

Republic of the Philippines
SUPREME COURT
Manila

THIRD DIVISION

G.R. No. 179127 December 24, 2008

IN-N-OUT BURGER, INC., petitioner,
vs.
SEHWANI, INCORPORATED AND/OR BENITA'S FRITES, INC., respondents.

D E C I S I O N

CHICO-NAZARIO, J.:

This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, seeking to reverse the Decision¹ dated 18 July 2006 rendered by the Court of Appeals in CA-G.R. SP No. 92785, which reversed the Decision² dated 23 December 2005 of the Director General of the Intellectual Property Office (IPO) in Appeal No. 10-05-01. The Court of Appeals, in its assailed Decision, decreed that the IPO Director of Legal Affairs and the IPO Director General do not have jurisdiction over cases involving unfair competition.

Petitioner IN-N-OUT BURGER, INC., a business entity incorporated under the laws of California, United States (US) of America, which is a signatory to the Convention of Paris on Protection of Industrial Property and the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). Petitioner is engaged mainly in the restaurant business, but it has never engaged in business in the Philippines.³

Respondents Sehwani, Incorporated and Benita Frites, Inc. are corporations organized in the Philippines.⁴

On 2 June 1997, petitioner filed trademark and service mark applications with the Bureau of Trademarks (BOT) of the IPO for "IN-N-OUT" and "IN-N-OUT Burger & Arrow Design." Petitioner later found out, through the Official Action Papers issued by the IPO on 31 May 2000, that respondent Sehwani, Incorporated had already obtained Trademark Registration for the mark "IN N OUT (the inside of the letter "O" formed like a star)."⁵ By virtue of a licensing agreement, Benita Frites, Inc. was able to use the registered mark of respondent Sehwani, Incorporated.

Petitioner eventually filed on 4 June 2001 before the Bureau of Legal Affairs (BLA) of the IPO an administrative complaint against respondents for unfair competition and cancellation of trademark registration. Petitioner averred in its complaint that it is the owner of the trade name IN-N-OUT and the following trademarks: (1) "IN-N-OUT"; (2) "IN-N-OUT Burger & Arrow Design"; and (3) "IN-N-OUT Burger Logo." These trademarks are registered with the Trademark Office of the US and in various parts of the world, are internationally well-known, and have become distinctive of its business and goods through its long and exclusive commercial use.⁶ Petitioner pointed out that its internationally well-known trademarks and the mark of the respondents are all registered for the restaurant business and are clearly identical and confusingly similar. Petitioner claimed that respondents are making it appear that their goods and services are those of the petitioner, thus, misleading ordinary and unsuspecting consumers that they are purchasing petitioner's products.⁷

Following the filing of its complaint, petitioner sent on 18 October 2000 a demand letter directing respondent Sehwani, Incorporated to cease and desist from claiming ownership of the mark "IN-N-OUT" and to voluntarily cancel its trademark registration. In a letter-reply dated 23 October 2000, respondents refused to accede to petitioner's demand, but expressed willingness to

surrender the registration of respondent Sehwhani, Incorporated of the "IN N OUT" trademark for a fair and reasonable consideration.⁸

Petitioner was able to register the mark "Double Double" on 4 July 2002, based on their application filed on 2 June 1997.⁹ It alleged that respondents also used this mark, as well as the menu color scheme. Petitioners also averred that respondent Benita's receipts bore the phrase, "representing IN-N-OUT Burger."¹⁰ It should be noted that although respondent Sehwhani, Incorporated registered a mark which appeared as "IN N OUT (the inside of the letter "O" formed like a star)," respondents used the mark "IN-N-OUT."¹¹

To counter petitioner's complaint, respondents filed before the BLA-IPO an Answer with Counterclaim. Respondents asserted therein that they had been using the mark "IN N OUT" in the Philippines since 15 October 1982. On 15 November 1991, respondent Sehwhani, Incorporated filed with the then Bureau of Patents, Trademarks and Technology Transfer (BPTTT) an application for the registration of the mark "IN N OUT (the inside of the letter "O" formed like a star)." Upon approval of its application, a certificate of registration of the said mark was issued in the name of respondent Sehwhani, Incorporated on 17 December 1993. On 30 August 2000, respondents Sehwhani, Incorporated and Benita Frites, Inc. entered into a Licensing Agreement, wherein the former entitled the latter to use its registered mark, "IN N OUT." Respondents asserted that respondent Sehwhani, Incorporated, being the registered owner of the mark "IN N OUT," should be accorded the presumption of a valid registration of its mark with the exclusive right to use the same. Respondents argued that none of the grounds provided under the Intellectual Property Code for the cancellation of a certificate of registration are present in this case. Additionally, respondents maintained that petitioner had no legal capacity to sue as it had never operated in the Philippines.¹²

Subsequently, the IPO Director of Legal Affairs, Estrellita Beltran-Abelardo, rendered a Decision dated 22 December 2003,¹³ in favor of petitioner. According to said Decision, petitioner had the legal capacity to sue in the Philippines, since its country of origin or domicile was a member of and a signatory to the Convention of Paris on Protection of Industrial Property. And although petitioner had never done business in the Philippines, it was widely known in this country through the use herein of products bearing its corporate and trade name. Petitioner's marks are internationally well-known, given the world-wide registration of the mark "IN-N-OUT," and its numerous advertisements in various publications and in the Internet. Moreover, the IPO had already declared in a previous inter partes case that "In-N-Out Burger and Arrow Design" was an internationally well-known mark. Given these circumstances, the IPO Director for Legal Affairs pronounced in her Decision that petitioner had the right to use its tradename and mark "IN-N-OUT" in the Philippines to the exclusion of others, including the respondents. However, respondents used the mark "IN N OUT" in good faith and were not guilty of unfair competition, since respondent Sehwhani, Incorporated did not evince any intent to ride upon petitioner's goodwill by copying the mark "IN-N-OUT Burger" exactly. The inside of the letter "O" in the mark used by respondents formed a star. In addition, the simple act of respondent Sehwhani, Incorporated of inquiring into the existence of a pending application for registration of the "IN-N-OUT" mark was not deemed fraudulent. The dispositive part of the Decision of the IPO Director for Legal Affairs reads:

With the foregoing disquisition, Certificate of Registration No. 56666 dated 17 December 1993 for the mark "IN-N-OUT" (the inside of the letter "O" formed like a star) issued in favor of Sehwhani, Incorporated is hereby CANCELLED. Consequently, respondents Sehwhani, Inc. and Benita's Frites are hereby ordered to permanently cease and desist from using the mark "IN-N-OUT" and "IN-N-OUT BURGER LOGO" on its goods and in its business. With regards the mark "Double-Double," considering that as earlier discussed, the mark has been approved by this Office for publication and that as shown by evidence, Complainant is the owner of the said mark, Respondents are so hereby ordered to permanently cease and desist from using the mark Double-Double. NO COSTS.¹⁴

Both parties filed their respective Motions for Reconsideration of the aforementioned Decision. Respondents' Motion for Reconsideration¹⁵ and petitioner's Motion for Partial Reconsideration¹⁶ were denied by the IPO Director for Legal Affairs in Resolution No. 2004-18¹⁷ dated 28 October 2004 and Resolution No. 2005-05 dated 25 April 2005,¹⁸ respectively.

Subsequent events would give rise to two cases before this Court, G.R. No. 171053 and G.R. No. 179127, the case at bar.

G.R. No. 171053

On 29 October 2004, respondents received a copy of Resolution No. 2004-18 dated 28 October 2004 denying their Motion for Reconsideration. Thus, on 18 November 2004, respondents filed an Appeal Memorandum with IPO Director General Emma Francisco (Director General Francisco). However, in an Order dated 7 December 2004, the appeal was dismissed by the IPO Director General for being filed beyond the 15-day reglementary period to appeal.

Respondents appealed to the Court of Appeals via a Petition for Review under Rule 43 of the Rules of Court, filed on 20 December 2004 and docketed as CA-G.R. SP No. 88004, challenging the dismissal of their appeal by the IPO Director General, which effectively affirmed the Decision dated 22 December 2003 of the IPO Director for Legal Affairs ordering the cancellation of the registration of the disputed trademark in the name of respondent Sehwani, Incorporated and enjoining respondents from using the same. In particular, respondents based their Petition on the following grounds:

THE IPO DIRECTOR GENERAL COMMITTED GRAVE ERROR IN DISMISSING APPEAL NO. 14-2004-00004 ON A MERE TECHNICALITY THE BUREAU OF LEGAL AFFAIR'S (SIC) DECISION AND RESOLUTION (1) CANCELLING RESPONDENT'S CERTIFICATE OF REGISTRATION FOR THE MARK "IN-N-OUT," AND (2) ORDERING PETITIONERS TO PERMANENTLY CEASE AND DESIST FROM USING THE SUBJECT MARK ON ITS GOODS AND BUSINESS ARE CONTRARY TO LAW AND/OR IS NOT SUPPORTED BY EVIDENCE.

Respondents thus prayed:

WHEREFORE, petitioners respectfully pray that this Honorable Court give due course to this petition, and thereafter order the Office of the Director General of the Intellectual Property Office to reinstate and give due course to [respondent]'s Appeal No. 14-2004-00004.

Other reliefs, just and equitable under the premises, are likewise prayed for.

On 21 October 2005, the Court of Appeals rendered a Decision denying respondents' Petition in CA-G.R. SP No. 88004 and affirming the Order dated 7 December 2004 of the IPO Director General. The appellate court confirmed that respondents' appeal before the IPO Director General was filed out of time and that it was only proper to cancel the registration of the disputed trademark in the name of respondent Sehwani, Incorporated and to permanently enjoin respondents from using the same. Effectively, the 22 December 2003 Decision of IPO Director of Legal Affairs was likewise affirmed. On 10 November 2005, respondents moved for the reconsideration of the said Decision. On 16 January 2006, the Court of Appeals denied their motion for reconsideration.

Dismayed with the outcome of their petition before the Court of Appeals, respondents raised the matter to the Supreme Court in a Petition for Review under Rule 45 of the Rules of Court, filed on 30 January 2006, bearing the title Sehwani, Incorporated v. In-N-Out Burger and docketed as G.R. No. 171053.¹⁹

This Court promulgated a Decision in G.R. No. 171053 on 15 October 2007,²⁰ finding that herein respondents failed to file their Appeal Memorandum before the IPO Director General within the period prescribed by law and, consequently, they lost their right to appeal. The Court further

affirmed the Decision dated 22 December 2003 of the IPO Director of Legal Affairs holding that herein petitioner had the legal capacity to sue for the protection of its trademarks, even though it was not doing business in the Philippines, and ordering the cancellation of the registration obtained by herein respondent Sehwan, Incorporated of the internationally well-known marks of petitioner, and directing respondents to stop using the said marks. Respondents filed a Motion for Reconsideration of the Decision of this Court in G.R. No. 171053, but it was denied with finality in a Resolution dated 21 January 2008.

G.R. No. 179127

Upon the denial of its Partial Motion for Reconsideration of the Decision dated 22 December 2003 of the IPO Director for Legal Affairs, petitioner was able to file a timely appeal before the IPO Director General on 27 May 2005.

During the pendency of petitioner's appeal before the IPO Director General, the Court of Appeals already rendered on 21 October 2005 its Decision dismissing respondents' Petition in CA-G.R. SP No. 88004.

In a Decision dated 23 December 2005, IPO Director General Adrian Cristobal, Jr. found petitioner's appeal meritorious and modified the Decision dated 22 December 2003 of the IPO Director of Legal Affairs. The IPO Director General declared that respondents were guilty of unfair competition. Despite respondents' claims that they had been using the mark since 1982, they only started constructing their restaurant sometime in 2000, after petitioner had already demanded that they desist from claiming ownership of the mark "IN-N-OUT." Moreover, the sole distinction of the mark registered in the name of respondent Sehwan, Incorporated, from those of the petitioner was the star inside the letter "O," a minor difference which still deceived purchasers. Respondents were not even actually using the star in their mark because it was allegedly difficult to print. The IPO Director General expressed his disbelief over the respondents' reasoning for the non-use of the star symbol. The IPO Director General also considered respondents' use of petitioner's registered mark "Double-Double" as a sign of bad faith and an intent to mislead the public. Thus, the IPO Director General ruled that petitioner was entitled to an award for the actual damages it suffered by reason of respondents' acts of unfair competition, exemplary damages, and attorney's fees.²¹ The fallo of the Decision reads:

WHEREFORE, premises considered, the [herein respondents] are held guilty of unfair competition. Accordingly, Decision No. 2003-02 dated 22 December 2003 is hereby MODIFIED as follows:

[Herein Respondents] are hereby ordered to jointly and severally pay [herein petitioner]:

1. Damages in the amount of TWO HUNDRED TWELVE THOUSAND FIVE HUNDRED SEVENTY FOUR AND 28/100(P212,574.28);
2. Exemplary damages in the amount of FIVE HUNDRED THOUSAND PESOS (P500,000.00);
3. Attorney's fees and expenses of litigation in the amount of FIVE HUNDRED THOUSAND PESOS (P500,000.00).

All products of [herein respondents] including the labels, signs, prints, packages, wrappers, receptacles and materials used by them in committing unfair competition should be without compensation of any sort be seized and disposed of outside the channels of commerce.

Let a copy of this Decision be furnished the Director of Bureau of Legal Affairs for appropriate action, and the records be returned to her for proper disposition. Further, let a copy of this Decision be furnished the Documentation, Information and Technology Transfer Bureau for their information and records purposes.²²

Aggrieved, respondents were thus constrained to file on 11 January 2006 before the Court of Appeals another Petition for Review under Rule 43 of the Rules of Court, docketed as CA-G.R. SP No. 92785. Respondents based their second Petition before the appellate court on the following grounds:

THE IPO DIRECTOR GENERAL COMMITTED GRAVE ERROR IN HOLDING PETITIONERS LIABLE FOR UNFAIR COMPETITION AND IN ORDERING THEM TO PAY DAMAGES AND ATTORNEY'S FEES TO RESPONDENTS THE IPO DIRECTOR GENERAL COMMITTED GRAVE ERROR IN AFFIRMING THE BUREAU OF LEGAL AFFAIR'S DECISION (1) CANCELLING PETITIONER'S CERTIFICATE OF REGISTRATION FOR THE MARK "IN-N-OUT," AND (2) ORDERING PETITIONERS TO PERMANENTLY CEASE AND DESIST FROM USING THE SUBJECT MARK ON ITS GOODS AND BUSINESS

Respondents assailed before the appellate court the foregoing 23 December 2005 Decision of the IPO Director General, alleging that their use of the disputed mark was not tainted with fraudulent intent; hence, they should not be held liable for damages. They argued that petitioner had never entered into any transaction involving its goods and services in the Philippines and, therefore, could not claim that its goods and services had already been identified in the mind of the public. Respondents added that the disputed mark was not well-known. Finally, they maintained that petitioner's complaint was already barred by laches.²³

At the end of their Petition in CA-G.R. SP No. 92785, respondents presented the following prayer:

WHEREFORE, [respondents herein] respectfully pray that this Honorable Court:

- (a) upon the filing of this petition, issue a temporary restraining order enjoining the IPO and [petitioner], their agents, successors and assigns, from executing, enforcing and implementing the IPO Director General's Decision dated 23 December 2005, which modified the Decision No. 2003-02 dated 22 December 2003 of the BLA, until further orders from this Honorable Court.
- (b) after notice and hearing, enjoin the IPO and [petitioner], their agents, successors and assigns, from executing, enforcing and implementing the Decision dated 23 December 2005 of the Director General of the IPO in IPV No. 10-2001-00004 and to maintain the status quo ante pending the resolution of the merits of this petition; and
- (c) after giving due course to this petition:
 - (i) reverse and set aside the Decision dated 23 December 2005 of the Director General of the IPO in IPV No. 10-2001-00004 finding the [respondents] guilty of unfair competition and awarding damages and attorney's fees to the respondent
 - (ii) in lieu thereof, affirm Decision No. 2003-02 of the BLA dated 22 December 2003 and Resolution No. 2005-05 of the BLA dated 25 April 2005, insofar as it finds [respondents] not guilty of unfair competition and hence not liable to the [petitioner] for damages and attorney's fees;
 - (iii) reverse Decision No. 2003-02 of the BLA dated 22 December 2003, and Resolution No. 2005-05 of the BLA dated 25 April 2005, insofar as it upheld [petitioner]'s legal capacity to sue; that [petitioner]'s trademarks are well-known; and that respondent has the exclusive right to use the same; and
 - (iv) make the injunction permanent.

[Respondents] also pray for other reliefs, as may deemed just or equitable.²⁴

On 18 July 2006, the Court of Appeals promulgated a Decision²⁵ in CA-G.R. SP No. 92785 reversing the Decision dated 23 December 2005 of the IPO Director General.

The Court of Appeals, in its Decision, initially addressed petitioner's assertion that respondents had committed forum shopping by the institution of CA-G.R. SP No. 88004 and CA-G.R. SP No. 92785. It ruled that respondents were not guilty of forum shopping, distinguishing between the respondents' two Petitions. The subject of Respondents' Petition in CA-G.R. SP No. 88004 was the 7 December 2004 Decision of the IPO Director General dismissing respondents' appeal of the 22 December 2003 Decision of the IPO Director of Legal Affairs. Respondents questioned therein the cancellation of the trademark registration of respondent Sehwani, Incorporated and the order permanently enjoining respondents from using the disputed trademark. Respondents' Petition in CA-G.R. SP No. 92785 sought the review of the 23 December 2005 Decision of the IPO Director General partially modifying the 22 December 2003 Decision of the IPO Director of Legal Affairs. Respondents raised different issues in their second petition before the appellate court, mainly concerning the finding of the IPO Director General that respondents were guilty of unfair competition and the awarding of actual and exemplary damages, as well as attorney's fees, to petitioner.

The Court of Appeals then proceeded to resolve CA-G.R. SP No. 92785 on jurisdictional grounds not raised by the parties. The appellate court declared that Section 163 of the Intellectual Property Code specifically confers upon the regular courts, and not the BLA-IPO, sole jurisdiction to hear and decide cases involving provisions of the Intellectual Property Code, particularly trademarks. Consequently, the IPO Director General had no jurisdiction to rule in its Decision dated 23 December 2005 on supposed violations of these provisions of the Intellectual Property Code.

In the end, the Court of Appeals decreed:

WHEREFORE, the Petition is GRANTED. The Decision dated 23 December 2005 rendered by the Director General of the Intellectual Property Office of the Philippines in Appeal No. 10-05-01 is REVERSED and SET ASIDE. Insofar as they pertain to acts governed by Article 168 of R.A. 8293 and other sections enumerated in Section 163 of the same Code, respondent's claims in its Complaint docketed as IPV No. 10-2001-00004 are hereby DISMISSED.²⁶

The Court of Appeals, in a Resolution dated 31 July 2007,²⁷ denied petitioner's Motion for Reconsideration of its aforementioned Decision.

Hence, the present Petition, where petitioner raises the following issues:

I

WHETHER OR NOT THE COURT OF APPEALS ERRED IN ISSUING THE QUESTIONED DECISION DATED 18 JULY 2006 AND RESOLUTION DATED 31 JULY 2007 DECLARING THAT THE IPO HAS NO JURISDICTION OVER ADMINISTRATIVE COMPLAINTS FOR INTELLECTUAL PROPERTY RIGHTS VIOLATIONS;

II

WHETHER OR NOT THE INSTANT PETITION IS FORMALLY DEFECTIVE; AND

III

WHETHER OR NOT THE COURT OF APPEALS ERRED IN ISSUING THE QUESTIONED DECISION DATED 18 JULY 2006 AND RESOLUTION DATED 31 JULY 2007 DECLARING THAT SEHWANI AND BENITA ARE NOT GUILTY OF: (A) SUBMITTING A PATENTLY FALSE CERTIFICATION OF NON-FORUM SHOPPING; AND (B) FORUM SHOPPING PROPER.²⁸

As previously narrated herein, on 15 October 2007, during the pendency of the present Petition, this Court already promulgated its Decision²⁹ in G.R. No. 171053 on 15 October 2007, which affirmed the IPO Director General's dismissal of respondents' appeal for being filed beyond the

reglementary period, and left the 22 December 2003 Decision of the IPO Director for Legal Affairs, canceling the trademark registration of respondent Sehwan, Incorporated and enjoining respondents from using the disputed marks.

Before discussing the merits of this case, this Court must first rule on the procedural flaws that each party has attributed to the other.

Formal Defects of the Petition

Respondents contend that the Verification/Certification executed by Atty. Edmund Jason Barranda of Villaraza and Angangco, which petitioner attached to the present Petition, is defective and should result in the dismissal of the said Petition.

Respondents point out that the Secretary's Certificate executed by Arnold M. Wensinger on 20 August 2007, stating that petitioner had authorized the lawyers of Villaraza and Angangco to represent it in the present Petition and to sign the Verification and Certification against Forum Shopping, among other acts, was not properly notarized. The jurat of the aforementioned Secretary's Certificate reads:

Subscribed and sworn to me this 20th day of August 2007 in Irving California.

Rachel A. Blake (Sgd.)
Notary Public³⁰

Respondents aver that the said Secretary's Certificate cannot properly authorize Atty. Barranda to sign the Verification/Certification on behalf of petitioner because the notary public Rachel A. Blake failed to state that: (1) petitioner's Corporate Secretary, Mr. Wensinger, was known to her; (2) he was the same person who acknowledged the instrument; and (3) he acknowledged the same to be his free act and deed, as required under Section 2 of Act No. 2103 and *Landingin v. Republic of the Philippines*.³¹

Respondents likewise impugn the validity of the notarial certificate of Atty. Aldrich Fitz B. Uy, on Atty. Baranda's Verification/Certification attached to the instant Petition, noting the absence of (1) the serial number of the commission of the notary public; (2) the office address of the notary public; (3) the roll of attorneys' number and the IBP membership number; and (4) a statement that the Verification/Certification was notarized within the notary public's territorial jurisdiction, as required under the 2004 Rules on Notarial Practice.³²

Section 2 of Act No. 2103 and *Landingin v. Republic of the Philippines* are not applicable to the present case. The requirements enumerated therein refer to documents which require an acknowledgement, and not a mere jurat.

A jurat is that part of an affidavit in which the notary certifies that before him/her, the document was subscribed and sworn to by the executor. Ordinarily, the language of the jurat should avow that the document was subscribed and sworn to before the notary public. In contrast, an acknowledgment is the act of one who has executed a deed in going before some competent officer or court and declaring it to be his act or deed. It involves an extra step undertaken whereby the signor actually declares to the notary that the executor of a document has attested to the notary that the same is his/her own free act and deed.³³ A Secretary's Certificate, as that executed by petitioner in favor of the lawyers of the Angangco and Villaraza law office, only requires a jurat.³⁴

Even assuming that the Secretary's Certificate was flawed, Atty. Barranda may still sign the Verification attached to the Petition at bar. A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records.³⁵ The party itself need not sign the verification. A party's representative, lawyer or any other person who personally knows the truth of the facts

alleged in the pleading may sign the verification.³⁶ Atty. Barranda, as petitioner's counsel, was in the position to verify the truth and correctness of the allegations of the present Petition. Hence, the Verification signed by Atty. Barranda substantially complies with the formal requirements for such.

Moreover, the Court deems it proper not to focus on the supposed technical infirmities of Atty. Baranda's Verification. It must be borne in mind that the purpose of requiring a verification is to secure an assurance that the allegations of the petition has been made in good faith; or are true and correct, not merely speculative. This requirement is simply a condition affecting the form of pleadings, and non-compliance therewith does not necessarily render it fatally defective. Indeed, verification is only a formal, not a jurisdictional requirement. In the interest of substantial justice, strict observance of procedural rules may be dispensed with for compelling reasons.³⁷ The vital issues raised in the instant Petition on the jurisdiction of the IPO Director for Legal Affairs and the IPO Director General over trademark cases justify the liberal application of the rules, so that the Court may give the said Petition due course and resolve the same on the merits.

This Court agrees, nevertheless, that the notaries public, Rachel A. Blake and Aldrich Fitz B. Uy, were less than careful with their jurats or notarial certificates. Parties and their counsel should take care not to abuse the Court's zeal to resolve cases on their merits. Notaries public in the Philippines are reminded to exert utmost care and effort in complying with the 2004 Rules on Notarial Practice. Parties and their counsel are further charged with the responsibility of ensuring that documents notarized abroad be in their proper form before presenting said documents before Philippine courts.

Forum Shopping

Petitioner next avers that respondents are guilty of forum shopping in filing the Petition in CA-G.R. SP No. 92785, following their earlier filing of the Petition in CA-G.R. SP No. 88004. Petitioner also asserts that respondents were guilty of submitting to the Court of Appeals a patently false Certification of Non-forum Shopping in CA-G.R. SP No. 92785, when they failed to mention therein the pendency of CA-G.R. SP No. 88004.

Forum shopping is the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition. It is an act of malpractice and is prohibited and condemned as trifling with courts and abusing their processes. In determining whether or not there is forum shopping, what is important is the vexation caused the courts and parties-litigants by a party who asks different courts and/or administrative bodies to rule on the same or related causes and/or grant the same or substantially the same reliefs and in the process creates the possibility of conflicting decisions being rendered by the different bodies upon the same issues.³⁸

Forum shopping is present when, in two or more cases pending, there is identity of (1) parties (2) rights or causes of action and reliefs prayed for, and (3) the identity of the two preceding particulars is such that any judgment rendered in the other action, will, regardless of which party is successful, amount to res judicata in the action under consideration.³⁹

After a cursory look into the two Petitions in CA-G.R. SP No. 88004 and CA-G.R. SP No. 92785, it would at first seem that respondents are guilty of forum shopping.

There is no question that both Petitions involved identical parties, and raised at least one similar ground for which they sought the same relief. Among the grounds stated by the respondents for their Petition in CA-G.R. SP No. 88004 was that "[T]he Bureau of Legal Affairs (sic) Decision and Resolution (1) canceling [herein respondent Sehvani, Incorporated]'s certificate of registration for the mark 'IN-N-OUT' and (2) ordering [herein respondents] to permanently cease and desist from using the subject mark on its goods and business are contrary to law and/or is (sic) not supported by evidence."⁴⁰ The same ground was again invoked by respondents in their Petition in CA-G.R. SP No. 92785, rephrased as follows: "The IPO Director General committed grave

error in affirming the Bureau of Legal Affairs's (sic) Decision (1) canceling [herein respondent Sehvani, Incorporated]'s certificate of registration for the mark "IN-N-OUT," and (2) ordering [herein respondents] to permanently cease and desist from using the subject mark on its goods and business."⁴¹ Both Petitions, in effect, seek the reversal of the 22 December 2003 Decision of the IPO Director of Legal Affairs. Undoubtedly, a judgment in either one of these Petitions affirming or reversing the said Decision of the IPO Director of Legal Affairs based on the merits thereof would bar the Court of Appeals from making a contrary ruling in the other Petition, under the principle of res judicata.

Upon a closer scrutiny of the two Petitions, however, the Court takes notice of one issue which respondents did not raise in CA-G.R. SP No. 88004, but can be found in CA-G.R. SP No. 92785, i.e., whether respondents are liable for unfair competition. Hence, respondents seek additional reliefs in CA-G.R. SP No. 92785, seeking the reversal of the finding of the IPO Director General that they are guilty of unfair competition, and the nullification of the award of damages in favor of petitioner resulting from said finding. Undoubtedly, respondents could not have raised the issue of unfair competition in CA-G.R. SP No. 88004 because at the time they filed their Petition therein on 28 December 2004, the IPO Director General had not yet rendered its Decision dated 23 December 2005 wherein it ruled that respondents were guilty thereof and awarded damages to petitioner.

In arguing in their Petition in CA-G.R. SP No. 92785 that they are not liable for unfair competition, it is only predictable, although not necessarily legally tenable, for respondents to reassert their right to register, own, and use the disputed mark. Respondents again raise the issue of who has the better right to the disputed mark, because their defense from the award of damages for unfair competition depends on the resolution of said issue in their favor. While this reasoning may be legally unsound, this Court cannot readily presume bad faith on the part of respondents in filing their Petition in CA-G.R. SP No. 92785; or hold that respondents breached the rule on forum shopping by the mere filing of the second petition before the Court of Appeals.

True, respondents should have referred to CA-G.R. SP No. 88004 in the Certification of Non-Forum Shopping, which they attached to their Petition in CA-G.R. SP No. 92785. Nonetheless, the factual background of this case and the importance of resolving the jurisdictional and substantive issues raised herein, justify the relaxation of another procedural rule. Although the submission of a certificate against forum shopping is deemed obligatory, it is not jurisdictional.⁴² Hence, in this case in which such a certification was in fact submitted, only if it was defective, the Court may still refuse to dismiss and, instead, give due course to the

Petition in light of attendant exceptional circumstances.

The parties and their counsel, however, are once again warned against taking procedural rules lightly. It will do them well to remember that the Courts have taken a stricter stance against the disregard of procedural rules, especially in connection with the submission of the certificate against forum shopping, and it will not hesitate to dismiss a Petition for non-compliance therewith in the absence of justifiable circumstances.

The Jurisdiction of the IPO

The Court now proceeds to resolve an important issue which arose from the Court of Appeals Decision dated 18 July 2006 in CA-G.R. SP No. 92785. In the afore-stated Decision, the Court of Appeals adjudged that the IPO Director for Legal Affairs and the IPO Director General had no jurisdiction over the administrative proceedings below to rule on issue of unfair competition, because Section 163 of the Intellectual Property Code confers jurisdiction over particular provisions in the law on trademarks on regular courts exclusively. According to the said provision:

Section 163. Jurisdiction of Court.—All actions under Sections 150, 155, 164, and 166 to 169 shall be brought before the proper courts with appropriate jurisdiction under existing laws.

The provisions referred to in Section 163 are: Section 150 on License Contracts; Section 155 on Remedies on Infringement; Section 164 on Notice of Filing Suit Given to the Director; Section 166 on Goods Bearing Infringing Marks or Trade Names; Section 167 on Collective Marks; Section 168 on Unfair Competition, Rights, Regulation and Remedies; and Section 169 on False Designations of Origin, False Description or Representation.

The Court disagrees with the Court of Appeals.

Section 10 of the Intellectual Property Code specifically identifies the functions of the Bureau of Legal Affairs, thus:

Section 10. The Bureau of Legal Affairs.—The Bureau of Legal Affairs shall have the following functions:

10.1 Hear and decide opposition to the application for registration of marks; cancellation of trademarks; subject to the provisions of Section 64, cancellation of patents and utility models, and industrial designs; and petitions for compulsory licensing of patents;

10.2 (a) Exercise original jurisdiction in administrative complaints for violations of laws involving intellectual property rights; Provided, That its jurisdiction is limited to complaints where the total damages claimed are not less than Two hundred thousand pesos (P200,000): Provided, futher, That availment of the provisional remedies may be granted in accordance with the Rules of Court. The Director of Legal Affairs shall have the power to hold and punish for contempt all those who disregard orders or writs issued in the course of the proceedings.

(b) After formal investigation, the Director for Legal Affairs may impose one (1) or more of the following administrative penalties:

(i) The issuance of a cease and desist order which shall specify the acts that the respondent shall cease and desist from and shall require him to submit a compliance report within a reasonable time which shall be fixed in the order;

(ii) The acceptance of a voluntary assurance of compliance or discontinuance as may be imposed. Such voluntary assurance may include one or more of the following:

(1) An assurance to comply with the provisions of the intellectual property law violated;

(2) An assurance to refrain from engaging in unlawful and unfair acts and practices subject of the formal investigation

(3) An assurance to recall, replace, repair, or refund the money value of defective goods distributed in commerce; and

(4) An assurance to reimburse the complainant the expenses and costs incurred in prosecuting the case in the Bureau of Legal Affairs.

The Director of Legal Affairs may also require the respondent to submit periodic compliance reports and file a bond to guarantee compliance of his undertaking.

(iii) The condemnation or seizure of products which are subject of the offense. The goods seized hereunder shall be disposed of in such manner as may be deemed appropriate by the Director of Legal Affairs, such as by sale, donation to distressed local governments or to charitable or relief institutions, exportation, recycling into other goods, or any combination thereof, under such guidelines as he may provide;

(iv) The forfeiture of paraphernalia and all real and personal properties which have been used in the commission of the offense;

(v) The imposition of administrative fines in such amount as deemed reasonable by the Director of Legal Affairs, which shall in no case be less than Five thousand pesos (P5,000) nor more than One hundred fifty thousand pesos (P150,000). In addition, an additional fine of not more than One thousand pesos (P1,000) shall be imposed for each day of continuing violation;

(vi) The cancellation of any permit, license, authority, or registration which may have been granted by the Office, or the suspension of the validity thereof for such period of time as the Director of Legal Affairs may deem reasonable which shall not exceed one (1) year;

(vii) The withholding of any permit, license, authority, or registration which is being secured by the respondent from the Office;

(viii) The assessment of damages;

(ix) Censure; and

(x) Other analogous penalties or sanctions.

10.3 The Director General may by Regulations establish the procedure to govern the implementation of this Section.⁴³ (Emphasis provided.)

Unquestionably, petitioner's complaint, which seeks the cancellation of the disputed mark in the name of respondent Sehvani, Incorporated, and damages for violation of petitioner's intellectual property rights, falls within the jurisdiction of the IPO Director of Legal Affairs.

The Intellectual Property Code also expressly recognizes the appellate jurisdiction of the IPO Director General over the decisions of the IPO Director of Legal Affairs, to wit:

Section 7. The Director General and Deputies Director General. 7.1 Functions.—The Director General shall exercise the following powers and functions:

x x x x

b) Exercise exclusive appellate jurisdiction over all decisions rendered by the Director of Legal Affairs, the Director of Patents, the Director of Trademarks, and the Director of Documentation, Information and Technology Transfer Bureau. The decisions of the Director General in the exercise of his appellate jurisdiction in respect of the decisions of the Director of Patents, and the Director of Trademarks shall be appealable to the Court of Appeals in accordance with the Rules of Court; and those in respect of the decisions of the Director of Documentation, Information and Technology Transfer Bureau shall be appealable to the Secretary of Trade and Industry;

The Court of Appeals erroneously reasoned that Section 10(a) of the Intellectual Property Code, conferring upon the BLA-IPO jurisdiction over administrative complaints for violations of intellectual property rights, is a general provision, over which the specific provision of Section 163 of the same Code, found under Part III thereof particularly governing trademarks, service marks, and tradenames, must prevail. Proceeding therefrom, the Court of Appeals incorrectly concluded that all actions involving trademarks, including charges of unfair competition, are under the exclusive jurisdiction of civil courts.

Such interpretation is not supported by the provisions of the Intellectual Property Code. While Section 163 thereof vests in civil courts jurisdiction over cases of unfair competition, nothing in the said section states that the regular courts have sole jurisdiction over unfair competition cases, to the exclusion of administrative bodies. On the contrary, Sections 160 and 170, which

are also found under Part III of the Intellectual Property Code, recognize the concurrent jurisdiction of civil courts and the IPO over unfair competition cases. These two provisions read:

Section 160. Right of Foreign Corporation to Sue in Trademark or Service Mark Enforcement Action.—Any foreign national or juridical person who meets the requirements of Section 3 of this Act and does not engage in business in the Philippines may bring a civil or administrative action hereunder for opposition, cancellation, infringement, unfair competition, or false designation of origin and false description, whether or not it is licensed to do business in the Philippines under existing laws.

x x x x

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) to Two hundred thousand pesos (P200,000), 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.

Based on the foregoing discussion, the IPO Director of Legal Affairs had jurisdiction to decide the petitioner's administrative case against respondents and the IPO Director General had exclusive jurisdiction over the appeal of the judgment of the IPO Director of Legal Affairs.

Unfair Competition

The Court will no longer touch on the issue of the validity or propriety of the 22 December 2003 Decision of the IPO Director of Legal Affairs which: (1) directed the cancellation of the certificate of registration of respondent Sehwan, Incorporated for the mark "IN-N-OUT" and (2) ordered respondents to permanently cease and desist from using the disputed mark on its goods and business. Such an issue has already been settled by this Court in its final and executory Decision dated 15 October 2007 in G.R. No. 171053, Sehwan, Incorporated v. In-N-Out Burger,⁴⁴ ultimately affirming the foregoing judgment of the IPO Director of Legal Affairs. That petitioner has the superior right to own and use the "IN-N-OUT" trademarks vis-à-vis respondents is a finding which this Court may no longer disturb under the doctrine of conclusiveness of judgment. In conclusiveness of judgment, any right, fact, or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which judgment is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies whether or not the claims, demands, purposes, or subject matters of the two actions are the same.⁴⁵

Thus, the only remaining issue for this Court to resolve is whether the IPO Director General correctly found respondents guilty of unfair competition for which he awarded damages to petitioner.

The essential elements of an action for unfair competition are (1) confusing similarity in the general appearance of the goods and (2) intent to deceive the public and defraud a competitor. The confusing similarity may or may not result from similarity in the marks, but may result from other external factors in the packaging or presentation of the goods. The intent to deceive and defraud may be inferred from the similarity of the appearance of the goods as offered for sale to the public. Actual fraudulent intent need not be shown.⁴⁶

In his Decision dated 23 December 2005, the IPO Director General ably explains the basis for his finding of the existence of unfair competition in this case, viz:

The evidence on record shows that the [herein respondents] were not using their registered trademark but that of the [petitioner]. [Respondent] SEHWANI, INC. was issued a Certificate of Registration for IN N OUT (with the Inside of the Letter "O" Formed like a Star) for restaurant business in 1993. The restaurant opened only in 2000 but under the name IN-N-OUT BURGER.

Apparently, the [respondents] started constructing the restaurant only after the [petitioner] demanded that the latter desist from claiming ownership of the mark IN-N-OUT and voluntarily cancel their trademark registration. Moreover, [respondents] are also using [petitioner's] registered mark Double-Double for use on hamburger products. In fact, the burger wrappers and the French fries receptacles the [respondents] are using do not bear the mark registered by the [respondent], but the [petitioner's] IN-N-OUT Burger's name and trademark IN-N-OUT with Arrow design.

There is no evidence that the [respondents] were authorized by the [petitioner] to use the latter's marks in the business. [Respondents'] explanation that they are not using their own registered trademark due to the difficulty in printing the "star" does not justify the unauthorized use of the [petitioner's] trademark instead.

Further, [respondents] are giving their products the general appearance that would likely influence purchasers to believe that these products are those of the [petitioner]. The intention to deceive may be inferred from the similarity of the goods as packed and offered for sale, and, thus, action will lie to restrain such unfair competition. x x x.

x x x x

[Respondents'] use of IN-N-OUT BURGER in businesses signages reveals fraudulent intent to deceive purchasers. Exhibit "GG," which shows the business establishment of [respondents] illustrates the imitation of [petitioner's] corporate name IN-N-OUT and signage IN-N-OUT BURGER. Even the Director noticed it and held:

"We also note that In-N-Out Burger is likewise, [petitioner's] corporate name. It has used the "IN-N-OUT" Burger name in its restaurant business in Baldwin Park, California in the United States of America since 1948. Thus it has the exclusive right to use the tradenames "In-N-Out" Burger in the Philippines and the respondents' are unlawfully using and appropriating the same."

The Office cannot give credence to the [respondent's] claim of good faith and that they have openly and continuously used the subject mark since 1982 and is (sic) in the process of expanding its business. They contend that assuming that there is value in the foreign registrations presented as evidence by the [petitioner], the purported exclusive right to the use of the subject mark based on such foreign registrations is not essential to a right of action for unfair competition. [Respondents] also claim that actual or probable deception and confusion on the part of customers by reason of respondents' practices must always appear, and in the present case, the BLA has found none. This Office finds the arguments untenable.

In contrast, the [respondents] have the burden of evidence to prove that they do not have fraudulent intent in using the mark IN-N-OUT. To prove their good faith, [respondents] could have easily offered evidence of use of their registered trademark, which they claimed to be using as early as 1982, but did not.

[Respondents] also failed to explain why they are using the marks of [petitioner] particularly DOUBLE DOUBLE, and the mark IN-N-OUT Burger and Arrow Design. Even in their listing of menus, [respondents] used [Appellants'] marks of DOUBLE DOUBLE and IN-N-OUT Burger and Arrow Design. In addition, in the wrappers and receptacles being used by the [respondents] which also contained the marks of the [petitioner], there is no notice in such wrappers and receptacles that the hamburger and French fries are products of the [respondents]. Furthermore, the receipts issued by the [respondents] even indicate "representing IN-N-OUT." These acts cannot be considered acts in good faith.⁴⁷

Administrative proceedings are governed by the "substantial evidence rule." A finding of guilt in an administrative case would have to be sustained for as long as it is supported by substantial evidence that the respondent has committed acts stated in the complaint or formal charge. As defined, substantial evidence is such relevant evidence as a reasonable mind may accept as

adequate to support a conclusion.⁴⁸ As recounted by the IPO Director General in his decision, there is more than enough substantial evidence to support his finding that respondents are guilty of unfair competition.

With such finding, the award of damages in favor of petitioner is but proper. This is in accordance with Section 168.4 of the Intellectual Property Code, which provides that the remedies under Sections 156, 157 and 161 for infringement shall apply *mutatis mutandis* to unfair competition. The remedies provided under Section 156 include the right to damages, to be computed in the following manner:

Section 156. Actions, and Damages and Injunction for Infringement.—156.1 The owner of a registered mark may recover damages from any person who infringes his rights, and the measure of the damages suffered shall be either the reasonable profit which the complaining party would have made, had the defendant not infringed his rights, or the profit which the defendant actually made out of the infringement, or in the event such measure of damages cannot be readily ascertained with reasonable certainty, then the court may award as damages a reasonable percentage based upon the amount of gross sales of the defendant or the value of the services in connection with which the mark or trade name was used in the infringement of the rights of the complaining party.

In the present case, the Court deems it just and fair that the IPO Director General computed the damages due to petitioner by applying the reasonable percentage of 30% to the respondents' gross sales, and then doubling the amount thereof on account of respondents' actual intent to mislead the public or defraud the petitioner,⁴⁹ thus, arriving at the amount of actual damages of P212,574.28.

Taking into account the deliberate intent of respondents to engage in unfair competition, it is only proper that petitioner be awarded exemplary damages. Article 2229 of the Civil Code provides that such damages may be imposed by way of example or correction for the public good, such as the enhancement of the protection accorded to intellectual property and the prevention of similar acts of unfair competition. However, exemplary damages are not meant to enrich one party or to impoverish another, but to serve as a deterrent against or as a negative incentive to curb socially deleterious action.⁵⁰ While there is no hard and fast rule in determining the fair amount of exemplary damages, the award of exemplary damages should be commensurate with the actual loss or injury suffered.⁵¹ Thus, exemplary damages of P500,000.00 should be reduced to P250,000.00 which more closely approximates the actual damages awarded.

In accordance with Article 2208(1) of the Civil Code, attorney's fees may likewise be awarded to petitioner since exemplary damages are awarded to it. Petitioner was compelled to protect its rights over the disputed mark. The amount of P500,000.00 is more than reasonable, given the fact that the case has dragged on for more than seven years, despite the respondent's failure to present countervailing evidence. Considering moreover the reputation of petitioner's counsel, the actual attorney's fees paid by petitioner would far exceed the amount that was awarded to it.⁵²

IN VIEW OF THE FOREGOING, the instant Petition is GRANTED. The assailed Decision of the Court of Appeals in CA-G.R. SP No. 92785, promulgated on 18 July 2006, is REVERSED. The Decision of the IPO Director General, dated 23 December 2005, is hereby REINSTATED IN PART, with the modification that the amount of exemplary damages awarded be reduced to P250,000.00.

SO ORDERED.

MINITA V. CHICO-NAZARIO
Associate Justice

WE CONCUR:

CONSUELO YNARES-SANTIAGO
Associate Justice
Chairperson

MA. ALICIA AUSTRIA-MARTINEZ
Associate Justice

ANTONIO EDUARDO B. NACHURA
Associate Justice

RUBEN T. REYES
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

CONSUELO YNARES-SANTIAGO
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

REYNATO S. PUNO
Chief Justice

FOOTNOTES:

¹ Penned by Associate Justice Magdangal M. de Leon with Associate Justices Godardo A. Jacinto and Marina L. Buzon, concurring. Rollo, pp. 51-74.

² Penned by IPO Director General Adrian S. Cristobal, Jr. Rollo, pp. 116-131.

³ Rollo, p. 139.

⁴ Id. at 166.

⁵ Id. at 144-145.

⁶ Id. at 140-144.

⁷ Id. at 148-158.

⁸ Id. at 53.

⁹ Id. at 15.

¹⁰ Id. at 19-20.

¹¹ Id. at 430.

¹² Id. at 166-174.

¹³ Id. at 178-195.

¹⁴ Id. at 195.

¹⁵ Id. at 697-704

¹⁶ Id. at 705-722.

¹⁷ Id. at 619.

¹⁸ Id. at 727-731.

¹⁹ Id. at 619.

²⁰ *Sehwani, Incorporated v. In-N-Out Burger, Inc.*, 536 SCRA 225.

²¹ Rollo, pp. 120-130.

²² Id. at 130-131.

²³ Id. at 75-108.

²⁴ Id. at 106-107.

²⁵ Id. at 51-73.

²⁶ Id. at 73.

²⁷ Id. at 363-364.

²⁸ Id. at 981.

²⁹ *Sehwani, Incorporated v. In-N-Out Burger, Inc.*, supra note 20.

³⁰ This Court notes that Section 8202 of the Government Code of the State of California provides that:

8202(a) When executing a jurat, a notary shall administer an oath or affirmation to the affiant and shall determine, from satisfactory evidence as described in Section 1185 of the Civil Code, that the affiant is the person executing the document. The affiant shall sign the document in the presence of the notary.

(b) To any affidavit subscribed and sworn to before a notary, these shall be attached a jurat in the following form:

State of California

County of _____

Subscribed and sworn to (or affirmed) before me on this ____ day of _____, 20__, by _____, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Seal _____

Signature _____

³¹ G.R. No. 164948, 27 June 2006, 493 SCRA 415.

³² Rule 8, Section 2 and Rule 3, Section 11 of the 2004 Rules on Notarial Practice state that:

SEC. 2. *Contents of the Concluding Part of the Notarial Certificate.* - The notarial certificate shall include the following:

- (a) the name of the notary public as exactly indicated in the commission;
- (b) the serial number of the commission of the notary public;
- (c) the words "Notary Public" and the province or city where the notary public is commissioned, the expiration date of the commission, the office address of the notary public; and
- (d) the roll of attorney's number, the professional tax receipt number and the place and date of issuance thereof, and the IBP membership number.

SEC. 11. *Jurisdiction and Term.* - A person commissioned as notary public may perform notarial acts in any place within the territorial jurisdiction of the commissioning court for a period of two (2) years commencing the first day of January of the year in which the commissioning is made, unless earlier revoked or the notary public has resigned under these Rules and the Rules of Court.

³³ See Azuela v. Court of Appeals, G.R. No. 122880, 12 April 2006, 487 SCRA 119, 143.

³⁴ Agpalo, *Legal Forms* (2006), pp. 71-72.

³⁵ LDP Marketing, Inc v. Monter, G.R. No. 159653, 25 January 2006, 480 SCRA 137, 141.

³⁶ Pajuyo v. Court of Appeals, G.R. No. 146364, 3 June 2004, 430 SCRA 492, 509.

³⁷ Torres v. Specialized Packaging Development Corporation, G.R. No. 149634, 6 July 2004, 433 SCRA 455, 463-464.

³⁸ MSF Tire and Rubber, Inc. v. Court of Appeals, 370 Phil. 824, 832 (1999).

³⁹ La Campana Development Corporation v. See, G.R. No. 149195, 26 June 2006, 492 SCRA 584, 588-589.

⁴⁰ Sehwani, Incorporated v. In-N-Out Burger, Inc., supra note 20 at 232-233.

⁴¹ Rollo, p. 83.

⁴² See Ateneo de Naga University v. Manalo, G.R. No. 160455, 9 May 2005, 458 SCRA 325, 336-337.

⁴³ Aguilar, *THE INTELLECTUAL PROPERTY CODE* (1st ed., 2004), pp. 7-9.

⁴⁴ Supra note 20.

⁴⁵ Oropeza Marketing Corporation v. Allied Banking Corporation, 441 Phil. 551, 564 (2002).

⁴⁶ McDonald's Corporation v. L.C. Big Mak Burger, Inc., G.R. No. 143993, 18 August 2004, 437 SCRA 10, 37.

⁴⁷ Rollo, pp. 121-124.

⁴⁸ Office of the Ombudsman v. Santos, G.R. No. 166116, 31 March 2006, 486 SCRA 463, 470.

⁴⁹ Section 156.3 of the Intellectual Property Code states that:

156.3 In cases where actual intent to mislead the public or defraud the complainant is shown, in the discretion of the court, the damages may be doubled.

⁵⁰ Lamis v. Ong, G.R. No. 148923, 11 August 2005, 466 SCRA 510, 519-520 and Cebu Country Club, Inc. v. Elizagaque, G.R. No. 160273, 18 January 2008, 542 SCRA 65, 75-76.

⁵¹ Del Rosario v. Court of Appeals, 334 Phil. 812, 827-829 (1997).

⁵² Pilipinas Shell Petroleum Corporation v. John Bordman Ltd. of Iloilo, Inc., G.R. No. 159831, 14 October 2005, 473 SCRA 151, 175.