

LORENZO ALMORADIE, <i>Petitioner,</i>	}	IPC No. 14-2003-00040
	}	Petition for Cancellation:
	}	
-versus-	}	Reg. No. 4-1995-102796
	}	Date Issued: Jan. 15, 2002
	}	
	}	Trademark: C.Y. GABRIEL SPECIAL
	}	ORIGINAL LABEL MARK, CORRECTED
ESTATE OF CRISANTA Y. GABRIEL, <i>Respondent-Registrant.</i>	}	BY THE BUREAU OF TRADEMARKS AS
	}	"C.Y. GABRIEL & DEVICE SHAPED LIKE
	}	SEA WAVES WITH BUBBLES"
	}	
x-----x	}	Decision No. 2004 – 17

DECISION

On June 19, 2003, herein Petitioner, Lorenzo Almoradie, Filipino citizen with postal address at Ramosa Compound, Luzon Avenue, Quezon City through Counsel filed a verified Petition for Cancellation of Registration No. 4-1995-102796 for the trademark "C.Y. GABRIEL SPECIAL ORIGINAL LABEL MARK" used on bleaching soap under Class 3 of the international classification of goods, which registration was issued on January 15, 2002 to the INTESTATE ESTATE OF CRISANTA Y. GABRIEL with postal address at 38 Bronze St., Tugatog, Malabon City.

Accordingly, the grounds for cancellation of the Petitioner are as follows:

"1. As clearly stated in the registration, the mark registered is the label of C.Y. Gabriel Special Original. For easy reference, a copy of the said registration is hereto attached as ANNEX "A". Being a label mark, the said mark should have been registered in the SUPPLEMENTAL REGISTER (defined under the old law R.A. 166) and not under the Principal Register. It should be noted that the Supplemental Register was abolished by the new law R.A. 8293;

"1.1. The registration of labels was not part of the registrable matters defined under the new law. Therefore, wit due respect, there is no basis for the issuance of the said registration.

"2. Furthermore, this Honorable Office should have mulled over the fact that there is an ongoing case between the parties herein involving the same issue – the ownership of the mark C.Y. GABRIEL. Said ongoing case is in the Court of Appeals and entitled Lorenzo B. Almoradie vs. Estate of Crisanta Y. Gabriel and docketed as C.A. G.R. No. 74335. The said case originated from this Honorable Office which was entitled "The Estate of Crisanta Y. Gabriel vs. Lorenzo B. Almoradie" and docketed as Inter Partes Case No. 4197 and Appeal Case No. 14-02-07 at the Office of the Director General. The issuance of the said registration would therefore render any decision of the Court of Appeals (and the Supreme Court for that matter) moot and academic;

"3. Furthermore, it should be noted that the submitted labels in Registration 4-1995-102796 at the time of the application is practically the same as the labels submitted by Lorenzo B. Almoradie in Registration No. 613822, a copy of the label submitted by Petitioner Lorenzo B. Almoradie is hereto attached as ANNEX "B";

"3.1 The documents are crystal clear – the label in Registration No. 4-1995-102796 (for the Respondent-Registrant) was filed on 8 February 1994 with claim of first use on 25 January 1989. Thus the dates will clearly show that Lorenzo B. Almoradie has prior use of the label in question.

In its Answer with Counterclaim filed on September 12, 2003, herein Respondent-Registrant through Counsel specifically each and every allegations in the Petition for Cancellation and raised by way of affirmative defenses the following:

"x x x

"5. That there is another action pending between the same parties for the same cause (litis pendentia);

"6. That the complaint does not state a cause of action;

"7. That a condition precedent has not been complied with and that an action for cancellation in this case is not the proper remedy, and furthermore alleges by way of counterclaim;

COUNTERCLAIM

"8. That such of the foregoing allegation as may be material to its counterclaim are hereby adopted;

"9. That the instant action of the Petitioner is baseless, unfounded and vexatious;

"10. That by reason of the filing of this unfounded and vexatious action, the Respondent in order to protect its right was compelled to engage the services of counsel for attorney's fee of P 50,000.00, plus P 2,000.00 per appearance and to incur litigation expenses."

Thereafter, the Pre-trial Conference of the above-captioned case was set on October 20, 1003 but by agreement of both parties through counsels, the same was reset to November 24, 2003. During the November 24, 2003 hearing, only Counsel for the Petitioner was present, thus, this Office was prompted to once again reset the hearing of the pre-trial conference on January 13, 2004. At the said pre-trial conference hearing of January 13, 2004, only Respondent-Registrant's Administratix, Ms. Dolores Gabriel and Counsel made their appearances. Consequently, Counsel for the Respondent-Registrant moved in open court the dismissal of the subject case on the ground of failure to prosecute. However, in Order No. 2004-07, said motion was denied by this Bureau and for the last time set the continuation of the pre-trial conference on February 17, 2004.

As the contending parties failed to reach an amicable settlement, during the hearing of this case dated April 19, 2004, parties opted to submit outright the cancellation proceedings for decision, wherein each was given periods to submit their respective memorandum. In compliance to this Office's Order, parties herein submitted their respective Memorandum.

As trial on the merits did not push through, this Office, will rely solely on the basis of the pleadings submitted by the contending parties in arriving at this decision.

After a careful perusal of the arguments raised by the disputing parties, it is the considered view of this Office to declare that the pivotal issues to be resolved in the case at bar are the following:

1. WHETHER OR NOT THE MARK REGISTERED NOW SUBJECT OF THE CANCELLATION PROCEEDINGS IS "CY GABRIEL SPECIAL ORIGINAL LABEL MARK";
2. WHETHER OR NOT THE PETITION FOR CANCELLATION AGAINST THE REGISTERED MARK IS WARRANTED UNDER EXISTING CIRCUMSTANCES.

At this point, it is worth mentioning that this cancellation proceedings emanated from the appealed case now pending before the Court of Appeals (C.A. G.R. No. 74335) in view of the cancellation of the mark then registered to herein Petitioner, Lorenzo B. Almoradie. Therefore, this Office takes judicial notice and accordingly, hereby adopts as records of this case the decision of this Bureau in Inter Partes Case No. 4197 and the decision on Appeal Case No. 14-02-07 before the Office of the Director General.

In support of its petition to cancel the mark in question, herein Petitioner contends that the Respondent's mark being a label mark should have been registered in the Supplemental Register pursuant to the provisions of the old law herein referred to as Republic Act No. 166 as amended, and not under the Principal Register. consequently, Petitioner argued that since the Supplemental Register has been abolished by the new law otherwise known as Republic Act No. 8293 (Intellectual Property Code of the Philippines), thus, the registration over the mark of herein Respondent has no legal basis.

Records of this case show that herein Respondent filed a Petition for Correction of Material Mistake in the Certificate dated September 12, 2003 before the Bureau of Trademarks, wherein Respondent through Counsel (Atty. Tito S. Fajardo) sought to correct the mistake in the certificate of registration of the Respondent. For a better appreciation thereof, it is but proper to indicate hereunder the substantial portion of the said petition, which reads, to wit:

"12 September 2003

THE DIRECTOR
Bureau of Trademarks
Intellectual Property Office
351 Sen. Gil Puyat Avenue
Makati City

Re: PETITION FOR CORRECTION OF A MATERIAL MISTAKE
UNDER SEC. 142 OF REPUBLIC ACT 8293, COMMITTED BY
THE BUREAU OF TRADEMARKS IN CERT. OF REGN. NO. 4-
1995-102796 Issued on September 6, 2002 FOR THE MARK
C.Y. GABRIEL AND DEVICE

MADAM:

x x x

From the foregoing, it is crystal clear that the mark being applied for registration by the herein applicant (Respondent in this case) as filed by its former counsel Atty. Jaime G. Manzano is the mark C.Y. GABRIEL which is shown in the drawing and facsimiles submitted which could be particularly described as –

CY GABRIEL AND DEVICE SHAOED LIKE SEA WAVES WITH BUBBLES, WITH THE COLORS PINK, GREEN AND YELLOW CLAIMED AS MATERIAL FEATURES OF THE MARK. THE EXCLUSIVE RIGHT TO USE THE WORDS ORIGINAL & SPECIAL IS HOWEVER DISCLAIMED APART FROM THE MARK AS SHOWN IN THE DRAWINGS."

However, when the corresponding Certificate of Regn. No. 4-1995-102796 was issued on September 6, 2002, the mark was incorrectly described as CY GABRIEL ORIGINAL SPECIAL LABEL MARK which does not reflect the correct mark being applied for by applicant. What is worst is that the certificate depicts the words "LABEL MARK" WHICH IS ONLY REGISTRABLE IN THE SUPPLEMENTAL REGISTER but which WAS NEITHER MENTIONED NOR APPLIED FOR by applicant in its application and even in the response to the official action of the Examiner filed by Atty. Manzano hereto attached and marked as Annex "D".

Section 142 of Republic Act 8293 provides as follows:

"Sec. 142. Correction of Mistakes Made by the Office. – Whenever a material mistake in a registration incurred through the fault of the Office is clearly disclosed by the records of the Office, a certificate stating the fact and the nature of such mistake shall be issued without charge, recorded and a printed copy thereof shall be attached to each printed copy of the registration. Such corrected registration shall thereafter have the same effect as the original certificate; or in the discretion of the Administrative, Financial and Human Resource Development Service Bureau a new certificate of registration may be issued without charge. All certificates of correction heretofore to which they are attached shall have the same force and effect as if such certificates and their issuance had been authorized by this Act."

In view of the material mistake incurred by your Office and in accordance with Section 142 of Republic 8293, it is respectfully prayed that a certificate of correction stating the fact and the nature of the mistake be issued without charge and be recorded or attached to the printed certificate of registration or that a new corrected certificate of registration be issued to this effect without charge.

Very truly yours,

FAJARDO VER CABRERA & ASSOCIATES

By:

(Signed)

TITO S. FAJARDO

Counsel for CY Gabriel Commercial: (*Emphasis ours*)

The above-mentioned Petition for Correction of Material Mistake was duly acted upon by the Intellectual Property Office when on February 11, 2004, a CERTIFICATE OF CORRECTION was issued in favor of the Respondent-Registrant. Accordingly, the certificate of correction states that:

"It is certified that an error in the registered trademark C.Y. GABRIEL SPECIAL ORIGINAL LABEL MARK appears in the above-identified trademark registration and that said Certificate of Registration is hereby corrected as follows:

"C.Y. GABRIEL & DEVICE SHAPED LIKE SEA WAVES WITH BUBBLES"

x x x x" (Underscoring provided)

It appears that the mark sought to be cancelled by herein Petitioner has been corrected in view of the foregoing Certificate of Correction, it is the considered view of this Office that the first issue at hand has become MOOT AND ACADEMIC considering that the mark sought to be cancelled is "C.Y. GABRIEL SPECIAL ORIGINAL LABEL MARK" and not "C.Y. GABRIEL & DEVICE SHAPED LIKE SEA WAVE WITH BUBBLES". Therefore, to claim that there is no legal basis to register the label mark of herein Respondent in the Principal Register in view of the abolition thereof under the new law (R.A. No. 8293) is already a misnomer and can no longer be considered a subject matter in this instant case.

Petitioner likewise argued that the registration of Respondent's mark "C.Y. GABRIEL SPECIAL ORIGINAL LABEL MARK" should be cancelled on the ground that the issue of priority of rights as well as the ownership over the same mark is still an issue under consideration in the appealed case (C.A. G.R. No. 74335) now pending before the Court of Appeals. We are not persuaded.

Pursuant to Republic Act No. 166, as amended (the old trademark Law), the law in force at the time that the application over the mark sought to be cancelled was prosecuted by the Respondent-Registrant (then Applicant, ESTATE OF CRISANTA Y. GABRIEL), specifically Section 17 thereof explicitly provides the grounds for cancellation of registration. It states that:

"Section 17. Grounds for cancellation. – Any person, who believes that he is or will be damaged by the registration of a mark, or trade-name, may, upon payment of the prescribed fee, apply to cancel said registration upon any of the following grounds:

- (a) That the registered mark or trade-name becomes the common descriptive name of an article or substance on which the patent has expired;*
- (b) That it has been abandoned;*
- (c) That the registration was obtained fraudulently or contrary to the provisions of section four, Chapter II hereof;*
- (d) That the registered mark or trade-name has been assigned, and is being used, by, or with the permission of, the assignee so as to misrepresent the source of the goods, business or services in connection with which the mark or trade-name is used; or*
- (e) That cancellation is authorized by other provision of this Act." (Emphasis provided)*

Moreover, under the new law on trademarks, Section 151 of Republic Act No. 8293 provides that:

"Section 151. Cancellation. – 151.1. A petition to cancel a registration of a mark under this Act may be filed with the Bureau of Legal Affairs by any person who believes that he is or will be damaged by the registration of a mark under this Act as follows:

- (a) Within five (5) years from the date of the registration of the mark under this Act.*

- (b) *At any time, if the registered mark becomes the generic name for the goods or services, or a portion thereof, for which it is registered, or has been abandoned, or its registration was obtained fraudulently or contrary to the provisions of this Act, or if the registered mark is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used. If the registered mark becomes the generic name for less than all of the goods or services for which it is registered, a petition to cancel the registration for only those goods or services may be filed. A registered mark shall not be deemed to be the generic name of goods or services solely because such mark is also used as a name of or to identify a unique product or service. The primary significance of the registered mark to the relevant public rather than purchaser motivation shall be the test for determining whether the registered mark has become the generic name of goods or services on or in connection with which it has been used.*
- (c) *At any time, if the registered owner of the mark without legitimate reason fails to use the mark within the Philippines, or to cause it to be used in the Philippines by virtue of a license during an uninterrupted period of three (3) years or longer.” (Emphasis provided)*

As can be gleaned from the foregoing provisions in both the old and new law on trademarks, the grounds raised by the Petitioner to cancel the registration of the mark of the Respondent is no where to be found. Therefore, to argue that cancellation is proper in view of the pendency of a case before the appellate court is to say the least, a clear manifestation of a self-serving motive on the part of the Petitioner. It shuns away in essence the lawful processes which the Respondent-Registrant had observed in order to obtain the registration of its mark which the Petitioner now is seeking to cancel. Moreover, to allow the cancellation of registration of herein Respondent-Registrant will be tantamount to influencing the appellate court on the pending appeal case before it. It is not only improper but a clear act of hostility on the part of the Respondent-Registrant.

It is a well-settled rule in both law and jurisprudence that there is a presumption of validity of official acts carried out by government officers and employees in the exercise of its jurisdiction. The aforementioned statement is in line with Section 3, Rule 131 of the Revised Rules of Evidence, which provides that:

“Section 3. Disputable Presumptions. – The following presumption are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence

x x x x

(m) That Official duty has been regularly performed;

(n) That a court, or judge acting as such, whether in the Philippines or elsewhere, was acting in the lawful exercise of jurisdiction.” (Underscoring ours)

The above-cited rule is that in the absence of any evidence questioning the irregularity of an official act performed by a government officer or employee, the benefit of such presumption of regularity or validity remains.

In furtherance of the foregoing, our Supreme in the case of REPUBLIC OF THE PHILIPPINES, vs. COURT OF APPEALS, [G.R. No. 79582. April 10, 1989.] has this say, to wit:

“While inefficiency was apparent, it cannot be equated with irregularity for, pursuant to Section 105 of the Public Land Law, the heirs of an applicant are entitled to have the Patent issued to them if they show compliance with requirement. Collusion cannot justifiably be claimed among the said officials and the widow of Nicolas, the dates of execution of the documents being far apart. On the contrary, the presumption that official duties were regularly performed must be upheld.”

It is unfortunate that herein Petitioner failed to adduce evidence to overcome the foregoing presumption.

WHEREFORE, in view of all the foregoing, the Petition for Cancellation filed by Petitioner, Lorenzo B. Almoradie is, as it is hereby, DENIED for lack of merit. Consequently, Registration No. 4-1995-102796, issued on January 15, 2002, for the mark “C.Y. GABRIEL & DEVICE SHAPED LIKE SEA WAVES WITH BUBBLES”, used on bleaching soap under Class 3 of the international classification of goods in favor of the registrant, THE INTESTATE OF CRISANTA Y. GABRIEL, remains VALID and EFFECTIVE unless validly cancelled in accordance with law.

Let the filewrapper subject matter of this case be forwarded to the Administrative, Financial Human Resource Development Service Bureau (AFHRDSB) for appropriate action in accordance with this DECISION with a copy furnished the Bureau of Trademarks (BOT) for information and to update its record.

SO ORDERED.

Makati City, 28 October 2004.

ESTRELLITA BELTRAN-ABELARDO
Director, Bureau of Legal Affairs
Intellectual Property Office