

KAMLA INC.,

Appellant,

-versus-

BUREAU OF TRADEMARKS,
ARNOLD RILLORAZA &
NORMA BALM-AS,

Appellees.

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Appeal No. 04-2011-0009

Application No. 4-2010-007605

Date Filed: 13 July 2010

Trademark: Vogue Look

ORDER

On 07 April 2011, this Office received a "MEMORANDUM OF APPEAL" from Kamla Inc. ("Appellant") seeking the reversal of the official action issued by Arnold F. Rilloraza and Norma B. Balmas, Examiners in the Bureau of Trademarks of the Intellectual Property Office of the Philippines ("Examiners"), finding the Appellant's mark "Vogue Look" as resembling the registered mark "Vogue" under Cert. of Reg. No. 42009000985.

Section 5 (b) of die Uniform Rules on Appeals, as amended, provides that:

Section 5. Action on the Appeal Memorandum.- x x x

b) The appeal shall be dismissed outright on any of the following grounds:

1. the appeal is filed out of time;
2. the subject of the appeal is an interlocutory order, or is not a decision or final order;
3. the appeal fee and other applicable fees are not paid within the reglementary period.

In this case, the finding of the Examiners that Vogue Look resembles the registered mark Vogue is not a decision or final order. A final order has been defined as one which disposes of the subject matter in its entirety or terminate a particular proceeding or action and leaves nothing else to be done but enforce by execution what has been determined b), the court. On the other hand, an interlocutory order is one which does not dispose of a case completely, but leaves something more to be adjudicated upon.¹

The assailed finding of the Examiners is akin to an interlocutory order, -which does not dispose of the case completely but leaves something more to be done. Sections 133.3 and 133.5 of the Intellectual Property Code of the Philippines state that:

133.3. If after the examination, the applicant is not entitled to registration for any reason, the Office shall advise the applicant thereof and the reasons therefore. The applicant shall have a period of four (4) months in which to reply or amend his application, which shall then be re-examined. The Regulations shall determine the procedure for the re-examination or revival of an application as well as the appeal to the Director of Trademarks from any final action by the Examiner.

133.5. The final decision of refusal of the Director of Trademarks shall be appealable to the Director General in accordance the procedure fixed by the Regulations.

Accordingly, the remedy of the Appellant is to continue with the proceedings in the Bureau of Trademarks. A final rejection by an Examiner of a trademark application can be appealed to die Director of the Bureau of Trademarks. It is the decision of the Director of the Bureau of Trademarks which may be appealed to the Office of the Director General,

¹ See *Bañares II et al, vs. Balising et al, G. R No. 132624, 13 March 2000.*

Moreover, this Office also noted that the Appellant did not pay the appeal fee and other applicable fees as required by the Uniform Rules on Appeal, as amended.

Wherefore, the instant appeal is hereby DISMISSED for the reasons discussed above.

SO ORDERED.

August 09, 2011, Makati City.

RICARDO R. BLANCAFLOR
Director General