



Republic of the Philippines  
**COURT OF APPEALS**  
 Manila

**FIRST (1<sup>ST</sup>) DIVISION**

**CYMAR INTERNATIONAL, INC.,**  
*Petitioner,*

**CA G.R. SP NO. 124697**

**Members:**

- versus -

**REYES, A.B. JR.,** *Chairperson,*  
**GONZALES-SISON, M.,** *and*  
**CRUZ, R.A.,** *JJ*

**THE DIRECTOR GENERAL,**  
**INTELLECTUAL PROPERTY**  
**OFFICE AND FARLING**  
**INDUSTRIAL CO., LTD.,**  
*Respondents.*

**Promulgated:**  
**June 25, 2015**

X ----- X

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

**Cruz, R.A., J.:**

**THE CASE**

This is a Petition for Review<sup>1</sup> on mixed questions of fact and law, under Rule 43 of the 1997 Rules of Civil Procedure, seeking to reverse and set aside the April 23, 2012<sup>2</sup> Decision of the Intellectual Property Office ("IPO") Director General. Moreover, it is prayed that Respondent Farling Industrial Co. Ltd.'s Opposition to the April 23, 2007 Application for the Issuance of Certificate of Registration for FARLIN DISPOSABLE BABY DIAPERS (WITH MOTHER & CHILD ICON) filed by Cymar International, Inc. be dismissed.

The dispositive portion of the April 23, 2012 Decision reads:

X X X

WHEREFORE, premises considered, the instant appeal is hereby DISMISSED. Let a copy of this Decision and the 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.<sup>3</sup>

X X X

## THE ANTECEDENTS

Private Respondent Farling Industrial Co. Ltd. ("Farling") is a Taiwan corporation engaged in the manufacture, sale and distribution of various plastic, resinous and baby products in Taiwan and other parts of the world, including the Philippines, using its FARLIN Trademarks.<sup>4</sup>

On October 1, 1978, in Taiwan, Republic of China, Private Respondent Farling first coined, adopted and used on goods the FARLIN trademark for various plastic and resinous products. The FARLIN trademark is a coined word based on its corporate name – Farling Industrial Company, Limited. Since then, Private Respondent Farling has been manufacturing products bearing its FARLIN trademark at its factories and distributing them to various countries even prior to January 5, 1983, the alleged date of first use of the mark by Cymar International, Inc. ("Cymar") in the Philippines.<sup>5</sup>

In 1981, Private Respondent Farling and Petitioner Cymar commenced an informal distributorship relationship wherein the latter became the distributor of products manufactured and exported to the Philippines by the former bearing the FARLIN Trademark. No formal distributorship agreement detailing the parties' respective rights and obligations was executed. Nevertheless, the parties' representatives executed an undated agreement wherein Private Respondent Farling authorized Petitioner Cymar "to sell the products manufactured by [the former] including those bearing 'FARLIN' brand in Philippines."<sup>6</sup>

Private Respondent Farling, as manufacturer and exporter, provided Petitioner Cymar not only with FARLIN brand products but also with sales and promotional materials such as brochures, samples and sponsorship for advertising expenditures of FARLIN brand products.<sup>7</sup>

Petitioner Cymar undertook to facilitate the registration of the FARLIN & Device trademark with the Philippine Patent Office on Private Respondent Farling's behalf. Petitioner Cymar sent to Private Respondent Farling the corresponding application form, which the latter executed and caused to be notarized. The accomplished application documents were forwarded to Petitioner Cymar which promised to deliver them to Private Respondent Farling's recommended attorneys for filing.<sup>8</sup>

Private Respondent Farling, however, discovered that Petitioner Cymar never delivered the application documents to its recommended attorneys. The application was never filed. Worse, Private Respondent Farling later learned that Petitioner Cymar had, without authority, appropriated to itself the FARLIN trademark and applied and obtained five trademark registrations on various dates, specifically, on the 4th of May 1990, 18th of July 1990, 13th of May 1991, 3rd of August 1990, and 16th of March 1993. Private Respondent Farling confronted Petitioner Cymar about the latter's fraudulent and unauthorized registrations of the FARLIN trademark.<sup>9</sup>

On March 27, 1993, Messrs. Shieh Wen-John (representing Private Respondent Farling) and Cyril Ko (representing Petitioner Cymar) met to discuss the issue of the fraudulent and unauthorized registrations. Through a memorandum, Petitioner Cymar agreed to settle all disputes with regard to the FARLIN trademark and royalty before June 30, 1993.<sup>10</sup>

However, the June 30, 1993 deadline passed without any settlement being reached by the parties. Petitioner Cymar ignored the formal demands made by Private Respondent Farling. Hence, the latter was constrained to institute Petitions for Cancellation of Trademark Registrations. On December 26, 2002, the BLA Director rendered her Decision denying Private Respondent Farling's Petitions for Cancellation.<sup>11</sup>

Private Respondent Farling appealed the adverse Decision of the BLA Director to the IPO Director General. In a Decision dated October 22, 2003, the IPO Director General reversed the Decision of the BLA Director and granted the Petitions for Cancellation of Private Respondent Farling.<sup>12</sup>

Petitioner Cymar appealed the IPO Director General's Decision to Us via a Petition for Review docketed as CA G.R. SP No. 80350. In Our Decision dated July 26, 2005, We upheld the IPO Director General's finding that Petitioner Cymar has indeed improperly appropriated the FARLIN trademark from Private Respondent Farling.<sup>13</sup> Petitioner Cymar's Motion for Reconsideration was denied in Our Resolution dated May 17, 2007.<sup>14</sup> Petitioner Cymar thereafter went to the Supreme Court by filing a Petition for Review on Certiorari docketed as G.R. No. 177974 and remains pending at the this time.<sup>15</sup>

In the interregnum, specifically on April 23, 2003, while Private

Respondent Farling's Appeal for its Petitions for Cancellation was still pending before the IPO Director General, Petitioner Cymar filed with the IPO an Application for the Registration of the Trademark FARLIN DISPOSABLE BABY DIAPERS (WITH MOTHER & CHILD ICON).<sup>16</sup> Private Respondent Farling filed its Verified Opposition, believing that it would be damaged by Petitioner Cymar's continued unlawful appropriation of its FARLIN mark.<sup>17</sup>

On February 28, 2009, the BLA Director rendered her Decision sustaining the Opposition filed by Private Respondent Farling.<sup>18</sup> Petitioner Cymar appealed the Decision of the BLA Director to the IPO Director General. In a Decision dated April 23, 2012 the IPO Director General sustained the Decision of the BLA Director and dismissed Petitioner Cymar's Appeal.<sup>19</sup>

In this petition before Us, Petitioner Cymar avers that it has the right of "first use" over the "FARLIN" Trademark being its "first user" in the Philippines, specifically on January 5, 1983.<sup>20</sup> Petitioner Cymar filed five (5) Applications for the Registration of the "Farlin" Trademark on various baby products as early as 1990, which applications were approved by the Bureau of Patents, Trademarks and Technology Transfer (BPTTT), now known as the IPO. In all those Applications, Petitioner Cymar declared five (5) times under oath its claim of "first use" of the "Farlin" Trademark. Petitioner Cymar's millions of investment for the goodwill development and ownership of "FARLIN" had been properly documented. From 1994, to the present, Petitioner Cymar solely spent, and continues to spend, on the advertising and promotion of "FARLIN" in the Philippines.<sup>21</sup>

Petitioner Cymar also asserts that Private Respondent Farling made no claim of "first use" of the said Trademark in the Philippines. Private Respondent Farling has not filed any application for the registration of the "FARLIN" Trademark in the Philippines. What it merely did was to allege a November 1, 1978 registration in the Republic of China. Private Respondent Farling's alleged China registration was not specifically for "baby products" (for which Petitioner Cymar registered "FARLIN" in the Philippines) but only for "various resinous plastic and resinous products." Private Respondent Farling's China registration expired on October 1, 1988. Therefore, the right of ownership over the "FARLIN" Trademark is reserved to Petitioner Cymar, which was the first to use, first to register and spent effort, industry, promotions and advertisements to promote its goodwill.<sup>22</sup>

## **THE ISSUES BEFORE US**

Petitioner Cymar raises the following grounds to support its Petition for Review, to wit:

(1)

RESPONDENT IPO DIRECTOR GENERAL ERRED IN RENDERING A DECISION WHICH [DOES] NOT EXPRESS THEREIN CLEARLY AND DISTINCTLY THE FACTS AND THE LAW ON WHICH IT BASED THE FINDING AND CONCLUSION THAT PETITIONER WAS A MERE "IMPORTER AND DISTRIBUTOR" OF RESPONDENT FARLING'S PRODUCTS.

(2)

RESPONDENT IPO DIRECTOR GENERAL ERRED IN RENDERING A DECISION WITH "MANIFEST BIAS AND PREJUDICE" AGAINST PETITIONER WHEN IT CITED AND USED IN ITS APPEALED APRIL 23, 2012 DECISION AS ABOVECITED, THE "FINDINGS" OF THE BLA DIRECTOR WHICH WAS "UNFAVORABLE" TO PETITIONER, BUT DISREGARDED THE DEC. 26, 2002 FINDINGS OF THE SAME BLA DIRECTOR, WHICH WAS FAVORABLE TO PETITIONER.

(3)

RESPONDENT IPO DIRECTOR GENERAL ERRED IN RENDERING A DECISION WHICH CONTAINS CONTRADICTORY RULINGS BY ADOPTING, AT ONE INSTANCE, THE FACTUAL FINDINGS IN CA-G.R. NO. 80359, (NOW G.R. NO. 177974) AND AT ANOTHER INSTANCE, DECLARING THAT THE COURT OF APPEALS CASE IS DIFFERENT FROM THIS CASE.

(4)

RESPONDENT IPO DIRECTOR GENERAL ERRED IN CITING CA G.R. SP. NO. 80350 AS "RES JUDICATA" ALTHOUGH IT IS STILL PENDING IN THE SUPREME COURT AS G.R. NO. 177974.

(5)

x x x

RESPONDENT IPO DIRECTOR GENERAL COMMITTED SERIOUS [ERROR] WHEN HE DISREGARDED THE FIVE (5) PRIOR REGISTRATIONS OF PETITIONER SHOWING "FIRST TO FILE" AND "FIRST AND PRIOR USE" IN THE PHILIPPINES AS EARLY AS JANUARY 5, 1983.

(6)

x x x

RESPONDENT IPO DIRECTOR GENERAL COMMITTED SERIOUS [ERROR] WHEN HE DISREGARDED THE "FIRST TO FILE RULE" UNDER [R.A.] 8293. PETITIONER FILED ITS FIRST FARLIN TRADEMARK APPLICATION ON APRIL 28, 1987, WHILE THE INSTANT APPLICATION WAS FILED ON APRIL 23, 2003, OR MUCH PRIOR TO, IF AT ALL RESPONDENT FARLING APPLIED, AND TO ITS PREJUDICE.

(7)

RESPONDENT IPO DIRECTOR GENERAL COMMITTED SERIOUS [ERROR] WHEN IT DISREGARDED THE DOCTRINE OF "THE FIRST TO REGISTER."

(8)

RESPONDENT IPO DIRECTOR GENERAL COMMITTED SERIOUS [ERROR] WHEN HE DISREGARDED PETITIONER'S OWNERSHIP OF THE PHILIPPINE GOODWILL OF THE "FARLIN" TRADEMARK.

(9)

x x x

RESPONDENT IPO DIRECTOR GENERAL COMMITTED SERIOUS [ERROR] WHEN IT RULED IN FAVOR OF RESPONDENT FARLING ALTHOUGH ITS AUGUST 7, 2007 OPPOSITION IS PALPABLY DEFECTIVE SINCE IT ATTACHED TO IT MERELY A XEROXED COPY OF A CERTIFICATE OF REGISTRATION IN THE REPUBLIC OF CHINA WHICH ALREADY EXPIRED ON OCTOBER 1, 1988. IT IS IN VIOLATION OF THE JURISDICTIONAL AND MANDATORY REQUIREMENT OF SEC. 134, [R.A.] 8293. ASIDE FROM BEING MERELY A XEROXED COPY, THE CERTIFICATE IS NOT BINDING ON THE PHILIPPINES BECAUSE CHINA WAS NOT YET A MEMBER OF THE TRIPS AGREEMENT WHEN IT WAS ALLEGEDLY ISSUED IN 1978.

(10)

x x x

RESPONDENT IPO DIRECTOR GENERAL COMMITTED SERIOUS [ERROR] WHEN HE RULED IN FAVOR OF THE RESPONDENT FARLING BASED MERELY ON ITS ALLEGED PRIOR USE IN THE REPUBLIC OF CHINA ON DIFFERENT PRODUCTS, IGNORING THE LIMITATIONS OF [R.A.] 8293 WHICH CONSIDERS ONLY "FIRST TO FILE" RULE IN [THE] PHILIPPINES ON THE SAME CLASS FOR THE SAME PRODUCTS.

(11)

x x x

RESPONDENT IPO DIRECTOR GENERAL COMMITTED SERIOUS [ERROR] WHEN IT RULED IN FAVOR OF THE RESPONDENT FARLING BASED MERELY ON RESPONDENT FARLING'S ALLEGED REGISTRATION OF THE MARK WITH OTHER COUNTRIES, AND NOT IN THE PHILIPPINES, AND DESPITE RESPONDENT FARLING'S ABJECT FAILURE TO SUPPORT ITS CLAIM THAT THE MARK IS WELL-KNOWN INTERNATIONALLY AND/OR HAVE ACQUIRED GOODWILL IN THE PHILIPPINES, THROUGH ITS EFFORTS AND INVESTMENTS.

(12)

x x x

RESPONDENT IPO DIRECTOR GENERAL COMMITTED SERIOUS [ERROR] WHEN HE IGNORED RESPONDENT FARLING'S "AUTHORIZATION" AND WAIVER OF RIGHTS ON THE MARK IN FAVOR OF PETITIONER, AND WHEN HE ALSO IGNORED PETITIONER'S HARD EVIDENCE ON ITS "EFFORTS, INDUSTRY, PROMOTIONS, AND ADVERTISEMENTS" WORTH MILLIONS OF PESOS TO DEVELOP, PROMOTE AND MAINTAIN THE GOODWILL OF THE TRADEMARK FARLIN IN THE PHILIPPINE MARKET, IN CONTRAST TO RESPONDENT FARLING'S BANKRUPT EVIDENCE ON ITS CLAIM OF "FARLIN" GOODWILL ANCHORED SLYLY ON ITS RECOGNITION OF PETITIONER'S GOODWILL THEREON.

(13)

RESPONDENT IPO DIRECTOR GENERAL COMMITTED DERELICTION OF DUTY WHEN IT IGNORED RESPONDENT FARLING'S FLAGRANT VIOLATION OF THE RULE ON NON-FORUM SHOPPING.<sup>23</sup>

In its discussion of the aforequoted grounds, Petitioner Cymar asserts the following:

- The Public Respondent IPO Director General violated Sec. 14 of the Constitution when he rendered a decision without first establishing his own "findings of facts" drawn from a separate assessment of each and every piece of evidence adduced in the instant case. The Public Respondent IPO Director General based his decision that Petitioner Cymar "was a mere importer and distributor" of the products of Private Respondent Farling on the "findings of facts" in another case, CA G.R. SP No. 80350, and on the unsubstantiated "Comments" of Private Respondent Farling, in the same Court of Appeals case.<sup>24</sup>

- The BLA Director showed manifest prejudice and bias when she selectively ignored the findings of her office on December 26, 2002 in Inter Partes Case Nos. 4045, 4046, 4047, 4048 and 4049. In this first “FARLIN” case before the IPO, Petitioner Cymar was adjudged the rightful owner of the “FARLIN” Trademark.<sup>25</sup>
- The Public Respondent IPO Director General contradicts himself when he ruled that CA G.R. SP. No. 80350 is different from “the subject matter and the causes of action in the instant opposition case” but at the same time applying in the instant opposition case the finding that Petitioner Cymar was a mere importer or distributor.<sup>26</sup>
- The BLA Director and the IPO Director General committed a serious error in law, if not ignorance of the law, when they cited in the appealed Decision the Court of Appeals case because the Supreme Court has ruled repeatedly that only its final and executory decisions maybe cited as legal precedents. In effect, Public Respondent applied a Decision which is not the law of the case.<sup>27</sup>
- Private Respondent Farling failed to prove that Petitioner Cymar imported FARLIN branded products. Petitioner Cymar, not Respondent Farling, filed first in the Philippines.<sup>28</sup>
- Private Respondent Farling's Exh. “D” is the photocopied formal offer of evidence in a different case, Inter Partes Case Nos. 4045-4049. A “Formal Offer” has no evidentiary value. It is only a proof of existence of the said photocopied “Formal Offer” but it is not proof of the Exhibits therein much less their contents in relation to this case. Also, the Offer was made under R.A. 166, while this case was brought under R.A. 8293. The documents attached to the “Formal Offer” also violate the rules on authenticity because they are all photocopied copies.<sup>29</sup>
- Private Respondent Farling had waived any claim or right against Petitioner Cymar for the copyright of “FARLIN”. The waiver of copyright in favor of the Petitioner Cymar also included the waiver of the right on the Trademark “FARLIN” without, however, contradicting nor abandoning Petitioner Cymar's ownership theory of “first to file”.<sup>30</sup>
- The Trademark “FARLIN” was unknown in the Philippines before Petitioner Cymar developed its goodwill by promoting the mark in the Philippines. Private Respondent Farling has not spent on the significant and substantial development of the goodwill of the



trademark "FARLIN" in the Philippines.<sup>31</sup>

- Its mark "FARLIN" is not confusingly similar with "FARLING" because the latter covers "PLASTICS AND RESINOUS PRODUCTS AND ALL OTHER COMMODITIES BELONGING TO THE CLASS", while the opposed Application of Petitioner Cymar covers the goods or products "DISPOSABLE BABY DIAPERS." Assuming arguendo that "FARLIN" and "FARLING" are the same, nonetheless, Private Respondent Farling has no cause of action because the registration of similar trademarks are allowed when they cover different products.<sup>32</sup>
- "FARLIN" has been registered in the IPO Philippines in the name of the Petitioner Cymar and not in the name of Private Respondent Farling, who did not file any application for registration of the said Trademark in the Philippines. This fact is not disputed in the Opposition or in any of the evidence of Private Respondent Farling. Petitioner Cymar had been using the mark "FARLIN" in the Philippines since January 5, 1983. On the other hand, Private Respondent Farling failed to allege in its Opposition its actual use of the said mark in the Philippines.<sup>33</sup>
- Petitioner Cymar filed with the IPO the Application being opposed after the effectivity of R.A. 8293. Thus, the instant case is being litigated under R.A. 8293. R.A. 8293 repealed R.A. 166, the old Trademark Law. However, Private Respondent Farling adopted and recycled the Exhibits which it adduced in the Cancellation Cases as evidence for its Opposition in the instant case. The cancellation cases were litigated under R.A. 166. The yardsticks used to evaluate the Exhibits therein were the provisions of R.A. 166. The grounds for Opposition under R.A. 166 are not the same as the grounds under R.A. 8293. Therefore, the Exhibits to prove the instant Opposition under R.A. 8293 cannot be the Exhibits which were used under R.A. 166 because these are irrelevant to the instant case.<sup>34</sup>
- All exhibits of Private Respondent Farling are hearsay evidence or merely photocopies. Private Respondent Farling's only Exhibits that are certified true copies are Exhs. "A", "B", and "C". Exh. "D" is not a certified true copy. It should not be admitted as evidence for the Private Respondent Farling, if not stricken off of the records, for violation of Sec. 7.1, Inter Partes Regulations.<sup>35</sup>
- The Secretary's Certificate, the Verification and Certification, and the Affidavit of Shieh Wen-John (Exh. "A") all violate Sec. 12, Rule II of the Supreme Court En Banc Resolution A.M. No. 02-8-13-SC dated July 6, 2004. The documents do not have any

evidence of identity at all, they are not under oath and they have no acknowledgment. There is an incomplete or defective *Jurat* on the Secretary's Certificate and on the Affidavit and none at all on the Verification and Certification. The Opposition and Affidavits of Witnesses are not under oath.<sup>36</sup>

- Private Respondent Farling committed forum-shopping. Private Respondent Farling did not declare in the "Certification of Non-Forum Shopping" of its Opposition the pending case with the Supreme Court entitled "Cymar International, Inc. vs. Farling Industrial Co., Ltd., et. al.", docketed as G.R. No. 177974, which case involves the same parties and the same FARLIN Trademark as the instant case. Private Respondent Farling also failed to include in its Opposition the Certification of Non-Forum Shopping.<sup>37</sup>

On the other hand, Private Respondent Farling avers that the factual findings of the Director General are supported by substantial evidence, therefore, binding on this Honorable Court;<sup>38</sup> Private Respondent Farling has complied with the certification against forum-shopping requirements;<sup>39</sup> the evidence in Inter Partes Case Nos. 4045-4049 are relevant and applicable to the instant case;<sup>40</sup> the Director General correctly allowed Private Respondent Farling's adoption of its evidence in Inter Partes Case Nos. 4045-4049;<sup>41</sup> Petitioner Cymar is not the owner of the FARLIN Trademark and was never authorized to register the mark in its name;<sup>42</sup> Petitioner Cymar cannot validly claim that it owns the Philippine Goodwill to the FARLIN mark;<sup>43</sup> Private Respondent Farling will be damaged by the registration.<sup>44</sup>

## **OUR RULING**

We DISMISS the Petition.

### **Section 14, Article VIII of the 1987 Constitution need not apply to decisions rendered in administrative proceedings**

We consider this first ground as unmeritorious.

Section 14, Article VIII of the 1987 Constitution need not apply to decisions rendered in administrative proceedings, as in the case at bar. The said section applies only to decisions rendered in judicial proceedings. In fact, Article VIII is titled "Judiciary," and all of its

provisions have particular concern only with respect to the judicial branch of government. Certainly, it would be error to hold or even imply that decisions of executive departments or administrative agencies, such as the IPO, are obliged to meet the requirements under Section 14, Article VIII.<sup>45</sup>

But even assuming arguendo the application of the said constitutional provision invoked by Petitioner Cymar still, the Decision of the Director General satisfied the standards set forth in our jurisprudence. The rule is that a decision need not be a complete recital of the evidence presented. So long as the factual and legal basis are clearly and distinctly set forth supporting the conclusions drawn therefrom, the decision arrived at is valid. Nonetheless, in order to effectively buttress the judgment arrived at, it is imperative that a decision should not be simply limited to the dispositive portion but must state the nature of the case, summarize the facts with references to the record, and contain a statement of the applicable laws and jurisprudence and the tribunal's assessments and conclusions on the case.<sup>46</sup>

A cursory reading of the assailed Order will readily show that it contains (a) a summary of the antecedental facts and proceedings therein<sup>47</sup> (b) an elucidation on how the threshold issues were resolved<sup>48</sup> and (c) the factual and legal bases for its holding<sup>49</sup>, to wit:

x x x

The essence of forum-shopping is the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment. In this instance, the Appellee filed the opposition to prevent the registration of the FARLIN & Device in favor of the Appellant pursuant to Sec.134 of the IP Code.

x x x

The pending case in the Supreme Court was filed by the Appellant and involves the cancellation of certificates of registration for FARLIN issued in favor of the Appellant. Thus, the subject matter and the causes of action in the instant opposition case and the pending case in the Supreme Court are different. While these cases all involve FARLIN, they refer to different trademark applications and/or trademark registrations.

x x x

The Director ruled that the Appellant is only an importer and distributor of the Appellee based on the findings of this Office and the Court of Appeals in connection with the petitions for cancellation of the Appellant's certificate of registration for FARLIN.

x x x

The Appellant's assertion that it was the first to file the application to register FARLIN and that it has spent millions of pesos promoting FARLIN will not save the day for the Appellant. As the Appellant is not the

owner of FARLIN, it cannot register this mark even if it is the first to file the trademark application for FARLIN or it has already spent millions of pesos in advertisement.

Lastly, the Appellant's claim that the products covered by FARLIN & Device are disposable baby diapers which are different from the products of the Appellee should be given scant consideration. The Appellee's products cover baby products such as baby bottle, nipple, pacifier, aspirator, powder puff, rattle, cotton swabs, funnel, and milk container, among other things. These products are related to, if not identical, with the Appellant's products.<sup>50</sup>

Moreover, We note that in this Petition for Review, Petitioner Cymar was able to assign the errors committed by the Director General in affirming the Decision of the BLA Director. This is a proof in itself that the assailed Decision contains findings of facts and conclusions of law on which the said decision was based.<sup>51</sup>

**Petitioner Cymar failed to prove its allegation that the IPO Director General acted with manifest bias and prejudice**

The second contention of Petitioner Cymar is likewise without merit. Extrinsic evidence is required to establish bias, bad faith, malice or corrupt purpose, in addition to the palpable error which may be inferred from the decision or order itself. The only exception to the rule is when the error is so gross and patent as to produce an ineluctable inference of bad faith or malice.<sup>52</sup>

In acting upon an appeal, the appellate agency shall review the records of the proceedings.<sup>53</sup> Implicit in this mandate is the prerogative of the appellate agency to give more weight to a certain finding or ruling over that of another. So long as the choice is founded on law and evidence, and the right of both parties to due process was respected, then this is a valid exercise of the discretion of the appellate agency, in this case, the Public Respondent IPO Director General.

Furthermore, public officers enjoy the presumption of regularity in the exercise of their functions.<sup>54</sup> The mere vehemence of the claim of bias does not translate to a clear and convincing evidence of impairing bias.<sup>55</sup> Absent any proof to the contrary, We cannot sustain the bare allegation of prejudice.<sup>56</sup>

## **No contradictory rulings issued by the IPO Director General**

Petitioner Cymar is wrong in its third ground. The Public Respondent IPO Director General did not render contradictory rulings.

The Public Respondent IPO Director General, in disposing whether or not there was forum shopping, held that the instant case and the prior case before Us docketed as CA G.R. SP No. 80350 were different. While these cases all involve FARLIN, they refer to different trademark applications and/or trademark registrations. CA G.R. SP No.80350, which is now pending before the Supreme Court and docketed as G.R. No. 177974, involves the cancellation of certificates of registration for FARLIN issued in favor of Petitioner Cymar. On the other hand, the present case pertains to Petitioner Cymar's application for the registration of FARLIN & Device and Private Respondent Farling's Opposition to such application.

For purposes of determining whether or not Petitioner Cymar had any right to the registration of FARLIN & Device and whether or not the opposition of Private Respondent Farling had any merit, the Public Respondent IPO Director General adopted Our factual findings in CA G.R. SP No. 80350 which declares that Private Respondent Farling is the true owner of the mark and, that Petitioner Cymar was merely an importer and distributor of Private Respondent Farling's products and therefore had no right at all to the mark. Thus, no contradictory rulings were issued by the IPO Director General. Instead, these rulings are independent and harmonious to each other.

## ***Res Judicata* and the Law of the Case Doctrines are inapplicable in this case**

The fourth contention of Petitioner Cymar is misleading. We find perplexing Petitioner Cymar's allegation that the Director General applied the doctrines of *res judicata* and law of the case in resolving the case. Nowhere in the assailed Decision did the Director General apply such doctrines. In fact, even the portion of the Decision quoted by Petitioner Cymar correctly made no reference to such doctrines as these are inapplicable in the opposition case.

Res judicata or bar by prior judgment is a doctrine which holds

that a matter that has been adjudicated by a court of competent jurisdiction must be deemed to have been finally and conclusively settled if it arises in any subsequent litigation between the same parties and for the same cause.<sup>57</sup> Thus, "[a] final judgment on the merits rendered by a court of competent jurisdiction is conclusive as to the rights of the parties and their privies and constitutes an absolute bar to subsequent actions involving the same claim, demand, or cause of action."<sup>58</sup> Res judicata is based on the ground that "the party to be affected, or some other with whom he is in privity, has litigated the same matter in a former action in a court of competent jurisdiction, and should not be permitted to litigate it again."<sup>59</sup>

For the doctrine to apply, four requisites must be met: (1) the former judgment or order must be final; (2) it must be a judgment or an order on the merits; (3) it must have been rendered by a court having jurisdiction over the subject matter and the parties; and (4) there must be, between the first and the second actions, identity of parties, of subject matter and of cause of action.<sup>60</sup>

Based on this definition, the doctrine of *res judicata* does not apply. There is no final judgment or order, as Petitioner Cymar has pointed out itself, and there is no identity of subject matter and of causes of action between the first and the second actions as the Public Respondent IPO Director General has stressed.

On the other hand, the law of the case doctrine applies in a situation where an appellate court has made a ruling on a question on appeal and thereafter remands the case to the lower court for further proceedings; the question settled by the appellate court becomes the law of the case at the lower court and in any subsequent appeal. It means that whatever is irrevocably established as the controlling legal rule or decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which the legal rule or decision was predicated continue to be the facts of the case before the court.<sup>61</sup>

Based on this definition, the doctrine of law of the case likewise does not apply. To put it simply, there is no remanded case to which a previous ruling on appeal may be applied.

**The IPO Director General committed no reversible error when it affirmed the Decision of the Bureau of Legal Affairs Director**

We likewise find no merit in the fifth, sixth, seventh, eighth, tenth, eleventh, and twelfth issues raised by Petitioner Cymar, which issues challenge the IPO Director General's appreciation of the evidence presented before him.

In his Decision dated April 23, 2012, the IPO Director General explained his basis in sustaining the Decision of the BLA Director and dismissing the Appeal of Petitioner Cymar, *viz*:

x x x

[I]t is emphasized that the essence of trademark registration is to give protection to the owners of trademarks. 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 as his product.

In sustaining the Appellee's opposition, the Director correctly held that:

Being a mere importer and/or distributor of Farling's goods bearing the mark "FARLIN", Cymar did not acquire ownership over the said mark. And Cymar has not shown at all that it is the actual owner of the mark in Taiwan (from where the goods are imported) nor that Farling ceded or transferred to it the ownership of the mark "FARLIN".

"An importer or distributor of goods on which a mark or a trade name owned by another is used or an agent or representative of the trademark owners does not acquire ownership of such mark or trade name, unless the owner has ceded or transferred it to him. The sale by the trademark owner of the goods does not carry with it the sale or transfer of the mark in favor of the buyer, unless they have agreement to that effect. The reason is that the use by the importer, distributor, agent or representative of the owner of the mark or tradename is deemed that of the latter. (Agpalo, The Law on Trademark, Infringement and Unfair Competition, 2000 First Edition, p. 12 citing (Marvex Commercial Co., vs. Petra Hampia & Company , 18 SCRA 1178)

x x x

The Director ruled that the Appellant is only an importer and

distributor of the Appellee based on the findings of this Office and the Court of Appeals in connection with the petitions for cancellation of the Appellant's certificates of registration for FARLIN. In other words, the Director cited the findings of this Office and the Court of Appeals that the Appellant is an importer and distributor of the Appellee's products. As correctly pointed out by the Appellee in its comment:

39. To repeat, the IPO Director-General as sustained by the Court of Appeals found and ruled that Cymar could not rightfully register the trademark FARLIN as it was a mere importer of the products of Farling, more so in the absence of authority from the principal. Concluded the Court of Appeals in its Decision in CA G.R. SP No. 80350:

“A review of the voluminous evidence in this case reveals that the import- export business relationship of petitioner and private respondent involving plastic baby products began as early as 1982, prior to petitioner's registration of the Trademark “FARLIN” under its own name. This fact is set forth in the affidavit of the general manager of Farling Industrial Company, Ltd. and repeatedly acknowledged by petitioner in several correspondences with private respondent. Export documents, bills of lading, letters of credit and invoices covering the period from 1982 up to the early 1990s clearly indicate the “FARLIN” trademark on the imported products shipped by private respondent to petitioner. It is indubitable, therefore, that petitioner was simply an importer, or at most an exclusive distributor, of private respondent's “FARLIN” products. As such, the validity of petitioner's registration of the imported trademark “FARLIN” under its own name can only be upheld if private respondent as actual owner of said mark has given its authority for petitioner to do so. Private respondent obviously does not sanction petitioner's avaricious design.

40. Being a mere importer and/or distributor of Farling's goods bearing its FARLIN trademark, Cymar did not acquire ownership over said mark. And Cymar has not shown at all that it is the actual owner of the mark in Taiwan (from where the goods are imported) nor that Farling ceded or transferred to it the ownership of FARLIN trademark.

The Appellant's assertion that it was the first to file the application to register FARLIN and that it has spent millions of pesos promoting FARLIN will not save the day for the Appellant. As the Appellant is not the owner of FARLIN, it cannot register this mark even if it is the first to file the trademark application for FARLIN or it has already spent millions of pesos in advertisement.

x x x

The Appellee's products cover baby products such as baby bottle, nipple, pacifier, aspirator, powder puff, rattle, cotton swabs, funnel, and milk container, among other things. These products are related to, if not identical, with the Appellant's products. Sec. 138 of the IP Code provides that a certificate of registration of a mark shall be prima facie evidence of the validity of the registration, the



registrant's ownership of the mark, and of the registrant's exclusive right to use the same in connection with the goods or services and those that are related thereto specified in the certificate. Accordingly, the registration of FARLIN&Device in favor of the Appellant would prevent the Appellee from using FARLIN on its baby products.

X X X

The BLA Director, in sustaining the Opposition of Private Respondent Farling and rejecting the trademark Application filed by Petitioner Cymar for the mark "FARLIN", cited the case of Unno Commercial Enterprises, Inc. v. General Milling Corporation<sup>62</sup>, Sec. 38 of R.A. 166, Articles 15.1 and 16.1 of the TRIPS Agreement, and Secs. 121 and 122 of R.A. 8293. Thus, the BLA Director made the informed disquisition as follows:

X X X

Ownership of a trademark is not acquired by mere registration alone. Registration merely creates a prima facie presumption of the validity of the registration, of the registrant's ownership of the trademark and of the exclusive right to use thereof. Registration does not perfect a trademark right. As conceded itself by the Petitioner evidence may be presented to overcome the presumption. Prior use by one will controvert a claim of legal appropriation by subsequent users.

It is very clear that Respondent-Applicant is banking on the first-filer-owner rule which means that the first to file the trademark application generally gets the registration. The right to the registration of the mark attaches to the one who is first in filing the application for registration.

In resolving the issue, there is a need to understand fully the main objective or purpose of a trademark. A trademark is essentially a means through which the goods of a particular producer or manufacturer may be distinguished from those of competitors or others. Its function is to designate distinctively or indicate the source or origin of the products to which it is attached. Significantly a trademark also guarantees certain standards of quality and warn against the imitation or faking of products thus preventing the commission of fraud on the public. Further, trademark is a form of advertisement. The definition of a trademark under Republic Act No. 166 as amended conforms to these stated purpose or function to wit:

X X X

The Philippines implemented the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement) when Republic Act 8293 took into force and effect on 01 January 1998.

X X X

There is no doubt at all and it is very clear that in this jurisdiction it is not the registration that confers ownership of trademark; rather it is the use of the mark that give rise to ownership of the trademark, which in turn gives the right to the owner to cause its registration and enjoy exclusive use thereof for the goods

associated with it. While Republic Act 8293 does not contain express references to ownership of mark as a basis for their registration, the definition of the term “mark” implies that the right to registration belongs to the owner who used or uses the same to distinguish his goods or services.

The first to file rule could not have been intended to justify the approval of a trademark application just because the applicant was the first to file the application regardless of another better or superior right over the mark being applied for. The rule cannot be used to commit or perpetuate an unjust and unfair claim. A trademark is an industrial property and the owner thereof has property rights over it. The right of being issued a registration for its exclusive use thereof should be based on the concept of ownership which in turn is based on actual use. Republic Act No. 8293 implements the TRIPS Agreement and therefore the idea of “registered” owner does not mean that ownership is established by mere registration but that registration merely establishes a presumptive right over ownership. The presumption of ownership yields to superior evidence of actual and real ownership of the trademark and the TRIPS Agreement requirement that no existing prior rights shall be prejudiced.

Section 122 of the IP Code provides:

The rights in a mark shall be acquired through registration made validly in accordance with the provisions of this law.

To follow the Respondent-Applicant's line of reasoning is to assume that in enacting the Intellectual Property Code of the Philippines, congress intended to allow anybody to acquire rights in a mark by simply seeing to it that his application for registration was filed ahead of all other applications.

The “first-to-file”rule is the general rule for trademark applications filed under and governed by Republic Act No. 8293. The rule will not be applied if there is a determination in appropriate proceedings:

1. That the “first-file” is not the owner of the trademark or is not authorized by the owner to prosecute registration of the trademark in his, her, or its favor, or
2. That the adoption and/or use by the “first-filer” of the trademark even in good faith is preceded by an actual use by another also in good faith prior to the taking into force and effect of Republic Act No. 8293.

x x x<sup>63</sup>

In trying to thumb down this ruling, Petitioner Cymar presented the following evidence: Exhibit “A”- Affidavit of Shieh Wen-John, executed on 16 August 2007, General Manager of Farling Industrial Company Limited; Exhibit “B”- Certified True Copy of the Decision of the Director-General of the IPP dated 22 October 2003 (Farling

Industrial Co., Ltd., vs. Cymar International Inc., Appeal No. 14-03-22) (IPC 4045-4049); Exhibit "C"- Certified True Copy of the Decision of the Court of Appeals, dated 26 July 2005 (Cymar International Inc., vs. Director General of the Intellectual Property Philippines, et al.) (CA-G.R. SP No. 80350); Exhibit "D"- Formal Offer of Evidence (inclusive of submarkings).<sup>64</sup>

These exhibits, in turn, embodied the following pieces of documentary evidence:

- (a) Telex dated December 20, 1982 (Exh. D-j-1) advising Cymar that Farling will bring to Cymar the requested catalogs through a tourist group.
- (b) Telex dated December 2, 1982 (Exh. D-j-2) in which Cymar requested Farling to send materials needed for filing patent and copyright applications.
- (c) Letter dated January 18, 1983 (Exh. D-j-3) in which Cymar notified Farling that its first shipment of FARLIN brand products arrival in the Philippines on January 14, 1983. Hence, Cymar's alleged date of first use of the mark FARLIN on January 5, 1983 is untrue.
- (d) Telex dated November 5, 1985 (Exh. D-j-9) in which Cymar requested Farling to prepare documentation authorizing Cymar as its exclusive distributor in the Philippines for submission to Philippine Ministry of Health.
- (e) Letter dated January 4, 1983 (Exh. D-j-12) in which Cymar requested Farling to print and send "FARLIN CALLING CARD" for use to develop its business.
- (f) Letter dated May 4, 1987 (Exh. D-j- 13) in which Cymar requested Farling to prepare and send relevant data for its use to apply for renewal of the Food and Drug Administration (FDA) permit.
- (g) Telex dated May 19, 1988 (D-j-16) in which Cymar requested Farling to execute a waiver on the copyright to the mark "FARLIN" so that Cymar may obtain said copyright in the Philippines. Farling did not accede to Cymar's said request but only gave Cymar authorization to use said FARLIN label.
- (h) Letter dated August 12, 1989 (Exh. D-j-18) in which Cymar requested Farling to send latest catalogs for

promotion of products.

(l) Letter dated May 24, 1989 (Exh. D-j-19) in which Cymar requested Farling to prepare and execute product Specification for Cotton Buds for its use to apply for renewal of the FDA permit.

(j) Fax letter dated October 6, 1992 (Exh. D-j-21) in which Cymar requested Farling to execute (1) Agreement between Supplier & Distributor and (2) Certificate of Free Sale For Finished Product, drafts of which were provided by Cymar.

(k) Letter advice dated October 8, 1992 (Exh. D-j-24) in which Farling rejected Cymar's proposal that it be authorized to market FARLIN cotton buds to Saudi Arabia, Europe, Thailand and Mexico.<sup>65</sup>

(l.) Cymar letter dated August 15, 1983 (Exh. D-w) to Mr. John Shieh of Farling advising that Farling's allowance of US\$5,000 for promotional campaign of FARLIN products is "not enough."

(m.) Telex certification dated November 8, 1985 (Exh.D-w-1) issued by Farling to Philippine Ministry of Health.

(n.) Cymar telex (Exh. D-w-2) to Farling received November 27, 1985 on alteration of orders.

(o.) Cymar letter dated January 23, 1986 (Exh. D-w-3) to Farling regarding samples of FARLIN labels used by Cymar.

(p.) Cymar letter dated June 20, 1986 (Exh. D-w-4) to Farling on price list for items and advertisement proposal.

(q.) Cymar letter dated June 20, 1986 (Exh. D-w-5) to Farling requesting for more FARLIN brochures and boxes of FARLIN items

(r.) Farling memorandum dated October 21, 1986 (Exh. D-w-6) on Cymar order list.

(s.) Cymar letter dated May 8, 1987 (Exh. D-w-9) to Farling on remittance of payment and request for more FARLIN brochures.

(t.) Cymar letter dated July 15, 1987 (Exh. D-w-10) to Farling requesting for documentary requirements for BFAD

Certificate of Registration.

(u.) Cymar fax dated February 2, 1988 (Exh. D-w-11, D-w-11-A) to Farling of press releases on FARLIN concert.

(v.) Cymar letter dated June 22, 1988 (Exh. D-w-12) to Farling on breakdown of payment.<sup>66</sup>

(w.) Copy of the Bureau of Trademarks' Acknowledgment of the filing of Farling's application (Application No. 4-2007-009500) for the mark FARLIN.<sup>67</sup>

(x.) Farling's FARLIN trademark first registration with the Republic of China Trademark Chamber on November 1, 1978 for various resinous plastic and resinous products was first registered (Exh. A, par 3.2; Exh. D).

(y.) Farling's worldwide registrations for its FARLIN trademark. (Exh. A, par. 3.3; Exhs. E to E-66-B, inclusive of submarkings).

(z.) Farling's extensively advertisement and promotion of its products bearing the FARLIN trademark in various countries. (Exh. A, pars. 4.2 to 4.5; Exhs. F to G-15-A, inclusive of submarkings; Exhs. Q to V, inclusive of submarkings)

(a.1.) Farling's extensive sales of its products bearing the FARLIN trademark all over the world. (Exh. A, par.4.6) <sup>68</sup>

(a.2.) Undated agreement wherein Farling authorizes Cymar "to sell the products manufactured by them (Farling) including those bearing "FARLIN" brand in Philippines."

(a.3.) Advertisement in the Bulletin Today issue of April 1, 1987 where Cymar identified itself as "importer" of products bearing the FARLIN trademarks. (Exh. A, par. 5.7; Exh.L)

(a.4.) Drawings and facsimiles submitted by Cymar in its application under Reg. No. SR-8328 that bears "Farling Industrial Co. Ltd" in the FARLIN label mark applied for. (Exh. A, par. 5.10; Exhs. M-4, M-5 and M-10)

(a.5.) Label submitted by Cymar in its application under Registration No. 54569 that indicates that the FARLIN products applied for are "Distributed by: Cymar International, Inc., Pasay City, Metro Manila." (Exh. A, par. 5.11; Exh. N-2)<sup>69</sup>

(a.6.) Export documents between Farling and Cymar.

(a.7.) Various correspondence between Farling and Cymar on the distributorship, sales/promotional materials including brochures and samples and sponsorship for advertising expenditures.

On the other hand, Respondent Farling presented the following pieces of evidence:

Exhibit "1"-Certificate of Registration (China) dated 01 November 1978;

Exhibit "2"- Supreme Court Resolution, dated 24 September 2007 in G.R. No. 177974;

Exhibits "3" to "7"- Certificates of Registration for FARLIN and "FARLIN LABEL"(certified true copies);

Exhibit "8"- Faxed Letter of the Appellant to the Appellee;

Exhibits "9" to "13", "15", "16" and "17"- Advertisements and summary of expenses;

Exhibit "14"- Certificates of Award and Recognition;

Exhibit "18"- Affidavit of Ms. Amor M. Lindog dated 22 March 2007, Chief Accountant of Cymar International, Inc. certifying as to Cymar's advertising expenses in the Philippines and Farling's lack of such.<sup>70</sup>

Exhibit "19"- Authorization granted to the Appellant<sup>71</sup>

Exhibit "20"- Decision No. 2002-44, dated 26 December 2002 in IPO Cancellation Case Nos. 4045-4049, Farling Industrial Co., Ltd., vs. Cymar International Inc.<sup>72</sup>

It bears stressing that a judicial review of the findings and decisions rendered by administrative agencies is not a trial *de novo*; It is merely an ascertainment of whether the findings of the administrative agency are consistent with law, free from fraud or imposition and supported by evidence.<sup>73</sup>

In resolving the instant Petition for Review under Rule 43 of the Rules of Court, We are particularly guided by Section 10 thereof, which provides that the findings of fact of the court or agency concerned, when supported by substantial evidence, shall be binding to Us.

Substantial evidence is more than a mere scintilla of evidence. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise.<sup>74</sup>

In appreciating the evidence presented by both parties, the IPO Director General cited the case of Birkenstock Orthopaedie GMBH and Co. KG v. Philippine Shoe Expo Marketing Corporation, thus:

x      x      x

Besides, petitioner has duly established its true and lawful ownership of the mark "BIRKENSTOCK."

x      x      x

In the instant case, petitioner was able to establish that it is the owner of the mark "BIRKENSTOCK." It submitted evidence relating to the origin and history of "BIRKENSTOCK" and its use in commerce long before respondent was able to register the same here in the Philippines. It has sufficiently proven that "BIRKENSTOCK" was first adopted in Europe in 1774 by its inventor, Johann Birkenstock, a shoemaker, on his line of quality footwear and thereafter, numerous generations of his kin continuously engaged in the manufacture and sale of shoes and sandals bearing the mark "BIRKENSTOCK" until it became the entity now known as the petitioner. Petitioner also submitted various certificates of registration of the mark "BIRKENSTOCK" in various countries and that it has used such mark in different countries worldwide, including the Philippines.

On the other hand, aside from Registration No. 56334 which had been cancelled, respondent only presented copies of sales invoices and advertisements, which are not conclusive evidence of its claim of ownership of the mark "BIRKENSTOCK" as these merely show the transactions made by respondent involving the same.

x      x      x"<sup>75</sup>

Findings of administrative officials and agencies which have acquired expertise because their jurisdiction is confined to specific matters are generally accorded not only respect but at times even finality if such findings are supported by substantial evidence.<sup>76</sup> There is no justifiable reason for Us to disregard the factual findings of the IPO Director General and the BLA Director. Their respective rulings are supported by clear and convincing evidence. These findings, therefore, must be deemed as conclusive.<sup>77</sup>

**Procedural Rules and Rules on Evidence were observed by the Director General in resolving Petitioner Cymar's appeal**

The Director General has resolved Petitioner Cymar's appeal without violating the Procedural Rules and the Rules on Evidence. Regarding the thirteenth issue concerning the Verification and Certification on Non-Forum Shopping, the Director General aptly ruled, to wit:<sup>78</sup>

x        x        x  
Rule 2 Sections 7.1, 7.2 and 7.3 of the Regulations provide that:

Rule 2

x        x        x

b. The petition or opposition, together with the affidavits of witnesses and originals of the documents and other requirements, shall be filed with the Bureau, provided, that in case of public documents, certified copies shall be allowed in lieu of the originals. The Bureau shall check if the petition or opposition is in due form as provided in the Regulations particularly Rule 3, Section 3; Rule 4, Section 2; Rule 5, Section 3; Rule 6, Section 9; Rule 7, Sections 3 and 5; Rule 8, Sections 3 and 4. For petition for cancellation of layout design (topography) of integrated circuits, Rule 3, Section 3 applies as to the form and requirements. The affidavits, documents and other evidence shall be marked consecutively as "Exhibits" beginning with the letter "A".

c. The prescribed fees under the IPO Fee Structure shall be paid upon the filing of the petition or opposition otherwise, the petition or opposition shall be considered as not filed.

d. If the petition or opposition is in the required form and complies with the requirements including the certification of non-forum shopping, the Bureau shall docket the same by assigning the Inter Partes Case Number. Otherwise, the case shall be dismissed outright without prejudice.

In this case, the Appellee submitted a VERIFIED NOTICE OF OPPOSITION that was accompanied by a "VERIFICATION AND CERTIFICATION" executed by Shie Wen-John and a "SECRETARY'S CERTIFICATE" that authorized Shie Wen-John to represent the Appellee. The Appellee also submitted the affidavit of Shie Wen-John, executed on 16 August 2000, and the supporting documents to its opposition.

The Appellant, however, argues that the Appellee violated the rule on non-forum shopping because there is still a pending case in the Supreme Court involving the same parties and issues as in the instant case.



The Appellant's argument is not tenable. The essence of forum shopping is the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment. In this instance, the Appellee filed the opposition to prevent the registration of the FARLIN & Device in favor of the Appellant pursuant to Sec. 134 of the IP Code which provides that:

SEC.134. Opposition.- Any person who believes that he would be damaged by the registration of a mark may, upon payment of the required fee and within thirty (30) days after the publication referred to in Subsection 133.2, file with the Office an opposition to the application.

x x x

The pending case in the Supreme Court was filed by the Appellant and involves the cancellation of certificates of registration for FARLIN issued in favor of the Appellant. Thus, the subject matter and the causes of action in the instant opposition case and the pending case in the Supreme Court are different. While these cases all involve FARLIN, they refer to different trademark applications and/or trademark registrations. Moreover, if the Appellee would not file an opposition to the registration of FARLIN& Device, as required under the provisions of the IP Code, the Appellant's application for the registration of FARLIN & Device would be given due course.

In addition, the Verification and Certification by the Appellee expressly mentioned the pending case in the Supreme Court. Consequently, the Appellee's certification against forum shopping is proper and the opposition is compliant with the requirements of the IP Code and the Regulations.

x x x

Petitioner likewise did not submit persuasive arguments to rebut this finding. We will have to sustain the Director General on this matter.

Anent the issue that Private Respondent Farling never offered its exhibits separately for the purpose required under R.A. 8293, We note that there is no requirement in the applicable rule, specifically, IPO Order No. 79 series of 2005, that the evidence of the parties must be formally offered in order to be admissible in evidence.

Indeed, the aforementioned rules only provide that, to be deemed filed, the petition, opposition and answer must all be verified, the affidavits of the witnesses must be duly authenticated or notarized as the case may be, and said affidavits, documents (certified copies may be allowed in case of public documents) and other evidence of the parties must be duly marked and the prescribed fees under the IPO Fee Structure paid upon the filing of the petition or opposition. The only grounds for the IPO to dismiss the case outright are lack of jurisdiction, improper venue, and failure to state a cause of action.<sup>79</sup>

On the ninth issue which pertains to the fact that Private Respondent Farling submitted mere photocopied, unauthenticated evidence, the case of Birkenstock Orthopaedie GMBH and Co. KG v. Philippine Shoe Expo Marketing Corporation<sup>80</sup> enunciating a string of previous cases,<sup>81</sup> is once more *apropos*:

x      x      x  
The Court's Ruling

A. Admissibility of Petitioner's Documentary Evidence.

In its Comment dated April 29, 2011, respondent asserts that the documentary evidence submitted by petitioner in the Consolidated Opposition Cases, which are mere photocopies, are violative of Section 8.1 of the Rules on Inter Partes Proceedings, which requires certified true copies of documents and evidence presented by parties in lieu of originals. As such, they should be deemed inadmissible.

The Court is not convinced.

It is well-settled that "the rules of procedure are mere tools aimed at facilitating the attainment of justice, rather than its frustration. A strict and rigid application of the rules must always be eschewed when it would subvert the primary objective of the rules, that is, to enhance fair trials and expedite justice. Technicalities should never be used to defeat the substantive rights of the other party. Every party-litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities."

"Indeed, the primordial policy is a faithful observance of [procedural rules], and their relaxation or suspension should only be for persuasive reasons and only in meritorious cases, to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed." This is especially true with quasi-judicial and administrative bodies, such as the IPO, which are not bound by technical rules of procedure. On this score, Section 5 of the Rules on Inter Partes Proceedings provides:

Sec. 5. Rules of Procedure to be followed in the conduct of hearing of Inter Partes cases. – The rules of procedure herein contained primarily apply in the conduct of hearing of Inter Partes cases. The Rules of Court may be applied suppletorily. The Bureau shall not be bound by strict technical rules of procedure and evidence but may adopt, in the absence of any applicable rule herein, such mode of proceedings which is consistent with the requirements of fair play and conducive to the just, speedy and inexpensive disposition of cases, and which will give the Bureau the greatest possibility to focus on the contentious issues before it.

In the case at bar, while petitioner submitted mere photocopies as documentary evidence in the Consolidated Opposition Cases, it

should be noted that the IPO had already obtained the originals of such documentary evidence in the related Cancellation Case earlier filed before it. Under this circumstance and the merits of the instant case as will be subsequently discussed, the Court holds that the IPO Director General's relaxation of procedure was a valid exercise of his discretion in the interest of substantial justice.

X X X

A part of the twelfth issue raised by Our Petitioner Cymar scores the Public Respondent IPO Director General for ignoring Private Respondent Farling's Authorization and Waiver of Rights on the Mark In Favor of Petitioner Cymar. This is, likewise, without merit.

The supposed Authorization and Waiver of Rights On the Mark<sup>82</sup> pertains only to the Copyright of the box design of the FARLIN mark of Private Respondent Farling, viz:

Farling Industrial Co., Ltd., for brevity, "FARLIN" whom I present as the owner hereby executes this "Authorization", in compliance with the documentary requirements required by the copyright action of the Philippines National Library, in relation with Cymar International, Inc. Application for Copyright:

Notwithstanding the above, Farling Industrial Co., Ltd. waives any claim or right against Cymar Int'l Inc. Application for Copyright by reason of the inclusion of our name in the box design of forsaid,

By reason thereof, Farling Industrial Co., Ltd., waives any opposition/objection for Cymar Int'l. Inc.'s proprietorship of the said design in the Philippines, upon its being copyrighted in the Philippines and the validity of Cymar Int'l. Inc.'s of the forsaid application.

Done this 26<sup>th</sup> day of May 1988, Taiwan, R.O.C

Copyright in the strict sense of the term is purely a statutory right. Being a mere statutory grant the rights are limited to what the statute confers. It may be obtained and enjoyed only with respect to the subjects and by the persons, and on terms and conditions specified in the statute. Accordingly, it can cover only the works falling within the statutory enumeration or description.<sup>83</sup>

Trademark, copyright and patents are different intellectual property rights that cannot be interchanged with one another. A trademark is any visible sign capable of distinguishing the goods (trademark) or services (service mark) of an enterprise and shall include a stamped or marked container of goods. In relation thereto, a tradename means the name or designation identifying or distinguishing

an enterprise. Meanwhile, the scope of a copyright is confined to literary and artistic works which are original intellectual creations in the literary and artistic domain protected from the moment of creation. Patentable inventions on the other hand refer to any technical solution of a problem in any field of human activity which is new, involves an inventive step and is industrially applicable.<sup>84</sup>

Obviously, there appeared to be some confusion regarding what ought or ought not to be the proper subjects of copyrights, patents and trademarks. These three legal rights are completely distinct and separate from one another and the protection afforded by one cannot be used interchangeably to cover items or works that exclusively pertain to the others.<sup>85</sup>

We find no merit in Petitioner Cymar's contention that the Director General erred when it granted Private Respondent Farling's opposition based on exhibits presented in CA G.R. SP No. 80350 litigated under R.A.166 which was repealed by R.A.8293. We note that Private Respondent Farling also presented these Exhibits in the instant case, presumably because the two cases (the herein Opposition case and the Trademark cancellation cases in CA G.R. S.P. No. 80350) have "intertwined issues", that is, whether Cymar is the true owner of the FARLIN mark and is authorized to register the same, and whether the opposed mark is a formative of the FARLIN Mark.<sup>86</sup>

In view of Private Respondent Farling's submission of these Exhibits as its evidence in the instant case, it behooved the Public Respondent IPO Director General to take these into account in rendering a Decision. Such action of the Public Respondent IPO Director General is in consonance with the due process standards in administrative or quasi-judicial tribunals as set forth in *Ang Tibay v. Court of Industrial Relations*:<sup>87</sup>

x x x

(2) Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal must consider the evidence presented.

x x x

(5) The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected.

x x x

Lastly, We emphasize that the protection of trademarks as intellectual property is intended not only to preserve the goodwill and reputation of the business established on the goods bearing the mark

through actual use over a period of time, but also to safeguard the public as consumers against confusion on these goods.<sup>88</sup> On this matter of particular concern, administrative agencies, such as the IPO, by reason of their special knowledge and expertise over matters falling under their jurisdiction, are in a better position to pass judgment thereon. Thus, their findings of fact in that regard are generally accorded great respect, if not finality by the courts, as long as they are supported by substantial evidence, even if such evidence might not be overwhelming or even preponderant. It is not the task of the appellate court to weigh once more the evidence submitted before the administrative body and to substitute its own judgment for that of the administrative agency in respect to sufficiency of evidence.<sup>89</sup>

**WHEREFORE**, in view of the foregoing, the Petition for Review is **DISMISSED**. The April 23, 2012 Decision of Public Respondent IPO Director General is hereby **AFFIRMED**.

**SO ORDERED.**

**RAMON A. CRUZ**  
*Associate Justice*

**WE CONCUR:**

**ANDRES B. REYES, JR.**  
*Presiding Justice*

**MARLENE GONZALES-SISON**  
*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.

**ANDRES B. REYES, JR.**  
*Presiding Justice*  
*Chairperson, First Division*

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<sup>1</sup>Rollo, pp. 40-184.

<sup>2</sup>*Id.* at 10-18.

<sup>3</sup>*Id.* at 18.

<sup>4</sup>*Id.* at 1195.

<sup>5</sup>*Id.* at 1195-1196.

<sup>6</sup>*Id.* at 1196.

<sup>7</sup>Rollo, p.196

<sup>8</sup>*Id.* at 1199.

<sup>9</sup>*Id.* at 1200.

<sup>10</sup>*Id.* at 1200.

<sup>11</sup>*Id.*

<sup>12</sup>*Id.* at 1201.

<sup>13</sup>Rollo, p.1201.

<sup>14</sup>*Id.* at 1202.

<sup>15</sup>*Id.* at 4-9.

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

<sup>17</sup>*Id.* at 1157-1162.

<sup>18</sup>*Id.* at 20-33.

<sup>19</sup>Rollo, pp.10-18.

<sup>20</sup>*Id.* at 64.

<sup>21</sup>*Id.* at pp.64-65.

<sup>22</sup>*Id.* at 1371-1386.

<sup>23</sup>*Id.* at 112-117.

<sup>24</sup>*Id.* at 119.

<sup>25</sup>Rollo, p.121.

<sup>26</sup>*Id.* at 125.

<sup>27</sup>*Id.* at 127.

<sup>28</sup>*Id.* at 137.

<sup>29</sup>*Id.* at 139.

<sup>30</sup>*Id.* at 141-142.

<sup>31</sup>Rollo, p.142.

<sup>32</sup>*Id.* at 146-148.

<sup>33</sup>*Id.* at 149-154.

<sup>34</sup>*Id.* at 154-155.

<sup>35</sup>*Id.* at 155-156.

<sup>36</sup>*Id.* at 157-158.

<sup>37</sup>Rollo, pp.158-170.

<sup>38</sup>*Id.* at 1206.

<sup>39</sup>*Id.* at 1207-1210.

<sup>40</sup>*Id.* at 1210-1213.

<sup>41</sup>*Id.* at 1214-1220.

<sup>42</sup>*Id.* at 1220-1225.

<sup>43</sup>Rollo, pp.1226-1230.

<sup>44</sup>*Id.* at 1231-1232.

<sup>45</sup>*Solid Homes v. Laserna*, G.R. No. 166051, April 8, 2008.

<sup>46</sup>*People v. Baring*, G.R. No. 137933, January 28, 2002.

<sup>47</sup>Rollo, pp.10-14.

<sup>48</sup>*Id.* at 14-18.

<sup>49</sup>*Id.*

<sup>50</sup>*Id.*

<sup>51</sup>*People v. Macoy*, G.R. Nos. 96649-50, July 1, 1997.

<sup>52</sup>*Republic of the Philippines, et al., v. Hon. Henrick F. Gingoyon, et al.*, G.R. No. 166429, December 19, 2005 citing *Webb v. People*, 342 Phil. 206 (1997); *Aleria v. Velez*, G.R. No. 127400, November 16, 1998; *People v. Court of Appeals*, G.R. No. 129120, 2 July 1999;

<sup>53</sup>Executive Order No. 292 [Revised Administrative Code of the Philippines], Section 22, Chapter 4, Book 7.

<sup>54</sup>*Capt. Ernesto S. Caballero v. Philippine Coast Guard, Efficiency and Separation Board (PCG-ESB), et al.*, G.R. No. 174312, September 22, 2008.

<sup>55</sup>*Republic of the Philippines, et al., v. Hon. Henrick F. Gingoyon, et al.*, supra note 52.

<sup>56</sup>*Capt. Ernesto S. Caballero v. Philippine Coast Guard, Efficiency and Separation Board (PCG-ESB), et al.*, supra note 54.

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- <sup>57</sup>Development Bank of the Philippines vs. Court of Appeals, G.R. No. 110203, May 09, 2001 citing Gosnell v. Webb, 66 CA2d 518, 521, 152 P2d 463 (1944); Poochigian v. Layne, 120 CA2d 757, 261 P2d 738 (1953).
- <sup>58</sup>*Id.*, citing Republic v. Court of Appeals, 324 SCRA 560, 565, February 3, 2000, per Quisumbing, J.
- <sup>59</sup>*Id.*, citing Watkins v. Watkins, 117 CA2d 610, 256 P2d 339 (1953).
- <sup>60</sup>Esperas v. Court of Appeals, GR No. 121182, October 2, 2000; Ayala Land, Inc. v. Valisno, 324 SCRA 522, 531-532, February 2, 2000;
- <sup>61</sup> Vios and Sps. Antonio, v. Pantangco, Jr., G.R. No. 163103, February 06, 2009 (citing Bañes v. Lutheran Church in the Philippines G.R. No. 142308, November 15, 2005)
- <sup>62</sup>120 SCRA 804
- <sup>63</sup>Rollo, pp. 29-33.
- <sup>64</sup>*Id.* at 11, 24-25.
- <sup>65</sup>*Id.* at 1196-1198.
- <sup>66</sup>*Id.* at 1198-1199.
- <sup>67</sup>*Id.* at 1221.
- <sup>68</sup>*Id.* at 1224.
- <sup>69</sup>Rollo, p.1225.
- <sup>70</sup>*Id.* at 1145-1156.
- <sup>71</sup>*Id.* at 1164.
- <sup>72</sup>*Id.* at 13, 25-26.
- <sup>73</sup>Antonio E.B. Nachura, Outline Reviewer in Political Law 441.
- <sup>74</sup>Rosario L. Dadulo v. Court of Appeals, G.R. No. 175451, April 13, 2007; In-n-Out Burger, Inc. v. Schwani, Inc. and/or Benita's Frites, Inc., G.R. No. 179127 December 24, 2008 (both citing Montemayor v. Bundalian, 453 Phil. 158, 167 (2003)).
- <sup>75</sup>Birkenstock Orthopaedie GMBH and Co. KG (formerly Birkenstock Orthopaedie GMBH) v. Philippine Shoe Expo Marketing Corporation, G.R. No. 194307, November 20, 2013.
- <sup>76</sup>Biak-na-Bato Mining v. Tanco , 193 SCRA 323; Nuesa v. Court of Appeals , G.R. No. 132048, March 06, 2002.
- <sup>77</sup>E. Y. Industrial Sales, Inc. and Engracio Yap vs. Shen Dar Electricity and Machinery Co., Ltd. G.R. No. 184850, October 20, 2010.
- <sup>78</sup>Rollo, p.15.
- <sup>79</sup>Intellectual Property Office, IPO Order No. 79, Series of 2005, Sections 7, 9 and 12.
- <sup>80</sup>G.R. No. 194307, November 20, 2013.
- <sup>81</sup>*Id.* (citing Alcantara v. Philippine Commercial and International Bank, G.R. No. 151349, October 20, 2010; Asia United Bank v. Goodland Company, Inc., G.R. No. 188051, November 22, 2010; E.Y. Industrial Sales, Inc. v. Shen Dar Electricity and Machinery Co., Ltd., G.R. No. 184850, October 20, 2010)
- <sup>82</sup>Rollo, p.1164.
- <sup>83</sup>Pearl Dean (Phil.) v. Shoemart, Incorporated, and North Edsa Marketing, Incorporated, G.R. No. 148222, August 15, 2003.
- <sup>84</sup>Kho v. CA, G.R. No. 115758, March 11, 2002; Ching vs. Salinas, 462 SCRA 241
- <sup>85</sup>Pearl Dean (Phil.) v. Shoemart, Incorporated, and North Edsa Marketing, Incorporated, supra note 85.
- <sup>86</sup>Rollo, p.1208 .
- <sup>87</sup> G.R. No. L-46496, February 27, 1940
- <sup>88</sup>McDonald's Corporation v. MacJoy Fastfood Corporation, G.R. No. 166115, February 2, 2007. (citing Faberge Inc. v. Intermediate Appellate Court, 215 SCRA 316, 320 (1992) and Chuanchow Soy & Canning Co. v. Dir. of Patents and Villapania, 108 Phil. 833, 836 (1960))
- <sup>89</sup>Amigo Manufacturing, Inc. v. Cluett Peabody Co., Inc., 406 Phil. 905, 916 (2001).