

3C DISTRIBUTORS INTERNATIONAL INC.,
Petitioner,

-versus-

REGINALD JOSEPH O. CHUA,
Respondent – Registrant.

x-----x

IPC No. 13-2011-00397
Petition for Cancellation:
ID Reg. No. 13-2009-00488
Date Issued: 26 October 2009
Title: "AN AERODYNAMIC
FAN BLADE"

NOTICE OF DECISION

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GREETINGS:

Please be informed that Decision No. 2016 - 147 dated May 16, 2016 (copy enclosed) was promulgated in the above entitled case.

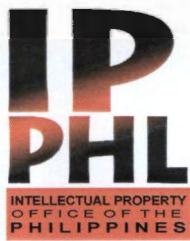
Taguig City, May 16, 2016.

For the Director:

MARILYN F. RETUAL
IPRS IV
Bureau of Legal Affairs

Republic of the Philippines
INTELLECTUAL PROPERTY OFFICE

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x-----x		Decision No. 2016- <u>147</u> -

DECISION

3C DISTRIBUTORS INTERNATIONAL INC.¹ ("Petitioner") filed on 25 August 2011 a Verified Petition for Cancellation of Certificate of Registration of Industrial Design No. 13-2009-000488 issued on 26 October 2009 issued to REGINALD JOSEPH O. CHUA² ("Respondent-Registrant").

Petitioner asserts that the subject industrial design should be cancelled on the ground of lack of subject matter that could be protected pursuant to Section 113.2 of R.A. No. 8293 otherwise known as the Intellectual Property Code of the Philippines ("IP Code) which provides:

113.2. Industrial design dictated essentially by technical or functional considerations to obtain a technical result or those that are contrary to public order, health or morals shall not be protected.

Petitioner further states that the subject matter claimed as new and sought to be covered by design registration is also the same electric fan blade covered by UM Registration No. 12-2010-00196 also in the name of Respondent-Registrant.

Petitioner's evidence consists of the following:

1. Exhibit "A" - Industrial Registration No. 13-2009-000488 issued on 26 October 2009 to Respondent-Registrant;
2. Exhibit "B" - Utility Model Registration No. 12-2010-00196 issued on 02 August 2010 to Respondent-Registrant; and
3. Exhibit "C" - Affidavit of Atty. Jorge Cesar M. Sandiego.

On 24 October 2011 this Bureau issued a Notice to Answer and personally served the same to Respondent-Registrant on 17 November 2011. Respondent-Registrant filed several motions for extension to file the answer. Despite the extensions given, Respondent-Registrant failed to file his Answer. On 18 September 2012, this Bureau issued an Order declaring Respondent-Registrant in default for failure to file the answer. On 26 September 2012, Respondent-Registrant filed a

¹ A corporation organized and existing under the law of the Philippines with address at 30 Taft St., San Juan City

² With address at No. 82 Biak Na Bato, Quezon City.

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It is noted that the angular shaped blade 12 together with the desired weight provides a maximum delivery of airflow with much higher volume and eases the load burden to the motor of the electric fan making the aerodynamic fan blade of the utility model ideal for electric and industrial fan user.

"5.4 Consequently, the desired angular shape of the fan blade shown in the UM Registration dictates essentially technical and functional considerations to obtain a technical result — which is to provide a maximum delivery of airflow with much higher volume and eases the load burden to the motor of the electric fan.

"5.5 It should also be noted that the shape of the fan blades in both the questioned design and UM Registration are the same (please see their respective figures 1). Furthermore, the titles are the same - aerodynamic fan blades and issued to the same person - the herein Respondent-Registrant."

Rule 1500 of the Revised Implementing Rules and Regulations for Patents, Utility Models and Industrial Designs provides:

Rule 1500. Industrial Design. – An industrial design is any composition of shape, lines, colors, or a combination thereof, or any three - dimensional form, whether or not associated with shape, lines, or colors, which produce an aesthetic and ornamental effect in their *tout ensemble* or when taken as a whole; Provided, that such composition or form gives a special appearance to and can serve as pattern for an industrial product or handicraft.

Industrial products include articles of manufacture that belong to the useful or practical art, or any part including thereof, which can be made and sold separately.

After a judicious evaluation of the petition and the evidence on records, this Bureau finds the petition without merit. The feature of the subject Industrial Design is as follows:

Claim:

The ornamental design for an aerodynamic fan blade as substantially shown:

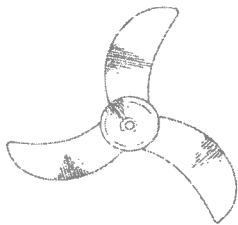


FIG. 1

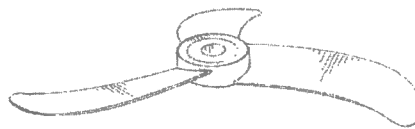


FIG. 2

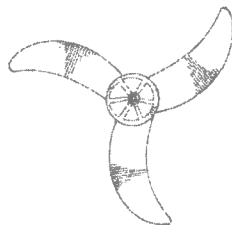


FIG. 3

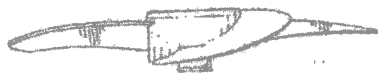


FIG. 4

A scrutiny of the subject industrial design shows that the aerodynamic blade disclosed and claimed satisfies the requirement of ornamentality in view of its unique shape and proportion of the fan blade that creates an impression in the eyes of the observer. It is in the uniqueness of the shape and the proportion of the fan blades as compared to the conventional blades of other electric fan blades that makes the design registrable. While the shape and proportion of the blades has functionality, it does not veer away from the ornamentality or aesthetic effect of the design. On the other hand, the functionality incidental thereto can be protected separately by a utility model registration. The law on patents does not prohibit the registration of an article of manufacture that possesses both ornamental and functional features to be protected separately by an industrial design and/or utility model registration.

Moreover, in *Del Rosario v. Court of Appeals*³, the Supreme Court ruled, to wit:


In issuing, reissuing or withholding patents and extensions thereof, the Director of Patents determines whether the patent is new and whether the machine or device is the proper subject of patent. In passing on an application, the Director decides not only questions of law but also questions of fact, i.e. whether there has been a prior public use or sale of the article sought to be patented. Where petitioner introduces the patent in evidence, if it is in due form, it affords a prima facie presumption of its correctness and validity. The decision of the Director of Patents in granting the patent is always presumed to be correct, and the burden then shifts to respondent to overcome this presumption by competent evidence.

In this case, Petitioner who is seeking the cancellation of the industrial registration issued by the Director of Patents failed to overcome the prima facie presumption of the correctness and validity of such registration. This Bureau, therefore cannot cancel the registration on the ground alleged or cited by the petitioner.

WHEREFORE, the instant Petition for Cancellation is hereby **DENIED** for the reason stated above. Let the filewrapper of Industrial Design Registration No. 13-2009-00488 be returned, together with a copy of this Decision, to the Bureau of Patents for information and appropriate action.

SO ORDERED.

Taguig City


ATTY. NATHANIEL S. AREVALO
Director IV
Bureau of Legal Affairs

³ G.R. No. 115106. March 15, 1996