



**JS UNITRADE MERCHANDIZE, INC.,**

Petitioner,

-versus-

**MEGASOFT HYGENIC PRODUCTS, INC.,**

Respondent-Registrant.

X ----- X

IPC No. 13-2014-00097

Petition for Cancellation of

ID Reg. No. 3-2013-000868

Date Issued: 12 August 2013

Title: **"PANTY LINER"**

Decision No. 2017- 92

### DECISION

JS Unitrade Merchandize, Inc.<sup>1</sup> ("Petitioner") filed a petition to cancel Industrial Design ("ID") Registration No. 3-2013-000868 issued to Megasoft Hygenic Products, Inc.<sup>2</sup> ("Respondent-Registrant") entitled "PANTY LINER".

The Petitioner alleges, among others, that the Respondent-Registrant's design is already used by its company way back 2008. It has been ordering panty liner products from China and sold the same in the Philippines even prior to the filing date of the contested registration. Thus, according to the Petitioner, the Respondent-Registrant's industrial design lacks in novelty. In support of the allegations in the instant Petition, the Petitioner submitted the as evidence the affidavit of Sharon Joy Z. Punzalan, with annexes.<sup>3</sup>

A Notice to Answer was issued and served upon the Respondent-Registrant on 17 March 2014. The latter, however, did not file an Answer. Thus, on 26 January 2017, the Adjudication Officer issued Order No. 2017-235 declaring the Respondent-Applicant in default and the case submitted for decision.

The issue is whether the Respondent-Registrant's industrial design registration for "PANTY LINER" should be cancelled.

Section 61 of R.A. No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code"), provides that:

***"Section 61. Cancellation of Patents. - 61.1. Any interested person may, upon payment of the required fee, petition to cancel the patent or any claim thereof, or parts of the claim, on any of the following grounds:***

***(a) That what is claimed as the invention is not new or Patentable;***

<sup>1</sup> A domestic corporation with business address at 31<sup>st</sup> Floor Raffles Corporate Center, Emerald Avenue, Ortigas Center, Pasig City.

<sup>2</sup> With known address at #52-53, 20<sup>th</sup> Avenue, Murphy, Cubao. Quezon City.

<sup>3</sup> Marked as Exhibits "A" to "D", inclusive.

***(b) That the patent does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by any person skilled in the art; or  
(c) That the patent is contrary to public order or morality."***

Corollarily, Rule 137 of the Rules and Regulations on Utility Models and Industrial Designs state that:

***"Rule 317. Cancellation of design registration. At any time during the term of the industrial design registration, any person upon payment of the required fee, may petition the Director of Legal Affairs to cancel the industrial design on any of the following grounds:***

***(a) If the subject matter of the industrial design is not registrable within the terms of Sections 112 and 113 of the IP Code;  
(b) If the subject matter is not new; or  
(c) If the subject matter of the industrial design extends beyond the content of the application as originally filed."***

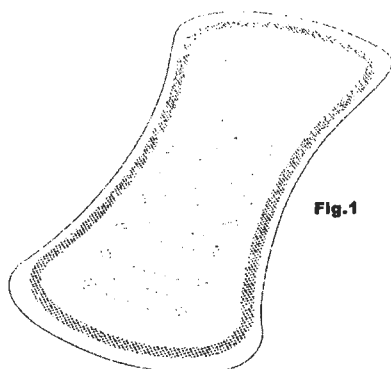
The instant petition is anchored on the argument that the subject design is not novel. In this regard, the IP Code defines industrial design as follows:

***"Sec. 112. Definition of Industrial Design.- An industrial design is any composition of lines or colors or any three-dimensional form, whether or not associated with lines or colors; Provided, That such composition or form gives a special appearance to and can serve as pattern for an industrial product or handicraft."***

As a requisite for registration, it is stated that:

***"Sec. 113. Substantive Conditions for Protection.- 113.1 Only industrial designs that are new or original shall benefit from protection under this Act."***

The drawings covered by Registration No. 3-2013-00868 are reproduced hereafter:

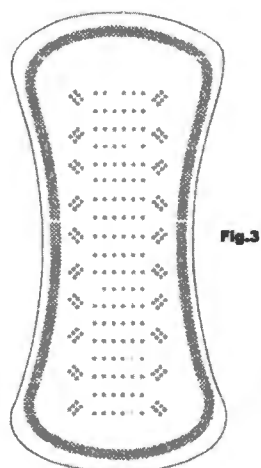


**Fig.1**



**Fig.2**





On the other hand, the Petitioner's "CHARMEE GO GIRL" product is depicted below as follows:<sup>4</sup>



At the middle portion, both compose of dotted lines, which are perfectly aligned horizontally and vertically. Throughout the lengths of the longer sides of the panty liner are multiple short parallel slanted dotted lines in alternate directions. Also, both Petitioner's product and the Respondent-Registrant's ID have similar feature throughout the edges of the pantyliners. There is no doubt that the questioned industrial design is practically identical to the Petitioner's "CHARMEE GO GIRL" panty liner design.

The Petitioner presented substantial evidence that it has been importing, distributing and/or selling its "CHARMEE GO GIRL" products as early as 2012 as shown by the shipping advise and its sales invoice to Robinson Supermarket Corporation.<sup>5</sup> Its trademark registration for "CHARMEE GO GIRL" corroborates its

<sup>4</sup> Marked as Exhibit "A" of the Punzalan affidavit.

<sup>5</sup> Marked as Exhibits "C-1" and "D" of the Punzalan affidavit.

claim of use, adoption and/or sale of the said panty liner products.<sup>6</sup> On the other hand, the Respondent-Registrant filed the application for the contested industrial design only on 24 July 2013. Finding that ID Registration No. 3-2013-000868 is identical with the Petitioner's "CHARMEE GO GIRL" product, the latter is considered a prior art. Succinctly, Sec. 24.2 of the IP Code adopted the definition of the mark under the old Law on Trademarks (Republic Act No. 166), to wit:

***"Sec. 24. Prior Art.- Prior Art- shall consist of:***

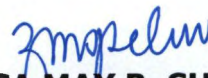
***24.1. Everything which has been made available to the public anywhere in the world, before the filing date or the priority date of the application claiming the invention; and***

***24.2 The whole contents of an application for a patent, utility model, or industrial design registration, published in accordance with this Act, filed or effective in the Philippines, with a filing or priority date that is earlier than the filing or priority date of the application; Provided: That the application which has validly claimed the filing date of an earlier application under Section 31 of this Act, shall be prior art with effect as of the filing date of such earlier application: Provided further: That the applicant or the inventor identified in both applications are not one and the same."***

**WHEREFORE**, premises considered, the instant petition for cancellation is hereby **GRANTED**. Let the filewrapper of Industrial Design Registration No. 3-2013-000868 be returned, together with a copy of this Decision, to the Bureau of Patents for information and appropriate action.

**SO ORDERED.**

Taguig City, **27 MAR 2017**

  
**Atty. Z'SA MAY B. SUBEJANO-PE LIM**  
Adjudication Officer  
Bureau of Legal Affairs

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<sup>6</sup> Marked as Exhibit "A-1" of the Punzalan affidavit.