



MUSIC AND VIDEO PERFORMANCE, INC.,
Complainant,

IPV No. 10-2011-00009

-versus-

For: "Copyright Infringement
with Damages"

NATIONAL BOOKSTORE, INC.,
Respondent-Third Party
Complainant,

-versus-

JAIME N. RIVERA, JR., doing business
Under the name and Style RIVER A
IN-HOUSE BROADCASTING SERVICE,
Third-Party Respondent.

X-----X

NOTICE OF ORDER

MR. CHITO ILACAD
MUSIC AND VIDEO PERFORMANCE INC.
Complainant
34 Sct. Dr. Lazcano Street
Quezon City

ROY ALFERT M. CARASIG
Counsel for Respondent-Third Party Complainant
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125 Pioneer Street
Mandaluyong City

DAVID ROBERT C. AQUINO
Counsel for Complainant
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BENGZON NEGRE UNTALAN
Counsel for Third-Party Respondent
2nd Floor SEDCCO Building
Rada corner Legaspi Streets
Legaspi Village, Makati City

GREETINGS:

Please be informed that Order No. 2013 - 01 (D) dated February 01, 2013 (copy enclosed) was promulgated in the above entitled case.

Taguig City, February 01, 2013.

For the Director:

Edwin A. Daring
Atty. EDWIN DANILO A. DARING
Director III
Bureau of Legal Affairs

CERTIFIED TRUE COPY

Marilyn F. Retual
MARILYN F. RETUAL



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x-----x Order No. 2013- 01 (D)

ORDER

MUSIC AND VIDEO PERFORMANCE, INC. ("Opposer"), filed on 07 July 2011 a complaint against NATIONAL BOOKSTORE, INC. (Respondent-Third Party Complainant), for copyright infringement and damages. On 12 July 2011, Respondent National Bookstore filed its Answer and a Motion to Admit Third-Party Complaint. The said motion was granted through Order No. 2011-47 impleading JAIME N. RIVERA, JR. doing business under the name and style RIVER A IN-HOUSE BROADCASTING SERVICE as Third-Party Respondent. The Third-Party Respondent filed its Answer on 21 November 2011

Records of the case shows that on 12 March 2012, this Bureau issued a Notice of Pre-Trial Conference (NPTC) set on 16 April 2012 directing the parties to file their respective Pre-Trial Brief with this Bureau and serve a copy upon the parties at least within three (3) days before the date of the pre-trial conference. On the same date 12 March 2012, this Bureau issued Order No. 2012-18 granting the Urgent Motion for the Production and Inspection of Documents and Things filed by the Third-Party Respondent and directed the Complainant to produce the requested documents and/or materials indicated and to allow the movant to inspect and copy the said documents. The NPTC and Order No. 2012-18 were served by this Bureau in the address provided by Complainant's counsel and was acknowledged receipt by a certain Angel Suclan on 22 March 2012.

On 16 April 2012, the Pre-Trial Conference for the above entitled case was held with only Counsels for Respondent-Third Party Complainant and Third-Party Respondent appearing. Counsels for Respondent-Third Party Complainant and Third-Party Respondent moved for the dismissal of the case for failure of Complainant to appear on said conference despite due notice. Likewise, they manifested that Complainant failed to file their Pre-Trial Brief and to comply with Order No. 2012-18 directing them to produce documents and/or materials as specified in the Order.

On 08 May 2012, this Bureau received from Complainant an Urgent Manifestation and Motion to Reset Pre-Trial and Admit Pre-Trial Brief of Complainant stating that the

said notice and order was served and received by the lobby personnel of the building and was only given to Complainant's counsel on 14 April 2012. The Respondent-Third Party Complainant and the Third Party Respondent filed their respective comment/opposition rebutting the contentions of Complainant both on 09 May 2012.

This Bureau finds the Complainant's motion bereft of merit considering that Complainant's counsel himself provided its address wherein orders, resolutions, notices etc. may be served by this Bureau. In fact, the NPTC and Order No. 2012-18 were served and received in the said address. Hence, the presumption of regularity is established.

In Section 13 of the Implementing Rules and Regulations on Administrative Complaints for Violation of Laws Involving Intellectual Property Rights which took effect on 16 December 1998, states that the failure to file Pre-Trial Brief and non-appearance of a party shall be a cause for the dismissal of the case to wit:

"Section 13. Effect of failure to file Pre-Trial Brief or to appear.- **The failure of the complainant to submit the Pre-Trial Brief within the prescribed period or to appear at the pre-trial pursuant to these Regulations shall be cause for dismissal of the action with prejudice motu proprio or upon motion.** A similar failure on the part of the respondent shall be cause to declare respondent as in default motu proprio or upon motion and to allow the complainant to present his evidence ex parte and the office to render judgment on the basis thereof."

Moreover, Complainant's Urgent Motion lacks the required notice of hearing. Rule 15, Section 4 and 5 of the Rules of Procedure, which have suppletory application in inter partes proceedings states to wit:

Sec. 4. Hearing of motion.

Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

x x x

The Third Party Respondent correctly cited the case of *Bank of the Philippine Islands vs. Far East Molasses Corporation G.R. No. 89125, 2 July 1991* wherein the Supreme Court said that:

"The unripped doctrine in this jurisdiction is that a motion that does not contain a notice of hearing is but a mere scrap of paper; it presents no question which merits the attention and consideration of the court. It is not even a motion for it does not comply with the rules and hence, the clerk has no right to receive it."

WHEREFORE, for the failure of the Complainant to submit the Pre-Trial Brief and to appear on the said Pre-Trial Conference despite due notice, the instant case is, as it is hereby **DISMISSED**.

Taguig City, 01 February 2013.


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