



INTELLECTUAL PROPERTY
OFFICE OF THE PHILIPPINES

J. CHOO LIMITED,
Opposer,

-versus-

KARMARTS PUBLIC COMPANY LIMITED,
Respondent-Applicant.

X-----X

IPC No. 14-2014-00459

Opposition to:

Appln. Serial No. 4-2013-010276

Date Filed: 28 August 2013

TM: CATHY CHOO

NOTICE OF DECISION

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GREETINGS:

Please be informed that Decision No. 2017 - 357 dated 19 October 2017 (copy enclosed) was promulgated in the above entitled case.

Pursuant to Section 2, Rule 9 of the IPOPHL Memorandum Circular No. 16-007 series of 2016, any party may appeal the decision to the Director of the Bureau of Legal Affairs within ten (10) days after receipt of the decision together with the payment of applicable fees.

Taguig City, 19 October 2017.

MARILYN F. RETUAL
IPRS IV

Bureau of Legal Affairs



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IPC No. 14-2014-00459

Opposition to:
 Application No. 4-2013-010276
 Date Filed: 28 August 2013
 Trademark: "CATHY CHOO"

Decision No. 2017- 357

DECISION

J. CHOO LIMITED¹ ("Opposer") filed an opposition to Trademark Application Serial No. 4-2013-010276. The application, filed by KARMARTS Public Company Limited² ("Respondent-Applicant"), covers the mark "CATHY CHOO" for use on "lipsticks; eye shadow; nail colors; face powder sold in compact; eye brow pencil; make-up powder; perfumes; cosmetic creams; lotions for cosmetic purpose; massage; creams; cleansing milk for toilet purpose; mascara; hair lotions; hair oils; essential oils; make up foundation; shampoo; after-shave lotions; soaps; cosmetic preparations for skin care; cosmetics; nail care products; nail polish; nail polish remover; cosmetic preparations for slimming purposes; eyeliners; hair styling products; hair care products; hair colorants; lip gloss; lip tints; concealers; toners; blushers; facial care cosmetics; facial masks; facial cleansing foams; facial cleansing gels; facial cleansing creams; shower creams; shower gels; hair treatment products; hair conditioners; hair perm products; hair relaxers; body creams; body lotions; false eyelashes; adhesives for affixing eyelashes; make-up removers; facial cosmetic sets" under Class 03 of the International Classification of Goods and Services.³

The Opposer alleges:

x x x
 "Discussion

"30. The objects of a trademark are to point out distinctly the origin or ownership of the article to which it is affixed, to secure to him, who has been instrumental in bringing into market a superior article of merchandise, the fruit of his industry and skill, and to prevent fraud and imposition. Thus, Section 123.1 of the IP Code provides that a mark cannot be registered if it:

x x x

¹With address at 54 Rue La Boetie 75008 Paris, France.

²With address at Frankfurter Strasse 250, 64293 Darmstadt, Germany Fed. Rep.

³The Nice Classification is a classification of goods and services for the purpose of registering trademark and service marks, based on a multilateral treaty administered by the World Intellectual Property Organization. The treaty is called the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks concluded in 1957.

"31. In determining whether marks are confusingly similar, courts generally apply the dominancy test and consider the dominant features in the competing marks. Under the dominancy test, courts give greater weight to the similarity of the appearance of the product arising from the adoption of the dominant features of the registered mark, disregarding minor differences. Courts will consider more the aural and visual impressions created by the marks in the public mind, giving little weight to factors like prices, quality, sales outlets and market segments. If the competing trademark contains the main, essential or dominant features of another, and confusion or deception is likely to result, infringement takes place. Duplication or imitation is not necessary; nor is it necessary that the infringing label should suggest an effort to imitate. The question is whether the use of the marks involved is likely to cause confusion or mistake in the mind of the public or deceive purchasers.

"32. Here, Jimmy Choo's registered marks are composed of the integral dominant feature, 'CHOO,' which is a separate registered mark in itself. A cursory comparison of the subject marks in itself. A cursory comparison of the subject marks leads to the simple conclusion that respondent copied the 'CHOO' mark:

x x x

"33. Obviously, there is no doubt that respondent reproduced the exact same 'CHOO' mark and appropriated this as the dominant element of its mark, which smacks of deliberate intent to cause confusion or mistake in the mind of the public. Quite clearly, by having the same dominant feature, respondent's 'CATHY CHOO' mark is identical, or at the very least, confusingly similar, to Jimmy Choo's registered marks.

"34. It is of no moment that respondent implemented certain stylistic elements in its 'CATHY CHOO' mark as depicted above. It bears stressing that the other elements included in respondent's mark, such as the name 'CATHY' and a stylistic border surrounding the words 'CATHY CHOO' lack distinctiveness, as the addition of these elements does not eliminate the obvious identity with and/or confusing similarity to Jimmy Choo's well-known marks.

"35. On this point, *Del Monte Corporation v. Court of Appeals* is instructive:

x x x

"36. The foregoing observations only confirm that the attempted registration of respondent's mark is calculated to deceive the public into believing that its enterprise is the same, or at the very least, related to that of Jimmy Choo's. It must be emphasized that respondent's 'CATHY CHOO' mark, when read or spoken, instantly elicits confusion by reason of the obvious similarity with the 'CHOO' and 'JIMMY CHOO' marks of Jimmy Choo.

"37. Furthermore, it does not help respondent that the 'CATHY CHOO' mark will be used on beauty and personal care products under Class 03 of the Nice International Classification, because Jimmy Choo's trademark registrations also cover the same class of goods as the normal expansion of its business. It is a well-entrenched principle in intellectual property law that the protection extends to all cases in which the use by a junior appropriator of a trademark or tradename is likely to lead to a confusion of source, as where (1) prospective purchasers would be misled into thinking that the complaining party has extended his business into the field; or (b) is in any way connected with the activities of the infringer; or (c) when it forestalls the normal potential expansion of his business. Thus, the difference in channels of trade does not eradicate the

possibility of mistake on the part of the purchasing public to associate one product to another, especially when they refer to the same or related class of goods.

"38. In *McDonalds Corp. v. LC Big Mak Burger, Inc.*, the Supreme Court explained that a registered trademark owner is not precluded from using his mark on other types of goods, to wit:

x x x

"39. To be sure, Jimmy Choo's marks have become well-known and popular, not only in the luxury fashion industry, but even to the general public, whether in the Philippines or abroad, and have been further known to continually expand its product line. Considering that Jimmy Choo is also a natural person's name, the 'CATHY CHOO' mark would instantaneously elicit a general impression of some relation to Jimmy Choo, such as an expansion of its business or operations. If registered, respondent's use of the 'CATHY CHOO' mark would indicate a connection between its goods and services and Jimmy Choo's, when there is none, resulting in the clear infringement of the registered marks and irreparable damage to Jimmy Choo's goodwill and reputation.

"40. Hence, as the registered owner and prior user of the well-known 'JIMMY CHOO' and 'CHOO' marks, Jimmy Choo has a vested right to the exclusive use of its marks for its goods, to the exclusion of others, whether such goods are similar or dissimilar. On the other hand, respondent is a mere junior user that would not lose anything if it were prohibited from seeking registration of 'CATHY CHOO.' Being a junior user, respondent had countless permutations to come up with a mark that is not identical, or at the very least, confusingly similar with 'JIMMY CHOO' or 'CHOO.'

"41. Considering the substantial investment made by Jimmy Choo in promoting its marks and respondent's deceitful conduct in applying for the registration of a mark identical and/or confusingly similar to Jimmy Choo's, it is plain that Jimmy Choo would be greatly damaged and prejudiced, and respondent unduly enriched.

"42. It bears stressing that 'JIMMY CHOO' is likewise the tradename by which Jimmy Choo conducts its business and identifies its enterprise to the general public, both here in the Philippines and worldwide. Thus, the 'JIMMY CHOO' mark, as a tradename, is afforded protection from infringing users, as espoused in Section 165 of the IP Code, which provides:

x x x

"43. In *Fredco Manufacturing Corporation v. Presidents and Fellows of Harvard University (Harvard University)*, the Supreme Court discussed tradename protection granted by the foregoing provision and Article 8 of the Paris Convention. In that case, the Supreme Court held that 'Harvard' is the tradename of the world famous Harvard University, and is in itself the trademark of the institution. As a tradename owned by a juridical entity of the United States of America, a Paris Convention signatory, the Philippines is bound by treaty obligation to extend protection over the 'Harvard' tradename, even without registration of such tradename in the Philippines.

"44. There is no reason to depart from *Fredco*. In the same vein, the tradename 'JIMMY CHOO' must likewise be protected here in the Philippines, as the subject 'CATHY CHOO' is a confusingly similar mark that is likely to mislead the public, and thus, its registration would be unlawful. As Jimmy Choo is a corporation organized under the laws of the United Kingdom, a signatory to the Paris Convention, this

Honorable Office is bound to extend tradename protection in accordance with treaty obligations.

"45. Lastly, respondent's use of a confusingly similar mark has grossly diluted the distinctive quality of the Jimmy Choo marks to refer to luxury footwear and accessories. As discussed in *Levi Strauss & Co. v. Clinton Apparelle, Inc.*, to be eligible for protection from trademark dilution, there has to be a finding that (a) the trademark sought to be protected is famous and distinctive; (b) the use by respondent began after the opposer's became famous; and (c) such subsequent use defames or otherwise blurs the distinctiveness of the mark.

"46. Without doubt, Jimmy Choo's 'JIMMY CHOO' and 'CHOO' marks are famous and distinctive, as they are widely recognized by the general consuming public globally and even in the Philippines as a designation for luxury and high-end fashion footwear and other accessories. Respondent's 'creation' of its mark began only after the Jimmy Choo marks have become internationally and locally famous. Respondent's use of a similar mark in beauty and personal care products undoubtedly dilutes or blurs the distinctiveness and uniqueness of the Jimmy Choo marks with respect to luxury footwear and high-end fashion accessories.

"47. Through the years of continued use, it cannot be denied that the quality of Jimmy Choo's goods and services bearing the 'JIMMY CHOO' and 'CHOO' brand have acquired tremendous goodwill and reputation that it is a valuable property right in and of itself. By using an identical mark with 'CHOO' and a confusingly similar mark to 'JIMMY CHOO,' respondent clearly wanted to make use of the goodwill and well-renowned reputation built by Jimmy Choo to mislead the public into believing that its goods are of the same quality and stature of the merchandise of Jimmy Choo's, which the latter had built through the years of extensive marketing, and has been in existence since 1996.

"48. It is undisputed that Jimmy Choo's registered 'JIMMY CHOO' and 'CHOO' marks enjoy international notoriety, and this is clearly established by the extent of its long time and widespread use of the mark worldwide and even in the Philippines. Thus, under Section 123 of the IP Code, marks which are identical and/or confusingly similar to the 'JIMMY CHOO' and 'CHOO' marks cannot be registered, even when the goods and services involved are not related to those which registration is applied for. This Honorable Office is invited to plainly apply the law.

"49. Attached in support of this Notice of Opposition are the (a) notarized and authenticated Judicial Affidavit of Ms. Hannah Lucy Victoria Merritt; and (b) notarized Judicial Affidavit of Ms. Rita Marie L. Mesina.

The Opposer's evidence consists of the printout of the webpage <http://row.jimmychoo.com/en/about-demandware/about-us.html>; a copy of the Power of Attorney executed by J. Choo Limited appointing the law firm of Castillo Laman Tan Pantaleon & San Jose or any of its members and associates as its attorneys-in-fact; a copy of Jimmy Choo Company Profile; a copy of the webpage <http://www.jimmychoopl.com/the-brand/sandra-choi>; printed screenshots of store locations on the webpage http://row.jimmychoo.com/en/store-locator#|_|1|0|0; copy of the webpage <http://www.vogue.com/871507/vd-the-real-deal-jimmy-choo->

for-h038m/; a copy of the webpage <http://fashion.telegraph.co.uk/article/TMG8078127/Jimmy-Choo-and-UGH-collaborate.html>; a copy of the webpage <http://www.luxury-insider.com/luxury-news/2014/08/carrera-by-jimmy-choo-capsule-collection-for-men>; a copy of the webpage <http://www.independent.co.uk/news/business/analysis-and-features/jimmy-choo-the-worlds-most-valuable-shoemaker-2076499.html>; a copy of the Deed of Assignment dated November 14, 2001 as filed with the IPOPHL; a copy of the Trademark Assignment dated February 3, 2010 as filed with IPOPHL; printed screenshots of the webpage <http://www.jimmychoopl.com/the-brand/brand-dna>; a copy of the webpage <http://en.vogue.fr/thevougelist/jimmy-choo-1/779>; printed screenshot of the webpage <http://row.jimmychoo.com/en/choo-world-history/history-content.html>; a printed screenshot of the webpage <http://www.elleuk.com/fashion/trends/the-a-list-loves-jimmy-choo-chloe-moretz-katemiddleton#image=18>; a copy of the webpage <http://www.usmagazine.com/celebrity-style/news/kate-iddleton-wore-4-inch-750-jimmy-choo-heels-at-tuesday-event-2012105>; a printed screenshot of the webpage <http://row.jimmychoo.com/en/choo-world-history/history-content.html>; a printed screenshot of the webpage <http://row.jimmychoo.com/en/choo-world-history/history-content.html>; a printed screenshot of the webpage <http://valiram.com/celebrities-in-jimmy-choo/#prettyPhoto>; a printed screenshot of the webpage <http://row.jimmychoo.com/en/choo-world-history/history-content.html>; a printed copy of the screenshot <http://row.jimmychoo.com/en/choo-world-history/history-content.html>; a printed screenshot of the webpage <http://row.jimmychoo.com/on/demandware.store/Sites-jchrow-Site/en/GeoShow-Content?cid=spotted>; a printed copy of the screenshot <http://row.jimmychoo.com/en/choo-world-history/history-content.html>; a printed copy of the screenshot <http://www.elleuk.com/fashion/trends/the-a-list-loves-jimmy-choo-chloe-moretz-kate-middleton#image=11>; a printed copy of the webpage <http://heart-2-heart-online.com/2010/04/15/glide-in-style-with-your-choo/>; a printed screenshot of the webpage <http://row.jimmychoo.com/en/choo-world-history/history-content.html>; a printed copy of the webpage <http://nypost.com/2013/10/28/michelle-obamas-over-the-knee-boots-are-a-great-look-even-at-church/>; a printed copy of the webpage http://www.mhamedia.com/case_studies/jimmy-choo-establishH-the-brand-as-the-celebrity-shoe-designer-of-choice-2/; a printed copy of the webpage <http://www.vogue.co.uk/brand/jimmy-choo>; a printed copy of the webpage <http://elle.in/fashion/news/jimmy-choos-new-bond-street-store/>; a printed copy of the webpage <http://sg.asiatatler.com/style/fashion/Jimmy-Choo-goes-bold-and-beautiful-for-Cruise-2015>; a printed copy of the webpage <http://my.asiatatler.com/style/fashion/jimmy-choo-vices-capsule-collection-resort-2015>; a printed copy of the webpage <http://row.jimmychoo.com/en/choo-world-history/history-content.html>; copy of Google Analytics report 2006-2012 for www.jimmychoo.com; a printed copy of the webpage <http://www.youtube.com/user/OfficialJimmyChoo>;



printout of Opposer's official Facebook page; a printout of Opposer's official Instagram page; a printout of Opposer's official Pinterest page; a printed copy of the webpage <http://www.imdb.com/title/tt0458352/quotes>; a printed copy of the webpage <http://blogs.wsj.com/chinarealtime/2014/05/01/how-a-korean-tv-show-sparked-a-jimmy-choo-craze-in-china/>; a printed copy of the webpage <http://www.shefinds.com/2014/jimmy-choos-best-sellinH-pump-is-sold-out-everywhere-except-the-u-s/>; a printed copy of the webpage <http://www.philstar.com/business/410296/rustans-adds-hermes-jimmy-choo-its-portfolio>; a printout of the October 12, 2014 Manila Standard Today feature; a printout of May 18, 2012 Philippine Daily Inquirer feature; a printout of the webpage <http://www.trend-hotspot.com/fashion/manilas-well-heeled-attend-opening-of-the-news-jimmy-choo-flagship-store-at-shangrila-la-plaza-east-wing/>; a printout of the webpage <http://chuvaness.livejournal.com/1554627.html>; a printout of the webpage <http://www.marche-ph.com/marche-finds/an-i-do-for-jimmy-choo/>; a schedule of 'JIMMYC CHOO' worldwide trademark registrations; copies of trademark registrations in Canada, People's Republic of China, Hong Kong, India, World Intellectual Property Organization (WIPO), Malaysia, Mexico, Namibia, South Africa, United Arab Emirates, United Kingdom, European Union (through the Office for Harmonization in the Internal Market (OHIM)); a schedule of "CHOO" worldwide trademark registrations; copies of trademark registrations in Canada (online record), People's Republic of China, OHIM. Hong Kong, Malaysia, Namibia, Saudi Arabia, United Kingdom, Mexico, and India; a copy of trademark registration No. 4-2011-009809 for the mark "JIMMYCHOO"; a copy of trademark registration No. 9177 for the mark 'JIMMY CHOO'; a copy of trademark registration No. 5441 for the mark "JIMMY CHOO"; a copy of trademark registration No. 2562 for the mark "JIMMY CHOO (STYLIZED)"; a copy of trademark registration No. 4-2013-003648 for the mark "CHOO"; a copy of trademark registration No. 4-2011-009810 for the mark "CHOO 24:7"; the Affidavit of Ms. Hannah Lucy Victoria Merritt; and the Affidavit of Ms. Rita Marie L. Mesina.⁴

This Bureau issued a Notice to Answer and served a copy thereof upon Respondent-Applicant on 13 February 2015. Said Respondent-Applicant, however, did not file an Answer.

Should the Respondent-Applicant be allowed to register the trademark CATHY CHOO?

The Opposer anchors its opposition on the following provision of Republic Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code"):

Sec. 123. Registrability. - 123.1. A mark cannot be registered if it:

x x x

⁴Marked as Exhibits "A" to "S", inclusive.

- (d) Is identical with a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date, in respect of :
- (i) The same goods or services, or
 - (ii) Closely related goods or services, or
 - (iii) If it nearly resembles such a mark as to be likely to deceive or cause confusion;"

Records show that at the time the Respondent-Applicant filed its trademark application on 28 August 2013, the Opposer has an existing trademark registration for the mark JIMMY CHOO under Trademark Reg. No. 4-2003-009177 issued on 18 December 2006. This Philippine registration covers "soaps; perfumery, essential oils, cosmetics, hair lotions, body lotions, foot lotions; dentrifices; shoe cream, shoe polish, shoe wax" under Class 03, "sunglasses, spectacles, sunglasses and spectacles cases and frames, encoded bank cards; electrical apparatus and instruments; apparatus for recording, transmission or reproduction of sound or images, magnetic data carriers, recording discs; pre-recorded CD's, CD ROM's, tapes and discs; protective footwear" under Class 09, "precious metals and their alloys and goods in precious metals or coated therewith; jewellery, precious stones; horological and chronometric instruments" under Class 14, "leather and imitations of leather, and goods made of these materials; trunks, traveling bags, handbags, purses, wallets, hat boxes, umbrellas, parasols, walking sticks" under Class 18, and "retails services; the bringing together, for the benefit of others of a variety of goods in a general merchandise store or website, or retail outlet or website specializing in perfumery, cosmetics, footwear, clothing, sunglasses, jewellery and watches; advice and assistance in the selection of goods" under Class 35. This Bureau noticed that the goods indicated in Respondent-Applicant's trademark application under Application Serial No. 4-2013-010276, i.e., lipsticks; eye shadow; nail colors; face powder sold in compact; eye brow pencil; make-up powder; perfumes; cosmetic creams; lotions for cosmetic purpose; massage; creams; cleansing milk for toilet purpose; mascara; hair lotions; hair oils; essential oils; make up foundation; shampoo; after-shave lotions; soaps; cosmetic preparations for skin care; cosmetics; nail care products; nail polish; nail polish remover; cosmetic preparations for slimming purposes; eyeliners; hair styling products; hair care products; hair colorants; lip gloss; lip tints; concealers; toners; blushers; facial care cosmetics; facial masks; facial cleansing foams; facial cleansing gels; facial cleansing creams; shower creams; shower gels; hair treatment products; hair conditioners; hair perm products; hair relaxers; body creams; body lotions; false eyelashes; adhesives for affixing eyelashes; make-up removers; facial cosmetic sets are similar and/or closely related to the Opposer's.

Hence, the question, does CATHY CHOO resemble JIMMY CHOO such that confusion or deception is likely to occur? The marks are shown below:



JIMMY CHOO

Opposer's trademark



Respondent-Applicant's mark

The Respondent-Applicant's mark CATHY CHOO is confusingly similar to Opposer's trademarks JIMMY CHOO and CHOO. The distinctive feature of the Opposer's mark is the word CHOO, the surname of a Malaysian shoemaker then based in the east end of London, United Kingdom in the early 1990s⁵, Mr. Jimmy Choo, which surname CHOO was appropriated by the Respondent-Applicant. Thus, CATHY CHOO is confusingly similar to Opposer's CHOO or JIMMY CHOO marks. Because the Respondent-Applicant's trademark application covers goods that are similar and/or closely related to the Opposer's, particularly, personal care products under Class 03, it is likely that the consumers will have the impression that these goods originate from a single source or origin. The confusion or mistake would subsist not only on the purchaser's perception of goods but on the origin thereof as held by the Supreme Court, to wit:

Callman notes two types of confusion. The first is the confusion of goods in which event the ordinary prudent purchaser would be induced to purchase one product in the belief that he was purchasing the other. In which case, defendant's goods are then bought as the plaintiff's and the poorer quality of the former reflects adversely on the plaintiff's reputation. The other is the confusion of business. Here, though the goods of the parties are different, the defendant's product is such as might reasonably be assumed to originate with the plaintiff and the public would then be deceived either into that belief or into belief that there is some connection between the plaintiff and defendant which, in fact does not exist.⁶

Public interest therefore requires, that two marks, identical to or closely resembling each other and used on the same and closely related goods or services, but utilized by different proprietors should not be allowed to co-exist. Confusion, mistake, deception, and even fraud, should be prevented. It is emphasized that the function of a trademark is to point out distinctly the origin or ownership of the goods to which it is affixed; to secure to him, who has been instrumental in bringing into the market a superior article of merchandise, the fruit of his industry and skill; to assure the public that they are procuring the genuine article; to prevent fraud and imposition; and to protect the manufacturer against substitution and sale of an inferior and different article

⁵Exhibit "R" for the Opposer.

⁶ *Converse Rubber Corp. v. Universal Rubber Products, Inc. et. al.*, G.R. No. L-27906, 08 Jan. 1987.

as his product.⁷ This Bureau finds that the Respondent-Applicant's mark does not meet this function.

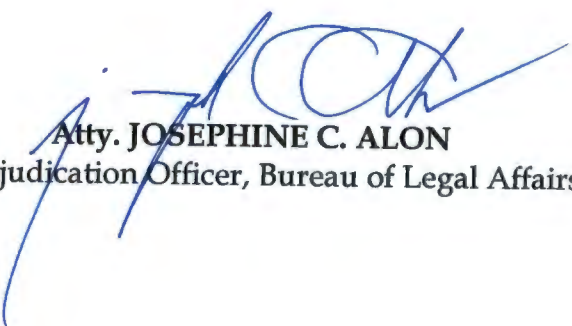
Succinctly, the field from which a person may select a trademark is practically unlimited. As in all other cases of colorable imitations, the unanswered riddle is why of the millions of terms and combinations of letters and designs available, the Respondent-Applicant had to come up with a mark identical or so closely similar to another's mark if there was no intent to take advantage of the goodwill generated by the other mark.⁸

The intellectual property system was established to recognize creativity and give incentives to innovations. Similarly, the trademark registration system seeks to reward entrepreneurs and individuals who through their own innovations were able to distinguish their goods or services by a visible sign that distinctly points out the origin and ownership of such goods or services.

WHEREFORE, premises considered, the instant Opposition to Trademark Application No. 4-2013-010276 is hereby SUSTAINED. Let the filewrapper of the subject trademark application be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 19 OCT 2017.


Atty. JOSEPHINE C. ALON
Adjudication Officer, Bureau of Legal Affairs

⁷ *Pribhdas J. Mirpuri v. Court of Appeals*, G.R. No. 114508, 19 November 1999, citing *Ethepa v. Director of Patents, supra, Gabriel v. Perez*, 55 SCRA 406 (1974). See also Article 15, par. (1), Art. 16, par. (1), of the Trade Related Aspects of Intellectual Property (TRIPS Agreement).

⁸ *American Wire & Cable Company v. Director of Patents*, G.R. No. L-26557, 18 Feb. 1970.