

MOTION PICTURE ASSOCIATION,
Complainant,

-versus-

**BACOR CABLE TV CORP.,
PARAÑAQUE CABLE TV, INC., LAS
PINAS CABLE TV, INC. AND CABLE
LINK AND HOLDING CORP.,**
Respondents.

IPV No. 10-2007-00012

For: Violation of Intellectual
Property Rights under the
IRR Issued Pursuant to the
Joint NTC-IP Philippines
Memorandum Agreement dated
16 June 2006 (Joint NTC-IP Phil.
Memo. Circular No.1, s. 2007)

x-----x

NOTICE OF DECISION

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NATIONAL TELECOMMUNICATIONS COMMISSION

BIR Road, East Triangle
Diliman, Quezon City

GREETINGS:

Please be informed that Decision No. 2016 - 18 dated November 07, 2016 (copy enclosed) was promulgated in the above entitled case.

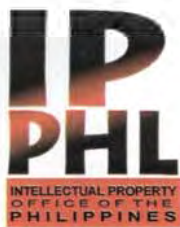
Taguig City, November 14, 2016.

For the Director:

MARILYN F. RETUTAL
IPRS IV, Bureau of Legal Affairs

**Republic of the Philippines
INTELLECTUAL PROPERTY OFFICE**

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} Decision No. 2016- 18

DECISION

Motion Picture Association¹ ("Complainant") filed a complaint against Bacoor Cable TV Corporation², Parañaque Cable TV Corporation³, Las Piñas Cable TV, Inc.⁴ and Cable Link and Holdings Corp. ("Respondents") for violation of intellectual property rights under the Implementing Rules and Regulations issued pursuant to the Joint National Telecommunications Commission (NTC) – Intellectual Property Philippines (IPO) Memorandum of Agreement dated 16 June 2006.

The Complainant alleges that sometime in November 2006 and May 2007, the Respondents aired through their respective cable TV subscriber service channels the movies Alien 3, Rising Sun, Desperado, The Sweetest Thing and Stuck on You, among others, without proper authorization. It claims that the said films belong to 20th Century Fox and Columbia Pictures Industries, two of its member-companies, and are covered by copyright certificates of registration issued by the United States Copyright Office.

According to the Complainant, it engaged the services of Ricky Taguding and Anna Ruth A. Rioflorido, both connected with the Hills and Associates Risk Consulting (Phils.), Inc., to undertake surveillance and investigations on the Respondents' unauthorized activities. Taguding and Rioflorido attested that they saw the Cablelink Logo flash on screen several times and recorded the films to confirm that the said entity was airing as part of its cable TV services the films belonging to the member companies of the Complainant.

¹ A corporation duly organized and existing under the law of the State of Delaware, United States of America (USA), with principal office located at 15503, Ventura Boulevard, Encino CA 91436, USA. It has a regional office for the Asia Pacific region located at No. 1 Magazine Road, #04-07 Central Mall, Singapore 059567.

² A domestic corporation with principal office at 2nd Floor Ilanations Food City Bldg. No. 151 P. Diego Cera Avenue, Las Piñas City.

³ With principal office at 606 Quirino Avenue, Tambo, Parañaque, Metro Manila.

⁴ With principal office at 151 P. Diego Cera Ave., Las Piñas City.

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In support of its Complaint, the Complainant submitted the following:⁵

1. list of its member companies;
2. certified true copies of a legalized powers of attorney, Asia Pacific Region, Frank Rittman, from Columbia Pictures Industries, Inc. and 20th Century Fox Film Corporation;
3. Special Power of Attorney (SPA) in favor of Atty. Maria Trinidad P. Villareal and/or any lawyer connected to Caballes, Jamora and Somera Law Offices;
4. printout of pages from the website of Cable Link and Holdings Corp.;
5. certified true copy of the Certificate of Filing of Amended Articles of Incorporation and General Information Sheet (GIS) for 2007 of Cable Link and Holdings Corporation;
6. certified true copies of the Copyright Certificate of Registration issued by the US Copyright Office for the films Alien 3, Rising Sun, Desperado, The Sweetest Thing and Stuck on You;
7. legalized certifications from the Assistant Secretary of 20th Century Fox and Columbia Pictures;
8. legalized certificate of Incumbency-Philippines for 20th Century Fox and from the Assistant Secretary of 20th Century Fox;
9. affidavit of Mr. Ricky P. Taguding;
10. copy of Provisional Receipt No. 8296 issued by Bacoor Cable TV Corp.;
11. certified true copy of a GIS for year 2007 filed by Bacoor Cable TV Corp.;
12. affidavit of Ms. Anna Ruth A. Rioflorido;
13. scanned color photograph featuring the frontage of the building where Parañaque Cable TV is located;
14. duplicate original of the job order issued by Cable Link to Rioflorido;
15. original Provisional Receipt No.124363 issued by Las Piñas Cable TV, Inc. to Rioflorido;
16. scanned colored photograph of an installation van of Las Piñas Cable TV, Inc.;
17. 2007 GIS filed by Las Piñas Cable TV, Inc.;
18. Notarized letter dated 18 May 2007 by Ms. Marilyn Morales certifying the authority of Rioflorido as her lessee to apply for a cable connection;
19. Actual VHS tapes containing the recordings of the subject movies.

The Respondents filed their Answer alleging that they are separate and independent corporations. According to the Respondents, they install, operate and maintain their respective facilities which, in whole or in part, receive, amplify or otherwise modify and improve, the received broadcast signals by one or more television, satellite or radio stations, and distribute such signals by wire, fiber optic or cable to subscribing members of the public who pay for such services. Their

⁵ Marked as Exhibits "A" to Q-4", inclusive.

reception, distribution and/or transmission of television line-ups are made possible through agreements with or authorization from the program/content providers. As a result of such agreements, they transmit the channel line-up. They are in such business of operating and maintaining a cable/community antennae television system under separate certificates of authority issued by the NTC.

The Respondents contend that the IPO has no jurisdiction over the instant case, insisting that the same should be filed in regional trial courts (RTC) designated as commercial courts. They assert that the case should be dismissed outright for lack of valid Verification and Certificate of Non-Forum Shopping on the ground that Frank Sears Rittman is not authorized to prosecute the complaint and that his execution of the Special Power of Attorney (SPA) in favor of Complainant's counsel is in excess of his authority. They likewise question the Complainant's legal capacity to institute the instant complaint.

The Respondents deny that they violated the Complainant's copyright and related rights. They claim to merely relay signals between the program/content provider and the subscriber and as such, they perform the function of a conduit or service provider, allowing the end user to connect or subscribe to the content providers or the channels. While they admit that they must strictly observe a policy of self-censorship, they maintain that they have no authority to modify or alter the content/program received or to make any entry therein on behalf of the originator/provider, addressee/subscriber or any third party unless specifically authorized to do so. They further aver that they are under contractual obligation to retain for transmission the program content in accordance with the format as they received or as necessary for the purposes of the performance of the services they were engaged to perform.

The Respondents' evidence consists of the following:⁶

1. Certificate of Incorporation of Bacoor Cable TV Corp.;
2. Certificate of Incorporation of Las Piñas Cable TV, Inc.;
3. Certificate of Filing of Amended Articles of Incorporation of Las Piñas Cable TV, Inc.;
4. Certificate of Filing of Amended Articles of Incorporation of Cable Link & Holdings Corporation;
5. individual certificates of authority Bacoor Cable TV Corp., Las Piñas Cable TV, Inc. and Parañaque Cable TV, Inc.;
6. VHS tape containing their channel line-up as of 08 January 2008;
7. copy of the Secretary's Certificate;
8. 2008 GIS filed by Cable Link & Holdings, Inc.;
9. 2007 GIS filed by Bacoor Cable TV, Inc.;

⁶ Marked as Exhibits "1" to 18.

10. 2007 GIS filed by Las Piñas Cable TV, Inc.;
11. judicial affidavit of Leo San Miguel;
12. VHS tapes containing spliced recording of the film Sky High and Rising Sun;
13. judicial affidavit of Arnold Marquez; and
14. copy of NTC Order No. NCR-173-08.

Ultimately, the issue to be resolved is whether the Respondents infringed the Petitioner's copyright.

Before discussing the same, this Bureau will first resolve the technical issues raised by the Respondents.

Anent the lack of jurisdiction of the IPO, specifically the BLA, Section 10 of R.A. No. 8293, also known as the Intellectual Property Code ("IP Code") provides that:

"Section 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;

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. x x x"

Although the Complainant cites the NTC in its allegations, this does not change the fact that the core issue in this case is its complaint for copyright infringement. The Respondents' assertion that the case should have been filed in regular trial courts is unmeritorious. While civil and criminal cases for infringement do fall within the jurisdiction of the commercial courts, the IP Code clearly states the administrative complaints where the claim of damages is not less than P200,000.00, as in this case, falls within the jurisdiction of the BLA.

As to the alleged lack of authority of Frank Sears Rittman to prosecute the instant complaint, the same holds no water. Records show that Vicki Solomon, Assistant Secretary of Columbia Pictures Industries, Inc., executed a Power of Attorney authorizing:⁷

⁷Exhibit "B".

"The Motion Picture Association (the 'MPA') act on COMPANY'S behalf in respect of the protection and enforcement of intellectual property rights, including copyrights, in diverse cinematographic works produced in video, laser disc, VCD, DVD or any other format version. x x x

Further, Frank Rittman as Vice President, of Motion Picture Association-International, Asia Pacific, is authorized to represent the countries of the Asia Pacific region, the common interests of the United States motion picture, television and home video exporters who are members of the MPA and is hereby specifically authorized to act on COMPANY'S behalf with respect to the protection and enforcement of COMPANY'S intellectual Property rights for the Asia Pacific Region."

Another Power of Attorney was executed by Ronald C. Wheeler, Assistant Secretary of Twentieth Century Fox Film Corporation and Twentieth Century Fox Home Entertainment LLC, stating:⁸

"The Motion Picture Association (the 'MPA") is authorized to act on Fox's behalf in respect of the protection and enforcement of intellectual property rights, including copyrights, in diverse cinematographic works produced in video, laser disc, VCD, DVD or any other format version. x x x

Further, Frank Rittman as Vice President, of Motion Picture Association-International, Asia Pacific, is authorized to represent the countries of the Asia Pacific region, the common interests of the United States motion picture, television and home video exporters who are members of the MPA and is hereby specifically authorized to act on Fox's behalf with respect to the protection and enforcement of Fox's intellectual Property rights for the Asia Pacific Region."

The tenor of the Powers of Attorney executed by Solomon and Wheeler sufficiently shows the authority of the Complainant to prosecute the case in behalf of Columbia Pictures and Twentieth Century Fox. These documents also validate Rittman's authority to sign the Verification and Certificate of Non-Forum Shopping.

Proceeding to the ultimate issue of this case, it bears noting that infringement of a copyright is a trespass on a private domain owned and occupied by the owner of the copyright, and, therefore, protected by law, and infringement of copyright, or piracy, which is a synonymous term in this connection, consists in the doing by any person, without the consent of the owner of the copyright, of anything the sole right to do which is conferred by statute on the owner of the copyright.⁹

A cinematographic film falls within the purview of "audiovisual works and cinematographic works and works produced by a process analogous to

⁸ Exhibit "C".

⁹ Pacita I. Habana vs. Felicidad C. Robles, G.R. No. 131522, 19 July 1999.

cinematography or any process for making audio-visual recordings¹⁰, and therefore copyrightable. Evidence shows that the movies "Alien 3", "Rising Sun" and "Stuck On You" were registered in favor of Twentieth Century Fox Film Corporation on 15 May 1992, 19 July 1993 and 15 December 2003, respectively, by the Copyright Office of the United States under Copyright Registration Nos. PA 565-581, PA 620-083 and PA 1-188-411. The movies "Desperado" and "The Sweetest Thing" are also registered in the name of Columbia Pictures Industries, Inc., covered by Copyright Registration Nos. PA 705-573 and PA 1086-938, issued on 11 September 1995 and 12 July 2002, respectively.

Corollarily, Section 177 of R.A. No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code") provides for the copy or economic rights of an owner of a copyright as follows:

"Sec. 177. Copy or Economic rights. — Subject to the provisions of chapter VIII, copyright or economic rights shall consist of the exclusive right to carry out, authorize or prevent the following acts:

177.1 Reproduction of the work or substantial portion of the work;

177.2 Dramatization, translation, adaptation, abridgement, arrangement or other transformation of the work;

177.3 The first public distribution of the original and each copy of the work by sale or other forms of transfer of ownership;

177.4 Rental of the original or a copy of an audiovisual or cinematographic work, a work embodied in a sound recording, a computer program, a compilation of data and other materials or a musical work in graphic form, irrespective of the ownership of the original or the copy which is the subject of the rental; (n)

177.5 Public display of the original or copy of the work;

177.6 Public performance of the work; and

177.7 Other communication to the public of the work."

In the affidavit of Ricky P. Taguding¹¹, he stated that he subscribed for the services of Bacoor Cable TV Corporation, as shown by the receipt the latter issued to him dated 10 September 2006. He claims to have watched the movies "The Rising Sun" and "Alien 3" in channels 42 (Movie Channel) and 45 (Movie Plus), respectively, on 17 September 2006. Taguding took the witness stand and testified in part:¹²

¹⁰ Section 172.1(l) of the IP Code.

¹¹ Exhibit "O".

¹² TSN, 24 July 2008, pp. 37-42.

ATTY. VILLAREAL: *Can you present. For the record, witness just took out a VHS tape with the notations 'Cable Link, September 17, 2006, OA10R1146H Channel 42 Rising Sun.*

x x x

MR. WITNESS: *Bago magstart iyong movie may Cable Link logo muna siya.*

HEARING OFFICER: *For a while counsel, are you asking something?*

ATTY. VILLAREAL: *Yes your honor. I'm asking him because he is volunteering to explain, so I'm asking a question. What is appearing on the screen?*

MR. WITNESS: *Iyan po iyong commercial.*

INTERPRETER: *That is the commercial.*

ATTY. VILLAREAL: *What is that?*

MR. WITNESS: *Commercial po.*

ATTY. VILLAREAL: *The logo of Twentieth Century Fox appear on the screen.*

ATTY. ALCANTARA: *Your Honor, additional manifestation that the device on the upper left corner of the recording showing 18VSL.*

HEARING OFFICER: *Noted.*

ATTY. VILLAREAL: *The title, Rising Sun, splash on screen. What did you notice during the recording of this particular film, if any?*

MR. WITNESS: *Wala pong commercial break, dire-diretso po ang pag record.*

INTERPRETER: *There is no commercial break, the recording is continuous (sic).*

MR. WITNESS: *Pero may instances na iniistop.*

INTERPRETER: *But there are instances that it's being stopped the film.*

MR. WITNESS: *Dahil po may mga sensitive scene or part na hindi ipapakita sa mga manonood.*

INTERPRETER: *Because there are sensitive scenes or parts that cannot be shown to the viewers.*

ATTY. VILLAREL: *What happens in particular at the end of this recording?*

MR. WITNESS: *Pagkatapos po may commercial na lalabas at maraming beses na lumabas iyong Cable Link logo.*

INTERPRETER: *After that, there is a commercial being shown and there are many times that the Cable Link logo is being shown also.*

ATTY. VILLAREAL: *May we ask for permission to pass forward and the witness will stop the viewing at the point wherein the Cable Link logo will appear. The film has ended showing on the screen are the credits of the film, logo, Twentieth Century Fox at the end of the film.*

ATTY. ALCANTARA: *Manifestation your Honor, there is a blank portion of the film credits.*

HEARING OFFICER: *Noted.*

ATTY. ALCANTARA: *Can you explain why there is seemingly pause after the closing credits?*

MR. WITNESS: *Iyon po iyong iniemphasize nila...*

HEARING OFFICER: *Sino iyong sila?*

MR. WITNESS: *Iniemphasize na pag-aari ng Cable Link, iyong channel ma pinili po naming.*

INTERPRETER: *It emphasized the channel we chose which owned by the Cable Link.*

ATTY. VILLAREAL: *(movie resume) (reading the screen) To our valued subscribers, prominently display Cable Link logo, statements pertaining to the payment of the Cable Link films, again, the Cable Link logo appears across the terms subscribers reward program, update your accounts now and the one lucky winners, Cable Link logo promo runs from January to December 2006 good customer..... Also, another Cable Link logo in relation to its kiddie membership club for Kiddos club, Cable Link logo continues to appear on the screen, still in advertisement pertaining to the kiddos ogo Parañaque CL TV, Las Piñas CL TV, Muntinlupa CL TV, Bacoor CL TV, All throughout Cable Link logo appears on the lower right hand portion of the screen, Again, the customer hotline 8256789.*

x x x"

On the other hand, Anna Ruth A. Rioflorido's affidavit¹³ states that she subscribed the cable services of Cablelink and was issued a job order dated 22 May 2007¹⁴ with the latter's logo and a receipt also dated 22 May 2007¹⁵ with the name

¹³ Exhibit "P".

¹⁴ Exhibit "P-2"

"Cablelink Las Piñas Cable TV, Inc.". She allegedly saw the movies "Stuck On You", "The Sweetest Thing" and "Desperado" in channels 42 (Movie Channel), 45 (Movie Plus) and 50 (Hollywood) on 26 May 2007, 30 May 2007 and 31 May 2007, respectively. Rioflorido was presented as witness and testified that:¹⁶

ATTY. VILLAREAL: *What proof do you have if any, that you did see an MPA owned film, an MPA member owned film and thereafter a Cable Link logo un your recording?*

WITNESS: *Ma'am eto po yung tape nan i-record ko po na merong logo ng Cable Link.*

INTERPRETER: *This was the tape that I recorded.*

ATTY. VILLAREAL: *The witness has handed over a VHS tape with the external markings 'Cable Link Las Piñas Channel, 42 Stuck on You, May 26, 2007 8:45 to 19:07 a.m.' which was previously marked during the preliminary conference as Complainant's Exhibit 'Q-4'. We request permission to show, to air.*

HEARING OFFICER: *Proceed.*

ATTY. VILLAREAL: *We are making of record the fact that the witness has placed the VHS inside the machine. For the record, the screen clearly shows Cable Link but we would like to manifest that earlier on when the tape was viewed, markings for Cable Link were already shown on the screen. We will just show one film for today because we actually have 3 others. We have another witness.*

HEARING OFFICER: *Ok.*

x x x

ATTY. VILLAREAL: *Just for the record, the screen is now showing towards the end of the film showing 'Stuck On You', certain mechanics wherein the logo of Cable Link appears on the right portion of the screen. Again, we reiterate, there is also a reference to Cable Link with respect to how to pay the bills...*

ATTY. ALCANTARA: *Can we also manifest that the logo of the Star World appears beside the Cable Link Logo*

x x x"

The Respondents, for their part, argue that they merely perform the function of a conduit or service provider. In order to function as such, they allegedly enter into agreements with the channel/program providers.¹⁷ No copy of such agreement

¹⁵ Exhibit "P-3".

¹⁶ TSN, 15 July 2008, pp. 53-56.

¹⁷ See Answer, p. 16.

was presented by the Respondents. They were mere self-serving declarations which under the law are admissible as evidence. Failure to present the alleged agreements are fatal in the Respondents' defense as the absence thereof proves lack of their authority to air the programs carried by the channel providers.

The act of playing the copyrighted movies constitutes as "other communication to the public" under Section 177.7 of the IP Code. "Communication to the public" or "communicate to the public" means the making of a work available to the public by wire or wireless means in such a way that members of the public may access these works from a place and time individually chosen by them.¹⁸ The copies of the video recordings of the recorded movies clearly show the logo of herein Respondent Cable Link and Holdings Corporation. The Respondents, therefore, through cable, made available the subject movies to their subscribers, without securing authority from the respective copyright owners.

But who shall be held liable for the unauthorized showing of the copyrighted movies? A corporation is an artificial entity created by operation of law. It possesses the right of succession and such powers, attributes, and properties expressly authorized by law or incident to its existence. It has a personality separate and distinct from that of its stockholders and from that of other corporations to which it may be connected.¹⁹ The Respondents' similar addresses are not conclusive that the corporations are solidarily liable. Hence, their individual participation of the complained acts should be proved.

That Taguding and Rioflorido applied for subscription with Parañaque Cable is TV, Inc. are self-serving and not supported by evidence. What is clear though is that Taguding subscribed the services of Bacoor Cable TV Corporation, as shown by the receipt the latter issued to him dated 10 September 2006, while Rioflorido subscribed the services of Las Piñas Cable TV, Inc. as evidenced by the receipt also dated 22 May 2007. As to Cable Link and Holdings Corporation, the video recordings clearly show its logo, which is sufficient proof of its participation of the unauthorized airing of the Complainant's movies. Therefore, for lack of evidence, only the Respondents Bacoor Cable TV Corporation, Las Piñas Cable TV, Inc. and Cable Link and Holdings Corporation are liable.

For failure to prove actual damages, the same is denied. Indeed, basic is the rule that to recover actual damages, the amount of loss must not only be capable of proof but must actually be proven with a reasonable degree of certainty, premised upon competent proof or best evidence obtainable of the actual amount thereof. The claimant is duty-bound to point out specific facts that afford a basis for measuring whatever compensatory damages are borne. A court cannot merely rely

¹⁸ Section 171.3 of the IP Code.

¹⁹ Philippine National Bank vs. Hydro Resources Contractors Corp., G.R. No. 167530, 13 March 2013.

on speculations, conjectures, or guesswork as to the fact and amount of damages as well as hearsay or uncorroborated testimony whose truth is suspect.²⁰

WHEREFORE, premises considered, this Bureau finds that Respondents Bacoor Cable TV Corporation, Las Piñas Cable TV, Inc. and Cable Link and Holdings Corporation liable for copyright infringement and ordered to completely cease and desist from airing, broadcasting, cablecasting, offering for subscription, making any use on any of their cable channels and/or program guides titles, contents and/or films owned by Complainant. Let a copy of this decision be forwarded to the National Telecommunications Commission for information.

SO ORDERED.

Taguig City, **07 NOV 2016**


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

²⁰ PNO Shipping and Transport Corp. vs. Court of Appeals, G.R. No. 107518, 08 October 1998.