



**PHILIPPINE FEDERATION OF GAMEFOWL  
BREEDERS, PFGB, INC.,**

*Petitioner*

**-versus-**

**PAMBANSANG FEDERATION NG  
GAMEFOWL BREEDERS (DIGMAAN), INC.**

*Respondent.*

**IPV No. 10-2014-00008  
Case Filed: 02 June 2014**

**FOR: Quieting of Right  
Injunction with prayer for  
issuance of preliminary  
injunction restraining order**

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**Order No. 2014- 4 (D)**

## **ORDER**

PHILIPPINE FEDERATION OF GAMEFOWL BREEDERS, PFGB, INC.,<sup>1</sup> filed a "Petition" for "Quieting of Right Injunction with prayer for issuance of preliminary injunction restraining order" against Pambansang Federation ng Gamefowl Breeders (DIGMAAN), Inc.<sup>2</sup> The "Petition" states:

X X X

"1. Petitioner has been organized to promote cockfighting sports in the country and for other purposes related to cockfighting sports, such as but not limited to:

*"To assist every member in the technical aspect of producing quality game fowls.*

*To conduct and/or undertake seminars/workshops to effectively guide all members breeders to attain its objectives of upgrading the quality of gamefowls.*

*To instill sportsmanship, fairness and equity among aficionados in the conduct of derbies sponsored by the federation in order to encourage fellowship, camaraderie and end enhance goodwill among those involves or connected with game fowl breeding in the Philippines.*

*To promote the best interest of cockfighting aficionados in the truly indigenous Filipino sport of 'SABONG' in order to promote Philippine tourism.*

*To acquire such properties, real or personal that would rebound to the benefits of all members and to the federation."*

"2. That the incorporators of the Petitioner who also served as its Board of trustees are:

Wilson C.P. Ong  
Antonio F. Ohsan

<sup>1</sup> A private non-stock and non-profit corporation duly organized and existing under Philippine laws with office and business at Unit 608 Union Square Bldg., 15<sup>th</sup> Avenue, Cubao, Quezon City.

<sup>2</sup> A private non-profit corporation duly organized and existing under and by virtue of Philippine laws, with office address at Purok Pag-asa Banilad, Dumaguete City, Negros Oriental represented by its President Wilson Ong.

Atty. Eugenio O. Original  
Alex I. Initay  
Winefredo P. Geonzoncoy  
Bernardino G. Tacoy  
Atty. Rori James Miraflor  
Nestor Vendivil  
Rene M. Liwanag  
Elmer Boy S. Aspe  
Roderick D. Reyes  
Orlando Aristeo G. Reyes  
Basilio S. Samson

"3. Since the incorporation of the Petitioner it has been engaged in a National stag derby dubbed or labeled as DIGMAAN. It has been using this Word DIGMAAN to describe its annual stag derbies for two (2) years now. Attached herewith are proof of such use. The Pasay City 3-stag elimination at Pasay City Cockpit on December 2, 2013 as Annexes 'A', 'A-1', 'A-2', and 'A-3'; Stag Registry as Annex 'B', 'B-1', and 'B-2', all dated April 11, 2012, and Digmaan Stag Registry dated April 5, 2013 as Annex 'C'.

"4. Petitioner has been using this label/description of its activity for the past two (2) years exclusively.

"5. On February 16, 2014 an election of officers of the Petitioner was held participated by eleven (11) of its 13 Board of Trustees resulting to the election of Trustee Roderick D. Reyes as President in a vote of seven (7) and four (4) for Wilson C.P. Ong. Other officers elected were Antonio F. Ohsan, Vice President, Orlando A.G. Reyes, Secretary and Basilio S. Samson as Treasurer. All the Board of Trustees were reelected.

"6. Wilson C.P. Ong refused to accept his loss and together with several other Board of Trustess numbering five of the thirteen members formed another private non-stock and non-profit Corporation which they called 'Pambansang Federation ng Gamefowl Breeders (Digmaan) Inc.' with the same acronym as the Plaintiff- PFGB.

"7. Before the stags are fought in the cockpit they are banded. The wingband being used by the Petitioner is inscribed the word 'Digmaan' to symbolize its National stag derby promotions.

"8. The wingbanding of cockerels for this DIGMAAN derby promotions is done simultaneously nationwide on April 1-15, 2014.

"9. The wingband stocks of the Petitioner with the word DIGMAAN had been purchased several months before and this fact is known to the Respondent.

"10. It has come to the attention of the Petitioner that the Respondent is copying or duplicating the word DIGMAAN in their own wingband to the damage and prejudice of the Petitioner.

"11. Petitioner right to use the word DIGMAAN is by virtue of their first to use it.

"12. Despite the foregoing facts, Respondent claim also the right to use it in its own wingbanding activities and stag derby promotions which created cloud over the right of Petitioner because the aforesaid claim of the Respondent.

"13. That there is therefore NEED TO REMOVE SUCH CLOUD AND TO DECLARE THE Petitioner to have better right to use the word DIGMAAN in its national stag derby promotions over that of the Respondent.

"14. In order to remove such cloud there is therefore a need for the declarations by this Honorable Office the right in equity to use said word DIGMAAN in order to remove any cloud therein brought about by the aforementioned unjustified claim made by the Respondent.

"PRAYER

"WHEREFORE, in view of the foregoing, it is most respectfully prayed of the Honorable Office:

1. To declare the Petitioner as owner in equity of the right to use DIGMAAN on its wingband and its Stag Derby Promotions.
2. Ordering Respondent to desist from using the promotional DIGMAAN Petitioner having the better right to use it.
3. Ordering the maintenance of a "status quo ante" by issuing a preliminary injunction enjoining the Respondent and any or all of its representatives, agents or cohorts from using the word DIGMAAN in its wingband and in any and all of its derby promotions.

"Petitioner further pray for such other relief just and equitable in the premises."

Attached to the petition is a 3-page document with the title "Pasay City presents..."DIGMAAN 3-STAG SEMIS" December 2, 2013-Monday"; a 1-page document with the title "PASAY CITY COCKPIT 'DIGMAAN 3-STAG, STRAIGHT S" December 2, 2013-Monday; a 3-page document entitled PHILIPPINE FEDERATION OF GAMEFOWL BREEDERS, INC. DIGMAAN STAG REGISTRY (SR); a 1-page document with the title DIGMAAN Philippine Federation of Gamefowl Breeders, Inc. STAG REGISTRY (SR); and a 2014 Board Resolution of Philippine Federation of Gamefowl Breeders-PFGB, Inc.<sup>3</sup>

Because of the nature of the relief asked by Philippine Federation of Gamefowl Breeders, PFGB, Inc., including a prayer for the issuance of preliminary injunction/restraining order, the case is docketed as an Intellectual Property Rights Violation ("IPV") Case. This Bureau issued a Notice to Answer and served a copy thereof upon Pambansang Federation ng Gamefowl Breeders (DIGMAAN), Inc. on 05 June 2014. Pambansang Federation ng Gamefowl Breeders (DIGMAAN), Inc. filed its Answer on 27 June 2014, alleging that it:

"1. ADMITS the personal circumstances of the Petitioner with the qualification that the legitimacy of its President to occupy such position is unknown to Respondent;

"2. ADMITS the personal circumstances of Respondent with the qualification that it is not only a non-profit but also on a non-stock corporation;

"3. ADMITS Paragraph 1 of the Petition.

"4. ADMITS Paragraph 2 of the Petition subject to the Special and Affirmative defenses incorporated in this Answer;

"5. ADMITS Paragraphs 3 and 4 of the Petition subject to the qualification that Petitioner has no vested right to appropriate the word or mark 'DIGMAAN' as more fully discussed in the Special and Affirmative defenses incorporated in this Answer;

"6. ADMITS the allegation in Paragraph 5 of the Petition that on February 16, 2014, an election of officers of the Petitioners was held subject to the qualification that said election

<sup>3</sup> Marked as Annexes "A" to "C", inclusive.

is submitted to be seriously and legally flawed and violative of Petitioner's own registered By-laws;

"7. ADMITS Paragraph 6 of the Petition that Wilson C.P. Ong and other Board of Trustees formed another private non-stock and non-profit corporation and named 'PAMBANSANG FEDERATION NG GAMEFOWL BREEDERS (DIGMAAN), INC.' and with acronym or mark 'PFGB-DIGMAAN' but not because the former refused to accept loss during the seriously and legally flawed election. Wilson C.P. Ong and other Board of Trustees then of Petitioner realized that they should not participate and associate with the questionable set of trustees and officers of Petitioner who were installed during seriously and legally flawed election;

"8. ADMITS Paragraphs 7, 8 and 9 of the Petition subject to Special and Affirmative Defenses incorporated in the Answer;

"9. DENIES the allegation in Paragraph 10 of the Petition that Respondent is copying or duplicating the word 'DIGMAAN' in its wingband to the damage and prejudice of Petitioner, the truth being that 'PFGB-DIGMAAN' are the words being used and to be used in Respondent's wingband for being part of its corporate name 'PAMBANSANG FEDERATION NG GAMEFOWL BREEDERS (DIGMAAN), INC.' as discussed in the Special and Affirmative Defenses incorporated in this Answer;

"10. DENIES Paragraphs 11, 13 and 14 of the Petition for being erroneous conclusion of facts and/or law, the truth being those alleged in the Special and Affirmative Defenses incorporated in this Answer;

"11. ADMITS the allegation in Paragraph 12 of the Petition that Respondent claims the right to use the word 'DIGMAAN' but for its mark 'PFGB-DIGMAAN' in connection with its wingbanding activities and stag derby promotions for being integral part of its corporate name and as discussed in the Special and Affirmative Defenses incorporated in this Answer and *by way of-*

#### "SPECIAL AND AFFIRMATIVE DEFENSES

"Respondent repleads, adopts and incorporate the foregoing material allegations and states:

"12. The Petition failed to state a cause of action against the Respondent in the same way that the Petitioner has no cause of action against the Respondent. There is no right of Petitioner therefore that could be subject for quieting;

"13. Based on the allegations in the Petition, it is humbly submitted that the Honorable Intellectual Property Office has no jurisdiction over the instant case, the issues being more on the validity of election of corporate officers and members of the Board of Trustees of the Petitioner which belong to other fora;

"14. The word 'DIGMAAN' is an integral part of the corporate name of Respondent and registered with the Securities and Exchange Commission under Company Registration No. CN201404231 with Tax Identification No. 008-725-814;

"15. It is humbly submitted that the word 'DIGMAAN' is a generic mark and therefore must be registered first with the Honorable Intellectual Property Office pursuant to Section 122 of the Intellectual Property Code of the Philippines (R.A. No. 8293) before it can be validly acquired and appropriated. Based on allegations in the Petition, the mark 'DIGMAAN' is not registered with the Honorable Intellectual Property Office;

"16. Mr. Wilson C.P. Ong had filed a Trademark Application Form for the mark 'PFGB-DIGMAAN' way back on February 27, 2014 and paid the fees under Official Receipt No. 0488152 issued by the Honorable Intellectual Property Office with reference to the Respondent as a corporate name. Attached are the copies of Official Receipt No. 0488152, Trademark Application Form and Acknowledgement of the receipt of the Application marked respectively as Annexes '1', '2' and '3' to form integral parts hereof;

"17. On March 7, 2014, immediately after the incorporation of Respondent with the Securities and Exchange Commission, it adopted the Trademark Application for the Mark 'PFGB Digmaan' that was filed by Wilson C.P. Ong on February 27, 2014 before the Intellectual Property Office and adopted, appropriated and ratified the mark 'PFGB Digmaan' as its trademark. Attached is a copy of the Secretary's Certificate as Annex '4' to form an integral part hereof;

"18. Some members of the Board of Trustees of 'PAMBANSANG FEDERATION NG GAMEFOWL BREEDERS (DIGMAAN) INC.', through their individual intellect were participants and contributors in conceptualizing and adopting the word 'DIGMAAN' when they were part of the Petitioner, hence, it cannot be said that Petitioner solely has the right to use the said word. A corporation being an artificial person can only think through the Members of its Board of Directors or Trustees. Some members of the Board of Trustees of the Respondent were once members of the Board of Trustees of the Petitioner and as said were also participants and contributors through their individual intellect in conceptualizing and adopting the word 'DIGMAAN' then;

"19. As a registered federation with the Securities and Exchange Commission, the Respondent has several local associations throughout the Philippines as members. The mark 'PFGB-DIGMAAN' is to be used and is used by the Respondent for the wingbanding activities and stag derby promotions exclusively being participated by its members and therefore will not cause confusions to the general public;

**"OPPOSITION TO THE PRAYER FOR ISSUANCE OF PRELIMINARY INJUNCTION OR RESTRAINING ORDER**

"Respondent repleads, adopts and incorporates the foregoing material allegations and further states:

"20. Based on the allegations in the Petition, the Petitioner has shown no right to be protected and addressed by issuance of Preliminary Injunction or temporary restraining order. No irreparable injury or damage that will be sustained has been shown by Petitioner if the word 'DIGMAAN' will form part of the mark of Respondent and to be used in its wingbanding activities and stag derby promotions;

"21. Requirements before an application for preliminary injunction or temporary restraining order can be granted have not complied with by the Petitioner, hence, the application for preliminary injunction or temporary restraining order must be outrightly denied;

"22. In support of this Answer is the Counter-Affidavit of Wilson C.P. Ong marked as Annex '5' to form an integral party hereof."

Pambansang Federation ng Gamefowl Breeders (DIGMAAN), Inc. attached to the answer a copy of official receipt no. 0488152, a copy of trademark application form bearing application serial no. 04-2014-002496, a copy of acknowledgement receipt of the application on 27 February 2014, an original

copy of a secretary's certificate dated 25 June 2014, the counter-affidavit of Wilson C.P. Ong, and the original copy of a secretary's certificate dated 26 June 2014.<sup>4</sup>

On 27 August 2014, Philippine Federation of Gamefowl Breeders, PFGB, INC. filed a Reply, stating, among other things:

"1. The matter raised in this Petition is not the validity of the election. Petitioner is not questioning the results of the elections. The issue here is who has the better right to the use of the word 'DIGMAAN' in its promotional derby, the complainant who has been using it for the past two (2) years or the Respondent. xxx

"2. The use of the word DIGMAAN in the corporate name of the respondent had been questioned and is one of the issues raised in SEC Case No. 14-573. A copy of the Petition is hereto attached as Annex 'A' and made part of this Petition. x x x

"3. The application for registration of the word Digmaan had been opposed by the complainant and subsequently thereafter complainant filed a trademark application. Attached are the acknowledgment of the receipt of the application and trademark application Form filed in June 10, 2014 marked as Annexes 'B', 'C' and 'D' and made an integral part of this reply.

"4. The use of the word Digmaan is misleading and confusing because the first set of wingbands the Respondent used in its wingbanding are wingbands stolen or taken by Wilson Ong from the complainant. In fact a demand to return the said wingbands had been sent to Wilson Ong, alleged President of Respondent. A copy of the demand letters is hereto attached as Annex 'E'.

"5. The complainant is entitled to a preliminary injunction because it has established that it has a better right to use the word 'DIGMAA' since it has been using it consistently for two (2) years already and that right to use is being threatened by the Respondent."

On 26 September 2014, Atty. Julita F. Escueta-Gonzales filed an "ENTRY OF APPEARANCE With MOTION TO SET APPLICATION FOR INJUNCTIVE WRIT/TRO FOR HEARING". Atty. Escueta-Gonzales enters her appearance as collaborating counsel for Philippine Federation of Gamefowl Breeders PFGB, INC.

After evaluating the pleadings and documents on hand, this Bureau finds that it has no jurisdiction over the "petition". The "petition" is not an Inter Partes case as provided under Sec. 10.1 of Republic Act 8293, also known as the Intellectual Property Code of the Philippines ("IP Code"), to wit:

Sec. 10. The Bureau of Legal Affairs. – The Bureau of Legal Affairs shall have the following functions: 10.1. Hear and decide opposition to the application for registration of marks; cancellation of trademarks; subject to the provisions of Section 64, cancellation of patents, utility models, and industrial designs; and petitions for compulsory licensing of patents;

x x x

The "petition" does not fall under any category of Inter Partes case stated in Sec. 10.1 of the IP Code. While in its Reply, Philippine Federation of Gamefowl Breeders, PFGB, INC. alleges that "The application for registration of the word Digmaan had been opposed by the complainant (Philippine Federation of Gamefowl Breeders, PFGB, Inc.) x x x", this refers to "SEC Case No. 14-573".

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<sup>4</sup> Marked as Annexes "1" to "6", inclusive.

Corollarily, while on the basis of the prayer and/or relief sought by Philippine Federation of Gamefowl Breeders, PFGB, Inc. including the provisional remedies, the case may be considered and in fact docketed as an IP rights violation case, Sec. 10.2 (a) of the IP Code provides that:

SEC. 10. *The Bureau of Legal Affairs.* – The Bureau of Legal Affairs shall have the following functions:

X X X

10.2. (a) Exercise original jurisdiction in administrative complaints for violations of laws involving intellectual property rights: **Provided, That its jurisdiction is limited to complaints where the total damages claimed are not less than Two hundred thousand pesos (P200,000):** *Provided further,* That availment of the **provisional remedies** may be granted in accordance with the Rules of Court. The Director of Legal Affairs shall have the power to hold and punish for contempt all those who disregard orders or writs issued in the course of the proceedings.(Emphasis and underscoring supplied)

X X X

The “petition” failed to allege the particular provisions of the IP Code that have been supposedly violated by Pambansang Federation ng Gamefowl Breeders (DIGMAAN), Inc. Neither does the “petition” state that Philippine Federation of Gamefowl Breeders, PFGB, Inc. is a registrant of a trademark or a holder of a copyright, patent, utility model or industrial design. Moreover, Philippine Federation of Gamefowl Breeders, PFGB, Inc. has not claimed damages not less than Php200,000.00, a requirement under Section 10.2 (a) of the IP Code. It must be emphasized, that the claim of damages is a jurisdictional requirement under the IP Code.


Succinctly, the law and jurisprudence has recognized the authority of the court to dismiss complaint *motu proprio* when it appears from the pleadings or evidence on record that it has no jurisdiction over the subject matter.<sup>5</sup>

Consequently, because this Bureau has no jurisdiction over the “petition”, it cannot resolve, much less grant, the application for the issuance of the writ of preliminary injunction.

**WHEREFORE,** premises considered, the instant Administrative Complaint is hereby **DISMISSED.**

**SO ORDERED.**

Taguig City, 30 September 2014.

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

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<sup>5</sup> *Katon v. Palanca Jr., et. al.*, G.R. No. 151149, September 7, 2004.