



MH ADEXPRESSION, INC.,
Represented by its President/General
Manager, Filomeno P. Hernandez,
Petitioner,

-versus-

ADELE MARIE JOSELINA CRUZ
and/or UR LED Enterprise,
Respondent.

X-----X

}
} IPC No. 12-2009-00202
} Petition for Cancellation:
} U.M. Reg.No. 2-2008-00402
} Date Issued: 13 October 2008
} Title: "Mobile Entertainment
} and Advertising System"

NOTICE OF DECISION

**TERENCIO ANGEL DE DIOS MARTIJA
& CHIPECO LAW OFFICES**
Counsel for Petitioner
Suite 401-A ITC Building
337 Sen. Gil Puyat Avenue
Makati City

CRUZ LAW FIRM
Counsel for Respondent
Unit 830 City & Land Mega Plaza
ADB Avenue corner Garnet Road
Ortigas Center, Pasig City

GREETINGS:

Please be informed that Decision No. 2015 - 14 dated February 05, 2015 (copy enclosed) was promulgated in the above entitled case.

Taguig City, February 05, 2015.

For the Director:

Edwin Q. Dating
Atty. EDWIN DANILO A. DATING
Director III
Bureau of Legal Affairs



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Decision No. 2015 – 14

DECISION

MH ADEXPRESSION, INC., represented by its President/General Manager, Filomeno P. Hernandez ("Petitioner")¹, filed Verified Petition for Cancellation of Utility Model Registration No. 2-2008-00402. The registration issued to ADELE MARIE JOSELINA CRUZ and/or UR LED Enterprise ("Respondent-Registrant")², is entitled "Mobile Entertainment and Advertising System."

The Opposer alleges the following:

"3. Petitioner is engaged in the manufacture and sale of mobile vehicle mounted Light Emitting Diode (LED) Billboards. Its flagship product is the Barangay LED Van, a LED billboard mounted on a truck with the screen bolted to its bottom metal aluminum casing which is raised manually by pulling a chain loop from an installed metal chain block, passing over a heavy duty pulley, hoisting the whole screen projector to a desired height from its base.

"4. While both Petitioner and Respondent use the LED screen as its major component in its utility model, the latter's design is mounted permanently on one side of the vehicle body for displaying video images. On the other hand, Petitioner's utility model is entirely movable, specifically designed to be hoisted to a certain height before the same can be used for viewing purposes.

"5. Sometime 2004, Petitioner organized and established MH Adxpression, Inc., in Antipolo City, Rizal. During its initial business venture, the said company was engaged primarily in the manufacture of Flex Lighted Box signages at low cost price through a system of mass production.

"6. However, in 2005, the company's President and General Manager, Filomeno Hernandez, a veteran-pioneer in the advertising industry (outdoor billboard concept), conceptualized a non-traditional type of outdoor video display which he called the "Menoboard". The said video display employed a service of dual hi-lumen video projectors and used imported silk screen where the video images are projected through the use of a multimedia computer system operating for its nighttime operations and rolltex tarpaulin poster for its daytime operations.

"7. As a result of the innovation conceptualized by Filomeno Hernandez, the company secured clients and contracts for the installation of several outdoor MenoBoard Display scattered all over Metro Manila.

¹ A corporation duly organized and existing under Philippine laws with principal place of business at 257 Sumulong Highway, Mambungan, Antipolo City.

² With known residence/business address at 24 old Sauyo Road, Novaliches, Quezon City.

"8. The company continued with its MenoBoard concept for 2005-2007 until the Petitioner noticed that the billboard projector-type they developed had limited video exposure with its maximum visibility only during nighttime operations.

"9. Hence, Petitioner ceased using the projector system and eventually shifted to the use of Light Emitting Diode (LED) billboards on February 2008 for better visibility both during daytime and nighttime.

"10. Consequently, petitioner replaced its existing billboards at EDSA-Camp Aguinaldo, EDSA-Sangandaan, EVER Gotesco Plaza, Plaza Sta. Cruz, Plaza Evangelista, Quiapo, Meralco-Ortigas, Julia Vargas, Ortigas Center, Taft Avenue, Katipunan Avenue, Elliptical Road, Quezon City, with LED display boards.

"11. Still thinking of ways to better improve its products' marketability, on March 2008, petitioner conceived the vehicle-mounted audio/video advertisement display device using a LED display screen disposed on one side of the vehicle designed to be adjusted from an original position at the side of the vehicle into an elevated position to make the advertised display more visible to the viewing public, which he called the Barangay L.E.D. van.

"12. As like any other businessman, Petitioner sent out flyers and tested its product by coordinating with several local government units to have its Barangay L.E.D. van displayed in key areas in their respective cities (copies of petitioner's flyers and photos of the Barangay L.E.D. van in operation are hereto attached

"13. On 30 March 2009, Petitioner filed an application for registration of his utility model with the Bureau of patents of the Intellectual Property Office in order to protect his creation.

"14. In the meantime, petitioner continued marketing his product by sending proposals to local government units, including the Department of Interior and Local Government (DILG). In fact, petitioner even received a formal reply from the Office of Public Affairs of the DILG commending the product.

"15. To date, petitioner has demo units operating in several local government units in Luzon, Visayas and Mindanao.

"16. To his surprise, petitioner received a letter from respondent dated 24 March 2009 claiming ownership over the patent of the vehicle-mounted L.E.D. billboard. In the said letter, respondent accused petitioner of infringement for manufacturing the said vehicle-mounted L.E.D. billboard.

"17. On 5 May 2009, another letter was sent by respondent reiterating their claim of ownership and accusation of infringement.

"18. At the outset, it must be stressed that respondent's alleged patent/ownership over the vehicle-mounted L.E.D. billboard should be cancelled on the ground that the same is not new or patentable.

x x x

"21. Obviously, petitioner cannot claim to be the creator of the vehicle-mounted L.E.D. billboard considering that the concept had long been thought about and materialized by the other individuals even before she could produce her own vehicle-mounted L.E.D. billboard.

"22. To be sure, a simple browse in the internet would readily show the numerous vehicle-mounted L.E.D. designs available to the public.

"23. Thus, respondent cannot claim exclusivity over the design considering that the patented utility model had been in existence and available to the public long before respondent sought registration for the same.

"24. More importantly, cancellation is proper in the instant case in view of the fact the registration granted to respondent's invention covered a creation which is not new and forms part of a prior art. Moreover, the claimed invention has been made available to the public anywhere in the world even before the filing date or the priority date of respondent's application.

"25. Under Section 109.4 (d) of the Intellectual Property Code, the utility model registration shall be cancelled on the ground, among others, that the owner of the utility model registration is not the inventor or successor in title.

"26. Respondent is neither the owner nor the inventor of this utility model. Although petitioner does not claim to be the inventor of the subject design, it is actually petitioner who introduced the subject design to the market.

"27. Further, there is a strong possibility that respondent merely saw the LED design during the exhibit/showcase held at the World Trade Center sometime September 2008. As far as petitioner was concerned, respondent was not yet into producing LED billboards or LED mounted at that time. On the other hand, petitioner was already servicing numerous clients with its LED billboards even before the exhibit at the World Trade Center.

"28. The fact that respondent's alleged designer/maker, Rogelio Bueno, was a former sub-contractor for some of petitioner's projects thereby witnessing the production and manufacture by petitioner of LED billboards also raises serious doubts as to respondent's claim of originality.

The Petitioners' evidence consist of the following:

1. Exhibit "A" - Certificate of Incorporation;
2. Exhibit "B" - Secretary's Certificate in favor of Mr. Hernandez;
3. Exhibit "C"- "F" - Pictures of LED billboards in various places in Metro Manila;
4. Exhibit "G"- "Q"- Flyers and photos of the Barangay L.E.D. van in operation in several local government units;
5. Exhibit "R" - Letter dated 08 June 2009 from the Office of Public Affairs, DILG; and,
6. Exhibit "S"- "Z"- Internet articles of numerous vehicle-mounted L.E.D. designs available to the public.

On 03 February 2015, Respondent-Registrant filed its Answer containing among others the following Special and Affirmative Defenses:

"9. Respondent-Registrant has been engaged in the audio-visual industry for more than twenty (20) years and specializes in the production of audio-visual presentations, documentary, tv specials and commercials under SFX Productions, Inc., a service-oriented audio-visual company established in the year 1990.

"10. After ten (10) years, respondent-registrant expanded its services to include the staging of live events which entails audio visual production, video coverage, live and sounds stage set-up, among others using video projectors with screen.

"11. In 2005, respondent-registrant started to use the light-emitting diode screens or LED screens which served as the better alternative to video projector because of its ability to show video during daytime and when the venue is lighted. However, the use of LED screens require manpower who will do the set-up and it takes hours to complete the set-up considering the weight and size of the LED screens.

"12. During the early part of 2007, respondent-registrant formed a team to plan the LED services which included Mr. Rogelio B. Bueno who had an extensive experience in the sales of audio-visual equipment and had global contacts of suppliers. By late 2007, in their effort to

create ways to overcome the difficulty of setting-up the LED screens as well as improve their LED services, the respondent-registrant came up with the idea of the mobile entertainment and advertising system.

"13. The design of the mobile entertainment and advertising system consisted of the following: a vehicle having a vehicle body with front side door, a LED display screen disposed on one side of said vehicle, a media player to play an audio/video program on LED image processor which projects said audio/video program from said media player into said LED display screen, a speaker system to transmit the sound emitting from said audio/video program, and a height adjustable mounting assembly integrally disposed behind said LED display screen which enables the LED display screen to be moved from an original position at the side vehicle into an elevated position to make the advertised display more visible to the viewing public.

"14. In April 2008, the respondent-registrant began production of the mobile entertainment and advertising system using a bus where the LED screen was mounted and the space inside the bus was used to accommodate the operating system of the LED and audio speakers and as lounge for clients who may choose to travel with the bus and can also be used as backstage area during the event. By June 2008, the first unit of the mobile entertainment and advertising system was completed and registered with the Land Transportation Office on July 15, 2008 as shown by the Certificate of registration, a photocopy of which is herein attached as Annex "1".

"15. In September 2008, respondent-registrant filed an application for the registration of the mobile entertainment and advertising system which is now covered by Utility Model Registration No. 2-2008-000402.

"16. At present, the respondent-registrant has a fleet of five (5) mobile entertainment and advertising system consisting of three (3) buses and two (2) trucks which services clients such as ABS-CBN and GMA 7, advertising agencies, private companies and government agencies which require mobile LED for special events and as an advertising medium. The most recent campaigns which used the respondent-registrant's mobile entertainment and advertising system were the Kapamilya regional roadshows of ABS-CBN in Pangasinan, Iloilo, Cebu, Leyte, Davao and Cagayan de Oro, communication campaign of the National Nutrition Council, Emperador Brandy roadshows, Eat Bulaga (GMA 7) and Walk for Earth (Active Asia). The brochure and the pictures of the two (2) units of the mobile entertainment and advertising system are herein attached as Annexes "2", "3" and "4".

"17. Utility Model Registration No. 2-2008-000402 under the name of respondent-registrant was issued in accordance with the provisions of the Intellectual Property Code, laws and regulations.

"18. The allegation that the utility model is not new and forms part of a prior art is without factual basis. The pictures attached as Annexes "S" to "Z" do not constitute credible evidence of prior art not to mention that it does not show any semblance of similarity to the respondent-registrant's mobile entertainment and advertising system.

"19. The allegation that there is a strong possibility that respondent-registrant saw the petitioner's LED design during the exhibit/showcase at the World trade Center in September 2008, is another speculation which is certainly unbelievable and incredible. The respondent-registrant created the mobile entertainment and advertising system in 2007 as a way of improving the LED services offered by the respondent-registrant with the objective of providing a mobile entertainment system which carries electronic and video equipment ready for use without need of installation or adjustment and by June 2008, respondent-registrant completed the production of its first unit of mobile entertainment and advertising system.

"20. The respondent-registrant sent demand letter to the petitioner to cease and desist from the unauthorized manufacture, distribution, sale or use of the bus mounted mobile LED billboard covered by Utility Model Registration No. 2-2008-000402. The photocopies of the letters dated March 5, 2009, March 24, 2009 and May 5, 2009 are herein attached as Annexes "5", "6", and "7".

"21. The petitioner replied by sending the letters dated March 26, 2009 and May 18, 2009 wherein the petitioner pointed out the differences in its Barangay LED Van as against respondent-registrant's mobile entertainment and advertising system and that the Barangay LED Van was registered with the Philippine Patent Office under Intellectual Property Rights No. 22009000115. The respondent-registrant was surprised to have received thereafter this petition for cancellation. The photocopies of the letters dated March 26, 2009 and May 18, 2009 are herein attached as Annexes "8" and "9".

"22. What is evident from this petition is the intention of the petitioner to appropriate for himself the mobile entertainment and advertising system covered by Um Registration No. 2-2008-000402. As can be seen from the petition, the petitioner filed an application for registration of his utility model on March 30, 2009 under Application No. 2-2009-000115. The petitioner's utility model is the same mobile entertainment and advertisement system mounted on a bus, truck or trailer covered by UM Registration No. 2-2008-000402. Its principal elements and features are the same – it has the same LED video screen for displaying video images, speakers producing output, and electronic equipment for processing and playing video images displayed on the video screen. The use for which the petitioner's utility model is intended is also the same as that of Um Registration No. 2-2008-00402 – for use as an entertainment and advertising system, ready for use without requiring installation designed to showcase any audio-video material at any given time and in any place, bringing entertainment and messages right to the target audience.

The Respondent-Patentee's evidence consist of the following:

1. Exhibit "1" - Certificate of Registration issued by the Land Transportation Office;
2. Exhibit "2"- "4" - Brochure and pictures of two (2) units of mobile entertainment and advertising system;
3. Exhibit "5"- "7" - Demand letters to Petitioner;
4. Exhibit "8"- "9" - Reply letters of Petitioner;
5. Exhibit "10" - Affidavit of Adele Marie Joselina Cruz; and,
6. Exhibit "11" - Affidavit of Rogelio Bueno.

On 15 February 2010, Petitioner filed its Reply. Thereafter, Petitioner and Respondent-Patentee submitted their respective Position Papers on 21 October 2010 and 29 October 2010. Hence, this case is deemed submitted for decision.

Should Utility Model Registration No. 2-2008-00402 issued in favor of Respondent-Registrant be cancelled?

The Petitioner anchored its petition on Sections 61, 61.1(a), Chapter VI of R.A. No. 8293, otherwise known as the Intellectual Property Code of the Philippines ("IP Code"), which provides that:

Sec. 61. Cancellation of Patents

61.1. Any interested person, may upon payment of the required fee, petition to cancel the patent or any claim thereof, or parts of the claim, on any of the following grounds:

- (a) That what is claimed as the invention is not new or patentable;

x x x

Petitioner likewise relied on Section 109.4 par. (d) of the same law, which provides that:

109.4. In proceedings under Section 61 to 64, the utility model registration shall be cancelled on the following grounds:

- (a) That the claimed invention does not qualify for registration as a utility model and does not meet the requirements of registrability, in particular having regard to Subsection 109.1 and Sections 22, 23, 24 and 27;
- (b) That the description and the claims do not comply with the prescribed requirements;
- (c) That any drawing which is necessary for the understanding of the invention has not been furnished;
- (d) That the owner of the utility model registration is not the inventor or his successor in title.

Records show that the Respondent-Registrant applied for utility model registration on 05 September 2008 and was issued registration on 13 October 2008. It covers utility model for mobile entertainment and advertising system with the following claim:³

A mobile entertainment and advertising system comprising: a vehicle having a vehicle body with front side door; a video screen mounted on at least one side of said vehicle body for displaying video images; at least a pair of opposing speakers, each being mounted on one side of said vehicle body adjacent said video screen which produces audio output; electronic equipments positioned within said vehicle body, said electronic equipments consisting of a control processing unit for serving image video process, an image video processor for processing images to be displayed on said video screen, a digital video disc player (DVD) for playing video images to be displayed on the said video screen, a video compact disc (VCD) player for playing video images to be displayed said objects on said video screen, a camera for photographing objects and displaying said objects on said video screen, a satellite receiver which receives signal from television network and transmits said signal onto said video screen, a computer which provides information data and displays said information data onto said video screen, and a monitor for simultaneously viewing the images being displayed on said video screen; and a power supply unit which runs said video screen and electronic equipments.

A patent shall be presumed valid.⁴ The issuance of such patent creates a presumption which yields only to clear and cogent evidence that the patentee was the original and first inventor. The burden of proving want of novelty is on him who avers it and the burden is a heavy one which is met only by clear and satisfactory proof which overcomes every reasonable doubt.⁵

In this case, the Petitioner claimed that the subject utility model is *not new or novel* and that the Respondent-Registrant is not the "inventor" thereof.

To establish its case, the Petitioner submitted various internet-sourced pictures showing L.E.D. designs⁶ which appear similar in appearance to the subject patent. However, a scrutiny of these pieces of evidence shows the billboard in pictures are mere structures which do not show or provide information as to when these were first introduced into the market or made known to the public. There is nothing to say that these constitute prior art as to bar or revoke the registration of the Respondent-Registrant's utility model. A prior art is one which has been made available to the public anywhere in the world, before the filing date or the priority date of the application claiming the

³ Filewrapper records.

⁴ Chiron Corp. v Genentech Inc., 363 F.3d 1247, 125 (Fed. Cir. 2004)

⁵ 60 AmJur 2d 573, cited in Angelita Manzano v. Court of Appeals and Melencia Madolaria, as assignor to new United Foundry Manufacturing Corporation, G.R. No. 113388, 05 September 1997.

⁶ Exhibits "S" to "Z" of Petitioner.

invention.⁷ Likewise, the pictures of LED billboards in different places in Metro Manila⁸ and the flyers and photos of the Barangay L.E.D. van in operation in several local government units⁹, do not convey information or establish prior art.

Thus, the instant petition is based on bare allegations which are not equivalent to proof under the Rules. The cancellation proceeding is essentially a litigation and the parties have the burden to submit evidence to support their allegations and to impeach the others.

Succinctly, the issuance of a patent creates a presumption which yields only to clear and cogent evidence that the patentee was the original and first inventor.¹⁰ The burden of proving otherwise is on him who avers it and the burden is heavy one which is met only by reasonable doubt. With this, this Bureau concludes that the pieces of evidence submitted by the Petitioner failed to overcome the presumption of a valid patent in favor of Respondent-Patentee.

WHEREFORE, premises considered, the Petition is hereby **DISMISSED**. Let the filewrapper of this subject patent be returned, together with a copy of this Decision, to the Bureau of Patents for information and appropriate action.

SO ORDERED.

Taguig City, 05 February 2015.


Atty. **NATHANIEL S. AREVALO**
Director IV, Bureau of Legal Affairs

⁷ Sec. 24.1, R.A. 8293.

⁸ Exhibits "C" to "F" of Petitioner.

⁹ Exhibits "G" to "Q" of Petitioner.

¹⁰ Angelita Manzano v. Court of Appeals and Melencia Madolaria, as assignor to new United Foundry Manufacturing Corporation, G.R. No. 113388, 05 September 1997.