OFFICE OF THE DIRECTOR GENERAL

AMBOS MUNDOS RESTAURANT INC.,
Petitioner-Appellant,

-versus-

MARIA TERESA S. GAUDINEZ,
Respondent-Appellee.
x----------x

APPEAL NO. 14-2010-0028
IPC No. 14-2007-00327
Petition for Cancellation:

Cert. of Reg. No. 4-1997-121056
Date Issued: 24 October 2005
Trademark: AMBOS MUNDOS RESTAURANT

NOTICE

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IPOPHL LIBRARY
Documentation, Information and
Technology Transfer Bureau
Intellectual Property Office
Taguig City

IPOPHL LIBRARY
DATE: 9-30-2014
BY:

GREETINGS:

Please be informed that on 18 September 2014, the Office of the Director General issued a Decision in this case (copy attached).

Taguig City, 22 September 2014.

Very truly yours,

ROBERT NEREO B. SAMSON
Attorney V

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DECISION

AMBOS MUNDOS RESTAURANT INC. ("Appellant") appeals the decision of the Director of Bureau of Legal Affairs ("Director") denying the Appellant's petition to cancel the registration of the mark "AMBOS MUNDOS RESTAURANT" in the name of MARIA TERESA S. GAUDINEZ ("Appellee").

On 09 November 2007, the Appellant filed a "PETITION FOR CANCELLATION" seeking the cancellation of the certificate of registration for AMBOS MUNDOS RESTAURANT issued in the name of the Appellee. The Appellant maintained that the Appellee is not engaged in any restaurant business using the name AMBOS MUNDOS RESTAURANT and that the records in the Department of Trade and Industry and the Securities and Exchange Commission (SEC) would show that this mark was validly and legally issued in the name of the Appellant.

The Appellee filed an "ANSWER" dated 20 February 2008 claiming that because of the unlawful and illegal acts of the Appellant in using the name AMBOS MUNDOS RESTAURANT which has caused confusion to the public, she is being prevented from using her trademark and from engaging in the restaurant business. The Appellee claimed that the Appellant is guilty of forum shopping and that the Appellant failed to state that there is a case pending in the Office of the President and a petition for cancellation of the Appellant's corporate name in the SEC.

After the appropriate proceedings, the Director rendered a decision denying the Appellant's petition. The Director held that the Appellee as the prior adopter and user of AMBOS MUNDOS RESTAURANT is the actual owner of this mark. The Director ruled that the Appellee satisfactorily explained her non-use of the mark and that the Appellee was precluded to operate a restaurant using AMBOS MUNDOS RESTAURANT because of a pending case awaiting resolution from the Office of the President involving this mark. Consequently, the Appellant filed a motion for reconsideration which the Director denied for being a mere scrap of paper for failure of the Appellant to set the motion for hearing.

Not satisfied with the ruling of the Director, the Appellant filed on 02 March 2010 a "NOTICE OF APPEAL with MEMORANDUM ON APPEAL" reiterating its position that the Appellee is not engaged in any actual restaurant business as proven by the certifications issued by the *City of Muntinlupa* and the *Office of the Barangay Chairman for Barangay Ayala Alabang* attesting that there is no registered business establishment under the name AMBOS MUNDOS RESTAURANT represented by the Appellee. The Appellant maintains that the Appellee failed to explain satisfactorily its non-use of the mark as the case cited by the Appellee does not prevent her to engage in actual restaurant business operation. Moreover, the Appellant argues that with respect to its motion for reconsideration, it furnished the Appellee a copy of this motion and that the Appellee filed an opposition/comment on this motion for reconsideration. The Appellant asserts that public policy favors the disposition of claims on their merits.

The Appellee filed on 13 May 2010 her "COMMENT/OPPOSITION" maintaining that because the Appellant's motion for reconsideration was a mere scrap of paper, it did not stop the running of the period to appeal. Consequently, according to the Appellee, the appeal was filed out of time and the decision of the Director has become final and executory. The Appellee claims that the Appellant's arguments are mere re-hash of its petition and that the records show that she has superior right over AMBOS MUNDOS RESTAURANT. The Appellee asserts that the SEC upheld her right over this mark and that the Appellant was ordered to change its corporate name. The Appellee claims that her non-use of the mark is independent of her will and it is because of the Appellant's unlawful use of AMBOS MUNDOS RESTAURANT that prevented her from engaging in the restaurant business using this mark. Lastly, the Appellee argues that procedural rules should not be belittled or dismissed simply because they may prejudice a party's substantial rights.

The main issue in this appeal is whether the Director was correct in denying the Appellant's petition to cancel the registration of AMBOS MUNDOS RESTAURANT in the name of the Appellee.

Before resolving this issue, this Office will tackle first the Appellee's contention that the appeal was filed out of time and that the decision of the Director has become final and executory because the Appellant's motion for reconsideration was a mere scrap of paper.

While it is true that the Director had ruled that the Appellant's motion for reconsideration was a mere scrap of paper, the Appellant timely appealed the decision of the Director including the resolution denying the motion for reconsideration. As correctly pointed out by the Appellant:

> "That the said Decision was received last February 12, 2009 and as provided for under Office Order No. 12, Series of 2002, it states-
>
> "Section 2. Appeal to the Director General.- The decisions or final orders of the Bureau Director shall become final and executory thirty (30) days after receipt of a copy thereof by the appellant or appellants, unless, within the same period, a motion for reconsideration is filed with the Bureau Director or an appeal to the Director General has been perfected; Provided, that only one (1) motion for reconsideration of the decision or order of the Bureau Director shall be allowed; and, in case the motion for reconsideration is denied, the appellant or appellants has/have the balance of the period prescribed above within which to file the appeal."

That a Motion for Reconsideration was filed on February 19, 2009, thus seven (7) days lapsed and leaving a balance of twenty three (23) days. That the petitioner through the undersigned received the Resolution dated December 21, 2009 denying the Motion for Reconsideration last February 11, 2010. Thus from February 11, 2010 the 23rd day would be on March 6, 2010."[1]

The Appellant filed its appeal on 02 March 2010 which is within the required period to file the appeal. Hence, this Office issued an Order dated 12 March 2010 stating that the appeal was filed on time and compliant with the requirements for filing an appeal to the Director General.

Moreover, this case has dragged on for several years and in the interest of substantial justice, this case requires that the appeal be heard and decided on the merits. Precisely, the interest of justice and fair play requires the resolution of the issue of whether the Appellee's certificate of registration for AMBOS MUNDOS RESTAURANT should be cancelled.

The Appellant's main argument in seeking the cancellation of the registration of AMBOS MUNDOS RESTAURANT is the Appellee's failure to use this mark in any restaurant business operation. Sec. 151.1 (c) of the Intellectual Property Code of the Philippines ("IP Code") provides that:

SEC. 151. Cancellation.- 151.1. A petition to cancel a registration of a mark 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 under this Act as follows:

x x x

(c) At any time, if the registered owner of the mark without legitimate reason fails to use the mark within the Philippines, or to cause it to be used in the Philippines by virtue of a license during an uninterrupted period of three (3) years or longer.

On the other hand, the Appellee did not deny that she is not using AMBOS MUNDOS RESTAURANT but maintains that the Appellant's unlawful use of this mark, coupled with the filing of baseless and dilatory suits by the Appellant has prevented her to engage in the restaurant business using her registered mark.

The appeal is not meritorious.

Section 152.1 of the IP Code states that:

SEC. 152. Non-use of a Mark When Excused.- 152.1. Non-use of a mark may be excused if caused by circumstances arising independently of the will of the trademark owner. Lack of funds shall not excuse non-use of a mark.

In this instance, the Appellee satisfactorily explained her non-use of the registered mark AMBOS MUNDOS RESTAURANT. As stated by the Appellee:

[1] NOTICE OF APPEAL with MEMORANDUM ON APPEAL dated 26 February 2010, page 2.