

IN-N-OUT BURGER, INC.
Complainant-Appellee,

APPEAL NO. 14-2004-0004

IPV NO. 10-2001-0004

-versus-

SEHWANI, INCORPORATED
and/or BENITA'S FRITES, INC.,
Respondents-Appellants,
X-----X

ORDER

On 18 November 2004, Respondents-Appellants, SEHWANI, INCORPORATED and/or BENITA'S FRITES, INC. filed an APPEAL MEMORANDUM from Decision dated 22 December 2003 and the Resolution dated 28 October 2004 of the Director of the Bureau of Legal Affairs.

While the appeal fee was paid, the appeal was not accompanied by a copy of the assailed decision and of the material portions of the record as would support the allegations of the appeal as required under Section 4(d) of the IPO Uniform Rules on Appeal. In such cases, this Office, under Section 5(b) of the said rules, shall require appellants to complete the formal requirements mentioned in Section 4.

On 25 November 2004, however, the Respondents-Appellants filed a MOTION TO ADMIT COPY OF DECISION NO. 2003-02, alleging that by inadvertence, a copy of the assailed decision was not attached as an annex to the APPEAL MEMORANDUM.

Notwithstanding the foregoing, this Office finds that the appeal must be dismissed outright. Section 2 of the Uniform Rules on Appeal (Office Order No. 12, s. 2002) states that:

Section 2. Appeal to the Director General – The decisions or final orders of the Bureau Director shall become final and executor thirty (30) days after receipt of a copy thereof by the appellant or appellants unless, within the same period, a motion for reconsideration is filed with the Bureau Director or an appeal to the Director General has been perfected; Provided, that only one (1) motion for reconsideration of the decision or order of the Bureau Director shall be allowed; and, in case the motion for reconsideration is denied, the appellant or appellants has/have the balance of the period prescribed above within which to file the appeal.

Considering that the Respondents-Appellants received a copy of the appealed Decision on 15 January 2004 and filed their MOTION FOR RECONSIDERATION on 30 January 2004, said parties had a balance of 15 days from their receipt of the Resolution denying said motion within which to file the APPEAL MEMORADUM. Per records of the Bureau of Legal Affairs, the Respondents-Appellants received a copy of the Resolution on 29 October 2004. Hence, the deadline for the filing of the APPEAL MEMORANDUM was on 13 November 2004. Since said date fell on a Saturday, the appeal should have been filed on the ensuing working day, that is, 15 November 2004.

On this score, Section 5(c) of the Uniform Rules on Appeal provides:

Section 5. Action on the Appeal Memorandum – The Director General shall:

- a) x x x
- b) x x x

- c) Dismiss the appeal for being patently without merit, provided that the dismissal shall be outright if the appeal is not filed within the prescribed period or for failure of the appellant to pay the required fee within the period of appeal. (Underlining supplied)

WHEREFORE, premises considered, the MOTION TO ADMIT COPY OF DECISION NO. 2003-02 is hereby granted. The instant appeal, however, is hereby DISMISSED for having been filed out of time.

December 07 2004, Makati City, Philippines

EMMA C. FRANCISCO
General Director