedita Balagbis on the basis of reliable information that Elidad, Violeta and Roger Kho were engaged in the illegal manufacture and sale of fake Chin Chun Su products enabled her to gain personal knowledge of the illegal activities of the Khos.[53] This fact was sufficient justification for the examining judge, in this case Judge Lanzanas, to conclude that there was probable cause for the issuance of the search warrant.

At the hearing conducted by Judge Lanzanas, SPO4 Nedita Balagbis and Victor Chua testified on the affidavits they separately executed, and essentially stated therein upon inquiry by Judge Lanzanas that indeed several fake Chin Chun Su products were loaded to a tricycle and brought to a warehouse in Topacio Street.

In People v. Tee,[54] this Court held that:

> It is presumed that a judicial function has been regularly performed, absent a showing to the contrary. A magistrate's determination of probable cause for the issuance of a search warrant is paid great deference by a reviewing court, as long as there was substantial basis for that determination. Substantial basis means that the questions of the examining judge brought out such facts and circumstances as would lead a reasonably discreet and prudent man to believe that an offense has been committed, and the objects in connection with the offense sought to be seized are in the place sought to be searched.

We cannot find any irregularity or abuse of discretion on the part of Judge Lanzanas for issuing the assailed search warrant. On the contrary, we find that he had complied with the procedural and substantive requirements for issuing a search warrant. We are, therefore, bound to respect his finding of probable cause for issuing Search Warrant No. 99-1520.

After declaring that Search Warrant No. 99-1520 was validly issued by the RTC of Manila, Branch 7, then there is

no reason for us to order the return of the articles seized by virtue thereof.

WHEREFORE, the Decision of the Court of Appeals dated 6 August 2001 and Resolution dated 16 November 2001, denying the quashal of Search Warrant No. 99-1520 and the return of the seized items, are hereby AFFIRMED. Costs against petitioners.

SO ORDERED.

Panganiban, C. J., (Chairperson), Ynares-Santiago, and Callejo, Sr., JJ., concur.
Austria-Martinez, J., no part.

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[1] Annex 2, rollo, pp. 322-323.

[2] Annex 8, id., p. 331.

[3] Annex 9-B, id., p. 334.

[4] REPUBLIC ACT No. 166. AN ACT TO PROVIDE FOR THE REGISTRATION AND PROTECTION OF TRADE-MARKS, TRADE-NAMES, AND SERVICE-MARKS, DEFINING UNFAIR COMPETITION AND FALSE MARKING AND PROVIDING REMEDIES AGAINST THE SAME, AND FOR OTHER PURPOSES.
SEC. 12. Duration. - Each certificate of registration shall remain in force for twenty years: Provided, That registrations under the provisions of this Act shall be cancelled by the Director, unless within one year following the fifth, tenth and fifteenth anniversaries of the date of issue of the certificate of registration, the registrant shall file in the Patent Office an affidavit showing that the mark or tradename is still in use or showing that its non-use is due to special circumstances which excuse such non-use and is not due to any intention to abandon the same, and pay the required fee.

[5] Annex D, rollo, p. 70.

[6] Annex E, id., pp. 71-72.

[7] Annex 7, id., pp. 330-331.

[8] Annexes 10, 11, and 12, id., pp. 334-336.

[9]Annex 13, id., p. 337.

[10] Penned by Judge Abraham P. Vera. Annex K, id., p. 106.

[11]Penned by Associate Justice Hector L. Hofilena with Associate Justices Omar U. Amin and Jose L. Sabio, Jr. concurring.

[12] Annex L, rollo, pp. 107-119.

[13] Annex 20, id., pp. 368-369.

[14] Captioned "In the matter of the Summerville Mfg. Request for the cancellation of KEC registration of Chin Chun Su" docketed as BFAD COSMETIC CASE NO. CM-040-91.

[15]Annex 15, rollo, pp. 346-347.

[16] Except for the Order of dismissal dated 24 October 2001 of the RTC of Manila, Branch 1, where Criminal Case No. 00-183261 was filed, no other document pertaining to Criminal Case No. 00-183261 appears in the records of the present petition so we could not state the exact date when the said criminal case was filed, but it is

safe to assume that the said criminal case was filed anytime after the 31 May 2000 resolution (p. 373, rollo) rendered by Assistant City Prosecutor Elmer M. Calledo finding sufficient evidence against Elidad, Roger and Violeta Kho for violation of The Intellectual Property Code.

[17] Annex 2, rollo, pp. 370-373.

[18]Annex 21, id., p. 370. INTELLECTUAL PROPERTY CODE OF THE PHILIPPINES (Republic Act No. 8293, As Amended) Section 168. Unfair Competition, Rights, Regulation and Remedies. - x x x
168.3. In particular, and without in any way limiting the scope of protection against unfair competition, the following shall be deemed guilty of unfair competition:
(a) Any person, who is selling his goods and gives them the general appearance of goods of another manufacturer or dealer, either as to the goods themselves or in the wrapping of the packages in which they are contained, or the devices or words thereon, or in any other feature of their appearance, which would be likely to influence purchasers to believe that the goods offered are those of a manufacturer or dealer, other than the actual manufacturer or dealer, or who otherwise clothes the goods with such appearance as shall deceive the public and defraud another of his legitimate trade, or any subsequent vendor of such goods or any agent of any vendor engaged in selling such goods with a like purpose; xxx
Section 170. Penalties. - Independent of the civil and administrative sanctions imposed by law, a criminal penalty of imprisonment from two (2) years to five (5) years and a fine ranging from Fifty Thousand Pesos (P50,000) to Two Hundred Thousand Pesos (P200,000), shall be imposed on any person who is found guilty of committing any of the acts mentioned in Section 155, Section 168 and Subsection 169.1. (Arts. 188 and 189, Revised Penal Code)

[19] Annex 23, rollo, p. 375.

[20] Annex AA, id., pp. 271-279.

[21]Annex BB, id., p. 280.

[22] Id., p. 465.

[23] Annex A, id., p. 509.

[24]Annex B, id., p. 518.

[25] Id., p. 519.

[26] Id., p. 466.

[27] Id., p. 462.

[28] A motion for consolidation of G.R. No. 163741 (CA-G.R. No. 77180 before the Court of Appeals) and G.R. No. 150877 was denied in a resolution dated 17 November 2004 on the ground that although both petitions involve the same parties, the cause of action and issues are not the same.

[29] Annex O, rollo, p. 123.

[30] Presided by Judge Enrico A. Lanzanas , now Associate Justice of the Court of Appeals, Annex P, id., p. 137.

[31]Annex Q, id., p. 138.

[32]Annex W, id., p. 205.

[33] Judge Enrico A. Lanzanas.

[34] SC ADMINISTRATIVE ORDER No. 113-95 dated 2 October 1995 "Re: Designation of Special Courts for

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Intellectual Property Rights."

[35] Annex X, rollo, pp. 211-212.

[36] Id., pp. 211-212.

[37] Docketed as CA-G.R. SP No. 60084, Annex Y, id., p. 213.

[38] Penned by Associate Justice Mercedes Gozo-Dadole with then Presiding Justice Alicia Austria-Martinez (now Associate Justice of this Court) and Associate Justice Portia Aliño- Hormachuelos, concurring. Rollo, p. 53.

[39] Id., p. 66.

[40] Annex CC, id., p. 281.

[41] Annex DD, id., p. 284.

[42] Rollo, p. 457.

[43] Id., pp. 421-422.

[44]Annex AA, rollo, pp. 271-279.

[45] Annex A, id., p. 509.

[46]Annex B, id., p. 518.

[47] G.R. No. 140946, 13 September 2004, 438 SCRA 224, 234-237.

[48] 329 Phil. 875, 918-919 (1996).

[49] G.R. Nos. 142915-16, 27 February 2004, 424 SCRA 72, 84.

[50]G.R. No. 104879, 6 May 1994, 232 SCRA 249, 257.

[51] Annexes M and N, rollo, pp. 121-122.

[52] Cupcupin v. People, 440 Phil. 712, 727 (2002).

[53]Yu v. Honrado, G.R. No. 50025, 21 August 1980, 99 SCRA 273, 278.

[54]443 Phil. 521, 539-540 (2003).

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