

Republic of the Philippines  
Court of Appeals  
Manila

**FIFTH DIVISION**

ARISTON COMMERCIAL, CA-G.R. SP No. 134220  
INC.,

*Petitioner,*

*Members:*

- versus -

ABDULWAHID, H.S.,  
*Chairperson,*  
BALTAZAR-PADILLA, P.J., and  
INTING, S.B., JJ.:

CONSOLIDATED ARTISTS  
B.V.,

*Respondent.*

*Promulgated:*

January 28, 2015

x-----x

**D E C I S I O N**

**ABDULWAHID, J.:**

In this Petition for Review under Rule 43 of the 1997 Rules of Civil Procedure, petitioner Ariston Commercial, Inc. seeks to annul and set aside the *Decision*<sup>1</sup> dated February 7, 2014 rendered by the Intellectual Property Office (IPO) Director General in Appeal No. 14-2010-0027 (Application No. 4-2002-009677), dismissing petitioner's appeal and upholding respondent Consolidated Artists B.V.'s opposition to petitioner's application to register the mark MANGO.

Petitioner Ariston Commercial, Inc. is a corporation organized and existing under Philippine laws with address at

---

<sup>1</sup> Rollo, pp. 13-17.

541 Rizal Avenue, Sta. Cruz, Manila. Respondent Consolidated Artists B.V., on the other hand, is a foreign corporation with address at Jan Leentvaarlaan 13065 DC Rotterdam, Netherlands.<sup>2</sup>

On November 11, 2002, petitioner filed a trademark application<sup>3</sup> for the use of the mark MANGO on watches under Class 14 of the Nice Classification.<sup>4</sup> On August 18, 2004, the trademark application was published in the Intellectual Property Office Official Gazette.<sup>5</sup>

On October 15, 2004, respondent filed its *Unverified Opposition*<sup>6</sup> to petitioner's application, alleging that it was the prior user of MANGO for jewelry also under Class 14. Furthermore, respondent claims that it was issued a certification of registration for the MANGO mark on April 12, 2002 for goods under Class 25, which includes clothing, hat, footwear, shoes, sandals and other classes of goods. Respondent likewise emphasized that its mark is well-known locally and internationally, and that it maintains several MANGO shops in prominent malls in the Philippines. Respondent underscored that the petitioner adopted the identical mark MANGO in bad faith with an intention of cashing in on the goodwill and reputation of respondent's mark.<sup>7</sup>

On December 28, 2007 the Bureau of Legal Affairs denied respondent's opposition and gave due course to petitioner's MANGO trademark application for watches under Class 14.<sup>8</sup>

---

<sup>2</sup> *Id.* at 23.

<sup>3</sup> *Id.* at 55.

<sup>4</sup> The Nice Classification is a classification of goods and services for the purpose of registering trademarks and service marks, based on a multilateral treaty administered by the World Intellectual Property Organization. This 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.

<sup>5</sup> Rollo, p. 13.

<sup>6</sup> *Id.* at 87-92.

<sup>7</sup> *Id.* at 88-89.

<sup>8</sup> *Id.* at 109-118.

Upon *Motion for Reconsideration*<sup>9</sup> filed by respondent, the Bureau of Legal Affairs found that respondent had successfully proven actual and prior use of the MANGO mark, and thus, reversed and set aside<sup>10</sup> its earlier *Decision*. This prompted petitioner to elevate the matter on appeal to the IPO Director General.<sup>11</sup>

On February 7, 2014, the IPO Director General dismissed petitioner's appeal in the assailed *Decision*, the dispositive portion of which reads, as follows:<sup>12</sup>

WHEREFORE, premises considered, the instant appeal is hereby dismissed. Let a copy of this Decision as well as the trademark application and records be furnished and returned to the Director of the Bureau of Legal Affairs for appropriate action. Further, let also the Director of the Bureau of Trademarks and the library of the Documentation, Information and Technology Transfer Bureau be furnished a copy of this decision for information, guidance and records purposes.

SO ORDERED.

Aggrieved, petitioner interposed the instant appeal and raised the following assignment of errors for consideration of this Court:<sup>13</sup>

I.

**WHETHER OR NOT THE PRINCIPLE OF CONFUSION OF GOODS AND/OR BUSINESS HAS BEEN CORRECTLY APPLIED IN THE CASE AT BAR; and**

II.

**WHO BETWEEN PETITIONER AND RESPONDENT**

---

9 *Id.* at 119-133.

10 *Id.* at 142-144.

11 *Id.* at 145-159.

12 *Id.* at 17.

13 *Id.* at 27.

**HAS A BETTER RIGHT TO USE/ REGISTER THE  
MANGO TRADEMARK FOR WATCHES UNDER  
CLASS 14 OF THE NICE CLASSIFICATION.**

Petitioner contends that the IPO Director General's finding of possible confusion with its registration of the MANGO mark for watches is unwarranted and misplaced, in light of the following established facts:<sup>14</sup>

- a) Petitioner was the first to file for the registration of the MANGO mark for use on watches under Class 14;
- b) Petitioner has prior actual commercial use of the MANGO mark for watches;
- c) Respondent did not deal with watches at the time petitioner filed its MANGO trademark application; and
- d) Respondent's Declaration of Actual Use either deals or pertains to goods other than watches.

On the other hand, respondent asserts that the petition should be dismissed outright, considering that petitioner lacks the legal personality to appeal the subject case as it had assigned all its rights over the trademark application subject of the appeal to Thousand Fold Co., Ltd. (Thousand Fold).<sup>15</sup>

Furthermore, respondent posits that the IPO Director General did not err in sustaining the Bureau of Legal Affairs in upholding its opposition to petitioner's trademark application as it had adduced sufficient evidence to prove its prior use of the mark MANGO in various classes and was the first to use the said mark even in Class 14, which is the class under contention.<sup>16</sup>

The appeal is bereft of merit.

---

<sup>14</sup> *Id.* at 28.

<sup>15</sup> *Id.* at 193-194.

<sup>16</sup> *Id.* at 194.

A real party in interest is said to be the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or the Rules of Court, every action must be prosecuted or defended in the name of the real party in interest.<sup>17</sup>

In the case at bar, petitioner did not dispute nor rebut respondent's allegations that petitioner assigned its rights over the trademark application subject of this case to Thousand Fold, a Taiwanese firm. The evidence on record also supports respondent's allegations of a transfer of rights. In a *Deed of Assignment*<sup>18</sup> dated October 8, 2011 with Thousand Fold, petitioner unequivocally transferred all its rights, title and interest in and to the trademark application of the MANGO mark, to wit:

xxx

xxx

xxx

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, **ARISTON COMMERCIAL, INC.** per the attached Secretary's Certificate assigns to **THOUSAND FOLD CO., LTD.** all rights, title and interest in and to the mark **MANGO** under Trademark Application No. 4-2002-009677 dated 11 November 2002 together with all the goodwill symbolized by the mark.

It is hornbook doctrine that only a real party in interest is allowed to prosecute and defend an action in court. "Interest" within the meaning of the rule means material interest, an interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest.<sup>19</sup>

---

17 Section 2, Rule 3 of the 1997 Rules of Civil Procedure.

18 Rollo, p. 210.

19 *VSC Commercial Enterprises, Inc. vs. Court of Appeals*, 394 SCRA 74, 79 (2002).

In the case at bar, it is not disputed that petitioner transferred its rights, title and interest over its trademark application over the MANGO mark for valuable consideration to Thousand Fold. Suffice to say that with petitioner's absolute transfer of its rights over its trademark application, it ceased being a real party in interest, thus losing its right to prosecute or defend an action in court. Clearly then, it is Thousand Fold and not petitioner which possesses the standing to appeal the denial of the trademark application before this Court.

In light of petitioner's lack of standing to sue, this Court finds it therefore unnecessary to rule on the issues it elevated to this Court on appeal.

**WHEREFORE**, the appeal is **DENIED**, and the assailed *Decision* dated February 7, 2014 of the Intellectual Property Office Director General in Appeal No. 14-2010-0027 is **AFFIRMED**.

**SO ORDERED.**

**HAKIM S. ABDULWAHID**  
Associate Justice

**WE CONCUR:**

**PRISCILLIA J. BALTAZAR-PADILLA**  
Associate Justice

**SOCORRO B. INTING**  
Associate Justice

## **CERTIFICATION**

Pursuant to Article VIII, Section 13 of the constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

**HAKIM S. ABDULWAHID**  
Chairperson  
FIFTH DIVISION