



GLORIAMARIS SHARK'S
FIN RESTAURANT, INC.,
Petitioner,

-versus-

PACIFICO Q. LIM,
Respondent-Registrant.

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IPC NO. 14-2009-00282
Case Filed: 04 December 2009
Cancellation of:
Reg. No. 4-2004-009149
Date Issued: 28 August 2005
Trademark: "GLORIA MARIS
WOK SHOP AND DESIGN"

Decision No. 2012 - 34

DECISION

GLORIAMARIS SHARK'S FIN RESTAURANT, INC. ("Petitioner")¹ filed on 04 December 2009 a petition to cancel Trademark Registration No. 4-2004-009149, which was issued to Pacifico Q. Lim ("Respondent-Registrant")² on 28 August 2005 covering the mark "GLORIA MARIS WOK SHOP AND DESIGN" for use various food products and "restaurant services/take out counters" under Classes 29, 30, 32 and 43 of the International Classification of Goods and Services.³ The Petitioner alleges the following:

x x x

"3. Sometime in the second half of 1993, a certain businessmen, specifically, Messrs. Pedro O. Manalo, Lorenzo Q. Dy, Pacifico Q. Lim, Dominador B. Menguito, with Atty. Edmundo L. Tan acting as a legal adviser, met several times and decided to invest and put up a company, petitioner herein, which would operate a fine-dining Chinese restaurant.

"4. As any meeting of such nature would go, among the very first topics discussed was the business name and/or trademark to be used by the company for its restaurant once in operation. The group agreed to use a trademark consisting of the words 'Gloria Maris,' with a device of a shark's fin enclosed in an eared circle on top. Below the words 'Gloria Maris' would be the words 'Shark's Fin Restaurant,' enclosed inside an enlarged oval configuration with a set of Chinese characters below the oval configuration.

A copy of the trademark (hereinafter, the 'Gloriamaris trademark' is attached and made an integral part hereof as Exhibit 'A'.

"5. Petitioner was registered with the Securities and Exchange Commission in 1994 by the following incorporators:

- a. Dominador B. Menguito
- b. Pedro O. Manalo
- c. Pacifico Q. Lim
- d. Lorenzo Q. Dy
- e. Edmundo L. Tan

¹ A domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at Gloria Maris Restaurant, beside Coconut Palace, CCP Complex, Pasay City.

² With address at No. 1091 Agham Street, Sta. Mesa, Manila.

³ The Nice Classification is a classification of goods and services for the purpose of registering trademark and service marks, based on a multilateral treaty administered by the World Intellectual Property Organization. The treaty is called the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks concluded in 1957.

A certified true copy of petitioner's Articles of Incorporation is attached and made integral part hereof as Exhibit 'B'.

"6. A graphic artist was hired to submit a sample drawing of the Gloria Maris trademark. Upon their approval of the Gloriamaris trademark submitted by the graphic artist, petitioner's Board of Directors entrusted its registration, in petitioner's behalf, with this Honorable Office to their fellow director and stockholder, respondent herein.

"7. From the time onwards (and most likely even before its registration) to the present, petitioner has been using the Gloriamaris trademark for its fine-dining Chinese restaurant. In the many years of petitioner's operation using the subject trademark, it has become associated with fine Chinese-food dining and has become inseparable from the fine reputation and goodwill petitioner's restaurant has acquired as one of the best, if not the best, Chinese restaurant in the country.

Photographs of this trademark as used by petitioner are attached and made integral part hereof as Exhibit 'C'.

"8. Petitioner's stockholders therefore had assumed that the trademark had been registered in the corporation's name. They, however, discovered that contrary to what they had thought, the trademark entrusted to respondent for registration was not registered in the name of petitioner as soon as it was entrusted to him upon the company's incorporation but was instead registered by respondent only recently in 2006 under his own name and after he left the company, in fraud and grave abuse of the trust reposed in him by petitioner. Respondent never told any of petitioner's stockholders, directors, or officers about what he did.

The Affidavit of Mr. Dominador B. Menguito attesting to petitioner's prior and continuous use of the trademark is attached and made integral part hereof as Exhibit 'D'.

"9. Recently, new restaurants using the trademark petitioner has been using all these years have sprung up in the Metropolis, and these competing restaurants turned out to be owned by respondent. Not surprisingly, many of petitioner's loyal clientele had actually been patronizing respondent's restaurants, thinking that respondent's restaurants were the same as petitioner's, until they found out, upon casual inquiry, that respondent's business was entirely different, and then realizing that there was indeed a perceptible difference in the food, those served in petitioner's restaurant being of a higher class.

"10. The present registration in this Honorable Office of the Gloriamaris trademark was registered by respondent only recently in preparation for a competing business, in fraud of petitioner, and taking advantage of the trust and confidence it had reposed in him as one of its incorporators, Board members, and stockholders.

"11. The registration is therefore deemed to have been fraudulently made, and therefore in trust for petitioner who is the real and beneficial owner of the Gloriamaris trademark. This trademark has been used by respondent to deceive the public into thinking that his new restaurant business is the same as that of petitioner's, by passing off his business and giving it the exact same appearance as that of petitioner's which has already established a goodwill in the many years it has been operating.

"12. Respondent's use of this trademark is made in bad faith as the petitioner is the true and lawful proprietor of the trademark. In the case of *Shangri-la International Hotel Management Ltd., et. al., versus Developers Group of Companies, Inc.* (G.R. No. 159938, 31 March 2006), the Supreme Court held that: x x x

"13. Respondent's use of petitioner's trademark damages the latter and diverts its profits. Respondent's registration of petitioner's trademark is a fraud prejudicial not only to petitioner but also to the public who are most likely to be deceived and misled as to the source of respondent's goods and services.

"14. Therefore, the registration of the subject trademark in respondent's name should be cancelled.

The Respondent-Applicant filed his Answer on 05 July 2010 and avers the following:

"1. The allegations in paragraph no. 1 of the petition for cancellation are admitted, considering that the respondent is a stockholder of the petitioner;

"2. The allegations in paragraph no. 2 are admitted, with the reservation that all notices, pleadings, orders, resolutions and papers relative to this case be served to the respondent through the undersigned;

"3. The allegations in paragraph no. 3 are denied.

"4. The allegations in paragraph no. 4 are denied. The respondent never met with Mr. Dominador Menguito ever, the truth of the matter being that it was Mrs. Jean Menguito who talked/communicated/transacted with the respondent. This matter shall further be discussed in the respondent's affirmative allegations.

The 2nd paragraph of item no. 4 of the petition, where it is implied that there was trademark drawn by the petitioner is denied, the truth of the matter is that the respondent hatched the idea, concept, and concocted the logo/representation of Gloriamaris Sharks Fin Restaurant.

"5. The allegations in paragraph no. 5 are admitted.

"6. The allegations in paragraph no. 6 are denied. Petitioner never hired a graphic artist for purposes of drawing up a trademark, and there was no such situation that would give rise to an approval by petitioner of a purported trademark. Neither did petitioner's board of directors entrust the registration of a purported approved trademark to the respondent. The allegations in this paragraph are fabrications, created out of desperation to continue using an intellectual property that belongs to the respondent. The truth of the matter shall be further stated in the affirmative allegations of the respondent.

"7. The allegations in paragraph no. 7 are denied for containing conclusions, and speculations. The truth of the matter being the respondent allowed petitioner corporation to use the intellectual property he created, considering that he is a stockholder of the petitioner and would thus be benefited by the flourishing of the restaurant business. This matter shall likewise be elucidated in the affirmative allegations of the respondent.

The 2nd paragraph of item no. 7 of the petition is denied, the signs contained in the pictures being a mere continuation of the use of respondent's intellectual property.

"8. The allegations in paragraph no. 8 are denied for containing assumptions bereft of any legal and factual basis, and further for making conclusions uncalled for. Contrary to the allegations in said paragraph, the respondent never left the company or sold off his shares therein. This matter shall be elucidated in the respondent's affirmative allegations.

The affidavit of Dominador Menguito is denied at the moment for being self-serving. Respondent reserves the right to cross-examine Dominador Menguito.

"9. The first sentence of paragraph 9 is denied, the truth of the matter being that the restaurants that opened, and using the trademark of Gloria Maris are not owned by the respondent, but by corporations. The second sentence of paragraph 9 is likewise denied for being a conclusion, and a statement that belittles other restaurants.

"10. The allegations in paragraph no. 10 are denied, the truth of the matter being that respondent registered the subject trademark in 2005 for the purpose of developing the same, and in order to protect his intellectual property. This matter shall be elucidated in the respondent's affirmative allegations.

"11. The allegations in paragraph no. 11 are denied. Respondent never committed fraud against anyone, as the subject trademark (in fact even the idea, concept and ambience of Gloriamaris) is his creation and concoction, and thus his intellectual property. The respondent never used, and is not using the subject trademark to deceive the public. He is merely exercising the rights he has over his intellectual property. The respondent has allowed petitioner to use his trademark with all good intention of having its business flourish. Whether or not the restaurant business of petitioner would have been as successful as it is today if not for the use of respondent's trademark, no one can definitely say. But the fact is, the subject trademark is the intellectual creation of the respondent that sprung up from his idea.

"12. The allegations in paragraph no. 12 are denied. Respondent's use of the subject trademark is not made in bad faith, but is a mere exercise of his right as owner and creator thereof. The case of Shangri-la International Hotel Management Ltd., et al, is not applicable in this case, as the respondent herein created, concocted and registered the subject trademark, and moreover, actually used and continuously used/uses the subject trademark.

"13. The allegations in paragraph no. 13 are denied for being conclusions and speculations bereft of any legal and factual basis, the truth of the matter being that petitioner was able to use the intellectual property of the respondent by mere tolerance, and also for the underlying reason that should the petitioner flourish, the respondent would benefit as a stockholder.

"14. The allegation in paragraph no. 14 is denied, there being no basis in fact and in law to cancel the registration of respondent over the subject trademark.

x x x

"15. The respondent is a businessman. He is engaged in the business of construction, as well as in the restaurant business.

"16. As early as 1993, the respondent has already created and hatched an idea of opening a modern fine-dining Chinese restaurant business.

"17. At that time, the respondent already has a complete idea of a fine-dining chinese restaurant, from the name of the restaurant, to the theme and/or ambience of the restaurant, and the logo to be used by the restaurant.

The name of the restaurant concocted and planned by respondent was 'Gloria Maris Shark's Fin Restaurant'. The theme/ambience he wanted to create in his planned restaurant is a fine-dining style restaurant, with authentic chinese feel. The respondent already thought of a logo to use together with the name of the restaurant he planned – the logo shall be a fin of a shark, enclosed in a plate of irregular shape.

"18. With his idea and concept of a fine-dining restaurant, the respondent sought out the owner of the restaurant operating in the premises of the Cultural Center of the Philippines, which restaurant was then not doing good, and was about to go out of business.

Respondent was informed that the owner thereof was Ms. Jean Menguito.

"19. Respondent presented to Ms. Jean Menguito his idea and concept of a fine-dining Chinese restaurant called Gloria Maris Shark's Fin Restaurant. Ms. Menguito was convinced, and became interested, and thus agreed to the opening up of a chinese restaurant called Gloria Maris Shark's Fin Restaurant in the place of her western style restaurant. Ms. Jean Menguito decided to close up his western style restaurant as it was not doing good, and was about to fold anyway.

"20. From this agreement, Ms. Jean Menguito allowed the respondent to do renovation and construction works on the existing restaurant in order to implement his business idea of a fine-dining chinese restaurant. Never did respondent meet or talk to Mr. Dominador Menguito; it was his wife who was communicating with the respondent.

"21. At that time, and in the meeting with Ms. Jean Menguito, there was no discussion with respect to the registration of the name, logo, or trademark of 'Gloria Maris Shark's Fin Restaurant'. This is precisely because Ms. Jean Menguito, and the other investors knew very well that the idea and concept of Gloria Maris Shark's Fin Restaurant was respondent's creation, and that he hatched the concept and plan of such business, including the concoction of the logo/trademark of Gloriamaris Shark's Fin Restaurant.

"22. As the respondent was the creator of the idea and concept of the business plan, as well as the one who concocted the logo/trademark of Gloriamaris Shark's Fin Restaurant, and considering further that he is an Engineer and was in the business of construction, he took care of the construction and renovation of the old restaurant of Ms. Jean Menguito.

In the process of constructing and renovating the restaurant, the respondent engaged the services of Mr. Joey Rodriguez, Jr. to take care of the design and drawings that would implement and concretize the idea and concept created/concocted by the respondent.

"23. Mr. Joey Rodriguez worked with the respondent as to every detail of the restaurant. They would be the persons who would discuss, give inputs on the design and appearance of the restaurant, in accordance with the idea and concept of the respondent. Copy of the affidavit of Mr. Joey Rodriguez is hereto attached as Annex '1'.


"24. After the respondent agreed to the designs and drawings of the interior of the restaurant, the respondent proceeded to have his idea of the logo of Gloriamaris Shark's Fin Restaurant externalized and concretized. For this purpose, the respondent asked Mr. Joey Rodriguez to draw and interpret his idea and concept of the logo, that is, a fin of a shark in a plate with irregular shape.

"25. Again, the respondent and Joey Rodriguez worked on this matter. Mr. Joey Rodriguez made suggestions on how to aesthetically improve the idea and concept of the respondent with respect to the logo. When the respondent was satisfied, he approved the drawing and final implementation of his idea and concept of the logo of Gloria Maris Shark's Fin Restaurant. Copy of the drawings of the logo of Gloria Maris Shark's Fin Restaurant, as approved by respondent based on his idea and concept is hereto attached as Annex '2'. (Note: Considering that the same petitioner filed a petition for cancellation of the trademark 'Gloria Maris Shark's Fin Restaurant', the original of Annex '2' was attached to the verified answer filed therein).

"26. Mr. Jean Menguito, or the group never bought or contracted to acquire respondent's idea and concept of Gloria Maris Shark's Fin Restaurant. Neither did they buy or paid for respondent's intellectual creation of the idea/concept of Gloriamaris Shark's Fin Restaurant, its name, theme/ambience, and logo/trademark.

"27. The respondent allowed the group to use his idea and concept, as well as the name, and logo he created and concocted because he was a part of the Corporation incorporated for the purpose of owning the business.

"28. Likewise, to date, the respondent remains to be a stockholder of Gloriamaris Shark's Fin Restaurant, Inc. as he never sold or executed a Deed of Assignment/Sale covering his shares therein in favor of another person or entity. The respondent was surprised to read in the petition that Dominador Menguito claims that he sold his share in the company. The respondent is now investigating the matter, and he reserves the right to take the appropriate action if in deed his shares were transferred without his knowledge and consent.

"29. To reiterate, the respondent never left Gloriamaris Shark's Fin Restaurant, Inc., to date, the respondent is still a stockholder of the corporation. This is the reason why he is allowing Gloriamaris Shark's Fin Restaurant, Inc. to use his idea and concept in its Chinese restaurant located in CCP Complex. 

"30. Sometime in 2005, the respondent planned to expand and develop his idea and concept of Gloriamaris as a restaurant, as well as the name and logo thereof. He planned to have Gloriamaris restaurants that are smaller in size, and which he could franchise. Accordingly, and because of his plan to franchise his idea and concept of Gloriamaris restaurant, the respondent decided to register his intellectual property consisting of the name Gloria Maris Shark's Fin Restaurant and the logo, duly registered. He also registered variations in the name of Gloriamaris, but decided to consistently adopt the logo design.

Consequently, and after going through the process (which included publication, to inform the public that such application was being made), the Intellectual Property Office (IPO), in the year 2005, registered the trademark 'Gloria Maris Shark's Fin Restaurant (in English and Mandarin) and Logo' in the name of the respondent. Other variations of Gloria Maris were likewise duly registered in respondent's name – the other variations of the trademark referred to are: 'Gloria Maris Dimsum Kitchen with Logo', and 'Gloria Maris Work Shop and Design'. The registrations for these trademarks are in the records of the Honorable Office, and thus, the respondent prays that such registration be taken judicial notice of.

Specific to this case, the interpretation and finalization of the logo of Gloria Maris Wok Shop and Design based on respondents idea and concept was contracted out to a designer, who submitted the 'Logo Identity Guide', 'Color Standards', and 'Corporate Identity Guide', for the trademark 'Gloria Maris Wok Shop and Design'. The original of the drawings submitted to the respondent are Annexes '3', '3-1', and '3-2' respectively.

"31. The respondent, in pursuance of his plan to develop and expand the Gloria Maris Restaurant Business, ventured into franchising his idea and concept. Thus, respondent was able to franchise his idea and concept of Gloria Maris Restaurant to several companies, namely to:

1. HH-GM Foods Corporation;
2. Golden Bay Foods Corporation;
3. Gloria Maris Foods Corporation;
4. GM Block, Inc.
5. Gmaris Foods Corporation
6. Flavors Plus, Inc.
7. East Mall Hongkong Foods, Inc.
8. Hongkong East Triangle Foods, Inc.
9. Pan Pacific Foods Corporation
10. Dimsum Unlimited, Inc.
11. Bayern Munchen, Inc.
12. Tycoon Enterprises, Inc.

Certified True Copies of the Articles of Incorporation of the 9 of the 12 foregoing mentioned Corporations are hereto attached as Annexes '4' to '12', while the corresponding (copy certified) Franchise Agreements are hereto attached as Annexes '13' to '21'.

"33. Now there are many Gloria Maris Restaurants operating in different parts of the Philippines. The Gloria Maris Franchise is employing approximately 30 workers per franchised restaurant. The respondent has thus created jobs, revenues for the government and other incidental sources of income. Plus, the multiplier effect created by the Gloria Maris Franchise is expansive.

"34. Now that the Gloria Maris Franchise is extensive, the petitioner is now attempting to grab its ownership from the respondent.

"35. By itself, the story invented by the petitioner is not credible and believable. The petitioner would like to impress upon the Honorable Office that since 1993, its officer the name of the company. Mr. Menguito is a distinguished businessman, and he wants to make it appear that he did not, for fifteen (15) years or more, check on the status of the registration of the trademark Gloria Maris Shark's Fin Restaurant, Inc. If the petitioner's allegation that it owns the logo/trademark of Gloria Maris Shark's Fin Restaurant, Inc., Mr. Menguito would have duly checked on the status of its registration with the

Intellectual Property Office as early as 1993, or the following year. Even assuming for the sake of argument only the allegations of the petitioner, by its acts, it and/or Dominador Menguito are already guilty of estoppel.

The real reason for Mr. Menguito not to check on the registration of the trademark of Gloria Maris is because he knows that the idea and concept of Gloria Maris Shark's Fin Restaurant, the name, and the logo, were all created, concocted and prepared by the respondent. Now that the Gloria Maris Franchise has grown, developed and expanded, Mr. Menguito, motivated by greed, interposed his incredible claim on the trademark registered in the name of respondent.

"36. In fine, as the respondent has already established his creation, concoction, and ownership of the Trademark Gloria Maris Shark's Fin Restaurant, and considering further the incredibility of the story formulated by the petitioner, the Honorable Office must dismiss the claim herein made.

To support the foregoing allegations, attached hereto is the affidavit of respondent himself, as Annex `23'."

Should Trademark Registration No. 4-2004-009149 be cancelled?

The records and evidence bear the fact that the Respondent-Registrant is one of the incorporators of the Petitioner corporation. The Petitioner's claim that the Respondent-Registrant already left the corporation in 2006 is disputed by the Respondent-Registrant. Except for the bare and self-serving allegations in the petition and in the affidavit of Dominador Menguito, there is no proof that indeed the Respondent-Registrant already sold his shares and interests in the corporation. Thus, it would appear that this petition is a suit instituted by some owners of the corporation against a co-owner.

Be that as it may, this Bureau proceeds to resolve this case pursuant to Sec. 151 of Rep. Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code") which provides, among other things, that a "*petition to cancel a registration under this Act may be filed with the Bureau of Legal Affairs by any person who believes that he is or will be damaged by the registration of a mark x x x*". It must be emphasized that once filed, a petition for cancellation becomes, basically, a review of the trademark registration in question to determine if the legal requirements for registration have been satisfied at the time the application for registration was filed and if the maintenance or continuance of the trademark in the Trademark registry is damaging to the petitioner.

In this regard, Sec. 138 of the IP Code provides:

Sec. 138. *Certificates of Registration.* - A certificate of registration of a mark shall be *prima facie* evidence of the validity of the registration, the registrant's ownership of the mark, and of the registrant's exclusive right to use the same in connection with the goods or services and those that are related thereto specified in the certificate.

The burden of proof thus, is on the Petitioner to show that the registration of the Respondent-Registrant's mark was invalid on the ground that the latter is not the owner thereof. Corollarily, the Petitioner is required to establish substantial evidence to overcome the presumption of validity of Reg. No. 4-2004-009151 Sec. 5, Rule 133 of the Rules of Court provides that in cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence which is that amount of relevant evidence as a reasonable mind might accept as adequate to support a conclusion. It means such evidence

which affords a substantial basis from which the fact in issue can be reasonably inferred⁴, or as adequate to justify a conclusion⁵.

It is also a basic rule of evidence that each party must prove his affirmative allegations. If he claims a right granted by law, he must prove his claim by competent evidence, relying on the strength of his own evidence and not upon the weaknesses of that of his opponent. The test for determining on whom the burden of proof lies is found in the result of an inquiry as to which party would be successful if no evidence of such matters will be given.⁶

The Petitioner put premium on the fact that its corporate name registered with the Securities and Exchange Commission ("SEC") is "GloriaMaris Shark's Fin Restaurant, Inc." The Petitioner wants to impress upon this Bureau that the use and registration of "GloriaMaris Shark's Fin Restaurant, Inc." as its corporate name shows that the corporation owns the contested trademark and that the acts of the Respondent-Registrant in obtaining a trademark registration for the mark "GLORIA MARIS WOK SHOP AND DESIGN" were in the interest of the corporation.⁷ This Bureau finds otherwise.

The records and evidence clearly show that the contested mark was coined or created prior to the execution by the incorporators of the Articles of Incorporation and the subsequent SEC registration, of the Petitioner corporation. In other words, the mark's existence preceded that of the corporation. Corollarily, somebody already owns the mark before the corporation came into existence. The owner could only be the creator of the mark, or the person who caused or on whose behalf the mark was in fact created for. The presumptive owner is the Respondent-Registrant, who is one of the incorporators of the Petitioner corporation.

Succinctly, the Petitioner corporation cannot therefore claim ownership of the contested mark when it was incorporated in 1994. It is elementary that the personality of a corporation is distinct from that of the individual stockholders. A property belonging to, and brought in by a stockholder, and used by the corporation, does not necessarily become or converted into a property of the corporation. Significantly, the law recognizes a situation wherein a registered trademark is used, not by way of an infringement, by another person or entity with a juridical personality, who is or that is related to the registrant, and "fixes" the right of the parties involved. Sec. 152.4 of the IP Code provides:

Sec. 152.4. The use of a mark by a company related with the registrant or applicant shall inure to the latter's benefit, and such use shall not affect the validity of such mark or of its registration: Provided, That such mark is not used in such manner as to deceive the public. If use of a mark by a person is controlled by the registrant or applicant with respect to the nature and quality of the goods or services, such use shall inure to the benefit of the registrant or applicant."

It would have been possible for the Petitioner corporation to have acquired ownership of the contested mark if the original owner thereof effected a transfer of ownership. If there is no such transfer, then the mark remains to be the property of the original owner. In this regard, there is no evidence on such transfer or ownership. On this point alone, the petition

⁴ *Rubberworld (Phils.), Inc. v. National Labor Relations Commissions*, 175 SCRA 450.

⁵ *Remo Foods, Inc. v. National Labor Relations Commission*, 249 SCRA 379; *Fulgeura v. Linsangan*, 251 SCRA 264.

⁶ *Lolita Lopez v. Bodega City, et. al.*, G.R. No. 155731, 03 Sept. 2007, citing *Martinez v. National Labor Relation Commission*, 339 Phil. 176, 183 (1997); *Rufina Patis Factory v. Alusitain*, G.R. No. 146202, 14 July 2004, 434 SCRA 418, 428; *Imperial Victory Shipping Agency v. National Labor Relation Commission*, G.R. No. 84672, 05 Aug. 1991, 200 SCRA 178, 185.

⁷ Petitioner's Position Paper, p. 4.

should be dismissed because the Petitioner's claim of ownership of the contested mark as a property of the corporation has no factual and legal basis.

Moreover, the Respondent-Registrant did not only enjoy the benefit of presumptive ownership and validity of his trademark registration, he even submitted evidence to bolster his position. While the Petitioner has tell-tale in claiming ownership of the mark, the Respondent-Registrant's version is more plausible. The Petitioner can only boast of allegations and conclusions of facts that are not supported by evidence or proof. In contrast, the Respondent-Registrant's narrations as to the creation of the mark were very detailed and corroborated by no less than the testimony of the graphic artist he engaged to do the designing. In his affidavit, the graphic artist Joey Rodriguez averred:

"3. Sometime in 1998, Engineer Pacifico Q. Lim engaged my services to design, and renovate a restaurant in the area of the Cultural Center of the Philippines. I learned from Mr. Pacifico Lim that the planned restaurant is a fine-dining chinese restaurant to be known as 'Gloria Maris Shark's Fin Restaurant'.

"4. The task/work I performed for the project was the interior design of the restaurant.

In that connection, I often held meetings with Engineer Pacifico Q. Lim to talk about the project. Engineer Pacifico Q. Lim expressed to me his ideas and the concept he wanted for the theme and design of Gloria Maris Restaurant. We would have discussions, and after I give my inputs, Engineer Pacifico Q. Lim and I would make adjustments on the design of interior of the restaurant. In short, Engineer Pacifico Q. Lim laid down the ideas and concept, and I interpreted them, and externalized them in the proper drawings/plans. Of course, my design drawings and plans were subject to the approval of Engineer Pacifico Q. Lim.

"5. After Engineer Pacifico Q. Lim and I finished the interior of the restaurant, he discussed to me the design of the signage and logo of the restaurant.

I likewise handled the designing of the logo in accordance with the idea and concept of Engineer Pacifico Lim, subject to consultation and his approval.

"6. After several discussions, and consultations with Engineer Pacifico Q. Lim, he instructed me to use in the logo of Gloria Maris the image of a 'shark's fin'. Engineer Pacifico Q. Lim gave me a draft of a drawing/image of a 'shark's fin'. Thereafter, I drafted a design/drawing of the proposed logo of Gloria Maris containing the image of a 'shark's fin' in a plate of an irregular shape. My initial submission was not immediately approved by Engineer Pacifico Q. Lim, so we sat down and discussed the revisions needed. Right in our meeting, Engineer Pacifico Q. Lim commented on the design of the logo, and I immediately noted and made a rough draft of the logo, based on the inputs of Engineer Pacifico Q. Lim.

Ultimately after our discussion, Engineer Pacifico Q. Lim approved the design of the logo that would be used in the restaurant of Gloria Maris. Engineer Pacifico Q. Lim approved the logo of Gloria Maris which included an image of a shark's fin, with various marks/shorts lines surrounding it, all of which were contained in a plate shaped somewhat like a square but with variations.

"7. All the time that I was working on the project, I was only talking to, and consulting Engineer Pacifico Q. Lim. All the designs, plans, drawings, and the logo design made were completed upon discussion/consultation and approval of Engineer Pacifico Q. Lim."

Ranged against the foregoing positive assertions of the graphic artist, the allegations of Dominador Menguito in his affidavit are self-serving and thus, deserve scant consideration. Menguito's affidavit, submitted as evidence, only mirrors the allegations in the Petition for

Cancellation the preparation and filing of which he himself caused as Chairman of the Petitioner corporation.⁸

While the Petitioner claims that the registration of the mark was at its behest, again there is no evidence to show that indeed it was so. There was no showing that the Respondent-Registrant's filing of a trademark application was pursuant to an authorization from the Petitioner; no board resolution or similar document whatsoever. There is no proof that the Petitioner financed the filing and prosecution of the trademark application and the maintenance thereof. And of course, before the Petitioner could give these "authorizations" it must have acquired in the first place ownership of the mark. As discussed above, the contested mark was already created and therefore owned by somebody else before the Petitioner corporation came into existence.

Furthermore, in trademark registration process a trademark application once allowed is published in the "IPO Gazette", the purpose of which is for any person or parties who will be damaged by the registration, to file an opposition. The publication clearly indicates the name of the applicant. But, in this instance, neither the Petitioner corporation or any of its stockholders or officers opposed the trademark application filed by the Respondent-Registrant.

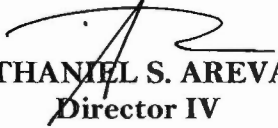
On the other hand, the Respondent-Registrant submitted evidence of his conduct and undertakings all through the years that manifest, and consistent with, acts of ownership. Aside from applying and obtaining trademark registration, he has been delving on and building business opportunities using the mark or its variations, including granting franchises.

Finally, this Bureau finds untenable the Petitioner's argument that the fact that the Respondent-Registrant never demanded of the Petitioner to stop using the contested mark after the latter allegedly sold his shares in the company only means that the Respondent-Registrant knew that Petitioner is the true and lawful owner of the mark.⁹ It is a conjecture, not evidence; not even to be considered as inference because it lacks factual basis. As discussed above, the Respondent-Registrant disputes the allegations that he already sold his shares in the corporation. There is also no evidence on record to prove that it was so. Hence, the Respondent-Registrant remains a co-owner of Gloria Maris Shark's Fin Restaurant, Inc. and is therefore under no compulsion to make such demand.

WHEREFORE, premises considered, the instant Petition for Cancellation is hereby DISMISSED. Let the filewrapper of Certificate of Registration No. 4-2004-009149 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 23 February 2012.


NATHANIEL S. AREVALO
Director IV
Bureau of Legal Affairs

⁸ See Verification and Certification of Non-Forum Shopping attached to the Petition for Cancellation.

⁹ See Petitioner's Position Paper, par. 9.