WILLIAM C. YAO, SR., LUISA C. YAO, RICHARD C. YAO, WILLIAM C. YAO JR., AND ROGER C. YAO, PETITIONERS, VS. THE PEOPLE OF THE PHILIPPINES, PETRON CORPORATION AND PILIPINAS SHELL P...

G.R. NO. 168306. June 19, 2007

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

In this Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court, petitioners William C. Yao, Sr., Luisa C. Yao, Richard C. Yao, William C. Yao, Jr., and Roger C. Yao pray for the reversal of the Decision dated 30 September 2004,[2] and Resolution dated 1 June 2005, of the Court of Appeals in CA G.R. SP No. 79256,[3] affirming the two Orders, both dated 5 June 2003, of the Regional Trial Court (RTC), Branch 17, Cavite City, relative to Search Warrants No. 2-2003 and No. 3-2003.[4] In the said Orders, the RTC denied the petitioners' Motion to Quash Search Warrant[5] and Motion for the Return of the Motor Compressor and Liquified Petroleum Gas (LPG) Refilling Machine.[6]

The following are the facts:

Petitioners are incorporators and officers of MASAGANA GAS CORPORATION (MASAGANA), an entity engaged in the refilling, sale and distribution of LPG products. Private respondents Petron Corporation (Petron) and Pilipinas Shell Petroleum Corporation (Pilipinas Shell) are two of the largest bulk suppliers and producers of LPG in the Philippines. Their LPG products are sold under the marks "GASUL" and "SHELLANE," respectively. Petron is the registered owner in the Philippines of the trademarks GASUL and GASUL cylinders used for its LPG products. It is the sole entity in the Philippines authorized to allow refillers and distributors to refill, use, sell, and distribute GASUL LPG containers, products and its trademarks. Pilipinas Shell, on the other hand, is the authorized user in the Philippines of the tradename, trademarks, symbols, or designs of its principal, Shell International Petroleum Company Limited (Shell International), including the marks SHELLANE and SHELL device in connection with the production, sale and distribution of SHELLANE LPGs. It is the only corporation in the Philippines authorized to allow refillers and distributors to refill, use, sell and distribute SHELLANE LPG containers and products.[7]

On 3 April 2003, National Bureau of Investigation (NBI) agent Ritche N. Oblanca (Oblanca) filed two applications for search warrant with the RTC, Branch 17, Cavite City, against petitioners and other occupants of the MASAGANA compound located at Governor's Drive, Barangay Lapidario, Trece Martires, Cavite City, for alleged violation of Section 155, in relation to Section 170 of Republic Act No. 8293, otherwise known as "The Intellectual Property Code of the Philippines."[8] The two applications for search warrant uniformly alleged that per information, belief, and personal verification of Oblanca, the petitioners are actually producing, selling, offering for sale and/or distributing LPG products using steel cylinders owned by, and bearing the tradenames, trademarks, and devices of Petron and Pilipinas Shell, without authority and in violation of the rights of the said entities.

In his two separate affidavits[9] attached to the two applications for search warrant, Oblanca alleged:

> - [That] on 11 February 2003, the National Bureau of Investigation ("NBI") received a letter-complaint from Atty. Bienvenido I. Somera Jr. of Villaraza and Angangco, on behalf of among others, [Petron Corporation (PETRON)] and Pilipinas Shell Petroleum Corporation (PSPC), the authorized representative of Shell International Petroleum Company Limited ("Shell International"), requesting assistance in the investigation and, if warranted, apprehension and prosecution of certain persons and/or establishments suspected of violating the intellectual property rights [of PETRON] and of PSPC and Shell International.
>
> - [That] on the basis of the letter-complaint, I, together with Agent Angelo Zarzoso, was assigned as the NBI agent on the case.
>
> - [That] prior to conducting the investigation on the reported illegal activities, he reviewed the certificates of trademark registrations issued in favor of [PETRON], PSPC and Shell International as well as other documents and other evidence obtained by the investigative agency authorized by [PETRON], PSPC and Shell International to investigate and cause the investigation of persons and establishments violating the rights of [PETRON], PSPC and Shell International, represented by Mr. Bernabe C. Alajar. Certified copies of the foregoing trademark registrations are attached hereto as Annexes "A" to ":E".
>
> - [That] among the establishments alleged to be unlawfully refilling and unlawfully selling and distributing [Gasul LPG and] Shellane products is Masagana Gas Corporation ("MASAGANA"). Based on Securities and Exchange Commission Records, MASAGANA has its principal office address at 9775 Kamagong Street, San Antonio Village, Makati, Metro Manila. The incorporators and directors of MASAGANA are William C. Yao, Sr., Luisa C. Yao, Richard C. Yao, William C. Yao, Jr., and Roger C. Yao. x x x.
>
> - I confirmed that MASAGANA is not authorized to use [PETRON and] Shellane LPG cylinders and its trademarks and tradenames or to be refillers or distributors of [PETRON and] Shellane LPG's.
>
> - I went to MASAGANA's refilling station located at Governor's Drive, Barangay Lapidario, Trece Martires City (sic), Cavite to investigate its activities. I confirmed that MASAGANA is indeed engaged in the unauthorized refilling, sale and/or distribution of [Gasul and] Shellane LPG cylinders. I found out that MASAGANA delivery trucks with Plate Nos. UMN-971, PEZ-612, WTE-527, XAM-970 and WFC-603 coming in and out of the refilling plant located at the aforementioned address contained multi-brand LPG cylinders including [Gasul and] Shellane. x x x.
>
> - [That] on 13 February 2003, I conducted a test-buy accompanied by Mr. Bernabe C. Alajar. After asking the purpose of our visit, MASAGANA's guard allowed us to enter the MASAGANA refilling plant to purchase GASUL and SHELLANE LPGs. x x x. We were issued an order slip which we presented to the cashier's office located near the refilling station. After paying the amount x x x covering the cost of the cylinders and their contents, they were issued Cash Invoice No. 56210 dated February 13, 2003. We were, thereafter, assisted by the plant attendant in choosing empty GASUL and SHELLANE 11 kg. cylinders, x x x were brought to the refilling station [and filled in their presence.] I noticed that no valve seals were placed on the cylinders.
>
> [That] while inside the refilling plant doing the test-buy, I noticed that stockpiles of multi-branded cylinders including GASUL and SHELLANE cylinders were stored near the refilling station. I also noticed that the total land area of the refilling plant is about 7,000 to 10,000 square meters. At the corner right side of the compound immediately upon entering the gate is a covered area where the maintenance of the cylinders is taking place. Located at the back right corner of the compound are two storage tanks while at the left side also at the corner portion is another storage tank. Several meters and fronting the said storage tank is where the refilling station and the office are located. It is also in this storage tank where the elevated blue water tank depicting MASAGANA CORP. is located. About eleven (11) refilling pumps and stock piles of multi-branded cylinders including Shellane and GASUL are stored in the refilling station. At the left side of the entrance gate is the guard house with small door for the pedestrians and at the right is a blue steel gate used for incoming and

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outgoing vehicles.

- [That] on 27 February 2003, I conducted another test-buy accompanied by Mr. Bernabe C. Alajar. x x x After choosing the cylinders, we were issued an order slip which we presented to the cashier. Upon payment, Cash Invoice No. 56398 was issued covering the cost of both GASUL and SHELLANE LPG cylinders and their contents. x x x Both cylinders were refilled in our presence and no valve seals were placed on the cylinders.

Copies of the photographs of the delivery trucks, LPG cylinders and registration papers were also attached to the aforementioned affidavits.[10]

Bernabe C. Alajar (Alajar), owner of Able Research and Consulting Services Inc., was hired by Petron and Pilipinas Shell to assist them in carrying out their Brand Protection Program. Alajar accompanied Oblanca during the surveillance of and test-buys at the refilling plant of MASAGANA. He also executed two separate affidavits corroborating the statements of Oblanca. These were annexed to the two applications for search warrant.[11]

After conducting the preliminary examination on Oblanca and Alajar, and upon reviewing their sworn affidavits and other attached documents, Judge Melchor Q.C. Sadang (Judge Sadang), Presiding Judge of the RTC, Branch 17, Cavite City, found probable cause and correspondingly issued Search Warrants No. 2-2003 and No. 3-2003.[12] The search warrants commanded any peace officer to make an immediate search of the MASAGANA compound and to seize the following items:

Under Search Warrant No. 2-2003:

- Empty/filled LPG cylinder tanks/containers, bearing the tradename "SHELLANE", "SHELL" (Device) of Pilipinas Shell Petroleum Corporation and the trademarks and other devices owned by Shell International Petroleum Company, Ltd.;

- Machinery and/or equipment being used or intended to be used for the purpose of illegally refilling LPG cylinders belonging to Pilipinas Shell Petroleum Corporation bearing the latter's tradename as well as the marks belonging to Shell International Petroleum Company, Ltd., enumerated hereunder:

- Bulk/Bullet LPG storage tanks;

- Compressor/s (for pneumatic refilling system);

- LPG hydraulic pump/s;

- LPG refilling heads/hoses and appurtenances or LPG filling assembly;

- LPG pipeline gate valve or ball valve and handles and levers;

- LPG weighing scales; and

- Seals simulating the shell trademark.

- Sales invoices, ledgers, journals, official receipts, purchase orders, and all other books of accounts, inventories and documents pertaining to the production, sale and/or distribution of the aforesaid goods/products.

- Delivery truck bearing Plate Nos. WTE-527, XAM-970 and WFC-603, hauling trucks, and/or other delivery trucks or vehicles or conveyances being used or intended to be used for the purpose of selling and/or distributing the above-mentioned counterfeit products.

Under Search Warrant No. 3-2003:

- Empty/filled LPG cylinder tanks/containers, bearing Petron Corporation's (Petron) tradename and its

tradename "GASUL" and other devices owned and/or used exclusively by Petron;

- Machinery and/or equipment being used or intended to be used for the purpose of illegally refilling LPG cylinders belonging to Petron enumerated hereunder;

- Bulk/Bullet LPG storage tanks;

- Compressor/s (for pneumatic filling system);

- LPG hydraulic pump/s;

- LPG filling heads/hoses and appurtenances or LPG filling assembly;

- LPG pipeline gate valve or ball valve and handles levers;

- LPG weighing scales; and

- Seals bearing the Petron mark;

- Sales invoices, ledgers, journals, official receipts, purchase orders, and all other books of accounts, inventories and documents pertaining to the production, sale and/or distribution of the aforesaid goods/products; and

- Delivery trucks bearing Plate Nos. UMN-971, PEZ-612 and WFC-603, hauling trucks, and/or other delivery trucks or vehicles or conveyances being used for the purpose of selling and/or distributing the above-mentioned counterfeit products.

Upon the issuance of the said search warrants, Oblanca and several NBI operatives immediately proceeded to the MASAGANA compound and served the search warrants on petitioners.[13] After searching the premises of MASAGANA, the following articles described in Search Warrant No. 2-2003 were seized:

- Thirty-eight (38) filled 11 kg. LPG cylinders, bearing the tradename of Pilipinas Shell Petroleum Corporation and the trademarks and other devices owned by Shell International Petroleum Company, Ltd.;

- Thirty-nine (39) empty 11 kg. LPG cylinders, bearing the tradename of Pilipinas Shell Petroleum Corporation and the trademarks and other devices owned by Shell International Petroleum Company, Ltd.;

- Eight (8) filled 50 kg. LPG cylinders, bearing the tradename of Pilipinas Shell Petroleum Corporation and the trademarks and other devices owned by Shell International Petroleum Company, Ltd.;

- Three (3) empty 50 kg. LPG cylinders, bearing the tradename of Pilipinas Shell Petroleum Corporation and the trademarks and other devices owned by Shell International Petroleum Company, Ltd.;

- One (1) set of motor compressor for filling system.

Pursuant to Search Warrant No. 3-2003, the following articles were also seized:

- Six (6) filled 11 kg. LPG cylinders without seal, bearing Petron's tradename and its trademark "GASUL" and other devices owned and/or used exclusively by Petron;

- Sixty-three (63) empty 11 kg. LPG cylinders, bearing Petron's tradename and its trademark "GASUL" and other devices owned and/or used exclusively by Petron;

- Seven (7) tampered 11 kg. LPG cylinders, bearing Petron's tradename and its trademark "GASUL" and other devices owned and/or used exclusively by Petron;

- Five (5) tampered 50 kg. LPG cylinders, bearing Petron's tradename and its trademark "GASUL" and other devices owned and/or used exclusively by Petron with tampered "GASUL" logo;

- One (1) set of motor compressor for filling system; and

- One (1) set of LPG refilling machine.

On 22 April 2003, petitioners filed with the RTC a Motion to Quash Search Warrants No. 2-2003 and No. 3-2003[14] on the following grounds:

- There is no probable cause for the issuance of the search warrant and the conditions for the issuance of a search warrant were not complied with;

- Applicant NBI Agent Ritchie N. Oblanca and his witness Bernabe C. Alajar do not have any authority to apply for a search warrant. Furthermore, they committed perjury when they alleged in their sworn statements that they conducted a test-buy on two occasions;

- The place to be searched was not specified in the Search Warrant as the place has an area of 10,000 square meters (one hectare) more or less, for which reason the place to be searched must be indicated with particularity;

- The search warrant is characterized as a general warrant as the items to be seized as mentioned in the search warrant are being used in the conduct of the lawful business of respondents and the same are not being used in refilling Shellane and Gasul LPGs.

On 30 April 2003, MASAGANA, as third party claimant, filed with the RTC a Motion for the Return of Motor Compressor and LPG Refilling Machine.[15] It claimed that it is the owner of the said motor compressor and LPG refilling machine; that these items were used in the operation of its legitimate business; and that their seizure will jeopardize its business interests.

On 5 June 2003, the RTC issued two Orders, one of which denied the petitioners' Motion to Quash Search Warrants No. 2-2003 and No. 3-2003, and the other one also denied the Motion for the Return of Motor Compressor and LPG Refilling Machine of MASAGANA, for lack of merit.[16]

With respect to the Order denying the petitioners' motion to quash Search Warrants No. 2-2003 and No. 3-2003, the RTC held that based on the testimonies of Oblanca and Alajar, as well as the documentary evidence consisting of receipts, photographs, intellectual property and corporate registration papers, there is probable cause to believe that petitioners are engaged in the business of refilling or using cylinders which bear the trademarks or devices of Petron and Pilipinas Shell in the place sought to be searched and that such activity is probably in violation of Section 155 in relation to Section 170 of Republic Act No. 8293.

It also ruled that Oblanca and Alajar had personal knowledge of the acts complained of since they were the ones who monitored the activities of and conducted test-buys on MASAGANA; that the search warrants in question are not general warrants because the compound searched are solely used and occupied by MASAGANA, and as such, there was no need to particularize the areas within the compound that would be searched; and that the items to be seized in the subject search warrants were sufficiently described with particularity as the same was limited to cylinder tanks bearing the trademarks GASUL and SHELLANE.

As regards the Order denying the motion of MASAGANA for the return of its motor compressor and LPG refilling machine, the RTC resolved that MASAGANA cannot be considered a third party claimant whose rights were violated as a result of the seizure since the evidence disclosed that petitioners are stockholders of MASAGANA and that they conduct their business through the same juridical entity. It maintained that to rule otherwise would result in the misapplication and debasement of the veil of corporate fiction. It also stated that the veil of corporate fiction cannot be used as a refuge from liability.

Further, the RTC ratiocinated that ownership by another person or entity of the seized items is not a ground to order its return; that in seizures pursuant to a search warrant, what is important is that the seized items were used or intended to be used as means of committing the offense complained of; that by its very nature, the properties sought to be returned in the instant case appear to be related to and intended for the illegal activity for which the search warrants were applied for; and that the items seized are instruments of an offense.

Petitioners filed Motions for Reconsideration of the assailed Orders,[17] but these were denied by the RTC in its Order dated 21 July 2003 for lack of compelling reasons.[18]

Subsequently, petitioners appealed the two Orders of the RTC to the Court of Appeals via a special civil action for certiorari under Rule 65 of the Rules of Court.[19] On 30 September 2004, the Court of Appeals promulgated its Decision affirming the Orders of the RTC.[20] It adopted in essence the bases and reasons of the RTC in its two Orders. The decretal portion thereof reads:

> Based on the foregoing, this Court finds no reason to disturb the assailed Orders of the respondent judge. Grave abuse of discretion has not been proven to exist in this case.
>
> WHEREFORE, the petition is hereby DISMISSED for lack of merit. The assailed orders both dated June 5, 2003 are hereby AFFIRMED.

Petitioners filed a Motion for Reconsideration[21] of the Decision of the Court of Appeals, but this was denied in its Resolution dated 1 June 2005 for lack of merit.[22]

Petitioners filed the instant petition on the following grounds:

> I.
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> THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT THE PRESIDING JUDGE OF RTC CAVITE CITY HAD SUFFICIENT BASIS IN DECLARING THE EXISTENCE OF PROBABLE CAUSE;
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> II.
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> THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT NBI AGENT (RITCHIE OBLANCA) CAN APPLY FOR THE SEARCH WARRANTS NOTHWITHSTANDING HIS LACK OF AUTHORITY;
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> III.
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> THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT THE REQUIREMENT OF GIVING A PARTICULAR DESCRIPTION OF THE PLACE TO BE SEARCHED WAS COMPLIED WITH;
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> IV.
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> THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT THE APPLICATIONS AND THE SEARCH WARRANTS THEMSELVES SHOW NO AMBIGUITY OF THE ITEMS TO BE SEIZED;
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> V.
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> THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT THE COMPLAINT IS DIRECTED AGAINST MASAGANA GAS CORPORATION, ACTING THROUGH ITS OFFICERS AND DIRECTORS, HENCE MASAGANA GAS CORPORATION MAY NOT BE CONSIDERED AS THIRD PARTY CLAIMANT WHOSE RIGHTS WERE VIOLATED AS A RESULT OF THE SEIZURE.[23]

Apropos the first issue, petitioners allege that Oblanca and Alajar had no personal knowledge of the matters on

which they testified; that Oblanca and Alajar lied to Judge Sadang when they stated under oath that they were the ones who conducted the test-buys on two different occasions; that the truth of the matter is that Oblanca and Alajar never made the purchases personally; that the transactions were undertaken by other persons namely, Nikko Javier and G. Villanueva as shown in the Entry/Exit Slips of MASAGANA; and that even if it were true that Oblanca and Alajar asked Nikko Javier and G. Villanueva to conduct the test-buys, the information relayed by the latter two to the former was mere hearsay.[24]

Petitioners also contend that if Oblanca and Alajar had indeed used different names in purchasing the LPG cylinders, they should have mentioned it in their applications for search warrants and in their testimonies during the preliminary examination; that it was only after the petitioners had submitted to the RTC the entry/exit slips showing different personalities who made the purchases that Oblanca and Alajar explained that they had to use different names in order to avoid detection; that Alajar is not connected with either of the private respondents; that Alajar was not in a position to inform the RTC as to the distinguishing trademarks of SHELLANE and GASUL; that Oblanca was not also competent to testify on the marks allegedly infringed by petitioners; that Judge Sadang failed to ask probing questions on the distinguishing marks of SHELLANE and GASUL; that the findings of the Brand Protection Committee of Pilipinas Shell were not submitted nor presented to the RTC; that although Judge Sadang examined Oblanca and Alajar, the former did not ask exhaustive questions; and that the questions Judge Sadang asked were merely rehash of the contents of the affidavits of Oblanca and Alajar.[25]

These contentions are devoid of merit.

Article III, Section 2, of the present Constitution states the requirements before a search warrant may be validly issued, to wit:

> Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause 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 persons or things to be seized. (emphasis supplied).

Section 4 of Rule 126 of the Revised Rules on Criminal Procedure, provides with more particularity the requisites in issuing a search warrant, viz:

> 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.

According to the foregoing provisions, a search warrant can be issued only upon a finding of probable cause. Probable cause for search warrant means such facts and circumstances which would lead a reasonably 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 to be searched.[26]

The facts and circumstances being referred thereto pertain to facts, data or information personally known to the applicant and the witnesses he may present.[27] The applicant or his witnesses must have personal knowledge of the circumstances surrounding the commission of the offense being complained of. "Reliable information" is insufficient. Mere affidavits are not enough, and the judge must depose in writing the complainant and his witnesses.[28]

Section 155 of Republic Act No. 8293 identifies the acts constituting trademark infringement, thus:

> SEC. 155. Remedies; Infringement. – Any person who shall, without the consent of the owner of the registered mark:
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> 155.1. Use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark or the same container or a dominant feature thereof in connection with the sale, offering for sale, distribution, advertising of any goods or services including other preparatory steps necessary to carry out the sale of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; or
>
> 155.2. Reproduce, counterfeit, copy or colorably imitate a registered mark or a dominant feature thereof and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive, shall be liable in a civil action for infringement by the registrant for the remedies hereinafter set forth: Provided, That the infringement takes place at the moment any of the acts stated in Subsection 155.1 or this subsection are committed regardless of whether there is actual sale of goods or services using the infringing material.

As can be gleaned in Section 155.1, mere unauthorized use of a container bearing a registered trademark in connection with the sale, distribution or advertising of goods or services which is likely to cause confusion, mistake or deception among the buyers/consumers can be considered as trademark infringement.

In his sworn affidavits,[29] Oblanca stated that before conducting an investigation on the alleged illegal activities of MASAGANA, he reviewed the certificates of trademark registrations issued by the Philippine Intellectual Property Office in favor of Petron and Pilipinas Shell; that he confirmed from Petron and Pilipinas Shell that MASAGANA is not authorized to sell, use, refill or distribute GASUL and SHELLANE LPG cylinder containers; that he and Alajar monitored the activities of MASAGANA in its refilling plant station located within its compound at Governor's Drive, Barangay Lapidario, Trece Martires, Cavite City; that, using different names, they conducted two test-buys therein where they purchased LPG cylinders bearing the trademarks GASUL and SHELLANE; that the said GASUL and SHELLANE LPG cylinders were refilled in their presence by the MASAGANA employees; that while they were inside the MASAGANA compound, he noticed stock piles of multi-branded cylinders including GASUL and SHELLANE LPG cylinders; and that they observed delivery trucks loaded with GASUL and SHELLANE LPG cylinders coming in and out of the MASAGANA compound and making deliveries to various retail outlets. These allegations were corroborated by Alajar in his separate affidavits.

In support of the foregoing statements, Oblanca also submitted the following documentary and object evidence:

> - Certified true copy of the Certificate of Registration No. 44046 for "SHELL (DEVICE)" in the name of Shell International;
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> - Certified true copy of the Certificate of Registration No. 41789 for "SHELL (DEVICE)" in the name of Shell International;
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> - Certified true copy of the Certificate of Registration No. 37525 for "SHELL (DEVICE) in the name of Shell International;
>
> - Certified true copy of the Certificate of Registration No. R-2813 for "SHELL" in the name of Shell International;
>
> - Certified true copy of the Certificate of Registration No. 31443 for "SHELLANE" in the name of Shell International;

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- Certified true copy of the Certificate of Registration No. 57945 for the mark "GASUL" in the name of Petron;

- Certified true copy of the Certificate of Registration No. C-147 for "GASUL CYLINDER CONTAINING LIQUEFIED PETROLEUM GAS" in the name of Petron;

- Certified true copy of the Certificate of Registration No. 61920 for the mark "GASUL AND DEVICE" in the name of Petron;

- Certified true copy of the Articles of Incorporation of Masagana;

- Certified true copy of the By-laws of Masagana;

- Certified true copy of the latest General Information Sheet of Masagana on file with the Securities and Exchange Commission;

- Pictures of delivery trucks coming in and out of Masagana while it delivered Gasul and Shellane LPG;

- Cash Invoice No. 56210 dated 13 February 2003 issued by Masagana for the Gasul and Shellane LPG purchased by Agent Oblanca and witness Alajar;

- Pictures of the Shellane and Gasul LPG's covered by Cash Invoice No. 56210 purchased from Masagana by Agent Oblanca and witness Alajar;

- Cash Invoice No. 56398 dated 27 February 2003 issued by Masagana for the Gasul and Shellane LPG purchased by Agent Oblanca and witness Alajar; and

- Pictures of the Shellane and Gasul LPG's covered by Cash Invoice No. 56398 purchased from Masagana by Agent Oblanca and witness Alajar.[30]

Extant from the foregoing testimonial, documentary and object evidence is that Oblanca and Alajar have personal knowledge of the fact that petitioners, through MASAGANA, have been using the LPG cylinders bearing the marks GASUL and SHELLANE without permission from Petron and Pilipinas Shell, a probable cause for trademark infringement. Both Oblanca and Alajar were clear and insistent that they were the very same persons who monitored the activities of MASAGANA; that they conducted test-buys thereon; and that in order to avoid suspicion, they used different names during the test-buys. They also personally witnessed the refilling of LPG cylinders bearing the marks GASUL and SHELLANE inside the MASAGANA refilling plant station and the deliveries of these refilled containers to some outlets using mini-trucks.

Indeed, the aforesaid facts and circumstances are sufficient to establish probable cause. It should be borne in mind that the determination of probable cause does not call for the application of the rules and standards of proof that a judgment of conviction requires after trial on the merits. As the term implies, "probable cause" is concerned with probability, not absolute or even moral certainty. The standards of judgment are those of a reasonably prudent man, not the exacting calibrations of a judge after a full blown trial.[31]

The fact that Oblanca and Alajar used different names in the purchase receipts do not negate personal knowledge on their part. It is a common practice of the law enforcers such as NBI agents during covert investigations to use different names in order to conceal their true identities. This is reasonable and understandable so as not to endanger the life of the undercover agents and to facilitate the lawful arrest or apprehension of suspected violators of the law.

Petitioners' contention that Oblanca and Alajar should have mentioned the fact that they used different names in their respective affidavits and during the preliminary examination is puerile. The argument is too vacuous to merit serious consideration. There is nothing in the provisions of law concerning the issuance of a search warrant which

directly or indirectly mandates that the applicant of the search warrant or his witnesses should state in their affidavits the fact that they used different names while conducting undercover investigations, or to divulge such fact during the preliminary examination. In the light of other more material facts which needed to be established for a finding of probable cause, it is not difficult to believe that Oblanca and Alajar failed to mention that they used aliases in entering the MASAGANA compound due to mere oversight.

It cannot be gainfully said that Oblanca and Alajar are not competent to testify on the trademarks infringed by the petitioners. As earlier discussed, Oblanca declared under oath that before conducting an investigation on the alleged illegal activities of MASAGANA, he reviewed the certificates of trademark registrations issued by the Philippine Intellectual Property Office in favor of Petron and Pilipinas Shell. These certifications of trademark registrations were attached by Oblanca in his applications for the search warrants. Alajar, on the other hand, works as a private investigator and, in fact, owns a private investigation and research/consultation firm. His firm was hired and authorized, pursuant to the Brand Protection Program of Petron and Pilipinas Shell, to verify reports that MASAGANA is involved in the illegal sale and refill of GASUL and SHELLANE LPG cylinders.[32] As part of the job, he studied and familiarized himself with the registered trademarks of GASUL and SHELLANE, and the distinct features of the LPG cylinders bearing the same trademarks before conducting surveillance and test-buys on MASAGANA.[33] He also submitted to Oblanca several copies of the same registered trademark registrations and accompanied Oblanca during the surveillance and test-buys.

As to whether the form and manner of questioning made by Judge Sadang complies with the requirements of law, Section 5 of Rule 126 of the Revised Rules on Criminal Procedure, prescribes the rules in the examination of the complainant and his witnesses when applying for search warrant, to wit:

> 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 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.

The searching questions propounded to the applicant and the witnesses depend largely on the discretion of the judge. Although there is no hard-and-fast rule governing how a judge should conduct his investigation, it is axiomatic that the examination must be probing and exhaustive, not merely routinary, general, peripheral, perfunctory or pro forma. The judge must not simply rehash the contents of the affidavit but must make his own inquiry on the intent and justification of the application.[34]

After perusing the Transcript of Stenographic Notes of the preliminary examination, we found the questions of Judge Sadang to be sufficiently probing, not at all superficial and perfunctory.[35] The testimonies of Oblanca and Alajar were consistent with each other and their narration of facts was credible. As correctly found by the Court of Appeals:

> This Court is likewise not convinced that respondent Judge failed to ask probing questions in his determination of the existence of probable cause. This Court has thoroughly examined the Transcript of Stenographic Notes taken during the investigation conducted by the respondent Judge and found that respondent Judge lengthily inquired into the circumstances of the case. For instance, he required the NBI agent to confirm the contents of his affidavit, inquired as to where the "test-buys" were conducted and by whom, verified whether PSPC and PETRON have registered trademarks or tradenames, required the NBI witness to explain how the "test-buys" were conducted and to describe the LPG cylinders purchased from Masagana Gas Corporation, inquired why the applications for Search Warrant were filed in Cavite City considering that Masagana Gas Corporation was located in Trece Martires, Cavite, inquired whether the NBI Agent has a sketch of the place and if there was any distinguishing sign to identify the place to be searched, and inquired about their alleged tailing and monitoring of the delivery trucks. x x x.[36]

Since probable cause is dependent largely on the opinion and findings of the judge who conducted the examination and who had the opportunity to question the applicant and his witnesses, the findings of the judge deserves great weight. The reviewing court can overturn such findings only upon proof that the judge disregarded the facts before him or ignored the clear dictates of reason.[37] We find no compelling reason to disturb Judge Sadang's findings herein.

Anent the second issue, petitioners argue that Judge Sadang failed to require Oblanca to show his authority to apply for search warrants; that Oblanca is a member of the Anti-Organized Crime and not that of the Intellectual Property Division of the NBI; that all complaints for infringement should be investigated by the Intellectual Property Division of the NBI; that it is highly irregular that an agent not assigned to the Intellectual Property Division would apply for a search warrant and without authority from the NBI Director; that the alleged letter-complaint of Atty. Bienvenido Somera, Jr. of Villaraza and Angangco Law Office was not produced in court; that Judge Sadang did not require Oblanca to produce the alleged letter-complaint which is material and relevant to the determination of the existence of probable cause; and that Petron and Pilipinas Shell, being two different corporations, should have issued a board resolution authorizing the Villaraza and Angangco Law Office to apply for search warrant in their behalf.[38]

We reject these protestations.

The authority of Oblanca to apply for the search warrants in question is clearly discussed and explained in his affidavit, viz:

> [That] on 11 February 2003, the National Bureau of Investigation (NBI) received a letter-complaint from Atty. Bienvenido I. Somera, Jr. of Villaraza and Angangco, on behalf of among others, Petron Corporation (PETRON) [and Pilipinas Shell Petroleum Corporation (PSPC), the authorized representative of Shell International Petroleum Company Limited (SHELL INTERNATIONAL)] requesting assistance in the investigation and, if warranted, apprehension and prosecution of certain persons and/or establishments suspected of violating the intellectual property rights of PETRON [and of PSPC and Shell International.]
>
> - [That] on the basis of the letter-complaint, I, together with Agent Angelo Zarzoso, was assigned as the NBI agent on the case.[39]

The fact that Oblanca is a member of the Anti-Organized Crime Division and not that of the Intellectual Property Division does not abrogate his authority to apply for search warrant. As aptly stated by the RTC and the Court of Appeals, there is nothing in the provisions on search warrant under Rule 126 of the Revised Rules on Criminal Procedure, which specifically commands that the applicant law enforcer must be a member of a division that is assigned or related to the subject crime or offense before the application for search warrant may be acted upon. The petitioners did not also cite any law, rule or regulation mandating such requirement. At most, petitioners may only be referring to the administrative organization and/or internal rule or practice of the NBI. However, not only did petitioners failed to establish the existence thereof, but they also did not prove that such administrative organization and/or internal rule or practice are inviolable.

Neither is the presentation of the letter-complaint of Atty. Somera and board resolutions from Petron and Pilipinas Shell required or necessary in determining probable cause. As heretofore discussed, the affidavits of Oblanca and Alajar, coupled with the object and documentary evidence they presented, are sufficient to establish probable cause. It can also be presumed that Oblanca, as an NBI agent, is a public officer who had regularly performed his official duty.[40] He would not have initiated an investigation on MASAGANA without a proper complaint. Furthermore, Atty. Somera did not step up to deny his letter-complaint.

Regarding the third issue, petitioners posit that the applications for search warrants of Oblanca did not specify the

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particular area to be searched, hence, giving the raiding team wide latitude in determining what areas they can search. They aver that the search warrants were general warrants, and are therefore violative of the Constitution. Petitioners also assert that since the MASAGANA compound is about 10,000.00 square meters with several structures erected on the lot, the search warrants should have defined the areas to be searched.

The long standing rule is that a description of the place to be searched is sufficient if the officer with the warrant can, with reasonable effort, ascertain and identify the place intended and distinguish it from other places in the community. Any designation or description known to the locality that points out the place to the exclusion of all others, and on inquiry leads the officers unerringly to it, satisfies the constitutional requirement.[41]

Moreover, in the determination of whether a search warrant describes the premises to be searched with sufficient particularity, it has been held that the executing officer's prior knowledge as to the place intended in the warrant is relevant. This would seem to be especially true where the executing officer is the affiant on whose affidavit the warrant had been issued, and when he knows that the judge who issued the warrant intended the compound described in the affidavit.[42]

The search warrants in question commanded any peace officer to make an immediate search on MASAGANA compound located at Governor's Drive, Barangay Lapidario, Trece Martires, Cavite City. It appears that the raiding team had ascertained and reached MASAGANA compound without difficulty since MASAGANA does not have any other offices/plants in Trece Martires, Cavite City. Moreover, Oblanca, who was with the raiding team, was already familiar with the MASAGANA compound as he and Alajar had monitored and conducted test-buys thereat.

Even if there are several structures inside the MASAGANA compound, there was no need to particularize the areas to be searched because, as correctly stated by Petron and Pilipinas Shell, these structures constitute the essential and necessary components of the petitioners' business and cannot be treated separately as they form part of one entire compound. The compound is owned and used solely by MASAGANA. What the case law merely requires is that, the place to be searched can be distinguished in relation to the other places in the community. Indubitably, this requisite was complied with in the instant case.

As to the fourth issue, petitioners asseverate that the search warrants did not indicate with particularity the items to be seized since the search warrants merely described the items to be seized as LPG cylinders bearing the trademarks GASUL and SHELLANE without specifying their sizes.

A search warrant may be said to particularly describe the things to be seized when the description therein is as specific as the circumstances will ordinarily allow; or when the description expresses a conclusion of fact not of law by which the warrant officer may be guided in making the search and seizure; or when the things described are limited to those which bear direct relation to the offense for which the warrant is being issued.[43]

While it is true that the property to be seized under a warrant must be particularly described therein and no other property can be taken thereunder, yet the description is required to be specific only in so far as the circumstances will ordinarily allow. The law does not require that the things to be seized must be described in precise and minute details as to leave no room for doubt on the part of the searching authorities; otherwise it would be virtually impossible for the applicants to obtain a search warrant as they would not know exactly what kind of things they are looking for. Once described, however, the articles subject of the search and seizure need not be so invariant as to require absolute concordance, in our view, between those seized and those described in the warrant. Substantial similarity of those articles described as a class or specie would suffice.[44]

Measured against this standard, we find that the items to be seized under the search warrants in question were

sufficiently described with particularity. The articles to be confiscated were restricted to the following: (1) LPG cylinders bearing the trademarks GASUL and SHELLANE; (2) Machines and equipments used or intended to be used in the illegal refilling of GASUL and SHELLANE cylinders. These machines were also specifically enumerated and listed in the search warrants; (3) Documents which pertain only to the production, sale and distribution of the GASUL and SHELLANE LPG cylinders; and (4) Delivery trucks bearing Plate Nos. WTE-527, XAM-970 and WFC-603, hauling trucks, and/or other delivery trucks or vehicles or conveyances being used or intended to be used for the purpose of selling and/or distributing GASUL and SHELLANE LPG cylinders.[45]

Additionally, since the described items are clearly limited only to those which bear direct relation to the offense, i.e., violation of section 155 of Republic Act No. 8293, for which the warrant was issued, the requirement of particularity of description is satisfied.

Given the foregoing, the indication of the accurate sizes of the GASUL and SHELLANE LPG cylinders or tanks would be unnecessary.

Finally, petitioners claim that MASAGANA has the right to intervene and to move for the return of the seized items; that the items seized by the raiding team were being used in the legitimate business of MASAGANA; that the raiding team had no right to seize them under the guise that the same were being used in refilling GASUL and SHELLANE LPG cylinders; and that there being no action for infringement filed against them and/or MASAGANA from the seizure of the items up to the present, it is only fair that the seized articles be returned to the lawful owner in accordance with Section 20 of A.M. No. 02-1-06-SC.

It is an elementary and fundamental principle of corporation law that a corporation is an entity separate and distinct from its stockholders, directors or officers. However, when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons, or in the case of two corporations merge them into one.[46] In other words, the law will not recognize the separate corporate existence if the corporation is being used pursuant to the foregoing unlawful objectives. This non-recognition is sometimes referred to as the doctrine of piercing the veil of corporate entity or disregarding the fiction of corporate entity. Where the separate corporate entity is disregarded, the corporation will be treated merely as an association of persons and the stockholders or members will be considered as the corporation, that is, liability will attach personally or directly to the officers and stockholders.[47]

As we now find, the petitioners, as directors/officers of MASAGANA, are utilizing the latter in violating the intellectual property rights of Petron and Pilipinas Shell. Thus, petitioners collectively and MASAGANA should be considered as one and the same person for liability purposes. Consequently, MASAGANA's third party claim serves no refuge for petitioners.

Even if we were to sustain the separate personality of MASAGANA from that of the petitioners, the effect will be the same. The law does not require that the property to be seized should be owned by the person against whom the search warrants is directed. Ownership, therefore, is of no consequence, and it is sufficient that the person against whom the warrant is directed has control or possession of the property sought to be seized.[48] Hence, even if, as petitioners claimed, the properties seized belong to MASAGANA as a separate entity, their seizure pursuant to the search warrants is still valid.

Further, it is apparent that the motor compressor, LPG refilling machine and the GASUL and SHELL LPG cylinders seized were the corpus delicti, the body or substance of the crime, or the evidence of the commission of trademark infringement. These were the very instruments used or intended to be used by the petitioners in trademark infringement. It is possible that, if returned to MASAGANA, these items will be used again in violating

the intellectual property rights of Petron and Pilipinas Shell.[49] Thus, the RTC was justified in denying the petitioners' motion for their return so as to prevent the petitioners and/or MASAGANA from using them again in trademark infringement.

Petitioners' reliance on Section 20 of A.M. No. 02-1-06-SC,[50] is not tenable. As correctly observed by the Solicitor General, A.M. 02-1-06-SC is not applicable in the present case because it governs only searches and seizures in civil actions for infringement of intellectual property rights.[51] The offense complained of herein is for criminal violation of Section 155 in relation to Section 170[52] of Republic Act No. 8293.

WHEREFORE, the petition is DENIED. The Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 79256, dated 30 September 2004 and 1 June 2005, respectively, are hereby AFFIRMED. Costs against petitioners.

SO ORDERED.

Ynares-Santiago, (Chairperson), and Austria-Martinez, JJ., concur.
Nachura, J., no part filed pleading as Sol Gen.

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[1] Rollo, pp. 8-28.[2] Penned by Associate Justice Rosalinda Asuncion-Vicente with Associate Justices Eugenio S. Labitoria and Rebecca De Guia Salvador, concurring; id. at 30-45.

[3] Id. at 48-49.

[4] Penned by Judge Melchor Q.C. Sadang; id. at 105-110.

[5] Id. at 78-88.

[6] Id. at 97-98.

[7] Records, pp. 4-83.

[8] Rollo, pp. 51-54 and 61-63.

[9] Id.

[10] Records, pp. 45-58.

[11] Rollo, pp. 58-60 and 67-69.

[12] Id. at 70-73.

[13] Id. at 74-77.

[14] Id. at 78-89.

[15] Id. at 97-99.

[16] Id. at 105-110.

[17] Records, pp. 223-233.

[18] Rollo, p. 112.

[19] Id. at 113-131.

[20] Id. at 30-45.

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[21] Id. at 132-139.

[22] Id. at 48-49.

[23] Id. at 17.

[24] Id. at 18.

[25] Id. at 19-21.

[26] Burgos, Sr. v. Chief of Staff, AFP, 218 Phil. 754, 767 (1984).

[27] Sony Music Entertainment (Phils.), Inc. v. Español, G.R. No. 156804, 14 March 2005, 453 SCRA 360, 371.

[28] Microsoft Corporation v. Maxicorp, Inc, G.R. No. 140946, 13 September 2004, 438 SCRA 224, 235.

[29] Records, pp. 4-83.

[30] Records, pp. 46-83.

[31] People v. Choi, G.R. No. 152950, 3 August 2006, 497 SCRA 547, 556.

[32] Rollo, pp. 55-57 and 64-66.

[33] Id.

[34] Supra note 31 at 555-556.

[35] Records, pp. 91-129.

[36] Rollo, p. 41.

[37] Supra note 31 at 559.

[38] Rollo, pp. 21-22.

[39] Records, p. 3.

[40] Revised Rules on Evidence, Rule 131, Section 3. Disputable presumptions. – The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

x x x x

(m) That official duty has been regularly performed;

[41] Uy v. Bureau of Internal Revenue, 397 Phil. 892, 907-908 (2000).

[42] Supra note 26 at 765.

[43] Bache & Co. (Phil.), Inc. v. Judge Ruiz, 148 Phil. 794, 811 (1971).

[44] Al-Ghoul v. Court of Appeals, 416 Phil. 759, 770 (2001).

[45] Records, pp. 45-58.

[46] Yutivo Sons Hardware Co. v. Court of Tax Appeals and Collector of Internal Revenue, 110 Phil. 751, 756-757 (1961).

[47] Umali v. Court of Appeals, G.R. No. 89561, 13 September 1990, 189 SCRA 529, 542.

[48] Supra note 26 at 766.

[49] Yee Sue Koy v. Almeda, 70 Phil. 141, 148 (1940).

[50] RE: PROPOSED RULE ON SEARCH AND SEIZURE IN CVIL ACTIONS FOR INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. Section 20. – Failure to file complaint. – the writ shall also, upon motion of the expected adverse party, be set aside and the seized documents and articles returned to the expected adverse party if no case is filed with the appropriate court or authority within thirty-one (31) calendar days from the date of the issuance of the writ.

[51] RE: PROPOSED RULE ON SEARCH AND SEIZURE IN CVIL ACTIONS FOR INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. Section 1. Coverage. – This Rule shall govern the provisional seizure and impounding of documents and articles in pending and intended civil actions for the purpose of preventing infringement and preserving relevant evidence in regard to [the] alleged infringement under Republic Act No. 8293, otherwise known as the Intellectual Property Code of the Philippines, Article 50 of the Agreement on Trade Related Aspects of Intellectual Property Rights, otherwise known as TRIPS and other related laws and international conventions (emphasis supplied).

[52] Republic Act No. 8293, 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 (P50,000.00) to two hundred thousand pesos (P200,000.00), 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.) (Emphasis supplied.)

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