

VENUS LUBRIN
Complainant,

IPV No. 10-2007-00010

- versus-

For: Unfair Competition,
Infringement of Copyright
& Damages

GLENN "COCO" DELA CRUZ,
Respondent.

x-----x

Decision No. 2011 - 01

DECISION

VENUS LUBRIN ("Complainant"), of 2848 Spanish Bay Drive, Brentwood, California 91513, United States of America (U.S.A.), and with business address at 608 AIC Burgundy Empire Tower, Garnet Road cor. A.DB Ave., Ortigas Center, Pasig City, filed a complaint against GLENN "COCO" DELA CRUZ ("Respondent"), of Unit 2828 Mega Plaza Garnet Road cor. ADB Ave., Pasig City, for Unfair Competition and Infringement of Copyright.

The complaint alleges the following:

"3. Sometime in October of 2006, Defendant, together with partner Ihman Esturco, convinced and induced Plaintiff by telephone to invest in and finance the production of their film project TROIKA (Threesome), with their offer that, upon completion of said film project, they would sell to her the film and all rights thereto, and in effect, Plaintiff would be the sole owner of the film.

"4. After due deliberation, Plaintiff had agreed to their offer, and entered with them into a Memorandum of Agreement dated November 6, 2006, copy of which is hereto attached as Annex 'A'. Underscored in this attachment is the relevant clause/s demonstrating the agreement that Plaintiff would be sole owner of said film.

At the time said Contract was drawn up and drafted, Plaintiff was still in her US residence, so she had entrusted the minutiae of the contract to Defendant and Ihman Esturco, again on the pre-agreed basis that she would obtain ownership of the film, and all rights appended to, upon its completion.

"5. In addition, Defendant, together with his partner, also convinced her later to finance and set up a film production company, DAVEN FILM PRODUCTIONS INTERNATIONAL (Daven Productions), with the understanding that the Company would receive Production credits for the film Troika, with Plaintiff as Executive Producer. The Company was set up under the name of Eric Dela Cruz Datu, with Defendant installed as Operations Manager. One of Defendant's important tasks, both under his agreement with Plaintiff and as an employee of Daven Productions, was to secure copyright for the film Troika under her name and/or the name of Daven Productions.

"6. To the shock and dismay of Plaintiff she would later find discrepancies in the auditing of Daven Productions' budget and finances suggesting that some of the money sent by the former for Company operations was diverted by Defendant for unauthorized personal use. For this and their failure to protect Plaintiffs financial interests in the company, the employments of Defendant together with Ihman Esturco were terminated on March 18, 2007.

"7. Knowing of this termination, and before their actual departure from the Company, Defendant had secretly taken the 35mm negative, soundtrack, and release prints of the Troika film and its pre—release trailer, to Plaintiffs damage and prejudice.

"8. Beyond the financial damages suffered by Plaintiff from the loss of the film prints,

they were further shocked to discover that, contrary to and in violation of the agreement between him and Plaintiff Defendant had copyrighted the film Troika with the National Library under his own name of 'Glenn Coco Dela Cruz', applied for on April 5, 2007, and awarded on April 23, 2007, as evidenced by attached copy of Certificate of Copyright Registration for film Troika as Annex 'B';

"9. Further, while they were employed by Daven Productions, Defendant was also responsible for production of a print promotional material for the movie, the 'Troika Coffee Table Book'. While Plaintiff was initially led to believe that the promotional material was duly copyrighted under the name of Daven Productions, she later found, again to her dismay, that it was copyrighted instead under Defendant's name, as evidenced by attached copy of Certificate of Copyright Registration for the Troika ('A Celebration of Threesomes') Coffee Table Book, as Annex 'C'. That both these actions were done immediately following their termination (when they should have been accomplished much earlier) implies a vindictive attitude on Defendant's part, with aforethought of malice.

"10. In this case of assignment of copyright, albeit that the contract between Plaintiff and Defendant (Annex 'A') does not expressly mention assignment of copyright, given the verbal agreement between Plaintiff and Defendant, and the sums of money she had invested in the film Troika, her actions have to be taken as having been done in the full confidence that she would obtain ownership and rights over the said film, a confidence which can only be given by Defendant during their negotiations over the phone. Further, as Angeles v. Calasanz (155 SCRA 323(1985) and De Borja v. Santos (79 SCRA 557 (1977) lay out, any ambiguity or obscurity that may be found to infect the terms of a contract must be construed against Defendant, who prepared the contract.

"11. If the contract and relevant clause were to be taken at face value, on the other hand, as there are no exclusionary clause(s) which portions out the rights over the film, it is well settled in jurisprudence that the whole panoply of ownership, all rights thereto included, had been sold and assigned to Plaintiff Sec. 180.2 of the Intellectual Property Code stipulates that 'The copyright is not deemed assigned inter vivos in whole or in part unless there is a written indication of such intention,' which is the case here

"12. In either case, the confidence with which Plaintiff had entered into agreement with Defendant to fund the film Troika in exchange for controlling ownership over the film can only be understood as rational behavior if she was convinced by Defendant that she would own and have rights to the movie. Even undersigned counsel is witness to repeated public assurances by Defendant that Plaintiff would obtain ownership and copyright to the film Troika.

"13. And when this is all held up against their secretly taking the film (upon their termination) without knowledge of Plaintiff or their employer, and then applying for a copyright under Defendant's name, contrary to the expressed agreement, it is clear Defendant had indeed given Plaintiff that confidence and the surreptitious manner in which he had taken the film and obtained copyright was necessary in order to betray said confidence.

"14. Defendant continues to pose himself, together with Ihman Esturco, as Producers of Troika in the film industry both here and abroad, engaging into contracts with different entities for promotion and distribution of the film under Indi Films Company, which is registered under the name of Defendant. These continuing actions prejudice the rights of Plaintiff as the rightful owner of the film, and constitute unfair competition on their part.

More so, whenever plaintiff would try to transact business regarding the film in the movie industry, the false representations of Defendant and Ihman Esturco serve as an embarrassing obstacle to her, despite her name appearing in the credits (as Executive Producer) during Troika's first screening run in the Philippines. As a result of such

subterfuge and connivance, to date, Plaintiff had not received the return of investment due to her from the film.

“14. Altogether, this record of actions by Defendant demonstrates a history of bad faith on his part to defraud Plaintiff of her rightful ownership and copyright over the film Troika and its associated promotional materials. Plaintiff’s inexperience in the film industry makes her even more vulnerable to fraud and deceit on the part of defendant. On account of this, Plaintiff suffered sleepless nights, besmirched reputation in the industry, and anxiety, which entitles her to an award of moral damages. Further, given how Defendant has and is misleading the entertainment industry by posing as owner(s) and as copyright holder(s) of the film Troika and its associated promotional materials, to set an example for the industry regarding this matter, he is liable for exemplary damages.

“15. Plaintiff was thus forced to engage the services of counsel to resolve their dilemma. Demand letters were sent to Defendant and Ihman Esturco to give them a chance to set the record straight, and for them to desist from their false promotions (copy of said letters attached hereto as Annexes ‘D’ and ‘E’) but to no avail. Hence, this Complaint.”

The Respondent filed his Answer on 14 September 2007, alleging the following:

- “1. He admits par. 1;
- “2. He admits par. 2;
- “3. He denies having convinced complainant to invest in the film project Troika.

He also denies that Ihman Esturco participated in convincing complainant to invest in the film project Troika.

Complainant knows the woman who directly convinced her to invest in said film project.

“4. He denies par. 4 for being inaccurate as it was another person known to complainant who negotiated with complainant for the terms of our memorandum of agreement.

He denies that complainant left the ‘minutae of the contract’ to respondent and Ihman Esturco because in truth and in fact, it was only Atty. Evangeline Jorge-Laluna, who after consulting respondent, finalized the memorandum of agreement.

He also denies that the pre-agreed basis of the memorandum of agreement was that when complainant obtains ownership of the film, it would include all rights appended to it when in truth and in fact, complainant’s acquisition of the film product or movie film only included the right to exhibit it to theaters within the Philippines. As proof of this, one has only to read specific portions of the Memorandum of Agreement (Annex ‘A’), to wit:

Page 1:

WHEREAS, SECOND PARTY needs financing assistance to finish and complete the above-mentioned project, and offered FIRST PARTY the opportunity to provide the necessary Funds, in consideration of which FIRST PARTY shall have full ownership of said rights over the TROIKA film project;

Note that ‘full ownership of said rights’ is defined and limited in the Memorandum of Agreement as over the TROIKA film project’ only, and not over any other right such

video rights, rights to publish in a magazine, rights to sell or exhibit the film outside the Philippines as the contract was executed essentially within Philippine territory and over any other rights not defined and alienated in Annex 'A' by respondent in favor of complainant.

Page 2:

'III. FIRST PARTY

a. Upon delivery and acceptance by the SECOND PARTY of the money referred to above, is deemed owner of the film TROIKA being produced by the SECOND PARTY.'

Note that 'is deemed owner' is defined and limited by the phrase 'of the film TROIKA being produced by the SECOND PARTY'. Thus video rights, rights to any other publication such as in a magazine or book (which includes coffee table hook), rights to sell, exhibit and enter into film festivals abroad are not included in the ownership transmitted through sale by respondent to herein complainant.

'III. FIRST PARTY

b. Upon acceptance of the film TROIKA as finished product and duly approved by the MTRCB for showing, FIRST PARTY has the absolute right to enter into contract with theater owners and the like for its showing; as such, she shall be entitled to all the proceeds that could be generated therefrom.'

Please note that the application and coverage of Annex. 'A' is defined and limited only to the 'film TROIKA as finished product and duly approved by the MTRCB for showing' and its effectivity embraces only the Philippine territory because the MTRCB has jurisdiction only in the Philippines.

Additionally, the phrase 'theater owners and the like...' encompasses only theater owners and the like situated in the Philippines, as the agency MTRCB and the law governing the memorandum effectively operates only in the Philippines.

"5. He denies par. 5 as respondent or Ihman Esturco never convinced complainant to set up the film production company DAVEN FILM PRODUCTIONS INTERNATIONAL (Daven Productions).

Daven Productions is the sole idea and creation of complainant and respondent was only persuaded by complainant to be consultant and assist the outfit as complainant and Eric Datu have no experience and manpower to operate a film production company.

Respondent engaged also the help of Ihman Esturco as consultant and assist the respondent in his personal capacity. To lend credence to the legitimacy of Daven Productions and to be able to avail of discounted rates in production costs, respondent consented to be designated in Daven staff IDs as Operations Manager WITHOUT AN EMPLOYEE CONTRACT. Ihman Esturco also assisted Daven Productions WITHOUT AN EMPLOYMENT CONTRACT. Respondent and Ihman Esturco assisted the President of Daven Productions ERIC DATU (who was just a messenger of respondent but a nephew of Venus Lubrin's fiancée & DANTE MUNGKAL, thus the name DAVEN, DA taken from Dante and VEN from Venus).

In fact, complainant was such a sweet talker and exploiter, with the same effectiveness as her 'money', that respondent and Ihman Esturco were persuaded to assist complainant WITHOUT A CONSULTANCY OR MANAGEMENT CONTRACT in operating Daven Productions under the messenger-turned-over-night-President Eric Datu

who could not explain the film Troika to MTRCB himself (Ihman and respondent had to do it), who did not know how to lease an or once space for Daven Productions (its office was leased by respondent), who did not know how to open a bank account (Daven used respondent's checking account to be able to conduct financial transactions such as paying bills, fees, honoraria purchase materials/equipments production professional fees, etcetera).

He denies that he was tasked by complainant to secure copyright for the film Troika under her name and/or the name of Daven Productions This claim by complainant is a clear manifestation that she never understand the legal difference between copyright owner and deemed owner' of rights to the flm Troika and the rights to transact with movie theater owners where the film Troika may be shown.

A copyright owner of a movie is the author of such intellectual property, which form of ownership can never be alienated. It is only the right to the film product and the distinct right to exhibit it within a specified territory or jurisdiction or the right to negotiate for its exhibition, the distinct right to the video product, the distinct right to publish the movie in a magazine or a book (in all its permutation or form) — only these distinct rights are alienable by sale or purchase embodied in a contract where the copyright owner is the LICENSOR and the 'deemed owner" or buyer' is the LICENSEE.

"6. He denies par. 6 for being irrelevant to the complaint for unfair competition and infringement of copyright which accusations at this point is still unsubstantiated.

"7. He denies par. 7 for being irrelevant to the herein complaint

"8. As to par. 8, he admits that he had the movie Troika copyrighted under his name because in truth arid in fact he is the author of such intellectual property and he could not have it copyrighted under his name until the movie is completed because the completion in movie or film form is a prerequisite to the registration of a 'created' intellectual work as born by out by the details asked in the copyright registration form of the National Library. When the form attached as Annex 'B' of complaint asked the Name of Author', what will he write? If he wrote 'Venus Lubrin', he would become liable for perjury for complainant was, is and never will be 'AUTHOR OF TROIKA'

"9. He denies par. for the reason that it is legally impossible and would constitute misrepresentation to register the coffee table book under the name of Daven Productions as 'Author' because in truth and in fact, it is respondent who is the author of said coffee table book. However, Dante Mungcal and Venus Lubrin were duly credited in that book as Executive Producers and Daven Productions as Producer, copies of the pages where the specific citations were printed are attached as Annexes '1' and '1-a'.

Complainant's allegation on the timing of the copyright registration that 'both these actions were done immediately following their termination (when they should have been accomplished much earlier) implies a vindictive attitude on defendant's part, with a forethought of malice' is malicious itself and shows the ignorance of complainant of the processes of intellectual creation and registration.

In Annex 'C' of complaint it is indicated that the 'Date of Creation' was 'January 30, 2007' because this was when the coffee table book concept was initially drafted and completed on paper Then it underwent editing and amendment and first published on February 14, 2007. Again, it underwent editing, improvement and amendments plus the assiduous arid difficult editing and execution of pictures Thus, having been duly completed after careful technical and artistic revision, it was finally registered and Copyrighted on April 3, 2007.

Complainant's lack of understanding of artistic, technical and legal processes

involved before registering an intellectual property engendered in the fertile mind of complainant all sorts of malicious and perverted thoughts.

“10. As to par. 10, he denies that he prepared the contract because in truth and in fact, it was Atty. Evangeline Jorge—Laluna, the legal representative and counsel herein of complainant, who prepared and finalized the Memorandum of Agreement. Thus, by legal representation and counsel of Atty. Laluna, complainant is the crafter of the Memorandum of Agreement (Annex ‘A’).

“11. He denies par. 11 for being opinionated, misplaced or misapplied jurisprudence and totally irrelevant to the complaint of unfair competition and infringement of copyright. This par. II has its Legal and proper place in a civil complaint for breach of contract, not here in this instant complaint.

“12. He denies par. 11 for being totally irrelevant.

“13. He denies par. 13 because respondent and Ihman Esturco continue to truly represent themselves only as Line Producer and Director respectively of Troika.

In fact, complainant is unable to attach any evidence indicating that respondent represented himself as ‘producer’ of the film Troika.

In fact, as far as movie theater owners are concerned, he never transacted with them as ‘producer’ of the film Troika and negotiated for the showing of the film Troika in any theater for his own account. In fact, movie theater Owners remitted their payment of what is due the producer directly to Daven Productions and never to respondent. Where is unfair competition there?

Complainant is right in saying that she directly did not receive the income from movie theater exhibition. However, respondent has nothing to do with that. It is complainant’s own making and design. Complainant created a dummy in the dumb Eric Datu (a messenger-turned-president) who is registered with the DTI as sole proprietor of Daven Productions. Yes, it was to Daven Productions that movie theater owners remitted their payments; NOT TO COMPLAINANT VENUS and NOT TO RESPONDENT.

“14. As to par. 14, he denies having defrauded and deceived complainant and having caused complainant to suffer sleepless nights, besmirched reputation in the industry and thus she is not entitled to moral damages.

In fact and in truth, complainant inflicted upon herself such moral suffering by insisting on her own unenlightened and legally unfounded understanding of the memorandum of agreement and the legal requirements of copyright registration and protection afforded by the Intellectual Property Code.

‘15. Complainant failed to establish in her complaint any palpable, tangible and valid evidence of ‘unfair competition’ and ‘infringement of copyright’

Instead, with the submission of Annexes ‘A’, ‘B. and ‘C’, she succeeded in confirming that:

(a) Respondent is the true and registered copyright owner of the film Troika and the copyright owner of the coffee table book ‘Special Edition TROIKA’;

(b) Complainant is a mere LICENSEE of respondent/LICENSOR who sold to the former the ownership rights IN THE PHILIPPINES to the Troika film product only and the exclusive right to transact with Philippine movie theaters for its paid exhibition/showing therein;

(c) Respondent did not sell, through the Memorandum of Agreement (Annex 'A' of complaint), the rights to the video product, rights to publication in a book or magazine or the rights to sell, exhibit and enter' the film Troika in film festivals outside of the Philippines.'

On 10 October 2007, the Complainant filed her Reply. During the Pre-Trial Conference on 17 October 2007, the parties failed to settle amicably.

The Complainant offered the following evidence:

1. Exhibit "A" -Department of Trade and Industry ("DTI") Registration of Daven Film Productions International by Eric Dela Cruz Datu;
2. Exhibit "A-1"-Certification from DTI re: registration of Daven Film Productions;
3. Exhibit "A-Q"-Affidavit of Loss executed by Eric Dela Cruz Datu; 'it.
4. Exhibit "B"-License Agreement between Complainant and Daven Productions International;
5. Exhibit "C" -Certificate of Copyright Registration and Deposit, dated April 3, 2007, for the film Troika;
6. Exhibit "D"-Daven Official Receipt ("O.R.") No. 000-1;
7. Exhibit "D-1"-Daven O.R. No. 000-3;
8. Exhibit "E"-Certified copy of Application for Copyright Registration and Deposit for Troika Coffee Table Book;
9. Exhibit "F"-Resolution of Office of the City Prosecutor, Pasig City, in I.S. No. PSG-07-08-o9600 for Estafa
10. Exhibit "G"-Printout transcript of email between the parties;
11. Exhibit "G-1"—Printout of attachment to email between the parties;
12. Exhibit "H"-Memorandum of Agreement ("MOA") between parties;
13. Exhibit "H-1"-No. 1, Letter B of "Obligation of Parties", MOA;
14. Exhibit "H-2"-Signature of the Complainant, MOA;
15. Exhibit "H-3"-Signature of the Respondent, MOA;
16. Exhibit "I"- Printout of email transcript, dated 19 October 2007, re: submission of Troika's entry to Locarno Film Festival under Respondent's name;
17. Exhibit "J"-Demand letter to Respondent;
18. Oral testimony of Eric Datu;
19. Oral testimony of Venus Lubrin; and,
20. Oral testimony of Paulo Cruz.

The Respondent's evidence on the other hand, consists of the following:

1. Exhibit "1"-Certificate of Copyright Registration & Deposit for Class of Work B;
2. Exhibit "2"-Certificate of Copyright Registration & Deposit for Class of Work E;
3. Exhibit "3"-Certificate of Copyright Registration & Deposit for Class of Work "U";
4. Exhibit "4"- Memorandum of Agreement (Exhibit "H" of the Complainant); and,
5. Oral testimony of the Respondent.

The Complainant submitted her Memorandum on 22 September 2008, while the Respondent filed his on 13 October 2008.

The issues to be resolved in this case are:

- 1) Who owns the copyright over the film TROIKA and derivative works
- 2) Is the Respondent guilty of copyright infringement? and
- 3) Is the Respondent guilty of unfair competition?

On the first issue, Sec. 178 of Rep. Act No. 8293, also known as the Intellectual Property Code of the Philippines (IP Code”), states:

Sec. 178. Rules of Copyright Ownership. - Copyright ownership shall be governed by the following rules:

178.1 Subject to the provisions of this Section, in the case of original literary and artistic works, copyright shall belong to the author of the work; x (Emphasis Supplied’

It is undisputed that the Respondent initiated the film project TROIKA and the one who was in charge of the film’s conceptualization and production. In essence, the Respondent is deemed the author and the copyright owner of the film.

The Complainant’s case, however, is anchored on her claim that the ownership and copyright over the film have already been passed on to her. She submitted as evidence the Memorandum of Agreement (MOA) she executed with the Respondent on 06 November 2006

The question is: what rights did she assume when she fulfilled her obligations under the MOA? The MOA provides, among other things:

-WITNESSETH, THAT:

“WHEREAS, the SECOND PARTY is presently producing the film entitled TROIKA; as such, SECOND PARTY has full and exclusive ownership and right over said film project;

“WHEREAS, SECOND PARTY needs financing assistance to finish and complete the mentioned project, and offered FIRST PARTY the opportunity to provide the necessary funds”, in consideration of which FIRST PARTY shall have full ownership of said rights over the TROIKA a film project;

“WHEREAS, FIRST PARTY accepted the offer, and therefore PARTIES agreed as they hereby agree to the following terms and conditions:

x x x

RIGHTS OF THE PARTIES

‘III FIRST PARTY

a. Upon delivery and acceptance by the SECOND PARTY of the money referred to above, is deemed already owner of the film TROIKA being produced by the SECOND PARTY

b. Upon acceptance of the film TROIKA as finished product and duly approved by the MTHCB for showing. FIRST PARTY has the absolute right to enter into contract with theater owners and the like for its showing, as such, she shall be entitled to all the proceeds that could be generated therefrom.

The rights that were transferred to the Complainant when she complied with commitment under the MOA are the ones or similar to those enumerated in Sec. 177 of the IP Code, to Wit:

Sec. 177. Copyright or Economic Rights. - Subject to the provisions of Chapter VIII, copyright or economic rights shall consist of the exclusive right to carry out, authorize or prevent the following acts:

- 177.1. Reproduction of the work or substantial portion of the work;
- 177.2. Dramatization, translation, adaptation, abridgment, arrangement or other transformation of the work;
- 177.3. The first public distribution of the original and each copy of the work by sale or other forms of transfer of ownership;
- 177.4. Rental of the original or a copy of an audiovisual or cinematographic work, a work embodied in a sound recording, a computer program, a compilation of data and other materials or a musical work in graphic form, irrespective of the ownership of the original or the copy which is the subject of the rental;
- 177.5. Public display of the original or a copy of the work;
- 177.6. Public performance of the work; and
- 177.7. Other communication to the public of the work.

x x x

Thus, it is obvious that the rights transferred to the Complainant are copyright or economic rights over the film TROIKA. Sec. 180 of the IP Code provides:

Sec. 180. Right of Assignee. - 180.1 The copyright may be assigned in whole or in part. Within the scope of the assignment, the assignee is entitled to all rights and remedies which the assignor had with respect to the copyright.

Accordingly, under the law, the assignee of a copyrighted work acquires the very same economic rights that the original owner had under Sec. 177 of the IP Code. In this regard, this Bureau finds untenable the Respondent's argument that when the Complainant obtained ownership of the film, it did not include all other rights appended to it because the latter's acquisition of the film product TROIKA only included the right to exhibit it to theaters within the Philippines. 'The second paragraph of Item III of the MOA is not a continuation of the first paragraph. It is the right of the Complainant under the MOA.

It is emphasized that the MOA is a contract which is a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service. It went through the stages of a valid contract: negotiation perfection and consummation. The last stage is the consummation of the contract wherein the parties fulfill or perform the terms agreed upon in the contract, culminating in the extinguishment thereof.⁴ Therefore, the MOA in the instant case is a perfected contract which contains the intent and consent of the parties. It is binding and obligatory.

Accordingly, the MOA has to be interpreted from its own language and according to its plain and ordinary meaning. The cardinal rule in the interpretation of contracts is embodied in the first paragraph of Art. 1370 of the Civil Code which states that if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control. This provision is akin to the "plain meaning rule", which assumes that the intent of the parties to an instrument is embodied in the writing itself, and when the words are clear and unambiguous the intent is to be discovered only from the express language of the agreement.⁵

The word "deemed" means "to regard as" or "to consider". The word "owner connotes "to have or possession as property"; "to have control over". In this regard, the transfer of the ownership of the film extends beyond physical possession of the film. What was transferred to the Complainant is the ownership of an intangible right involving an intellectual property. This Bureau finds the MOA not ambiguous, thus, there is no reason to come up with a different interpretation.

Considering that the copyright on the film project Troika was transferred or assigned to the Complainant, she acquired the economic rights over the work, among other things. Consequently, any person including the transfer or the assignor original owner, is liable for acts

that infringe the assignee's economic rights.

In this instance, the Respondent continuously represented himself as the owner of the work when he registered and filed an application for copyright ownership of the film Troika and its derivative work in the National Library⁷ on April 2007, when in fact, the same work was already transferred and assigned to the Complainant on 06 November 2006. Moreover, the Respondent caused the reproduction of the work, the public distribution of the original and the public performance of the work, and other communication to the public of the work⁸ when it submitted the subject work to Locarno Film Festival under his name⁹. These are acts which constitute infringement of copyright.

The Supreme Court held that

“The essence of intellectual piracy should be essayed in conceptual terms in order to underscore its gravity by an appropriate understanding thereof Infringement of a copyright is a trespass on a private domain owned and occupied by the owner of the copyright, and, therefore, protected by law, and infringement of copyright, or piracy, which is a synonymous term in this connection, consists in the doing by any person, without the consent of the owner of the copyright, of anything the sole right to do which is conferred by statute on the owner of the copyright.”¹⁰ (Emphasis Supplied)

Accordingly, this Bureau finds that the Respondent has no more right or legal basis to obtain “copyright registration” on April 2007 over the original work” of the film project Troika (Threesome) and to claim the ownership on derivative works’ which consists of associated promotional materials including Troika Coffee Table Book. A derivative work is defined as a work based upon one or more existing works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation or any other form in which a work may be recast, transformed or adapted)⁵ Thus, what is protected in the derivative work is the original idea set in and reformed by the person who derived it from such original work.

This Bureau therefore finds that it is just and proper to declare the Complainant entitled to the award of moral and exemplary damages, as well as attorney’s fees. Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury.’ The Complainant alleged and testified that she suffered embarrassment which is naturally a feeling of social humiliation, coupled with anxiety, as a result of the Respondent’s acts which amount to betrayal of trust. While she has rights over the film under the MOA, the Respondent’s actions and representations became obstacles that make it difficult for her to exercise her rights.

Exemplary or corrective damages on the other hand are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.⁵ Exemplary damages are designed to permit courts to mould behavior that has socially deleterious consequences, and its imposition is required by public policy to suppress the wanton acts of an offender.’⁶ Aptly, this Bureau finds unacceptable the Respondent’s acts of disregarding the rights of the Complainant. The Respondent displayed behavior which is contrary to justice and fair play, and which is inimical to an orderly society.

Likewise, Attorneys fees are awarded when a party is compelled to litigate or incur expenses to protect its interest by reason of an unjustified act of the other party.’⁷ The Complainant’s testimony states that she and her counsel reached an agreement that she will pay her counsel the amount of one hundred thousand pesos (P 100,000.00) for legal representation and services in the instant case.

Lastly, this Bureau finds no factual and legal basis to hold Respondent guilty of unfair competition. Unfair Competition is an offense falling within Part III of the IP Code entitled The Law on Trademarks, Service Marks and Trade Names’. Sec. 168, particularly 168.3 enumerates

the acts constituting as Unfair Competition. This Bureau finds the acts alleged by the Complainant as an unfair competition is not among those enumerated under the law.

WHEREFORE, premises considered, this Bureau finds the Respondent guilty of infringing the copyright or economic rights of the Complainant over the film TROIKA. Accordingly, the Respondent is hereby ordered to pay the Complainant the following amounts:

- 1) Two Hundred Thousand Pesos (Php200, 000.00) as moral damages;
- 2) One Hundred Fifty Pesos (Php 150000.00) as exemplary damages; and
- 3) One Hundred Thousand Pesos (Php 100, 000.00) as attorney's fees.

Let a copy of this Decision be furnished the National Library of the Philippines for information and appropriate action.

SO ORDERED.

Makati City, 15 February 2011.

NATHANIEL S. AREVALO
Director, Bureau of Legal Affairs
Intellectual Property Office