

KING SI BIAK  
Opposer,

- versus -

ANNIE S. ALIPIO,  
Respondent-Applicant.

x-----x

IPC NO. 14-2009-00213  
Case Filed on: 24 August 2009

Opposition to:  
App. Serial No. 4-2008-014892  
Date Filed: 10 December 2008  
TM: " PANCITERIA LIDO"

Decision No. 2010-74

## DECISION

KING SI BIAK ("Opposer"), a Filipino citizen with address at 593 T. Alonzo St., Binondo, Manila, filed an opposition to Trademark Application Serial No. 4-2008014892. <sup>1</sup> The application, filed by ANNIE S. ALIPIO ("Respondent-Applicant"), with 3rd address at c/o Atty. Marilyn S. Ngo, floor JAKA 6870 Bldg., Ayala Avenue, Makati City, covers the mark "PANCITERIA LIDO" for use on "restaurant" under Class 43 of the International Classification of Goods. <sup>2</sup>

The Opposer alleges the following:

"3. The Opposer is one of the partners of ENG SON CO., a partnership duly organized and existing under the laws of the Philippines with business address at 593 T. Alonzo St., Binondo, Manila, owning 50% share in the said partnership. Respondent-Applicant Annie S. Alipio is the other partner of Eng Son Co. owning the other 50% share in the partnership. xxx

"4. Respondent-Applicant has no right to register 'Panciteria Lido' with this Honorable Office under her name alone for the said mark, 'Panciteria Lido', is owned by Eng Son Co. As such, any registration with the Intellectual Property Office should be in the name of eng Son Co.

"5. To show proof that Eng Son Co. is the owner of the mark 'Panciteria Lido', attached herewith xxx is a copy of the letter-complaint of respondent-applicant with the Department of Trade and Industry dated May 20, 2009 specifically admitting that Panciteria Lido was formerly operated by Eng Son Co. and xxx a copy of the demand letter of respondent-applicant Alipio's counsel to Mr. Michael Roque dated April 27, 2009 prohibiting him to use the name 'Salido Restaurant' in the guise of representing Eng Son Co. as the owner of the mark 'Panciteria Lido'. The pertinent portion thereof is herein quoted as follows:

x x x

"6. From the above statements, respondent-applicant herself admitted that Eng Son Co. is the owner and user of Panciteria Lido.

"7. It is not true that steps had been taken towards the dissolution of Eng Son Co. The said partnership is still in existence and has not been dissolved.

"8. The registration of the trademark 'Panciteria Lido' with this Honorable Office was without the opposer's knowledge or consent. There was no partnership resolution whatsoever authorizing respondent-applicant to use the same, nor was the right to continue the business in her own name or in partnership with third persons was given or sold to her. This will clearly show respondent-applicant's bad faith.

---

1 The application was published in the Intellectual Property E-Gazette on 22 June 2009.

2 The Nice Classification is a classification of goods and services for the purpose of registering trademarks and servicemarks based on a multilateral treaty administered by the World Intellectual Property Organization. This treaty is called the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of Registration of Marks concluded in 1957.

“9. No other conclusion can be derived from the act of respondent-applicant in registering the mark ‘Panciteria Lido’ in her name alone with this Honorable Office but to take away from oppose the business which he himself managed and owned/part-owned for many years before oppose and respondent-applicant became partners.

“10. As the current general manager of eng Son Co., it is respondent-applicant’s duty to protect the business Panciteria Lido and not steal the business and appropriate it to herself or together with other people.

“11. Respondent-Applicant entered into partnership with third persons and registered the same with the SEC as Panciteria Lido Chinese Cuisine Co., and has unlawfully used the trademark ‘Panciteria Lido’ and maintained franchise agreements. xxx

“12. These acts of respondent-applicant are very unethical and illegal. She’s appropriating the goodwill created by Lido/ Panciteria Lido Restaurant herself.

“13. The founders of Panciteria Lido are Mr. Liong Hay and Aking Sok. On December 01, 1978, opposer together with his then partners, namely: Frankie Ang, Stanley Tan and Benjamin So, bought the business and continued to operate the business located at 593 T. Alonzo St., Binondo, Manila. ‘Lido’ is a place in Paris.

“14. In 1980, all other partners sold their shares to the opposer. Herein opposer became the sole owner of Lido Restaurant until 1994 when opposer again entered into partnership with others. It was only sometime 1997 when herein opposer and respondent-applicant Alipio became partners in Eng Son Co.

“15. Herein opposer was among those who developed the concept Lido/ Panciteria Lido. Some of the secret recipes were even owned by herein opposer who is also known as Mr. Lido.

“16. The registration of ‘Panciteria Lido’ in the name of respondent-applicant alone will cause great and irreparable damage and injury to the opposer.

“17. With the ownership of Eng Son Co. of the trademark ‘Lido’ having been sufficiently established as respondent-applicant herself admits the same, she has no authority to register the said trademark in any name other than that of Eng Son Co. as the applicant.”

The Opposer’s evidence consists of the following:

1. Exhibit “A” -Certified true copy of the Amended Articles of Partnership of ENG SON CO.;
2. Exhibit “B” -Letter, dated 20 May 2009, of Annie Silverstre Alipio to the Department of Trade and Industry ;
3. Exhibit “C” -Letter, dated 27 April 2009, of Fornier & Fornier Law Firm to Sa-Lido Restaurant; and
4. Exhibit “D” -Certified true copy of Articles of Partnership of Panciteria Lido Chinese Cuisine Co.

This Bureau issued on 09 September 2009 a Notice to Answer and served a copy thereof to the Respondent-Applicant’s counsel on 16 September 2009. On 16 November 2009, the Respondent-Applicant filed an Answer alleging, among others, the following:

- “1. The Registration of the Panciteria Lido trademark in the name of Eng Son Co. partnership would be an exercise in futility.

“1. Art. 1830 of the Civil Code provides that the dissolution of a partnership may be caused by the express will of any partner at any time, even contrary to any agreement between the partners. Notwithstanding the insistence of the Oppositor that the Eng Son Co. partnership still subsists, for all intents and purposes, the Eng Son Co. partnership is defunct and exists only as a phantom registered with the Securities and Exchange Commission (SEC). Due to the circumstances not directly related to the Eng Son Co. partnership, an irreparable rift has been formed between the Oppositor and the Respondent-Applicant, which precludes the possibility of any further action for business to be carried out by the former Eng Son Co. partnership. The Respondent-Applicant has expressly disavowed the carrying on of the Eng Son Co. partnership, and has taken steps to pursue the Panciteria Lido business separately from the Oppositor. As such, by operation of the provisions of the Civil Code, which supersede any formal registrations with the SEC, the Respondent-Applicant now operates the Panciteria Lido Enterprise on her own, and not under the auspices of the Eng Son Co. partnership.

“2. Even assuming that the Eng Son Co. partnership existed as a juridical entity, in spite of the express provisions of law allowing dissolution at the will of any of the partners, any application for the Panciteria Lido trademark by the Respondent-Applicant in the name of the said partnership would be a complete waste of time. The Panciteria Lido enterprise is now being wholly managed and supervised by the Respondent-Applicant, with no participation or assistance whatsoever from the Oppositor. The former partnership, if it exists at all, will certainly not be able to continue as such and has no business prospects. Thus, no beneficial purpose would be served by the suggestion of the Oppositor.

“3. As part of the tireless efforts to maintain the integrity and the survival of the Panciteria Lido enterprise, the Respondent-Applicant swiftly and decisively sought the registration of the Panciteria Lido trademark. This trademark, conceived and designed under the supervision and guidance of the Respondent-Applicant herself, was an integral part of her re-launch of the old Lido restaurant into a trendy but classic Chinese cafe now known as Panciteria Lido. She filed said Application with the Intellectual Property Office (IPO) in December of 2008, long before the Oppositor or any other party had even considered the official registration of the same, in recognition of its value and goodwill. As such, her Application should be given primary consideration above any other attempts to register the same.

“4. Contrary to the interpretation of the Oppositor of the documents that somehow found their way into the Oppositor’s possession, the Respondent-Applicant does not admit the ownership of Eng Son Co. of the Panciteria Lido trademark. She refers to Eng Son Co. frequently in the past tense, given her understanding that the Eng Son Co. partnership is defunct and impotent. She only mentions her position with Eng Son Co., as General Manager of said partnership, to reinforce her stand that she was the only logical option to carry on the Panciteria Lido enterprise. Xxx

“II. The Oppositor has performed acts that are inimical to the Panciteria Lido trademark and continue to threaten its value and goodwill, and abandoned the Panciteria Lido mark.

“5. Independently of any disagreements between the Respondent-Applicant and the Oppositor, the Oppositor has performed certain acts that have been prejudicial to the Panciteria Lido enterprise and its growth as a business. The original Panciteria Lido flagship has restaurant in Sta. Cruz, Manila is no more, having been forcibly shut down and stripped of its equipment due to the activities of the Oppositor. This is directly due to the involvement of the Oppositor in the facts surrounding the

criminal case of People of the Philippines vs. King Si Biak and Wu :Lai Hsiu Ching, Crim. Case No. 06-241 to 06-270, the result of which the Panciteria Lido flagship restaurant became the subject of a writ of attachment, and its properties seized. xxx The other accused in the subject criminal case, Mrs. Wu Lai Hsiu Ching, the mother of Respondent-Applicant, was merely the hapless liaison between the Oppositor and the third party private complainants. She was a friend of the private complainants and introduced them to the Oppositor, little realizing that the Oppositor would swindle both her and her friends.

“6. Without the knowledge of Respondent-Applicant, the Oppositor plunged the former Eng Son Co. partnership into criminal liability, which almost completely scuttled the fledging enterprise. It was only through the efforts of the Respondent-Applicant, in deference to the enterprise existing franchisee at the time, that Panciteria Lido was prevented from completely ceasing operations and falling out of the public eye.

“7. Likewise, instead of attempting to re-build or resurrect the Panciteria Lido enterprise, it appears that the Oppositor is supporting the efforts of Mr. Michael Roque, in a feeble attempt to claim the site of the former flagship store. The new restaurant that has opened in this area, Sa-Lido Restaurant, is neither a continuation nor a logical extension of the Panciteria Lido business that the Oppositor has historically linked to himself and his predecessors. By apparently affiliating himself with a restaurant with a name that is confusingly similar to that of a Panciteria Lido and purports to offer the same menu items, the Oppositor is working against the goodwill and renown of the Panciteria Lido enterprise. This can only constitute abandonment of the Panciteria Lido business, if not outright betrayal of the enterprise and the trademark.

“8. As such, the Oppositor, in spite of having managed the Panciteria Lido enterprise prior to the entry of the same by the Respondent-Applicant, has proven himself incapable of adding to the value of the Panciteria Lido mark. Thus, it was only fitting that the RespondentApplicant should register the mark in her own name, and obtain protections granted by the IPO as she expands the business. To allow the Oppositor to benefit from the Panciteria Lido trademark after he had taken such steps against its goodwill and prestige would be tremendous disservice to the integrity of the mark and the legacy of excellent Chinese cuisine for which its stands.

“9. Moreover, the Oppositor has not shown even the slightest interest in continuing to proliferate or develop the business that the Panciteria Lido trademark represents, even as the Respondent-Applicant has been relentlessly working to do so. Clearly, the Oppositor has abandoned any claim to future use of the Panciteria Lido mark, and cannot frustrate its proliferation under the guidance of the Respondent-Applicant out of spite or due to unresolved differences.

“III. The Respondent-Applicant is in the best position to proliferate and improve the presence of the Panciteria Lido trademark.

“10. The original Panciteria Lido restaurant in Sta. Cruz, Manila evolved from the old Lido restaurant referred to by the Oppositor, has changed exponentially in form and methodology since the Respondent-Applicant assumed management of the same. It was through her creative initiative and culinary know-how that Panciteria Lido now has thriving potential as a widespread Chinese restaurant franchise, instead of remaining the single quaint restaurant that it had always been. It is enlightening that Panciteria Lido has been in the guidance of Oppositor since 1978, but it had not, until Respondent-Applicant entered the picture, expanded beyond being a single Chinese restaurant with no serious expansion prospects.

“11. Respondent-Applicant swiftly and efficiently transformed this once quaint, struggling Lido Restaurant in the cornerstone of a future Chinese restaurant chain now known as Panciteria Lido. The sworn statements of two employees of the franchise, who have been with the business long enough to see how the Respondent -Applicant’s personal efforts were all that stood between Panciteria Lido and oblivion, will attest to the success of the restaurant that can only be attributed to her. xxx It must be emphasized that, as these statements reveal, prior to the entry of the Respondent-Applicant into the business, the restaurant was on the verge of failure, due to the poor management skills displayed by the Oppositor.

“12. The Respondent-Applicant has now, of her own volition, dramatically expanded the Panciteria Lido enterprise, having signed franchise agreements with two franchisees for Panciteria Lido restaurants that utilize the unique food preparation systems, distinct flavor and quality of the food, and the refreshing appearance that were all designed and developed by the Respondent-Applicant. The Panciteria Lido mark will only continue to grow in popularity and public acclaim with Respondent-Applicant at the helm. The celebrated potential of the Panciteria Lido franchise has not escaped the watchful eye of the media, who have over the years featured and commented positively on the business enterprise, citing in particular the participation and personal contributions of the Respondent-Applicant. xxx It should be emphasized that though the accuracy of the background information of the restaurant may vary depending on the article, the value of the contribution of the Respondent-Applicant to the enterprise remains consistent.

“13. The Panciteria Lido enterprise continues to flourish today, with no effort or participation whatsoever from the Oppositor. It is now being run solely as the business of the Respondent-Applicant, and it is only through her that a Panciteria Lido franchise can be obtained. No other individual or entity in the country is presently engaged in the management and operation of the Panciteria Lido franchise as its franchisor and developer of designs and innovations that continue to provide it with critical acclaim.

“14. There is no doubt, then, that the Respondent-Applicant, as the loyal successor to the Panciteria Lido enterprise that she transformed into a franchise concept worthy of emulation, should be the one to carry on the Panciteria Lido mark, and to have the same registered solely in her name. It is only just and equitable that the person most capable of providing continuing value to the mark be allowed to register it and be afforded the protection of the law, rather than to allow a mark to fall into disuse.”

The Respondent-Applicant’s evidence consists of the following:

1. Exhibits “1” and “2” -Copies of the Complaint of Ding Jing Zhang and Writ of Attachment issued by the Municipal Trial Court of Taytay, Rizal;
2. Exhibit “3” -Affidavit of Avelino Mabini;
3. Exhibit “4” -Affidavit of Teresita Mahinay; and
4. Exhibits “5-A” to “5-R” -Copies of newspaper clippings about Panciteria Lido.

The Opposer filed a Reply on 01 December 2009 submitting additional evidence as follows:

1. Exhibit “E” -Sinumpaang Salaysay of Nestor Aleria;

2. Exhibit "F" -Sinumpaang Salaysay of Celeste A. Albar;
3. Exhibit "G" -Sinumpaang Salaysay of Mario Aberlos;
4. Exhibit "H" -Affidavit of Beth N. Medes;
5. Exhibit "I" -Printout of the electronic copy of The Manila Times article, dated 01 August 2008, entitled "Come for the Coffee, Stay for the food".
6. Exhibit "J" -Printout of the electronic copy of The Daily Tribune article, dated 05 April 2009, entitled "Panciteria Lido opens branch at SM Fairview"; and
7. Exhibit "K" -Joint Affidavit of Arthur King and Albert King.

On 19 April 2010, the preliminary conference was terminated. Accordingly, this Bureau issued Order No. 2010-519 requiring the parties to submit their respective position papers. The Opposer and the Respondent-Applicant filed their respective Position Papers on 24 May 2010.

Should the Respondent-Applicant be allowed to register the mark PANCITERIA LIDO in her favor?

It is emphasized that an opposition is basically a review of the trademark application in question, succinctly, whether the requirements for registration under the law are met. Anybody who believes he will be damaged by the registration of the mark may oppose the application, even if the opposer has not applied for the registration of the identical or confusingly similar mark in the Philippines. Sec. 134 of Rep. Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code") provides:

"Any person who believes that he would be damaged by the registration of a mark may, upon payment of the required fee and within thirty (30) days after the publication referred to in Subsection 133.2, file with the Office an opposition to the application. Such opposition shall be in writing and verified by the oppositor or by any person on his behalf who knows the facts, and shall specify the grounds on which it is based and include a statement of the facts relied upon. Such opposition shall be in writing and verified by the oppositor or by any person on his behalf who knows the facts, and shall specify the grounds on which it is based and include a statement of the facts relied upon. Copies of certificates of registration of marks registered in other countries or other supporting documents mentioned in the opposition shall be filed therewith, together with the translation in English, if not in the English language. For good cause shown and upon payment of the required surcharge, the time for filing an opposition may be extended by the Director of Legal Affairs, who shall notify the applicant of such extension. The Regulations shall fix the maximum period of time within which to file the opposition. (Sec. 8, R.A. No. 165a)" [Emphasis supplied.]

The Opposer anchors his opposition on the ground that the Respondent-Applicant cannot register the mark in her favor because the latter does not solely own the trademark PANCITERIA LIDO. The Opposer alleges that Eng Son Co., a partnership between the parties, is the true owner of the mark, such that he stands to lose and incur damage if the Respondent-Applicant is allowed to register the mark solely in her name. The Opposer, thus, has cause of action and legal standing to oppose the Respondent-Applicant's application.

In this regard, 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>3</sup>

The Philippines implemented the TRIPS Agreement when the IP Code took into force and effect on 01 January 1998. Art. 15 of TRIPS Agreement reads:

## Section 2: Trademarks

### Article 15

#### Protectable Subject Matter

1. Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including personal names, letters, numerals, figurative elements and combinations of colours as well as any combination of such signs, shall be eligible for registration as trademarks. Where signs are not inherently capable of distinguishing the relevant goods or services, Members may make registrability depend on distinctiveness acquired through use. Members may require, as a condition of registration, that signs be visually perceptible.
2. Paragraph 1 shall not be understood to prevent a Member from denying registration of a trademark on other grounds, provided that they do not derogate from the provisions of the Paris Convention (1967).
3. Members may make registrability depend on use. However, actual use of a trademark shall not be a condition for filing an application for registration. An application shall not be refused solely on the ground that intended use has not taken place before the expiry of a period of three years from the date of application.
4. The nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to registration of the trademark.
5. Members shall publish each trademark either before it is registered or promptly after it is registered and shall afford a reasonable opportunity for petitions to cancel the registration. In addition, Members may afford an opportunity for the registration of a trademark to be opposed.

Also , Art. 16 (1) of the TRIPS Agreement states:

### Article 16

#### Rights Conferred

1. The owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of Members making rights available on the basis of use.

---

<sup>3</sup> *Pribhdas J. Mirpuri v. Court of Appeals*, G.R.No. 114508, 19 November 1999, citing *Etepha v. Director of Patents*, 16 SCRA 495

Significantly, the IP Code adopted the definition of the mark under R.A. 166, to wit:

121.1. "Mark" means any visible sign capable of distinguishing the goods (trademark) or services (service mark) of an enterprise and shall include a stamped or marked container of goods; (Sec. 38, RA. No. 166a)

Corollary thereto, Sec. 122 of the IP Code states:

Sec. 122. How Marks are Acquired.-The rights in a mark shall be acquired through registration made validly in accordance with the provisions of this law. (Sec. 2-A, RA. No. 166a)

and which makes reference to Sec. 2-A of R.A. 166, as amended, the old Law on Trademarks:

Sec. 2-A. Ownership of trademarks, tradenames and service marks; how acquired. -Anyone who lawfully produces or deals in merchandise of any kind or who engages in any -lawful business, or who renders any lawful service in commerce, by actual use thereof in manufacture or trade, in business, and in the service rendered, may appropriate to his exclusive use a trade-mark, a trade-name, or a service-mark not so appropriated by another, to distinguish his merchandise, business or service from the merchandise, business or services of others. The ownership or possession of a trade-mark, trade-name, service-mark, heretofore or hereafter appropriated, as in this section provided, shall be recognized and protected in the same manner and to the same extent as are other property rights known to the law."

In *Shangri-La International Hotel Management, Ltd., et. al v. Developers Group of Companies, Inc.*<sup>4</sup> the Supreme Court defined the scope of Sec. 2-A of RA 166, thus:

x x x For, while Section 2 provides for what is registrable, Section 2-A, on the other hand, sets out how ownership is acquired. These are two distinct concepts.

Under Section 2, in order to register a trademark, one must be the owner thereof and must have actually used the mark in commerce in the Philippines for 2 months prior to the application for registration. Since 'ownership' of the trademark is required for registration, Section 2-A of the same law sets out to define how one goes about acquiring ownership thereof. Under Section 2-A, it is clear that actual use in commerce is also the test of ownership but the provision went further by saying that the mark must not have been so appropriated by another. Additionally, it is significant to note that Section 2-A does not require that the actual use of a trademark must be within the Philippines. Hence, under RA. No. 166, as amended, one may be an owner of a mark due to actual use thereof but not yet have the right to register such ownership here due to failure to use it within the Philippines for two months. (Underscoring supplied)

From this legal background it is clear that the right to register trademarks, trade names and service marks by any person, corporation, partnership or association domiciled in the Philippines or in any foreign country, is based on ownership, and the burden is upon the applicant to prove such ownership.<sup>5</sup>

In *Unno Commercial Enterprises) Inc. v. General Milling Corporation) et A.*,<sup>6</sup> the Supreme Court held that:

---

4 G. R. No. 159938, 31 March 2006.

5 *Marvex Commercial Co., Inc. v. Petra Hawpia*, G.R. No. L-19297, 22 December 1966 citing *Operators, Inc. vs. Director of Patents*

6 G.R. No. L-28554, 28 February 1993.



“The right to register trademark is based on ownership. When the applicant is not the owner of the trademark being applied for, he has no right to apply for the registration of the same. Under the Trademark Law only the owner of the trademark, trade name or service mark used to distinguish his goods, business or service from the goods, business or service of others is entitled to register the same.”

In this instance, the Opposer submitted evidence that the partnership Eng Son Co. has appropriated and used the mark “LIDO RESTAURANT” since 1997 when the Opposer and the Respondent-Applicant entered into a partnership agreement. The founders of the Panciteria Lido Restaurant were Mr. Liong Hay and Aking Sok. On 01 December 1978, the Opposer together with Frankie Ang, Stanley Tan and Benjamin So bought the same and continued to operate the business at 593 T. Alonzo St., Sta. Cruz, Manila. In 1980, the Opposer bought all the shares of the other partners in the business and became the sole owner of the Lido Restaurant until 1994 when he again entered into a partnership with other people culminating in 1997 when a partnership was forged between him and the Respondent-Applicant under Eng Son Co. wherein the latter was designated as manager of the Lido Restaurant<sup>7</sup>.

Eng Son Co.’s ownership of the LIDO RESTAURANT is, therefore, undisputed. The Respondent-Applicant herself admitted Eng Son Co. ‘s ownership of the Lido Restaurant in her Answer, which is corroborated by her demand letter, dated 27 April 2009, against a certain SA-LIDO Restaurant, to wit:

“We represent the interests of Ms. Annie Silvestre Alipio, General Manager of the Eng Son Co. Partnership, General Manager of the Panciteria Lido Chinese Cuisine Co. Partnership, and owner and developer of the Panciteria Lido Restaurant concept and enterprise.

x x x

x x x Panciteria Lido, its current image, its unique recipes and reputation for excellent Chinese dishes, and the various other facets of its enterprise, are owned and managed by Ms. Alipio either as a General Manager of the Eng Son Co. Partnership and the Panciteria Lido Chinese Cuisine Co. or in her own personal capacity.”

Also, in her letter, dated 20 May 2009, to the Department of Trade and Industry, the Respondent-Applicant clearly stated therein that: “*The Panciteria Lido enterprise was formerly operated through a partnership called Eng Son Co., of which I was the General Manager and 50% owner.*” Considering, therefore, that the ownership of the business Panciteria Lido belongs to the Eng Son Co., the right to register the trademark “Panciteria Lido” is vested to the partnership.

The Respondent-Applicant’s contention that because of the dissolution of the partnership the ownership of the trademark by the partnership also ceased, is untenable. Articles 1828 and 1829 of the Civil Code provides:

Art. 1829. The dissolution of a partnership is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on as distinguished from the winding up of the business.

Art. 1829. On dissolution the partnership is not terminated, but continues until the winding up of partnership affairs is completed.

Thus, even if the Eng Son Co. partnership has already been dissolved at the behest or express will of the Respondent-Applicant, and the partners cease to carry on the business together, the partnership is not terminated up until the partnership affairs has been wound up.

---

<sup>7</sup> See Verified Notice of Opposition, page 5.

Absent therefore, of any contrary proof or evidence} the trademark Panciteria Lido, an intangible asset or property of the partnership, remains to be owned by the partnership. Consequently, since it is the partnership who owns the trademark, the Respondent-Applicant cannot appropriate and register the same solely in her own name. Assuming in arguendo that the Respondent-Applicant is in the best position to proliferate and improve the presence of the Panciteria Lido trademark, it still does not give her the right to register the same as she is not the owner of the mark.

WHEREFORE, premises considered the instant opposition to Trademark Application Serial No. 4-2008-014892 is hereby SUSTAINED. Let the filewrapper of Trademark Application Serial No. 4-2008-014892 be returned together with a copy of this DECISION to the Bureau of Trademarks (BOT) for appropriate action.

SO ORDERED.

Makati City, 19 November 2010.

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