



E.Y. INDUSTRIAL SALES, INC.,  
Petitioner,

-versus-

SHEN DAR ELECTRICITY MACHINERY  
CO. LTD.,  
Respondent.

x-----x

}  
} IPC No. 14-2009-00056  
} Petition For Cancellation:  
} Registration No. 4-1997-121492  
} Date Issued: 08 Feb. 2007  
} TM: "VESPA"  
}

**NOTICE OF DECISION**

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Antipolo City 1870

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3894 Magsaysay Blvd. Sta. Mesa  
Manila

**GREETINGS:**

Please be informed that Decision No. 2012 - 130 dated July 17, 2012 ( copy enclosed) was promulgated in the above entitled case.

Taguig City, July 17, 2012.

For the Director:

*Edwin A. Dating*  
**Atty. EDWIN DANILO A. DATING**  
Assistant Director, BLA

**CERTIFIED TRUE COPY**

*Sharon S. Alcantara*  
**SHARON S. ALCANTARA**  
Records Officer II  
Bureau of Legal Affairs, IPO



E. Y. INDUSTRIAL SALES, INC.  
*Petitioner,*

IPC No. 14-2009-00056  
Petition for Cancellation

-versus -

TM Reg. No. 4-1997-121492

SHEN DAR ELECTRICITY MACHINERY  
CO. LTD.,

*Respondent.*

x-----x

Decision No. 2012- 130

## DECISION

E.Y. INDUSTRIAL SALES, INC.<sup>1</sup> (“Petitioner”) filed on 25 February 2009 a Petition For Cancellation of Trademark Reg. No. 4-1997-121492. The trademark registration, issued to SHEN DAR ELECTRICITY MACHINERY CO., LTD.<sup>2</sup> (“Respondent-Registrant”) covers the mark “VESPA” for use on “*air compressor spot welding machine*” under Class 07 of the International Classification of goods.<sup>3</sup>

The Petitioner alleges, among other things, that Trademark Reg. No. 4-1997-121492 was obtained fraudulently and contrary to Sec. 123.1 (d) of Rep. Act No. 8293, also known as the Intellectual Property Code of the Philippines (“IP Code”). Petitioner stresses its ownership of the mark in connection with air compressors which it produces and sells. The Petitioner cites this Bureau’s Decision and the Director General’s Decision of 25 May 2007, in connection to Inter Partes Case No. 14-2004-00084.

On 20 May 2009, the Respondent-Registrant filed its Verified Answer alleging among other things that the instant petition is already moot and academic. The Respondent-Registrant cited the decision dated 21 February 2008 of the Court of Appeals in CA-G.R. 99356 “reversing” and “setting aside” the aforementioned decisions of this Bureau and the Director General. Also, the Respondent-Registrant cited the Supreme Court’s resolution dated 18 March 2009 in G.R. No. 184850 denying the Petitioner’s Petition for Review of the Court of Appeals decision.

This Bureau noticed that Inter Partes Case No. 14-2004-00084 was a petition for cancellation filed by the Respondent-Registrant against the herein Petitioner’s registration, also for the mark “VESPA”. This Bureau denied the petition. Subsequently, the Director General dismissed the Respondent-Registrant’s appeal and in addition, ordered the cancellation of the Respondent-Registrant’s Trademark Registration No. 4-1997-121492.

<sup>1</sup> A corporation duly organized and existing under Philippine laws with principal place of business at No. 520 T. Alonzo St., Sta. Cruz, Manila.

<sup>2</sup> A corporation organized under the laws of Taiwan, with principal place of business at No. 15, Alley 11, Lane 25, Kuo Chung 1 Road, Ta Li City, Taichung Hsien, Taiwan.

<sup>3</sup> The Nice Classification is a classification of goods and services for the purpose of registering trademarks 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 Purpose of the Registration of Marks concluded in 1957.

While the Respondent-Registrant was correct in citing the Court of Appeals ruling in CA-G.R. 99356, the Supreme Court, however, in its Decision of 20 October 2010 in G.R. No. 184850, entitled *E.Y. Industrial Sales, Inc. and Engracio Yap v. Shen Dar Electricity and Machinery Co., Ltd.* held, to wit:

“WHEREFORE, the petition is hereby GRANTED. The CA’s February 21, 2008 Decision and October 6, 2008 Resolution in CA-G.R. SP No. 99356 are hereby REVERSED and SET ASIDE. The Decision dated May 25, 2007 issued by the IPO Director General in *Inter Partes* Case No. 14-2004-00084 and the Decision dated May 29, 2006 of the BLA Director of the IPO are hereby REINSTATED.”

The decision of the Supreme Court affirming or reinstating the order of cancellation of Trademark Reg. No. 4-1997-121492 has rendered this proceeding moot and academic.

WHEREFORE, premises considered, the instant Petition for Cancellation is hereby **DISMISSED**. Let the filewrapper of Trademark Reg. No. 4-1997-121492 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

**SO ORDERED.**

Taguig City, 17 July 2012.

  
**ATTY. NATHANIEL S. AREVALO**  
Director IV, Bureau of Legal Affairs