BELEN BAYONETA, Junior Party-Applicant	)	INTER PARTES CASE NO. 3481 INTERFERENCE BETWEEN:
	)	Serial No. 66914
	)	Filed : February 9, 1989
	)	Trademark : BATIS
	)	Applicant : Belen Bayoneta
	)	Used on : Herbal soap (cake, powder, flakes and liquid forms)
- versus -	)	- and -
	)	Serial No. 62082
	)	Filed : July 8, 1987
	)	Trademark : BATIS PURE HERBAL ORGANIC SOAP
	)	Applicant : Cyrus D. Aparri
	)	Used on : Herbal soap (cake, powder, flakes and liquid forms)
CYRUS D. APARRI, Senior Party-Applicant.	)	DECISION NO. 94-17(TM) February 14, 1994

----------x

DECISION

This is an Interference Case (Inter Partes Case No. 3481), a proceeding instituted for the purpose of determining the question of priority of ADOPTION and USE of the trademark “BATIS” between the Senior Party-Applicant and the Junior Party-Applicant.

Cyrus D. Aparri, the Senior Party-Applicant is a Filipino with address at No. 90 National Road, Putuan, Muntinlupa, Metro Manila while the Junior Party-Applicant, BELEN M. BAYONETA is likewise a Filipino with address at Block 38, Lot 4, Lagro, Novaliches, Quezon City who is doing business under the style TRINIDAD General Merchandise.

On July 8, 1987, Cyrus D. Aparri filed an application for registration of the trademark “Pure Batis Herbal Organic Soap” for herbal soap (cake, powder, flakes & liquid forms) bearing Serial No. 62082 (the trademark application filed) stating in the application April 1, 1986 as the date he first used “BATIS” in commerce in the Philippines.

On February 9, 1989, BELEN M. BAYONETA, filed a trademark Application Serial No. 66914 for the trademark “BATIS” used on herbal soap (cake, powder, flakes & liquid form) claimed in the application is May 15, 1986, as date of first use of the mark in commerce in the Philippines.

The issue to be resolved is which of the parties owns the mark or, stated otherwise, who adopted and used the mark ahead of the other. It must be noted that Section 10-A of R.A. No. 166 provides as follows:

> “SEC. 10-A. *Interference.* – An interference is a proceeding instituted for the purpose of determining the question of priority if adoption and use of a trade-mark, trade-name, or service-mark between two or more parties claiming

ownership of the same or substantially similar trade-mark, trade-name, or service-mark."

During the trial on the merits, the Junior Party-Applicant herself testified and submitted documentary evidence (Exhs. "A" to "G") and its corresponding submarkings (Order No. 91-79) dated February 28, 1991.

The memoranda for both parties were subsequently filed and this case was submitted for decision.

Here is another story of a business dealing turned into a vicious legal battle.

Junior Party-Applicant and Senior Party-Applicant were engaged since 1986 in the manufacture and sale of unbranded bath soap eventually called BATIS. Senior-Party manufactures the bath soap in his backyard while Junior Party promotes and sells the same in department stores. It was in 1989 that their relationship turned sour for reasons unknown to us. Naturally, each has a different story to tell on the nature of their relationship.

Junior Party claims that theirs was a seller-buyer relationship, one independent to the other. Flowing from this seller-buyer relationship, she claims that it was through her efforts that the mark BATIS was used as a trademark on the bath soap. She "requested Cyrus Aparri [Senior Party] to mark all the soaps that he manufactured for" her (par. 5, Junior Party's Affidavit) and "[w]hen others saw the soaps ordered by Mrs. Bayoneta [Junior Party] which were stamped with the mark 'BATIS' by Cyrus Aparri upon her instructions [and] some requested that their orders be likewise marked or identified with the word 'BATIS' (par.6, id.)

As mentioned, Senior Party's tale is different. He claims that theirs was a manufacturer-distributor relationship. "In the distribution, and sale of BATIS soap produced by my company, I have arrange and finalized with several agents and distributors among others are x x x (c) Mrs. Belen Bayoneta, who represents Trinidad General Merchandising and this relationship as such agents, promotes and distributor are evidenced by documents marked as Annex x x x 'W' respectively". (par. 13, Senior Party's Affidavit). We note however that this duly notarized Certification of Exclusive Distributorship (Exhibit "24", Senior Party) was not acknowledge by Junior Party and denies having received a copy of such document. Senior Party contends that on the basis of business courtesy no written receipt was asked of Junior Party.

We are tasked today to rule on the uncorroborated assertions and denials of the parties.

We are convinced that heir true relationship was one of manufacturer-distributor. Among the evidence submitted by Senior Party are news clippings (exhibits "10" to "19") some dating back 1987, all pointing to the fact of Senior Party's success on his 'BATIS' soap. During these times Junior Party never lifted a finger to protest Senior Party's adverse claim over the mark BATIS. Since Junior Party was then closely associated in business with Senior Party, she could not have been unaware of these notorious publications. Normally, Junior Party should have taken ordinary care of her concerns such as her claim of ownership over the mark BATIS pursuant to Rule 131, Sec. 2 (d) of the Rules on Evidence.

Likewise indicative of Junior Party's status as mere distributor are the labels submitted by herself on February 9, 1989 as a requirement of the application under Sec. 5 (b) of the Trademark Law (R.A. 166 as amended). These labels explicitly state at the bottom portion thereof the following words: "Distributed by:" on the first line, and "Trinidad General Merchandise" on the second line. Subsequently, when this case came about, Junior Party submitted in evidence new labels and packages (Exhibits "G" and "H") now stating "Manufactured by:" on the first line. This apparently minute change eloquently speaks of Junior Party's belated attempt to salvage the shaky ground she had traversed.

Aside form being a mere distributor of bath soaps carrying the mark 'BATIS', Junior Party failed to submit in evidence proof of its ownership over the mark BATIS. Not a single piece of evidence was brought forth to show that Junior Party actually used the mark in commerce. The certificates of product registration (Exhibits "B" to "B-3"), license to operate (Exhibit "C"), clearance (Exhibit "D") and copyright registrations (Exhibit "E" to "E-3") are not evidence of actual use in commerce. Moreover, these latter set of evidence were all issued in 1989 and 1990 apparently in contemplation of and preparation for this eventual controversy.

Considering that Junior Party was not the first to use the mark and did not even prove actual use thereof in her name the rule (173 of the Rules of Practice in Trademark Cases) that her filing date of application is considered date of first use should not even accrue to her benefit in this interference proceedings; the SUBSTANTIVE rule that actual use in commerce is a prerequisite to the acquisition of the right of ownership under Sec. 2-A of the Trademark Law (Kabushiki Kaisha Isetan vs. IAC, 203 SCRA 583, 590 [1991]) should not be supplanted by the PROCEDURAL rule above where there is ample evidence to show that she is not the first to use, and not the owner of the mark sought to be registered.

We turn now to Senior Party's claim of ownership over the trademark 'BATIS'. To prove actual use thereof Senior Party submitted in evidence a bundle of sales invoices (Exhibits "21" to "21-00000000") dated July 17, 1987 to November 16, 1990. Aside from these invoices as best evidence to prove actual use (Converse Rubber Corp. vs. Universal Rubber Products, Inc, 147 SCRA 154 [1987]), Senior Party submitted in evidence news clippings mentioned earlier to show that "he has established tremendous goodwill and recognition as the man who manufactures and sells herbal bath soaps under the trademark BATIS. (p. 3, Memorandum for Senior Party). We are overwhelmed by this showing of actual use in commerce. Needless to say Senior Party was the first person to adopt and use in commerce in the Philippines the mark BATIS.

In a last-ditch effort to discredit Senior Party-Applicant, Junior Party-Applicant claims "that Senior Party-Applicant has had no bona fide commercial use of his trademark for the reason that he has not served the required label approval from the Bureau of Food and Drugs for his use of the trademark "BATIS".

We are generally distributed by this development especially in light of the open admission by Senior Party-Applicant of his failure to secure BFAD approval because he thought all the while that the license to operate (Exhibit "3") issued him by BFAD was already sufficient. (p. 8, TSN, 27 June 1991)

We note however that the failure to secure label approval is an omission calling for penal liability under Sec. 12 (a) of R.A. 3720. Thus, since the illegality of use in commerce proceeds only from a court declaration that a person is guilty of the crime charged, then we cannot rule on the alleged illegality of Senior Party-Applicant's use in commerce in this administrative proceeding.

And even granting arguendo authority of this office to rule on the alleged illegality of Senior Party's use in commerce, we note that in the recodification of RA 3720 into the recently passed Consumer Act (R.A. 7394) "soap" is specifically excluded in the definition of "cosmetics". This only means that label approval is not required in the sale of soap products. Thus, whether the then RA 3720 was incorrectly interpreted by BFAD as to include "soap" in the definition of "cosmetics" or Congress merely intended, during the passage of RA 7394, to exclude soap as part of cosmetics, the same should inure to the benefit of Senior Party-Applicant because penal laws are construed strictly against the state and any doubt should be resolved in favor of the alleged violator. Since the recodification is favorable to Senior Party-Applicant, RA 7394 can be applied retrospectively.

Again assuming that RA 7394 can be applied retrospectively albeit favorable to the violator, an alleged violator of the then RA 3720 can seek refuge under Sec. 12(b) of the same stating that "no person shall be subject to the penalties of subsection (a) of this Section for

having sold any article and delivered if, if such delivery was made in good faith xxx". In the case at bar, Senior Party-Applicant claimed good faith in thinking that the License to Operate was all there is to legally go into soap manufacturing business. This, the Junior Party-Applicant did not bother to contest and we find no reason not to give credit to the claim. If a criminal court cannot punish an alleged violator because of good faith, a fortiori, we cannot for the same reason impute penalty of Senior Party-Applicant by declaring his commercial use unlawful.

WHEREFORE, Application Serial No. 66914 in the name of Junior Party-Applicant is hereby DENIED for lack of ownership. Application Serial No. 62802 in the name of Senior Party-applicant is now allowed for publication.

Let the records of this decision be furnished to the Application, Issuance and Publication Division for proper action.

SO ORDERED.

IGNACIO S. SAPALO
Director