

WENSHA SPA CENTER COMPANY, INC.,
Petitioner,

-versus-

XU ZHI JIE a.k.a. POBBY SY CO,
Respondent-Registrant.

IPC No. 14-2013-00446
Petition for Cancellation of:


Reg. No. 4-2012-010355
Date Issued: 18 July 2013

TM: WENSHA

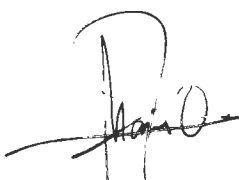
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NOTICE OF DECISION

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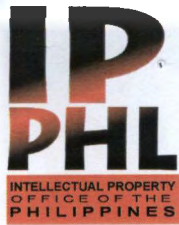
GREETINGS:

Please be informed that Decision No. 2016 - 523 dated 23 December 2016 (copy enclosed) was promulgated in the above entitled case.

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

Taguig City, 06 January 2017.


MARILYN F. RETUAL
IPRS IV
Bureau of Legal Affairs



WENSHA SPA CENTER COMPANY, INC.
Petitioner,

- versus -

XU ZHI JIE a.k.a. POBBY SY CO (PH),
Respondent-Registrant.

x ----- x

IPC No. 14-2013-00446
Cancellation of:

Reg. No. 4-2012-10355
Date Issued: 18 July 2013
Trademark: **"WENSHA"**

Decision No. 2014 - 523

DECISION

WENSHA SPA CENTER COMPANY, INC. ("Petitioner")¹, filed a petition for cancellation of Trademark Registration No. 4-2012-010355. The registration, issued to XU ZHI JIE a.k.a. POBBY SY CO ("Respondent-Registrant")², covers the mark "WENSHA" for use on class 43 namely: *restaurant services and hotel services*; and class 44 namely: *spa services* of the Nice Classification.³

The Petitioner alleges that in 2002, Marvin Regarde owned and operated "WENSHA SPA CENTER", offering spa service in Quezon City. In 2004, Regarde with several others, incorporated said business to form WENSHA SPA CENTER COMPANY, INC., in the same place where it started. Its primary purpose as stated in its Articles of Incorporation is to provide services relating to massage, hairdressing, and other beauty treatment. On 15 June 2004, it was issued a Certificate of Incorporation by the Securities and Exchange Commission under Company Reg. No. CS200408132. "WENSHA SPA CENTER", therefore, has been in the spa business for more than ten (10) years. In fact, since then, the words "WENSHA SPA CENTER" and its logo of a woman being massaged have been its trade name and/or service mark, is displayed on the facade of its two (2) spa centers located in Quezon City, and in Roxas Boulevard, Pasay City. These branches are claimed to operate lucratively up to the present.

According to the Petitioner, the operation of the first branch of the spa center was a huge success from the start, in view of the unique innovations that the Petitioner introduced, including the massage service by well-trained staff, free and unlimited use of jacuzzi, shower and pool, and the open buffet available 24/7. These amenities are offered at a price relatively lowest in the market such that "WENSHA SPA" became a byword for those looking to de-stress themselves over the weekend. Moreover, Petitioner invested in promotions and advertisements in website and other social networks such as in facebook.

Finally, Petitioner avers that it has established reputation and goodwill on its mark "WENSHA SPA" evidenced by salutary blogs from the customers in a mere "google" in the internet, inclusion in the

¹ A domestic corporation with principal office at Room 510 No. 77 PASDA Mansion, Panay Ave., cor. Timog Ave., Quezon City.

² Of legal age and with postal address at c/o Unit 406 One Beatriz Tower, Luan Street cor. Aurora Blvd., Project 3, Quezon City.

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

itinerary of tours by travel and tour agents, issuance of WENSHA gift checks as employee bonuses, and, celebrities' hangout spa centers.

From the foregoing, Petitioner hereby enumerates the elements of cancellation of registration provided in Section 151.1 of the Intellectual Property Code:

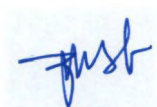
1. The registered name becomes the generic name for the goods or services, or a portion thereof, for which it is registered.
2. The registration was obtained fraudulently or contrary to the provisions of the code. Petitioner will be damaged by the registration under the Intellectual Property Code.
3. The registered name/mark will be 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.
4. The registered name/mark becomes the generic name for less than all of the goods or services for which it is registered.
5. The Registrant in registering the Petitioner's tradename and/or servicemark was made not for any other for than to commit fraud.

The Petitioner's evidence consists of the following:

1. Secretary's Certificated executed by Geraldine C. Yamson;
2. Business Permit issued in Quezon City for Wensha Spa Center with validity until 31 December 2002;
3. Articles of Incorporation of Wensha Spa Center Company, Inc. dated 13 February 2004;
4. Certificate of Incorporation of Wensha Spa Center Company, Inc. dated 15 June 2004;
5. Business Permit issued in Quezon City for Wensha Spa Center Company, Inc. with validity until 31 December 2013;
6. Business Permit issued in Pasay City for Wensha Spa Center Company, Inc. with validity until 31 December 2012;
7. Pictures of Wensha Spa Center in Quezon City and Pasay City; including the signages and the frontal facade of the stores; and,
8. Advertisement Contract between RW Productions and Geraldine Yamson, Corporate Secretary of Wensha Spa Center Company, Inc..
9. Business Permit issued in Pasay for Wensha Spa Center Company, Inc. the years 2007 to 2014.

On 23 April 2014, Respondent-Registrant filed his Answer containing Affirmative and Specific Denials. Respondent-Registrant alleges that Geraldine Yamson falsely verified the petition and failed to comply with the Certification against Forum-Shopping. The said Verification dated 05 November 2013 claims under oath that the allegations in the Petition are true and correct of her own personal knowledge and belief, and based on authentic records and/or documents. However, it narrated events that occurred as early as 2002, years before Yamson joined the company in 2004. Thus, negating the personal knowledge of facts that occurred prior her employment. Moreover, she could not have taken part in the preparation of any document prior to 2004 on the origin and business of the company. Thus, cannot competently allege on the circumstances under which the Wensha trademark and "Wensha Spa" as trade name came about, and to whom its ownership is attributable.

According to Respondent-Registrant, Yamson failed to comply with her sworn undertaking in the required certification against forum-shopping by freely, knowingly and feloniously withholding the fact of a previous filing of an Opposition dated 14 October 2013 on 17 October 2013 against Application Serial No. 4-2012-00010356 docketed as IPC No. 14-2013-00427. Respondent-Registrant therefore



seeks the dismissal of the instant case with liability for contempt of court per Section 5, Rule 7, Rules of Court.

Moreover, Respondent-Registrant assails Yamson's capacity, personality or authority to sue on behalf of the company through a Secretary's Certificate dated 05 November 2013, executed and attached to the Opposition, instead of a board resolution alleged to have taken place on 29 October 2013 which actually never happened since the Respondent-Registrant as incorporator, stockholder and director did not receive any notice of the said meeting.

It is therefore the position of the Respondent-Registrant that he is the true, bona-fide owner and the intellectual creator of the trade name and mark "Wensha". He narrated that sometime in October 2001, he discussed the possibility of operating a spa business at Pasda Mansion, Timog Ave. cor. Panay Ave., to the building owner and with the assistance of Marvin Regarde. He derived its name from the SM shopping mall's logo, turned upside down to appear as "WS". The original Wensha Spa logo features the profile of a woman standing half-submerged on a bed of water depicted by parallel lines, with her right arm diagonally across her chest, and her right hand touching her left shoulder, all circumscribed by a circle over which the large letters "WS" are written. The old logo was first prepared and produced on a brass plate and on a tarpaulin, with the brass plate still mounted and kept at the main entrance of the Quezon City branch. This logo still appears printed on some of the spa's towels at the spa centers. The concept of the business is to provide customers a luxurious one (1) hour treatment package of body massage, use of dry and steam saunas, whirlpool, and hot and cold jacuzzi, for Php680.00, without food and drinks, and not on a 24-hour basis. Later, a new branch was open in Pasay City.

With the continued growth and success of the business, Pobby conceptualized the opening of a third branch in Antipolo City. A sister company was created with the name Wensha Spa Company, Inc. which was opened on 15 December 2011. It was at that time when Yamson, with other members of the Board of WSCCI, began to exclude Pobby in the operations of both the Quezon City and Pasay City branches which includes barring Pobby from entering the premises and preventing access to its books and record. To protect his rights to the trade names he created, he filed an application for WENSHA trademark registration which is the subject matter of this instant case.

Thus, Pobby alleges that his prior application and the issuance of registration of the WENSHA trademark is a legal presumption of being the prima facie owner of the mark. Finally, he alleges that fraud under Section 151.1 of the Code is utterly inapplicable.

The Respondent-Registrant's evidence are the following:

1. Certificate of Registration No. 4-2012-00010355 for the mark WENSHA issued to XU ZHI JIE A.K.A. POBBY SY CO;
2. Copy of Opposition to Application No. 4-2012-00010356;
3. Joint Affidavit of Nick M. Bodegon and Rhea L. Castaneda;
4. Certification issued by Elmer B. Menina, Personnel Manager of Wensha Spa Center;
5. Copy of Gift Certificate issued by Wensha Spa Center;
6. Certificate of Incorporation and Articles of Incorporation of Wensha Spa Company, Inc.;
7. Certificate of Incorporation and Articles of Incorporation of Wensha Training School, Inc.;
8. Certificate of Incorporation and Articles of Incorporation of Wensha Food Corporation;
9. Certificate of Incorporation and Articles of Incorporation of Wensha International Institute Inc.; and,
10. General Information Sheet for the year 2012 of Wensha Spa Center Company, Inc.

Pursuant to Office Order No. 154, s. 2010, the case was referred to Alternative Dispute Resolution (ADR) for mediation. The ADR Services report reveals that the parties failed to settle the dispute through mediation. Thus, the case was returned to this Bureau for adjudication. Records further show that the Respondent-Registrant filed an Urgent Motion for the Hearing Officer to Inhibit for Bias, Pre-Judgment and Blatant Disregard of the Rules. A Comment/Opposition thereto was filed by the Petitioner. Accordingly, a Resolution was issued re-raffling this instant case.⁴

Thereafter, the Preliminary Conference was conducted and terminated on 07 April 2015. The Petitioner filed its Memorandum on 23 April 2015; and the Respondent-Applicant filed its Position Paper Ad Cautelam on 22 April 2016. This case is therefore submitted for decision.

Should the Respondent-Registrant's trademark WENSHA be cancelled?

Section 151.1 of the IP Code provides:

x x x 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:

x x x

(b) At any time, if the registered mark becomes 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. x x x

In order to determine the entitlement of the Respondent-Registrant to maintain its registration to the trademark WENSHA, the instant case requires the resolution of the procedural issue on the validity of Geraldine Yamson's authority, to act for and in behalf of the Petitioner.

Respondent-Registrant argues that Geraldine Yamson's capacity, personality or authority to sue on behalf of the company through a Secretary's Certificate⁵, executed and attached to the Opposition is defective. Thus, the petition is dismissible due to the flawed Verification and Certification of Non-Forum Shopping which are insufficient in form and, in violation of the applicable rules.

On the other hand, Geraldine Yamson contends that there is no dispute that she acted within the authority of the Petitioner in the institution of this instant case, evidenced by duly notarized documents consisting of Secretary's Certificate⁶, Verification and Certification of Non-Forum Shopping⁷. The said Secretary's Certificate manifests the grant of Ms. Yamson's authority emanating from a Special Board Meeting held on 29 October 2013.

It is the general rule that a verification signed without an authority from the board of directors is defective. However, the requirement of verification is simply a condition affecting the form of the pleading and non-compliance does not necessarily render the pleading fatally defective.⁸ In fact, in

⁴ "For uniformity and for the same reasons stated under Resolution No. 2015-02, this case shall be transferred to another Hearing Officer." Resolution No. 2015-03 dated 22 July 2015.

⁵ Dated 05 November 2013.

⁶ Id.

⁷ Dated 05 November 2013.

⁸ Swedish Match Philippines, Inc. vs. The Treasurer of the City of Manila, G.R. No. 181277, 03 July 2013.

numerous cases decided by the Honorable Supreme Court, it has recognized exceptions to the rule, where it is made evident that strict compliance with the rules may be dispensed with so the end of justice may be served.

In the instant case, this Bureau finds substantial compliance to the requirement of a Verification and Certification of Non-Forum Shopping. Records show that Geraldine Yamson submitted a duly notarized Verification and Certification of Non-Forum Shopping. The authority of Yamson to sign the said documents in behalf of the Opposer finds support in Secretary's Certificate⁹ which also contains proper notarization. Thus, the mentioned documents are regular in its form and substance. Documents which are duly notarized by a Notary Public reveals that it carry the evidentiary weight conferred upon it with respect to its due execution, and it has in its favor the presumption of regularity which may only be rebutted by evidence so clear, strong and convincing as to exclude all controversy as to the falsity of the certificate.¹⁰ Absent such, the presumption must be upheld. The burden of proof to overcome the presumption of due execution of a notarial document lies on the one contesting the same. Further, an allegation of forgery must be proved by clear and convincing evidence, and whoever alleges it has the burden of proving the same.

Respondent-Registrant's pure allegations on the invalidity of Yamson's acts are not supported with convincing proof or corroborating evidence. Thus, bare allegations, unsubstantiated by evidence, are not equivalent to proof. In short, mere allegations are not evidence.¹¹

Indeed, the Verification is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.¹²

Respondent-Registrant also seeks the dismissal of this instant case by withholding the fact of a pending opposition case. On this note, this Bureau concurs in Resolution No. 2015-01¹³ that, "the filing of a petition for cancellation and an opposition at the same time does not constitute forum shopping. A petition for cancellation attacks a registered mark while an opposition questions an applied mark. The cases pertain to different issues and subject mark and hence, can proceed simultaneously." Thus, forum shopping is the institution of two or more suits in different courts, either simultaneously or successively, in order to ask the courts to rule on the same or related causes and/or to grant the same or substantially the same reliefs¹⁴. This is not present in the instant case.

This Bureau therefore finds the Verification and Certification of Non-Forum Shopping and the accompanying documents, in accord with the substantial requirement of the law and the applicable rules. In fact, the Supreme Court was always held that a liberal construction of the rules may be invoked in situations in which there may be some excusable formal deficiency or error in a pleading, provided that the invocation thereof does not subvert the essence of the proceeding, but at least connotes a reasonable attempt at compliance with the rules. After all, rules of procedure are not to be applied in a very rigid, technical manner, but are used only to help secure substantial justice.¹⁵

⁹ Annex "A" of Petitioner.

¹⁰ Spouses Lehner and Ludy Martires vs Menelia Chua, G.R. No. 17420 dated 20 March 2013.

¹¹ Dra. Dela Llana vs Rebecca Biong, doing business under the name and style of Pongkay Trading, G.R. No. 182356, 04 December 2013.

¹² Joselito Ma. P. Jacinto (Formerly President of F. Jacinto Group, Inc.), Petitioner, vs Edgardo Gumar Jr., G.R. No. 191906, 02 June 2014.
Dated 06 April 2015.

¹⁴ Alfredo Villamor, Jr. vs Hon. Amelia C. Manalastas and Leonardo S. Umale substituted by his spouse Clarissa Umale, G.R. No. 171247, 22 July 2015.

¹⁵ Bank of the Philippine Islands vs. Hon. Court of Appeals, Hon. Romeo Barza, First Union Group Enterprises and Linda Wu Hu, G.R. No. 168313, 06 October 2010.

Before proceeding to the substantive issue, this Bureau has verified that Respondent-Registrant failed to file the Declaration of Actual Use (DAU) for 3rd year.¹⁶ Under the law¹⁷, the applicant or the registrant shall file a declaration of actual use of the mark with evidence to that effect, as prescribed by the Regulations within three (3) years from the filing date of the application. Otherwise, the application shall be refused or the mark shall be removed from the Register by the Director." While this case may be dismissed by the immediate execution of said provision, this Bureau finds it necessary to resolve the crux of the controversy to fully settle the issue.

Section 151.1 Republic Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code) provides:

x x x 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:

x x x

(b) At any time, if the registered mark becomes 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. x x x

Thus, Sec. 123.1 (d) of the IP Code reads:

A mark cannot be registered if it:

x x x

(d) Is identical with a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date, in respect of:

- (i) The same goods or services, or
- (ii) Closely related goods or services, or
- (iii) If it nearly resembles such a mark as to be likely to deceive or cause confusion;

Obviously, the parties refer to the same trademark and/or service mark in connection to WENSHA SPA CENTER COMPANY, INC.'s spa and related services covered in various branches in Metro Manila.

The public interest requires that the two marks, identical to or closely resembling each other and used on the same and closely related goods, but utilized by different proprietors should not be allowed to co-exist. Confusion, mistake, deception, and even fraud, should be prevented. It is emphasized that the function of 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

¹⁶ IPPhil Philippine Trademark Database, available at <http://www.wipo.int/branddb/ph/en/> (last accessed 19 December 2016).

¹⁷ Sec. 124.2, IP Code.

prevent fraud and imposition; and to protect the manufacturer against substitution and sale of an inferior and different article as his product.¹⁸

It is stressed that the Philippines implemented the TRIPS Agreement when the IP Code took into force and effect on 01 January 1998. Art. 15 of the TRIPS Agreement reads:

Section 2: Trademarks
Article 15
Protectable Subject Matter

1. Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words, including personal names, letters, numerals, figurative elements and combinations of colours as well as any combination of such signs, shall be eligible for registration of trademarks. Where signs are not inherently capable of distinguishing the relevant goods or services, members may make registrability depend on distinctiveness acquired through use. Member may require, as a condition of registration, that signs be visually perceptible.
2. Paragraph 1 shall not be understood to prevent a Member from denying registration of a trademark on other grounds, provided that they do not derogate from the provision of the Paris Convention (1967).
3. Members may make registrability depend on use. However, actual use of a trademark shall not be a condition for filing an application for registration. An application shall not be refused solely on the ground that intended use has not taken place before the expiry of a period of three years from the date of application.
4. The nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to registration of the trademark.
5. Members shall publish each trademark either before it is registered or promptly after it is registered and shall afford a reasonable opportunity for petitions to cancel the registration. In addition, Members may afford an opportunity for the registration of a trademark to be opposed.

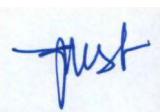
Article 16 (1) of the TRIPS Agreement states:

1. The owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights prescribed above shall not prejudice any existing prior rights, not shall they affect the possibility of Members making rights available on the basis of use.

Significantly, Sec. 121.1 of the IP Code adopted the definition of the mark under the old Law on Trademark (Rep. Act No. 166), to wit:

121.1. "Mark" means any visible sign capable of distinguish the goods (trademark) or services (service mark) of an enterprise and shall include a stamped or marked container of goods; (Sec. 38, R.A. No. 166a)

¹⁸ Pribhdas J.Mirpuri vs Court of Appeals, G.R. No. 114508, 19 Nov. 1999.



Sec. 122 of the IP Code states:

Sec. 122. How Marks are Acquired. - The rights in a mark shall be acquired through registration made validly in accordance with the provision of this law. (Sec. 2-A, R.A. No. 166a)

There is nothing in Sec. 122 which says that registration confers ownership of the mark. What the provision speaks of is that the rights in a mark shall be acquired through registration, which must be validly in accordance with the provision of the law.

Corollarily, Sec. 138 of the IP Code provides:

Sec. 138. Certificates of Registration. - 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 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. (Emphasis Supplied)

Clearly, it is not the application or the registration that confers ownership of a mark, but it is ownership of the mark that confers the right to registration. While the country's legal regime on trademarks shifted to a registration system, it is not the intention of the legislators not to recognize the preservation of existing rights of trademark owners at the time the IP Code took into effect.¹⁹ The registration system is not to be used in committing or perpetrating an unjust and unfair claim. A trademark is an industrial property and the owner thereof has property right over it. The privilege of being issued a registration for its exclusive use, therefore, should be based on the concept of ownership. The IP Code implements the TRIPS Agreement and therefore, the idea of "registered owner" does not mean that ownership is established by mere registration but that registration establishes merely a presumptive right of ownership. That presumption of ownership yields to superior evidence of actual and real ownership of the trademark and to the TRIPS Agreement requirement that no existing prior rights shall be prejudiced. In *E.Y. Industrial Sales, Inc. and Engracio Yap v. Shen Dar Electricity Machinery Co. Ltd.*²⁰, the Supreme Court held:

RA 8293 espouses the "first-to-file" rule as stated under Sec. 123.1(d) which states:

x x x

Under this provision, the registration of a mark is prevented with the filing of an earlier application for registration. This must not, however, be interpreted to mean that ownership should be based upon an earlier filing date. While RA 8293 removed the previous requirement of proof of actual use prior to the filing of an application for registration of a mark, proof of prior and continuous use is necessary to establish ownership of a mark. Such ownership constitutes sufficient evidence to oppose the registration of a mark.

Sec. 134 of the IP Code provides that "any person who believes that he would be damaged by the registration of a mark x x x" may file an opposition to the application. The term "any person" encompasses the true owner of the mark, the prior and continuous user.

Notably, the Court has ruled that the prior and continuous use of a mark may even overcome the presumptive ownership of the registrant and be held as the owner of the mark. As aptly stated by the Court in *Shangri-la International Hotel Management, Ltd. v. Developers Group of Companies, Inc.*

¹⁹ See Sec. 236, IP Code.

²⁰ G.R. No. 184850, 20 October 2010.

Registration, without more, does not confer upon the registrant an absolute right to the registered mark. The certificate of registration is merely a prima facie proof that the registrant is the owner of the registered mark or trade name. Evidence of prior and continuous use of the mark or trade name by another can overcome the presumptive ownership of the registrant and may very well entitle the former to be declared owner in an appropriate case.

Records show, at the time Respondent-Registrant was issued a registration of the mark WENSHA on 18 July 2013, Petitioner has no pending application nor registration for the same mark or variants. However, a careful review of the evidence on record show that the Petitioner substantially proved through documentary evidence that at the time Respondent-Registrant filed its application and was issued registration for the subject mark, Wensha Spa Center Company, Inc. was incorporated in the year 2004 with the primary purpose to engage in the business of providing services relating to massage service, hairdressing and other beauty treatment²¹, and since then and up to the present, continuously operating its spa service centers in various locations²². It prominently displays the trademark and/or service mark WENSHA SPA, with the dominant word WENSHA, in its spa centers²³, and in the facilities and supplies in its spa services²⁴. The Petitioner has also invested in advertisement service to promote its company and spa service²⁵. Moreover, the subject mark is also used as part of Petitioner's trade name²⁶. As such, Sec. 165 of the IP Code protects the prior user of the trade name, which in this case is the Petitioner, prior to or without registration of said trade name, to wit:

165.1. A name or designation may not be used as a trade name if by its nature or the use to which such name or designation may be put, it is contrary to public order or morals and if, in particular, it is liable to deceive trade circles or the public as to the nature of the enterprise identified by that name.

165.2. (a) Notwithstanding any laws or regulations providing for any obligation to register trade names, such names shall be protected, even prior to or without registration, against any subsequent use of the trade name by a third party, whether as a trade name or a mark or collective mark, or any such use of a similar trade name or mark, likely to mislead the public, shall be deemed unlawful.

On the other hand, Respondent-Registrant's reliance to the prima facie validity of a registered trademark was rebutted by Petitioner's substantial evidence of prior use and ownership. Respondent-Registrant's theory as the owner and intellectual creator of the subject mark remain as pure allegations, uncorroborated by any evidence and dislodged by concrete evidence on record.

It is stressed that the Law on Trademarks and Tradenames is based on the principle of business integrity and common justice. This law, both in letter and spirit is laid upon the premise that, while it encourages fair trade in every way and aims to foster, and not to hamper competition, no one especially a trader, is justified in damaging or jeopardizing other business by fraud, deceit, trickery or unfair methods of any sort. This necessarily precludes the trading by one dealer upon the good name and reputation built by another.

²¹ Annexes "C" and "D" of Petitioner.

²² Annexes "E" and "F" of Petitioner; Exhibits "A" to "H" of Petitioner.

²³ Annexes "G" and "H" of Petitioner.

²⁴ pp. 6-7, Verified Answer of Respondent-Registrant.

²⁵ Annex "I" of Petitioner.

²⁶ Sec. 121.3, IP Code, "Tradenname" means the name or designation identifying or distinguishing an enterprise.

WHEREFORE, premises considered, the instant Petition for Cancellation of Trademark Registration No. 4-2012-010355 is hereby **GRANTED**. Let the file wrapper of this instant case be forwarded to the Bureau of Trademarks (BOT) for information and appropriate action.

SO ORDERED.

Taguig City. **23 DEC 2016**



Atty. GINALYN S. BADIOLA, LL.M.
Adjudication Officer, Bureau of Legal Affairs