



OFFICE OF THE DIRECTOR GENERAL

SMART KITCHEN IDEAS
INTERNATIONAL CORP.,

Appellant,

-versus-

DANNY SY,

Appellee.

X-----X

Appeal No. 14-2012-0002

Inter Partes Case No. 14-2011-00560

Opposition to:

Reg. No. 4-2011-007415

Date Issued: 06 October 2011

Trademark: GREEN APPLE QING
PING GUO & DEVICE

DECISION

On 21 February 2012, Smart Kitchen Ideas International Corp. ("Appellant") appeals the Order of the Director of the Bureau of Legal Affairs ("Director") dismissing the Appellant's opposition to Application No. 04-2011-007415 for the trademark "GREEN APPLE QING PING GUO & DEVICE" filed by Danny Sy ("Appellee").

Records show that on 26 October 2011, the Appellant filed with the Bureau of Legal Affairs an "OPPOSITION" alleging that it adopted and continues to use the trademark/trade name "Green Apple" in all its merchandise. The Appellant claimed that the Appellee, in utter bad faith, surreptitiously applied for the registration of "Green Apple". The Appellant maintained that the Appellee has been allegedly charged in Cabanatuan City for selling products/wares with the use of other trademark/trade name.

On 10 January 2012, the Director issued an Order dismissing the opposition and ruling that:

"The Opposer anchored its opposition on Section 123.1 (e) of Republic Act No. 8293, otherwise known as the Intellectual Property Code of the Philippines ("IP Code"). However, the records show that the trademark application being opposed was published for opposition on 05 September 2011. In this regard, Section 2, Rule 7 of the amended Rules on Inter Partes Proceedings, provides:

Section 2. Period to file opposition.- The verified notice of opposition must be filed within thirty (30) days from the date of the publication of the trademark application in the IPOPHL "Gazette". x x x

No opposition or a motion for extension of the reglementary period within which to file the opposition was filed before the expiry of the 30-day period from the publication of the subject trademark application. Hence, the subject trademark was

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registered on 06 October 2011. This being so, the filing of the instant opposition was already late.”¹

Not satisfied, the Appellant filed with this Office an “APPEAL UNDER SEC. 2 RULE 9 OF RULES AND REGULATIONS ON INTER PARTIES (sic) PROCEEDINGS” claiming that the dismissal of the opposition is based on a technicality which is contrary to the constitutional requirement on due process. The Appellant maintains that it has a valid and lawful basis for its opposition.

This Office issued on 30 March 2012 an Order giving the Appellee thirty (30) days from receipt of the Order to submit comment on the appeal. The Appellee received a copy of the Order on 19 April 2012. The Appellee did not file his comment and this case was deemed submitted for decision.

The appeal is not meritorious.

Sec. 134 of the IP Code states in part that:

SEC. 134. Opposition.- 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.

In this case, the Appellee’s application to register the mark GREEN APPLE QING PING GUO & DEVICE was published for opposition on 05 September 2011. Under the provision of the IP Code, the Appellant has thirty (30) days after the date of publication or in this instance, until 05 October 2011 to oppose the registration of the Appellee’s mark. The Appellant, however, filed its OPPOSITION only on 26 October 2011 or beyond the 30-day period. There was also no proof that the Appellant paid the required fee in filing the opposition. The Director was, therefore, correct in dismissing the opposition.

The Appellant’s contention that the dismissal of its opposition on the ground of technicality is contrary to the constitutional requirement on due process is untenable. Sec. 134 of the IP Code expressly provides that 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 file with the Office an opposition to the application. As held by the Supreme Court in one case:

Procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party’s substantive rights. Like all rules, they are required to be followed except only for the most persuasive of reasons when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of

¹ Order No. 2012-10 (D) dated 10 January 2012.

his thoughtlessness in not complying with the procedure prescribed...Such rules are a necessary incident to the proper, efficient and orderly discharge of judicial functions.²


Similarly, in this case, the 30-day period to file an opposition was formulated for the proper, efficient and orderly discharge of the functions relevant to the registration of trademarks. The 30-day period to file the opposition allows the parties concerned the opportunity to contest a trademark application. However, an unwarranted and undue delay in the registration of the trademark will prejudice the interest of the applicant who may have complied with all the requirements under the law and regulations. Accordingly, to favor a party who has not shown good cause and justifiable reason to delay the registration of a mark would not be in accord with the principles of equity and due process.

Moreover, should the Appellant maintains, that it would be damaged by the registration of the Appellee's trademark, there are other remedies it can pursue. The IP Code, for instance, provides the proceedings for the cancellation of trademark registration and for actions with respect to violations of intellectual property rights. In the meantime, however, the Appellee's right to the registration of its trademark must neither be impaired nor delayed in the absence of a valid opposition that complies with the requirements of the law and the regulations.

Wherefore, premises considered, the appeal is hereby dismissed. Let a copy of this Decision as well as the trademark application and records be furnished and returned to the Director of the Bureau of Legal Affairs for appropriate action. Further, let also the Director of the Bureau of Trademarks and the library of the Documentation, Information and Technology Transfer Bureau be furnished a copy of this decision for information, guidance, and records purposes.

SO ORDERED.

OCT 24 2013 Taguig City


RICARDO R. BLANCAFLOR
Director General

² Lazaro v. Court of Appeals, G.R. No. 137761, 06 April 2000.