OFFICE OF THE DIRECTOR GENERAL

THE HERSHEY COMPANY,
Opposer-Appellant,

-versus-

GIRLIE PAULINO,
Respondent-Appellee.
x----------x

APPEAL NO. 14-2010-0022
IPC No. 14-2007-00265
Opposition to:

Application No. 4-2005-009908
Date Filed: 06 October 2005
Trademark: HERSHE AND DEVICE

NOTICE

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

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DATE: 12/08/14
BY: [illegible]

GREETINGS:

Please be informed that on 22 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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Appeal No. 14-2010-0022

Inter Partes Case No. 14-2007-00265
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Application No. 4-2005-009908
Date Filed: 06 October 2005
Trademark: HERSHE AND DEVICE

DECISION

THE HERSHEY COMPANY ("Appellant") appeals the decision of the Director of Bureau of Legal Affairs ("Director") denying the Appellant's opposition to the registration of the mark "HERSHE AND DEVICE".

Records show that GIRLIE PAULINO ("Appellee") filed on 06 October 2005 Trademark Application No. 4-2005-009908 for HERSHE AND DEVICE for use on trading of clothing. The trademark application was published in the Intellectual Property Office Electronics Gazette for Trademarks on 11 May 2007. Subsequently, the Appellant filed on 10 September 2007 a "VERIFIED NOTICE OF OPPOSITION" to the registration of HERSHE AND DEVICE in favor of the Appellee.

The Appellant claimed that the Appellee's mark is confusingly similar to its registered "HERSHEY MARKS" which are well-known internationally and in the Philippines and that the Appellee's use of HERSHE AND DEVICE will falsely indicate a connection between the Appellant and the Appellee. Thus, according to the Appellant, the Appellee's use of HERSHE AND DEVICE will unfairly allow the Appellee to ride on the Appellant's business reputation and goodwill causing incalculable and irreparable damage not only to the Appellant but to the consuming public as well.

After the appropriate proceedings the Director rendered a decision on 19 September 2008, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered the **OPPOSITION** filed by The Hershey Company is, as it is hereby, **DENIED**. Accordingly, Application Serial No. 14-2007-00264 filed by Respondent-Applicant, Girlie Paulino on 10 September 2007 for the mark "HERSHE & DEVICE" used for "trading of clothing" under class 35, is as it is hereby, **GIVEN DUE COURSE**.
>
> Let the filewrapper of "HERSHE", subject matter of this case together with a copy of this Decision be forwarded to the Bureau of Trademarks (BOT) for appropriate action.

SO ORDERED."

On 03 November 2008, the Appellant filed a "MOTION FOR RECONSIDERATION (to the Decision dated 19 September 2008)" which the Director denied for lack of merit.[1] Not satisfied the Appellant appealed[2] to this Office seeking the reversal and setting aside of the decision of the Director and the granting of its opposition.

This Office issued an Order dated 26 February 2010 giving the Appellee thirty (30) days from receipt of the Order to file her comment on the appeal. The Appellee did not file her comment and this case was deemed submitted for decision.

While this Office is drafting the decision on this appeal, it noticed in the records that there is no Declaration of Actual Use ("DAU") for HERSHE AND DEVICE. Accordingly, this Office requested information from the Bureau of Trademarks (BOT) on whether the Appellee filed a DAU for this mark.[3] On 16 April 2014, the BOT issued a "CERTIFICATION" that no DAU has been filed for HERSHE AND DEVICE.

In this regard, the Appellee's application to register the mark HERSHE AND DEVICE is considered refused for its failure to file the required DAU. Sec. 124.2 of the IP Code states that:

> 124.2. The applicant or the registrant shall file a declaration of actual use of the mark with evidence to that effect, as prescribed by the Regulations within three (3) years from the filing date of the application. Otherwise, the application shall be refused or the mark shall be removed from the Register by the Director.

Consequently, this appeal is now deemed moot and academic and the Office need not decide this case on the merits. The Appellant in filing the opposition to the registration of HERSHE AND DEVICE seeks to prevent the registration of this mark in favor of the Appellee. However, in view of the certification issued by the BOT showing the Appellee's failure to file the DAU, the Appellant's plea for the refusal of the Appellee's trademark application was practically granted.

In one case, the Supreme Court of the Philippines has ruled that:

> For a court to exercise its power of adjudication, there must be an actual case or controversy - one which involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution; the case must not be moot or academic or based on extra-legal or other similar considerations not cognizable by a court of justice. A case becomes moot and academic when its purpose has become stale, such as the case before us.[4]

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[1] Resolution No. 2009-47(D) dated 21 December 2009.
[2] APPEAL MEMORANDUM dated 25 February 2010.
[3] MEMORANDUM dated 08 April 2014.
[4] Dean Jose Joya, v. Presidential Commission on Good Government, G. R. No. 96541, 24 August 1993.

In this instance, no practical or useful purpose would be served by resolving the issues and merits in this case when the Appellant's trademark application is now considered refused. It is unnecessary to indulge in academic discussion of a case presenting a moot question as a judgment thereon cannot have any practical legal effect or, in the nature of things, cannot be enforced.[5]

Wherefore, premises considered, the appeal is hereby dismissed for the reasons discussed above.

Let a copy of this Decision as well as the trademark application and records be furnished and returned to the Director of the Bureau of Legal Affairs and the Bureau of Trademarks for their appropriate action and consideration of the Appellee's failure to file the required DAU. Further, let also the library of the Documentation, Information and Technology Transfer Bureau be furnished a copy of this decision for information, guidance, and records purposes.

SO ORDERED.

22 SEP 2014 Taguig City.

RICARDO R. BLANCAFLOR
Director General

[5] Gerardo O. Lanuza, Jr. v. Ma. Vivian Yuchengco, G.R. No. 157033, 28 March 2005.