

FRANCISCO R. REYES  
Petitioner,

-versus-

RONNIE P. ENRIQUEZ,  
Respondent-Registrant.

x-----x

IPC NO. 14-2009-00094  
Case Filed on: 29 November 2007  
Cancellation of:  
Registration No. 4-2005-006587  
Date Issued: 27 November 2006  
TM: "REYES BARBEQUE"

DECISION NO. 2011- 18

## DECISION

FRANCISCO R. REYES ("Petitioner"), a Filipino citizen with address at 819-B Torres Street, Mandaluyong City filed on 29 November 2007 a Petition for Cancellation of Trademark Registration No. 4-2005-006587. The subject trademark registration, issued on 27 November 2006 in the name of RONNIE P. ENRIQUEZ ("Respondent-Registrant"), of Rd. 1 Bik. 35 Lot 22, Minuyan III, Sapang Palay, SJDM City, covers the mark "REYES BARBEQUE" for use on barbeque sauce, barbeque marinade, peanut sauce, pica-pica sauce and atchara under Class 29 and eatery under Class 43. 1

The Petitioner alleges the following:

"3. Plaintiff is the registered owner and proprietor of REYES BARBEQUE, a sole proprietorship entity with business address at 819-B Torres Street, Mandaluyong City and has been in the business since 2002. x xx

"4. The trademark REYES BARBEQUE is registered with the Intellectual Property Office (IPO) as evidenced by the Certificate of Registration xxx.

"5. However, on November 20, 2007, plaintiff opened the IPO website, as he regularly does, and was surprised to discover that the registration above-mentioned was no longer in his name but was already registered in the name of defendant, which led him to personally inquire with the IPO.

"6. Plaintiff then discovered on November 21, 2007 a fraudulent document, an Assignment of Registered Trademark in favor of defendant, containing plaintiff's forged signature, wherein defendant made it appear that plaintiff participated in the assignment of the registered trademark REYES BARBEQUE in his favor and signed the said fraudulent Assignment of Registered Trademark.

x x x

"7. Plaintiff has not assigned the trademark REYES BARBEQUE to defendant or to anybody, for that matter. Plaintiff does not know nor is he acquainted with defendant. Plaintiff vehemently denounces the signature appearing in the Assignment of Registered Trademark purporting to be his. Likewise, plaintiff has never appeared before the Notary Public who notarized the said document.

"8. Plaintiff likewise denies knowing the witnesses in the fraudulent assignment of Registered Trademark, particularly Sherwin Closa and Keith Ronquillo.

"9. Further, plaintiff has not received any payment or consideration from defendant for the illegal transaction or transfer.

"10. Presently, defendant was surreptitiously able to transfer the registration of REYES BARBEQUE in his name with the same registration number (4-2005-006587).

xxx

“11. From the foregoing, it was defendant’s intent to divest plaintiff of his legal ownership, rights and privileges as the registered owner of the trademark REYES BARBEQUE knowing that his business under the said trademark is now making its name in the restaurant and food business.

“12. There exists a great danger that innocent third persons might purchase, for a consideration, illegal franchises or rights and interests, through the aforementioned fraudulent Assignment of Registered Trademark, from the defendant considering that, as mentioned earlier, the internet access through the IPO trademark search facility is available to the public.

“13. Further, under Section 149.2 of the Intellectual Property Code of the Philippines, such assignment shall be null and void if it is liable to mislead the public.

“14. This Honorable Office should take urgent measures to protect the public by canceling the recorded transfer in favor of defendant in accordance with Section 149.5 of the same Code.

“15. Plaintiff has priorly written the IPO concerning this anomaly xxx.”

The Petitioner’s evidence consists of the following:

1. Exhibit “A” — Certificate of Business Name Registration for Reyes Barbeque issued in the name of Francisco Reyes.
2. Exhibit “B” — copy of the Certificate of Registration No. 4-2005-006587 issued on 27 November 2006 To Francisco R. Reyes for the mark REYES BARBEQUE for use on good/service under Class 29 and 43 together with the Allowance for Publication and Declaration of Actual Use.
3. Exhibit “C” — Assignment of Registered Trademark executed by Francisco Reyes and Ronnie P. Enriquez on 13 September 2007.
4. Exhibit “D” - Copy of the Registration No. 4-2005-006587 in the name of Ronnie P. Enriquez as the Assignee;
5. Exhibit “E” — Letter dated 21 November 2007 addressed to the IPO Director General Adrian Cristobal Jr. from Francisco Reyes;
6. Exhibit “F” — Affidavit of Francisco R. Reyes; and
7. Exhibit “G” — Affidavit of Edgardo C. Arriola.

This Bureau issued on 01 April 2009 a Notice to Answer and served a copy thereof to the Respondent-Registrant on 21 April 2009. The Respondent- Registrant, however, failed to file an Answer. Accordingly, pursuant to Rule 2 Section 11 of the Rules and Regulations on Inter Partes Proceedings, as amended, the case is deemed submitted for decision on the basis the petition, the affidavits of witnesses, if any, and the documentary evidence submitted by the petitioner.

Should Trademark Registration No. 4-2005-006587 be cancelled?

It must be emphasized that the essence of trademark registration is to give protection to the owner of the trademarks. The function of a trademark is to point out distinctly the origin or ownership of the article to which it is affixed, to secure to him, who has been instrumental in bringing into a market a superior article of merchandise, the fruit of his industry and skill; to assure the public that they are procuring the genuine article; to prevent fraud and imposition; and to protect the manufacturer against substitution and sale of an inferior and different article as his products.<sup>2</sup>

Respondent-Registrant is the registered owner of the mark REYES BARBEQUE as per Certificate of Registration No. 4-2005-006587 issued on 08 November 2007. As a holder of a

certificate of registration, it is presumed to be the owner of the mark pursuant to Section 138 of Republic Act No. 8293, also known as the Intellectual Property Code of the Philippines (“IP Code”), which provides:

“Section 138. Certificates of Registration - A certificate of registration of a mark shall be prima facie evidence of the validity of the registration, 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.”

Prima facie evidence is defined as, “Evidence good and sufficient on its face. XXX Evidence which, if unexplained or uncontradicted is sufficient to sustain a judgment in favor of the issue it supports, but Which may be contradicted by other evidence”<sup>3</sup>. Necessarily since a certificate of registration is merely prima facie evidence of the validity of registration and Ownership of the mark, such presumption may be rebutted by presenting controverting evidence. In this regard, a petition for cancellation is a Proceeding that entitles a party who believes that he/she will be damaged by the registration of the mark to seek the cancellation thereof. Section 151.1 (b) of the IP Code Provides:

“151.1. A petition to cancel a registration of a mark under this Act may be filed with the Bureau of Legal Affairs by any person who believes that he is or will be damaged by the registration of a mark under this Act as follows:

x x x

(b) At any time, if the registered mark becomes the generic name for the goods or services, or a portion thereof for which it IS registered, or has been abandoned or if its registration was obtained fraudulently or contrary to the provisions of this Act xxx

Petitioner anchors his opposition on the ground that the subject Certificate of Registratj0 for the mark REYES BARBEQUE originally registered in his name, was fraudulently assigned to herein Respondent-Registrant without his knowledge and consent and that his signature in the purported Assignment of Trademark Registration was a forgery.

The evidence of this case would disclose that on 27 November 2006, Registration No. 4-2005-006587 for the mark REYES BARBEQUE was issued in the name of herein Petitioner, Francisco R. Reyes.<sup>4</sup> On 13 September 2007, the said registered mark was Purportedly assigned by Francisco Reyes to a certain Ronnie P. Enriquez as per the Assignment of Trademark Registration which was submitted to the Intellectual Property Office (“IPOP HL”) for record on 19 September 2007.<sup>5</sup> Consequently, Certificate of Registration No. 4-2005 006587 was issued by the IPOP HL on 08 November 2007 now in the name of Ronnie P. Enriquez. According to Petitioner, he discovered only such fact after browsing through the TPOP HL’s website and Personally inquiring with the said Office.<sup>6</sup> Thereafter, Petitioner through his counsel, immediately Wrote the then Director General Adrian Cristobal Jr. about the fraudulent assignment and requested to cancel the same.<sup>7</sup>

Based on the foregoing, Petitioner was able to prove by Substantial evidence that the assignment of his trademark REYES BARBEQUE to Ronnie P. Enriquez was made without his knowledge and consent and therefore without effect and not binding. Consequently Certificate of Registration No. 4-2005-006587 in the ne Ronnie P. Enriquez. Should be canceled and the one issued in the name of the original registrant, herein petitioner Francisco R. Reyes, be reinstated.

In conclusion, the Respondent Registrant and the public should be reminded that the intellectual property system was established to recognize creativity and give incentives to innovations. Similarly, the trademark registration system seeks to reward entrepreneurs and individuals who through their own innovations were able to distinguish their goods or services by a visible sign that distinctly points out the origin and ownership of such goods or services. The

intellectual property system is not a haven for people who would take advantage of the intellectual creation of others, whether a local resident or a foreigner.<sup>8</sup>

WHEREFORE, premises considered the instant Petition for Cancellation of Trademark Registration No. 4-2005-006587 is hereby GRANTED. Let the filewrapper of Trademark Registration No. 4-2005-006587 be returned together with a copy of this DECISION to the Bureau of Trademarks (BOT) for appropriate action.

SO ORDERED.

Makati City, 28 February 2011.

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