BERRIS AGRICULTURAL CO., INC., PETITIONER, VS. NORVY ABYADANG, RESPONDENT.

G.R. No. 183404. October 13, 2010

Ponente: NACHURA, J.

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NACHURA, J.:

This petition for review[1] on certiorari under Rule 45 of the Rules of Court seeks the reversal of the Decision dated April 14, 2008[2] and the Resolution dated June 18, 2008[3] of the Court of Appeals (CA) in CA-G.R. SP No. 99928.

The antecedents--

On January 16, 2004, respondent Norvy A. Abyadang (Abyadang), proprietor of NS Northern Organic Fertilizer, with address at No. 43 Lower QM, Baguio City, filed with the Intellectual Property Office (IPO) a trademark application for the mark "NS D-10 PLUS" for use in connection with Fungicide (Class 5) with active ingredient 80% Mancozeb. The application, under Application Serial No. 4-2004-00450, was given due course and was published in the IPO e-Gazette for opposition on July 28, 2005.

On August 17, 2005, petitioner Berris Agricultural Co., Inc. (Berris), with business address in Barangay Masiit, Calauan, Laguna, filed with the IPO Bureau of Legal Affairs (IPO-BLA) a Verified Notice of Opposition[4] against the mark under application allegedly because "NS D-10 PLUS" is similar and/or confusingly similar to its registered trademark "D-10 80 WP," also used for Fungicide (Class 5) with active ingredient 80% Mancozeb. The opposition was docketed as IPC No. 14-2005-00099.

After an exchange of pleadings, on April 28, 2006, Director Estrellita Beltran-Abelardo (Director Abelardo) of the IPO-BLA issued Decision No. 2006-24[5] (BLA decision), the dispositive portion of which reads--

> WHEREFORE, viewed in the light of all the foregoing, this Bureau finds and so holds that Respondent-Applicant's mark "NS D-10 PLUS" is confusingly similar to the Opposer's mark and as such, the opposition is hereby SUSTAINED. Consequently, trademark application bearing Serial No. 4-2004-00450 for the mark "NS D-10 PLUS" filed on January 16, 2004 by Norvy A. Ab[yada]ng covering the goods fungicide under Class 5 of the International Classification of goods is, as it is hereby, REJECTED.
>
> Let the filewrapper of the trademark "NS D-10 PLUS" subject matter under consideration be forwarded to the Administrative, Financial and Human Resources Development Services Bureau (AFHRDSB) for appropriate action in accordance with this Order with a copy to be furnished the Bureau of Trademark (BOT) for information and to update its records.
>
> SO ORDERED.[6]

Abyadang filed a motion for reconsideration, and Berris, in turn, filed its opposition to the motion.

On August 2, 2006, Director Abelardo issued Resolution No. 2006-09(D)[7] (BLA resolution), denying the motion for reconsideration and disposing as follows --

> IN VIEW OF THE FOREGOING, the Motion for Reconsideration filed by the Respondent-Applicant is hereby DENIED FOR LACK OF MERIT. Consequently, Decision No. 2006-24 dated April 28, 2006 STANDS.
>
> Let the filewrapper of the trademark "NS D-10 PLUS" subject matter under consideration be forwarded to the Bureau of Trademarks for appropriate action in accordance with this Resolution.
>
> SO ORDERED.[8]

Aggrieved, Abyadang filed an appeal on August 22, 2006 with the Office of the Director General, Intellectual Property Philippines (IPPDG), docketed as Appeal No. 14-06-13.

With the filing of the parties' respective memoranda, Director General Adrian S. Cristobal, Jr. of the IPPDG rendered a decision dated July 20, 2007,[9] ruling as follows--

> Wherefore, premises considered[,] the appeal is hereby DENIED. Accordingly, the appealed Decision of the Director is hereby AFFIRMED.
>
> Let a copy of this Decision as well as the trademark application and records be furnished and returned to the Director of Bureau of Legal Affairs for appropriate action. Further, let also the Directors of the Bureau of Trademarks, the Administrative, Financial and Human Resources Development Services Bureau, and the library of the Documentation, Information and Technology Transfer Bureau be furnished a copy of this Decision for information, guidance, and records purposes.
>
> SO ORDERED.[10]

Undeterred, Abyadang filed a petition for review[11] before the CA.

In its Decision dated April 14, 2008, the CA reversed the IPPDG decision. It held--

> In sum, the petition should be granted due to the following reasons: 1) petitioner's mark "NS D-10 PLUS" is not confusingly similar with respondent's trademark "D-10 80 WP"; 2) respondent failed to establish its ownership of the mark "D-10 80 WP" and 3) respondent's trademark registration for "D-10 80 WP" may be cancelled in the present case to avoid multiplicity of suits.
>
> WHEREFORE, the petition is GRANTED. The decision dated July 20, 2007 of the IPO Director General in Appeal No. 14-06-13 (IPC No. 14-2005-00099) is REVERSED and SET ASIDE, and a new one is entered giving due course to petitioner's application for registration of the mark "NS D-10 PLUS," and canceling respondent's trademark registration for "D-10 80 WP."
>
> SO ORDERED.[12]

Berris filed a Motion for Reconsideration, but in its June 18, 2008 Resolution, the CA denied the motion for lack of merit. Hence, this petition anchored on the following arguments--

> - The Honorable Court of Appeals' finding that there exists no confusing similarity between Petitioner's and respondent's marks is based on misapprehension of facts, surmise and conjecture and not in accord with the Intellectual Property Code and applicable Decisions of this Honorable Court [Supreme Court].
>
> - The Honorable Court of Appeals' Decision reversing and setting aside the technical findings of the Intellectual Property Office even without a finding or, at the very least, an allegation of grave abuse of discretion on the part of said agency is not in accord with law and earlier pronouncements of this Honorable Court [Supreme Court].
>
> - The Honorable Court of Appeals' Decision ordering the cancellation of herein Petitioner's duly registered and validly existing trademark in the absence of a properly filed Petition for Cancellation before the Intellectual

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> Property Office is not in accord with the Intellectual Property Code and applicable Decisions of this Honorable Court [Supreme Court].[13]

The basic law on trademark, infringement, and unfair competition is Republic Act (R.A.) No. 8293[14] (Intellectual Property Code of the Philippines), specifically Sections 121 to 170 thereof. It took effect on January 1, 1998. Prior to its effectivity, the applicable law was R.A. No. 166,[15] as amended.

Interestingly, R.A. No. 8293 did not expressly repeal in its entirety R.A. No. 166, but merely provided in Section 239.1[16] that Acts and parts of Acts inconsistent with it were repealed. In other words, only in the instances where a substantial and irreconcilable conflict is found between the provisions of R.A. No. 8293 and of R.A. No. 166 would the provisions of the latter be deemed repealed.

R.A. No. 8293 defines a "mark" as any visible sign capable of distinguishing the goods (trademark) or services (service mark) of an enterprise and shall include a stamped or marked container of goods.[17] It also defines a "collective mark" as any visible sign designated as such in the application for registration and capable of distinguishing the origin or any other common characteristic, including the quality of goods or services of different enterprises which use the sign under the control of the registered owner of the collective mark.[18]

On the other hand, R.A. No. 166 defines a "trademark" as any distinctive word, name, symbol, emblem, sign, or device, or any combination thereof, adopted and used by a manufacturer or merchant on his goods to identify and distinguish them from those manufactured, sold, or dealt by another.[19] A trademark, being a special property, is afforded protection by law. But for one to enjoy this legal protection, legal protection ownership of the trademark should rightly be established.

The ownership of a trademark is acquired by its registration and its actual use by the manufacturer or distributor of the goods made available to the purchasing public. Section 122[20] of R.A. No. 8293 provides that the rights in a mark shall be acquired by means of its valid registration with the IPO. A certificate of registration of a mark, once issued, constitutes prima facie evidence of the validity of the registration, of the registrant's ownership of the mark, and of the registrant's exclusive right to use the same in connection with the goods or services and those that are related thereto specified in the certificate.[21] R.A. No. 8293, however, requires the applicant for registration or the registrant to file a declaration of actual use (DAU) of the mark, with evidence to that effect, within three (3) years from the filing of the application for registration; otherwise, the application shall be refused or the mark shall be removed from the register.[22] In other words, the prima facie presumption brought about by the registration of a mark may be challenged and overcome, in an appropriate action, by proof of the nullity of the registration or of non-use of the mark, except when excused.[23] Moreover, the presumption may likewise be defeated by evidence of prior use by another person, i.e., it will controvert a claim of legal appropriation or of ownership based on registration by a subsequent user. This is because a trademark is a creation of use and belongs to one who first used it in trade or commerce.[24]

The determination of priority of use of a mark is a question of fact. Adoption of the mark alone does not suffice. One may make advertisements, issue circulars, distribute price lists on certain goods, but these alone will not inure to the claim of ownership of the mark until the goods bearing the mark are sold to the public in the market. Accordingly, receipts, sales invoices, and testimonies of witnesses as customers, or orders of buyers, best prove the actual use of a mark in trade and commerce during a certain period of time.[25]

In the instant case, both parties have submitted proof to support their claim of ownership of their respective trademarks.

Culled from the records, Berris, as oppositor to Abyadang's application for registration of his trademark, presented the following evidence: (1) its trademark application dated November 29, 2002[26] with Application

No. 4-2002-0010272; (2) its IPO certificate of registration dated October 25, 2004,[27] with Registration No. 4-2002-010272 and July 8, 2004 as the date of registration; (3) a photocopy of its packaging[28] bearing the mark "D-10 80 WP"; (4) photocopies of its sales invoices and official receipts;[29] and (5) its notarized DAU dated April 23, 2003,[30] stating that the mark was first used on June 20, 2002, and indicating that, as proof of actual use, copies of official receipts or sales invoices of goods using the mark were attached as Annex "B."

On the other hand, Abyadang's proofs consisted of the following: (1) a photocopy of the packaging[31] for his marketed fungicide bearing mark "NS D-10 PLUS"; (2) Abyadang's Affidavit dated February 14, 2006,[32] stating among others that the mark "NS D-10 PLUS" was his own creation derived from: N - for Norvy, his name; S - for Soledad, his wife's name; D - the first letter for December, his birth month; 10 - for October, the 10[th] month of the year, the month of his business name registration; and PLUS - to connote superior quality; that when he applied for registration, there was nobody applying for a mark similar to "NS D-10 PLUS"; that he did not know of the existence of Berris or any of its products; that "D-10" could not have been associated with Berris because the latter never engaged in any commercial activity to sell "D-10 80 WP" fungicide in the local market; and that he could not have copied Berris' mark because he registered his packaging with the Fertilizer and Pesticide Authority (FPA) ahead of Berris; (3) Certification dated December 19, 2005[33] issued by the FPA, stating that "NS D-10 PLUS" is owned and distributed by NS Northern Organic Fertilizer, registered with the FPA since May 26, 2003, and had been in the market since July 30, 2003; (4) Certification dated October 11, 2005[34] issued by the FPA, stating that, per monitoring among dealers in Region I and in the Cordillera Administrative Region registered with its office, the Regional Officer neither encountered the fungicide with mark "D-10 80 WP" nor did the FPA provincial officers from the same area receive any report as to the presence or sale of Berris' product; (5) Certification dated March 14, 2006[35] issued by the FPA, certifying that all pesticides must be registered with the said office pursuant to Section 9[36] of Presidential Decree (P.D.) No. 1144[37] and Section 1, Article II of FPA Rules and Regulations No. 1, Series of 1977; (6) Certification dated March 16, 2006[38] issued by the FPA, certifying that the pesticide "D-10 80 WP" was registered by Berris on November 12, 2004; and (7) receipts from Sunrise Farm Supply[39] in La Trinidad, Benguet of the sale of Abyadang's goods referred to as "D-10" and "D-10+."

Based on their proffered pieces of evidence, both Berris and Abyadang claim to be the prior user of their respective marks.

We rule in favor of Berris.

Berris was able to establish that it was using its mark "D-10 80 WP" since June 20, 2002, even before it filed for its registration with the IPO on November 29, 2002, as shown by its DAU which was under oath and notarized, bearing the stamp of the Bureau of Trademarks of the IPO on April 25, 2003,[40] and which stated that it had an attachment as Annex "B" sales invoices and official receipts of goods bearing the mark. Indeed, the DAU, being a notarized document, especially when received in due course by the IPO, is evidence of the facts it stated and has the presumption of regularity, entitled to full faith and credit upon its face. Thus, the burden of proof to overcome the presumption of authenticity and due execution lies on the party contesting it, and the rebutting evidence should be clear, strong, and convincing as to preclude all controversy as to the falsity of the certificate.[41] What is more, the DAU is buttressed by the Certification dated April 21, 2006[42] issued by the Bureau of Trademarks that Berris' mark is still valid and existing.

Hence, we cannot subscribe to the contention of Abyadang that Berris' DAU is fraudulent based only on his assumption that Berris could not have legally used the mark in the sale of its goods way back in June 2002 because it registered the product with the FPA only on November 12, 2004. As correctly held by the IPPDG in its decision on Abyadang's appeal, the question of whether or not Berris violated P.D. No. 1144, because it sold its

product without prior registration with the FPA, is a distinct and separate matter from the jurisdiction and concern of the IPO. Thus, even a determination of violation by Berris of P.D. No. 1144 would not controvert the fact that it did submit evidence that it had used the mark "D-10 80 WP" earlier than its FPA registration in 2004.

Furthermore, even the FPA Certification dated October 11, 2005, stating that the office had neither encountered nor received reports about the sale of the fungicide "D-10 80 WP" within Region I and the Cordillera Administrative Region, could not negate the fact that Berris was selling its product using that mark in 2002, especially considering that it first traded its goods in Calauan, Laguna, where its business office is located, as stated in the DAU.

Therefore, Berris, as prior user and prior registrant, is the owner of the mark "D-10 80 WP." As such, Berris has in its favor the rights conferred by Section 147 of R.A. No. 8293, which provides--

> Sec. 147. Rights Conferred.--
>
> 147.1. The owner of a registered mark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs or containers for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed.
>
> 147.2. The exclusive right of the owner of a well-known mark defined in Subsection 123.1(e) which is registered in the Philippines, shall extend to goods and services which are not similar to those in respect of which the mark is registered: Provided, That use of that mark in relation to those goods or services would indicate a connection between those goods or services and the owner of the registered mark: Provided, further, That the interests of the owner of the registered mark are likely to be damaged by such use.

Now, we confront the question, "Is Abyadang's mark `NS D-10 PLUS' confusingly similar to that of Berris' `D-10 80 WP' such that the latter can rightfully prevent the IPO registration of the former?"

We answer in the affirmative.

According to Section 123.1(d) of R.A. No. 8293, a mark cannot be registered if it is identical with a registered mark belonging to a different proprietor with an earlier filing or priority date, with respect to: (1) the same goods or services; (2) closely related goods or services; or (3) near resemblance of such mark as to likely deceive or cause confusion.

In determining similarity and likelihood of confusion, jurisprudence has developed tests--the Dominancy Test and the Holistic or Totality Test. The Dominancy Test focuses on the similarity of the prevalent or dominant features of the competing trademarks that might cause confusion, mistake, and deception in the mind of the purchasing public. Duplication or imitation is not necessary; neither is it required that the mark sought to be registered suggests an effort to imitate. Given more consideration are the aural and visual impressions created by the marks on the buyers of goods, giving little weight to factors like prices, quality, sales outlets, and market segments.[43]

In contrast, the Holistic or Totality Test necessitates a consideration of the entirety of the marks as applied to the products, including the labels and packaging, in determining confusing similarity. The discerning eye of the observer must focus not only on the predominant words but also on the other features appearing on both labels so that the observer may draw conclusion on whether one is confusingly similar to the other.[44]

Comparing Berris' mark "D-10 80 WP" with Abyadang's mark "NS D-10 PLUS," as appearing on their respective packages, one cannot but notice that both have a common component which is "D-10." On Berris' package, the "D-10" is written with a bigger font than the "80 WP." Admittedly, the "D-10" is the dominant feature of the

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mark. The "D-10," being at the beginning of the mark, is what is most remembered of it. Although, it appears in Berris' certificate of registration in the same font size as the "80 WP," its dominancy in the "D-10 80 WP" mark stands since the difference in the form does not alter its distinctive character.[45]

Applying the Dominancy Test, it cannot be gainsaid that Abyadang's "NS D-10 PLUS" is similar to Berris' "D-10 80 WP," that confusion or mistake is more likely to occur. Undeniably, both marks pertain to the same type of goods - fungicide with 80% Mancozeb as an active ingredient and used for the same group of fruits, crops, vegetables, and ornamental plants, using the same dosage and manner of application. They also belong to the same classification of goods under R.A. No. 8293. Both depictions of "D-10," as found in both marks, are similar in size, such that this portion is what catches the eye of the purchaser. Undeniably, the likelihood of confusion is present.

This likelihood of confusion and mistake is made more manifest when the Holistic Test is applied, taking into consideration the packaging, for both use the same type of material (foil type) and have identical color schemes (red, green, and white); and the marks are both predominantly red in color, with the same phrase "BROAD SPECTRUM FUNGICIDE" written underneath.

Considering these striking similarities, predominantly the "D-10," the buyers of both products, mainly farmers, may be misled into thinking that "NS D-10 PLUS" could be an upgraded formulation of the "D-10 80 WP."

Moreover, notwithstanding the finding of the IPPDG that the "D-10" is a fanciful component of the trademark, created for the sole purpose of functioning as a trademark, and does not give the name, quality, or description of the product for which it is used, nor does it describe the place of origin, such that the degree of exclusiveness given to the mark is closely restricted,[46] and considering its challenge by Abyadang with respect to the meaning he has given to it, what remains is the fact that Berris is the owner of the mark "D-10 80 WP," inclusive of its dominant feature "D-10," as established by its prior use, and prior registration with the IPO. Therefore, Berris properly opposed and the IPO correctly rejected Abyadang's application for registration of the mark "NS D-10 PLUS."

Verily, the protection of trademarks as intellectual property is intended not only to preserve the goodwill and reputation of the business established on the goods bearing the mark through actual use over a period of time, but also to safeguard the public as consumers against confusion on these goods.[47] On this matter of particular concern, administrative agencies, such as the IPO, by reason of their special knowledge and expertise over matters falling under their jurisdiction, are in a better position to pass judgment thereon. Thus, their findings of fact in that regard are generally accorded great respect, if not finality by the courts, as long as they are supported by substantial evidence, even if such evidence might not be overwhelming or even preponderant. It is not the task of the appellate court to weigh once more the evidence submitted before the administrative body and to substitute its own judgment for that of the administrative agency in respect to sufficiency of evidence.[48]

Inasmuch as the ownership of the mark "D-10 80 WP" fittingly belongs to Berris, and because the same should not have been cancelled by the CA, we consider it proper not to belabor anymore the issue of whether cancellation of a registered mark may be done absent a petition for cancellation.

WHEREFORE, the petition is GRANTED. The assailed Decision dated April 14, 2008 and Resolution dated June 18, 2008 of the Court of Appeals in CA-G.R. SP No. 99928 are REVERSED and SET ASIDE. Accordingly, the Decision No. 2006-24 dated April 28, 2006 and the Resolution No. 2006-09(D) dated August 2, 2006 in IPC No. 14-2005-00099, and the Decision dated July 20, 2007 in Appeal No. 14-06-13 are REINSTATED. Costs against respondent.

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SO ORDERED.

Velasco, Jr.,[*] Leonardo-De Castro,[***] Brion,[****] and Mendoza, JJ., concur.

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[*] Additional member in lieu of Associate Justice Antonio T. Carpio per Special Order No. 897 dated September 28, 2010.

[**] In lieu of Associate Justice Antonio T. Carpio per Special Order No. 898 dated September 28, 2010.

[***] Additional member in lieu of Associate Justice Roberto A. Abad per Special Order No. 905 dated October 5, 2010.

[****] Additional member in lieu of Associate Justice Diosdado M. Peralta per Special Order No. 904 dated October 5, 2010.

[1] Rollo, pp. 9-36.

[2] Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Rodrigo V. Cosico and Mariflor Punzalan-Castillo, concurring; id. at 63-75.

[3] Id. at 101-102.

[4] Id. at 104-117.

[5] Id. at 118-124.

[6] Id. at 124.

[7] Id. at 125-126.

[8] Id. at 126.

[9] Id. at 127-135.

[10] Id. at 134-135.

[11] Id. at 37-61.

[12] Id. at 74.

[13] Id. at 15.

[14] An Act Prescribing the Intellectual Property Code and Establishing the Intellectual Property Office, Providing for Its Powers and Functions, and for Other Purposes.

[15] An Act to Provide for the Registration and Protection of Trademarks, Trade Names and Service Marks, Defining Unfair Competition and False Marking and Providing Remedies Against the Same, and for Other Purposes.

[16] Sec. 239. Repeals. -

239.1. All Acts and parts of Acts inconsistent herewith, more particularly Republic Act No. 165, as Amended; Republic Act No. 166, as amended; and Articles 188 and 189 of the Revised Penal Code; Presidential Decree No. 49, including Presidential Decree No. 285, as amended, are hereby repealed.

[17] Sec. 121.1.

[18] Sec. 12.2.

[19] Sec. 38.

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

[21] R.A. No. 8293, Sec. 138.

[22] R.A. No. 8293, Sec. 124.2.

[23] Sec. 152. Non-use of a Mark When Excused.--

152.1. Non-use of a mark may be excused if caused by circumstances arising independently of the will of the trademark owner. Lack of funds shall not excuse non-use of a mark.

[24] Agpalo, R.E. The Law on Trademark, Infringement and Unfair Competition, 1[st] Ed. (2000), pp. 8-11, citing Sterling Products International, Inc. v. Farbenfabriken Bayer Aktiengesellschaft, 27 SCRA 1214 (1969) and Chung Te v. Ng Kian Giab, 18 SCRA 747 (1966).

[25] Agpalo, R.E. The Law on Trademark, Infringement and Unfair Competition, 1[st] Ed. (2000), pp. 11-12.

[26] CA rollo, pp. 149-150.

[27] Id. at 69.

[28] Id. at 68.

[29] Id. at 72-73.

[30] Id. at 193-194.

[31] Id. at 151-152.

[32] Rollo, pp. 304-306.

[33] Id. at 307.

[34] Id. at 303.

[35] CA rollo, p. 205.

[36] Sec. 9. Registration and Licensing.--No pesticides, fertilizer, or other agricultural chemical shall be exported, imported, manufactured, formulated, stored, distributed, sold or offered for sale, transported, delivered for transportation or used unless it has been duly registered with the FPA or covered by a numbered provisional permit issued by FPA for use in accordance with the conditions as stipulated in the permit. Separate registrations shall be required for each active ingredient and its possible formulations in the case of pesticides or for each fertilizer grade in the case of fertilizer.

[37] Creating The Fertilizer and Pesticide Authority and Abolishing The Fertilizer Industry Authority.

[38] CA rollo, p. 204.

[39] Id. at 70-71.

[40] Id. at 14.

[41] Gutierrez v. Mendoza-Plaza, G.R. No. 185477, December 4, 2009, 607 SCRA 807, 816-817; Calma v.

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Santos, G.R. No. 161027, June 22, 2009, 590 SCRA 359, 371.

[42] CA rollo, pp. 64, 66.

[43] Prosource International, Inc. v. Horphag Research Management SA, G.R. No. 180073, November 25, 2009, 605 SCRA 523, 531; McDonald's Corporation v. MacJoy Fastfood Corporation, G.R. No. 166115, February 2, 2007, 514 SCRA 95, 106; McDonald's Corporation v. L.C. Big Mak Burger, Inc., 480 Phil. 402, 434 (2004).

[44] Id.; Philip Morris, Inc. v. Fortune Tobacco Corporation, G.R. No. 158589, June 27, 2006, 493 SCRA 333, 357.

[45] R.A. No. 8293, Sec. 152.2.

Sec. 152.2. The use of the mark in a form different from the form in which it is registered, which does not alter its distinctive character, shall not be a ground for cancellation or removal of the mark and shall not diminish the protection granted to the mark.

[46] Agpalo, supra note 25, citing Philippine Refining Co., Inc. v. Ng Sam, 115 SCRA 472, 476 (1982); Romero v. Maiden Form Brassiere, 10 SCRA 556, 561 (1964); and Masso Hermanos, S.A. v. Director of Patents, 94 Phil. 136, 138-139 (1953).

[47] McDonald's Corporation v. MacJoy Fastfood Corporation, supra note 44, at 114, citing Faberge Inc. v. Intermediate Appellate Court, 215 SCRA 316, 320 (1992); and Chuanchow Soy & Canning Co. v. Dir. of Patents and Villapania, 108 Phil. 833, 836 (1960).

[48] Amigo Manufacturing, Inc. v. Cluett Peabody Co., Inc., 406 Phil. 905, 916 (2001).

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