



OFFICE OF THE DIRECTOR GENERAL

PHILIPPINE CHARITY SWEEPSTAKES  
OFFICE (PCSO),  
Opposer-Appellant,

Appeal No. 14-2012-0005  
IPC No. 14-2012-00045  
Opposition to:  
Application No. 4-2011-010826  
Date Issued: 09 September 2011

- versus -

PHILIPPINE GAMING MANAGEMENT  
CORPORATION (PGMC),  
Respondent-Appellee.

Trademark: "EZ2 LOTTO LOGO"

X-----X

NOTICE


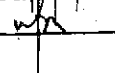
OFFICE OF THE GOVERNMENT  
CORPORATE COUNSEL  
Counsel for Opposer-Appellant  
3<sup>rd</sup> Floor, MWSS Building Katipunan Road  
Balara, Quezon City

LENY B. RAZ  
Director  
Bureau of Trademarks  
Intellectual Property Office,  
Taguig City

BERNAS LAW OFFICE  
Counsel for Respondent-Appellee  
8<sup>th</sup> Floor, Raha Sulayman Building  
108 Benavidez Street, Legaspi Village  
Makati City

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NATHANIEL S. AREVALO  
Director  
Bureau of Legal Affairs  
Intellectual Property Office, Taguig City


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GREETINGS:

Please be informed that on 09 September 2014, the Office of the Director General rendered a Decision in the above-titled case (copy attached).

Taguig City, 10 September 2014.

Very truly yours,

  
**ROBERT NEREO B. SAMSON**  
Attorney V

  
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DATE: 

ROBERT NEREO B. SAMSON  
ATTORNEY V  
Office of the Director General

Republic of the Philippines  
INTELLECTUAL PROPERTY OFFICE  
Intellectual Property Center, 28 Upper McKinley Road, McKinley Hill Town Center  
Fort Bonifacio, Taguig City 1634 Philippines  
T: +632-2386300 • F: +632-5539480 • www.ipophil.gov.ph



OFFICE OF THE DIRECTOR GENERAL

PHILIPPINE CHARITY SWEEPSTAKES  
OFFICE (PCSO)

Appeal No. 14-2012-0005

IPC No. 14-2012-00045

Opposer-Appellant,

-versus-

Opposition to:

Application No. 4-2011-010826

Date Filed: 09 September 2011

Trademark: EZ2 LOTTO LOGO

PHILIPPINE GAMING MANAGEMENT  
CORPORATION (PGMC)

Respondent-Appellee.

x-----x

DECISION

The PHILIPPINE CHARITY SWEEPSTAKES OFFICE (“Appellant”) appeals the order of the Director of Bureau of Legal Affairs (“Director”) dismissing the Appellant’s notice of opposition to the application for registration of the mark “EZ2 LOTTO LOGO” filed by PHILIPPINE GAMING MANAGEMENT CORPORATION (“Appellee”).


Records show that the Appellee filed Trademark Application No. 4-2011-010826 for EZ2 LOTTO LOGO for use on games and playthings. The trademark application was published in the Intellectual Property Office Electronics Gazette for Trademarks on 27 December 2011. On 27 January 2012, the Appellant filed a “MOTION FOR EXTENSION TO FILE VERIFIED NOTICE OF OPPOSITION” seeking an extension of until 26 February 2012 to submit its verified notice of opposition.

On 03 February 2012, the Director issued Order No. 2012-34 stating in part that:

“Since Trademark Application No. 4-2011-010826 was published on 27 December 2011, the deadline to file the opposition or to request for an extension of the period to file verified opposition was on 26 January 2012. The notice of opposition, therefore, was filed out of time. Further, the filing fee for opposition as required under the rules was not paid.

WHEREFORE, premises considered, this case is **DISMISSED.**”

On 15 March 2012, the Appellant filed an “APPEAL MEMORANDUM with prayer to admit OPPOSITION and RECALL of trademark registration” contending that the Bureau of Legal Affairs gravely erred when it allowed the Appellee’s application for registration of trademarks using the Appellant’s corporate seal/logo. The Appellant claims that the Director erred in allowing the registration of locally and

  
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ROBERT HEREO B. SAMSON  
ATTORNEY V  
Office of the Director General

Republic of the Philippines  
INTELLECTUAL PROPERTY OFFICE  
Intellectual Property Center, 28 Upper McKinley Road, McKinley Hill Town Center  
Fort Bonifacio, Taguig City 1634 Philippines  
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internationally well-known marks/symbols which it openly, continuously, and notoriously uses in the holding and conduct of the "Philippine Lottery" and other lottery games. The Appellant appeals for leniency in the application of the technical rules in the interest of substantial justice, public policy, and public order.

On 18 May 2012, the Appellee filed its "COMMENT TO THE APPEAL MEMORANDUM DATED 12 MARCH 2012" maintaining that the Appellant's delay in filing its opposition is inexcusable and that liberality in the application of the rules should not be granted because it would prejudice the rights of the Appellee. The Appellee asserts that the appeal of the Appellant cannot be treated as a verified opposition and the only issue to be addressed is the legality of the Director's order dismissing this case due to the belated filing of the Appellant's motion and the Appellant's non-payment of the filing fee. The Appellee argues that it is entitled to the registration of EZ2 LOTTO LOGO being the owner of this mark and that the grounds for the non-registrability of a mark that were cited by the Appellant do not apply in this case.

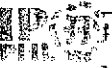
On 29 May 2012, this case was referred to the IPOP HL Alternative Dispute Resolution (ADR) Services pursuant to Office Order No. 154, Series of 2010, Rules of Procedure for IPO Mediation Proceedings. Subsequently, this Office received a copy of the "MEDIATOR'S REPORT" stating that the parties refused to mediate and requested the termination of the mediation proceedings.

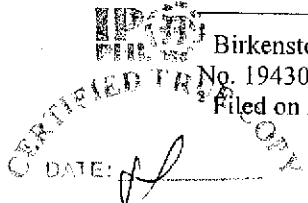

The issue in this case is whether the Director was correct in dismissing this case for failure of the Appellant to file a verified opposition on time and pay the required fees.

This Office recognizes the importance of rules of procedures in the adjudication of cases. Thus, adherence to time limits is essential for the effective and orderly administration and disposition of cases filed in this Office. However, these rules of procedure including time limits must not be used to frustrate the substantive rights of the parties. As pointed out by the Supreme Court of the Philippines in one case:

The rules of procedure are mere tools aimed at facilitating the attainment of justice, rather than its frustration. A strict and rigid application of the rules must always be eschewed when it would subvert the primary objective of the rules, that is, to enhance fair trials and expedite justice. Technicalities should never be used to defeat the substantive rights of the other party. Every party-litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities.<sup>1</sup>

In this case, when the Appellant filed a "MOTION FOR EXTENSION TO FILE VERIFIED NOTICE OF OPPOSITION"<sup>2</sup> it stated that the Appellee's marks are identical with or confusingly similar with its marks. Moreover, the Appellant cited

 Birkenstock Orthopaedie GMBH and Co. KG v. Philippine Shoe Expo Marketing Corporation, G. R. No. 194307, 20 November 2013.  
Filed on 27 January 2012.

  
DATE:   
ROBERT NEREO B. SAMSON  
ATTORNEY V  
Office of the Director General

that its delay in filing the motion for extension is only by one (1) day. As stated by the Appellant:

36. The PCSO's delay by only one day in submitting its motion for extension of time to file its verified opposition may be attributed to: a) the fact that it did not have personal knowledge until the 'home stretch', i.e., 24 January 2012, when it discovered that PGMC filed for trademark registration of marks used in the PCSO State-run lotteries; and b) the voluminous cases and assignments of equal importance the PCSO Legal Department had to attend to considering that it has small legal manpower complement which necessitated additional time to study and intelligently prepare and file its opposition before the Bureau of Legal Affairs, IPO.

37. Mindful that this Honorable Office observe its rules of procedure to the letter and is now aware that it failed to strictly comply with the requirements of Section 134, RA 8293, i.e., payment of prescribed filing fees and filing of verified opposition within 30 days from publication of the trademarks for opposition, PCSO appeals for leniency in the application of the technical rules in the interest of substantial justice, public policy and public order.<sup>3</sup>

The Director, therefore, should have not automatically dismissed this case. While the granting of a motion for extension of time is addressed to the discretion of the Director, the exercise of this discretion must be compatible with the right of litigants to have an opportunity to be heard and the best interest of justice.<sup>4</sup>

It is emphasized that the essence of trademark registration is to give protection to the owners of trademarks. The function of a trademark is to point out distinctly the origin or ownership of the goods to which it is affixed; to secure to him, who has been instrumental in bringing into the market a superior article of merchandise, the fruit of his industry and skill; to assure the public that they are procuring the genuine article; to prevent fraud and imposition; and to protect the manufacturer against substitution and sale of an inferior and different article as his product.<sup>5</sup>

Significantly, because the parties each claim to be the owner of EZ2 LOTTO LOGO, there is a need to determine the true owner of this mark. The Appellee in its Memorandum<sup>6</sup> points out that:

48. Even in the event that the dismissal was found to be illegal, the case should be returned to the Bureau of Legal Affairs for the hearing and reception of the parties' respective evidence.

49. An appeal memorandum is altogether different from an opposition. While an opposition dwells on evidentiary matters, an appeal memorandum does not. The appellate court or body can only review the findings of fact and law by the trial court.

50. The instant Appeal Memorandum dwells on evidentiary matters that require to be litigated, as a matter of due process. The Appeal Memorandum also

<sup>3</sup> APPEAL MEMORANDUM with prayer to admit OPPOSITION and RECALL of trademark registration dated 12 March 2012, page 21.

<sup>4</sup> Gregorio v. The Hon. Court of Appeals, G.R. No. L-43511, 28 July 1976.

<sup>5</sup> Pribhdas J. Mirpuri vs. Court of Appeals, G.R. No. 114508, 19 November 1999.

<sup>6</sup> Dated 04 July 2012.

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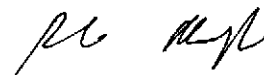
seeks to introduce new matters not forming parts of the records of the proceedings. This Honorable Office is not the proper forum for which such evidentiary matters should be threshed out.<sup>7</sup>

As the determination of who is the true owner of EZ2 LOTTO LOGO requires the introduction of substantial evidence, this Office deems it necessary to refer this case back to the Bureau of Legal Affairs for the reception of the evidence of the parties.

Wherefore, premises considered, Order No. 2012-34 dated 03 February 2012 dismissing IPC No. 14-2012-00045 is hereby set aside. The Appellant is hereby ordered to submit its verified opposition to the Bureau of Legal Affairs within thirty (30) days from receipt of this decision and to pay the required fees. Accordingly, the Bureau of Legal Affairs is hereby ordered to resolve this case in accordance with this decision and the Regulations on Inter Partes Proceedings.


SO ORDERED.

09 SEP 2014 Taguig City

  
RICARDO R. BLANCAFLOR  
Director General



MEMORANDUM dated 04 July 2012, pages 14-15.

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ROBERT NEREO B. SAMSON  
ATTORNEY V  
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