

SHEN LI MING, }  
*Petitioner*, }  
 -versus- }  
 JAN WEI QUI a.k.a. SUNNY BEO FRANCISCO, }  
*Respondent-Registrant.* }  
 x-----x

IPC No. 14-2013-00067  
 Cancellation of:  
 Reg. No. 4-2011-015432  
 Date Issued: 06 September 2012  
 Trademark: "SUMAX AND DESIGN"  
 Decision No. 2017- 292

**DECISION**

SHEN LI MING<sup>1</sup> ("Petitioner") filed a petition to cancel Trademark Registration No. 4-2011-015432. The registration, issued in favor of Sunny Beo Francisco<sup>2</sup> ("Respondent-Registrant"), covers the trademark "SUMAX AND DESIGN" for use on "blank CDR, DVDR disc" under Class 09 of the International Classification of Goods and Services.<sup>3</sup>

The Petitioner alleges:

x x x

"STATEMENT OF THE FACTS and MATERIAL ALLEGATIONS

"3. Petitioner Shen Li Ming is the author, creator and prior user of the trade names 'SUMAX' and 'MR. DATA.' He is then engaged in the business of importing, exporting, buying, selling, or otherwise dealing in, at wholesale of VCDs, DVDs;

"4. Since 2009 Petitioner Shen Li Ming had been importing, selling and distributing DVDs and Optical Devices using the Trademarks 'MR. DATA' and 'SUMAX'. This is evidence by the foregoing import documents, photocopy of which are hereto attached x x x

"5. As the business grew and as demanded by time and other circumstances, the petitioner Shen Li Ming together with other individuals including herein respondent Jan Wei Qui a.k.a. Sunny Beo Francisco decided to form a corporation which was later named as 'Blue-Ray DVD-R King Inc;'

"6. On June 8, 2010 a certificate of incorporation was issued to Blue Ray DVD-R King Inc. by the Securities and Exchange Commission (SEC). Petitioner Shen Li Ming and respondent Jan Wei Qui a.k.a. Sunny Beo Francisco are Incorporators and the same time members of the Board of Directors of 'Blue-Ray DVD-R King Inc.,' a corporation duly registered under Philippine laws. x x x

<sup>1</sup>With address at No. 2208 Balagtas St. Pasay City.

<sup>2</sup>With address at 462 C. Palanca Street, Quiapo, Manila.

<sup>3</sup>The Nice Classification is a classification of goods and services for the purpose of registering trademark and service marks based on a multilateral treaty administered by the World Intellectual Property Organization. The treaty is called the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks concluded in 1957.



"7. 'Blue-Ray DVD-R King Inc.,' is engaged mainly in the business of importation, distribution and sale of VCD-R, DVD-R and other computer accessories. Its primary purpose is to operate, conduct, and maintain the business of importing, exporting, buying, selling, or otherwise dealing in, at wholesale such goods as VCD-R, DVD-R and Computer Accessories items and finished products;

"8. In order for Blue-Ray DVD-R Inc., to effectively conduct business, Petitioner Shen Li Ming then allowed the corporation 'Blue-Ray DVD-R King Inc.,' to use the trademarks 'SUMAX' and 'MR. DATA' which the Petitioner had been using for several years prior to the creation of the Corporation.

"9. It was respondent JAN WEI QUI a.k.a. SUNNY BEO FRANCISCO, acting as President of Blue-Ray DVD-R King Inc. who acted as President of Blue Ray DVD-R King Inc.;

"10. Blue Ray DVR-R King was given license by the Optical Media Board (OMB) to import and distribute Recordable Disk. Photocopy of the License To Optical Media Business given by the Optical Media Board is hereto attached x x x

"11. By reason of such permit, the corporation BLUE RAY DVD-R KING INC. was given permission to import Recordable Disk which subsequently marked and marketed as 'SUMAX' and 'MR. DATA' by BLUE RAY DVR-R KING INC. Photocopy of Bill of Lading wherein Blue Ray DVD-R King is the consignee is hereto attached x x x

"12. Furthermore, the respondent JAN WEI QUI a.k.a. SUNNY BEO FRANCISCO, acting as President of Blue-Ray DVD-R King, Inc., filed several cases for violation of R.A. 8293 concerning the use of the trade marks 'SUMAX' and 'MR. DATA' against several persons sometime June 2012;

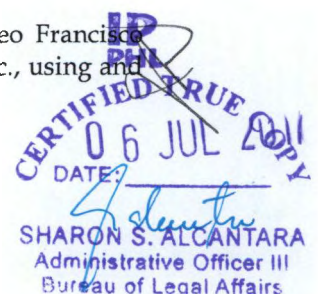
"13. On May 16, 2012 respondent authorized a certain Renato Antonia to act on behalf of the principal Blue-Ray DVD-R King Inc., with regard to the taking of appropriate legal actions on the matter of the infringement or illegal use of the trade marks SUMAX and MR. DATA which are owned by the corporation itself. Such authority of Renato Antonia is evidenced by a Special Power of Attorney dated May 16, 2012 executed by the defendant Sunny Beo Francisco allegedly in behalf of the corporation, which is x x x

"14. By reason of such Authority given by BLUE RAY DVD-R KING INC., (ANNEX 'F') a certain Renato Antonio executed an affidavit to support the filing of criminal Cases for Violation of Republic Act No. 8293 otherwise known as the 'Intellectual Property Code of the Philippines' against certain individual for alleged violations of TRADEMARKS 'SUMAX' and 'MR. DATA.' The pertinent portion of the Affidavit dated June 19, 2012 of Renato Antonio, x x x

"15. Upon the directives of the respondent Jan Wei Qui a.k.a. Sunny Beo Francisco, PSINP Allan A. Uy executed an Affidavit dated 14 June 2012 applying for Search Warrant before the Regional Trial Court of Manila, Branch 24, for alleged violation of Section 155 in Relation to Sec. 170 of R.A. 8293. Portion of Affidavit for the Application of Search Warrant provides to wit:

x x x

"16. On June 19, 2012 respondent Jan Wei Qui a.k.a. Sunny Beo Francisco issued a Certification 'under oath' as President of Blue Ray DVD-R King, Inc., using and



under BLUE RAY DVD-R King Inc.'s letterhead that DVD-R Master Inc., is not allowed to reproduce, sell and distribute such product bearing trademark 'SUMAX' and 'Mr. DATA.' Photocopy of the Certification dated June 19, 2012 is hereto attached x x x

**IP  
PHL**

INTELLECTUAL PROPERTY  
OFFICE OF THE  
PHILIPPINES

**SHEN LI MING,**  
*Petitioner,*

**-versus-**

**JAN WEI QUI a.k.a. SUNNY BEO FRANCISCO,**  
*Respondent-Registrant.*

**IPC No. 14-2013-00067**  
Cancellation as:  
Reg. No. 4-2011-015432  
Date Issued: 06 September 2012

**TM: SUMAX AND DESIGN**

X-----X

**NOTICE OF DECISION**

**MANTARING BAGASBAS AND ASSOCIATES**

*Counsel for Petitioner*  
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149 Roxas Boulevard corner Airport Road  
Parañaque City

**JAN WEI a.k.a. SUNNY BEO FRANCISCO**


*Respondent- Registrant*  
Elegant Tower, Galleria de Binondo  
Room 1003, Numancia, Binondo  
Manila

**GREETINGS:**

Please be informed that Decision No. 2017 - 292 dated 05 July 2017 (copy enclosed) was promulgated in the above entitled case.

Pursuant to Section 2, Rule 9 of the IPOPHL 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, 05 July 2017.

  
**MARILYN F. RETUAL**  
IPDC IV



"23. Despite actual and full knowledge of the fact of ownership and use by the petitioner and the corporation of the trademark 'Sumax and Mr. Data,' respondent maliciously and fraudulently caused the said trademarks to be registered in his own name and personal capacity to the damage and prejudice of the corporation and board of directors including herein petitioner;

"24. Respondent's fraudulent scheme and design to defraud the corporation and the stockholders is highlighted by the fact that he applied for registration of the trademarks 'Sumax' and 'Mr. Data' on December 28, 2011 after the corporation was organized to conduct business using the trademark 'Sumax' and 'Mr. Data'. Note that in his application for the trademark 'Sumax' under application No. 4-2011-015432, respondent declared therein that he (Sunny Beo Francisco) is the applicant thereof using his personal address at 314-0 C.M. Recto Ave., Sta. Cruz, Manila and further stating that he has an agent, a certain J&J Consultancy Agency. This is evidenced by the Registrability Report dated March 29, 2012, issued by the Honorable IPO, Bureau of Trademarks and attached as ANNEX 'J'. But what is more anomalous is that even after the respondent's application was made to this Honorable Office for Registration of the trademarks in his own name, the respondent continuously made representation in various courts and legal processes that the said trademarks he applied are owned and being used by Blue Ray DVD-R King Inc.;

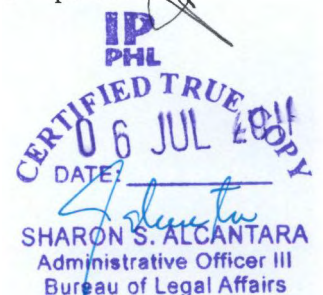
"25. Meanwhile, through a letter addressed to the Director of Trademark (IPO), the respondent Sunny Beo Francisco likewise stated that he is the applicant for the trademark 'MR. DATA' under application No. 4-2011-015433. x x x

"26. It should be stress that the respondent's representations that he is the true and actual owner of the two trademarks namely: 'SUMAX' and 'MR. DATA,' is utterly false and misleading and directed to defraud and cause great damage and prejudice to the corporation, officers or members of the board of directors of 'Blue-Ray DVD-R King Inc.,' most importantly herein petitioner who is the author and creator of such trademarks;

"27. At the time that the respondent Sunny Beo Francisco applied for registration of the subject trademarks, he is still one of the members of the board of directors of the corporation. It is worth noting that 'Blue-Ray DVD-R King Inc.,' was incorporated on June 8, 2010 and said corporation has never been dissolved involuntarily or voluntarily through a valid Board Resolution where all the members of the board of directors are duly represented and notified in a meeting held for the purpose;

"28. To cloak his fraudulent designs, defendant even executed a notarized letter dated May 2, 2012 addressed to the Optical Media Board (OMB). A copy of the said letter is attached as Annex 'L' of the instant Petition. In the subject letter, defendant Sunny Beo Francisco, as alleged President of 'Blue-Ray DVD-R King Inc.,' informed the OMB regarding the alleged stop operation of the corporation. He likewise relayed to the OMB that there was a Board Meeting of the director that was held concerning the alleged matter;

"29. Corollary, there was also a Corporate Secretary's Certificate issued dated May 2, 2012, allegedly giving authority to the Corporate Secretary Rodolfo Jr., Pio Todoc to close and cancel all the permits of the corporation and stop operation of its import and sales. x x x



"30. The logic behind the execution of the two dubious documents is ultimately to further the interests of the respondent Sunny Beo Francisco only. Such actuations are in support of his applications for registration of the subject trademarks in his personal capacity. Thus, respondent thought that there is a necessity to stop the operations of the corporation so that he may appropriate for himself the two trademarks which are owned and used exclusively by the corporation to distinguish the latter's goods, business or service from the goods, business or service of others;

"31. Moreover, in view of the Secretary's Certificate dated May 2, 2012, allegedly issued by the corporation, the respondent therefore have no authority to act on behalf of the corporation much less execute a letter to for that purpose addressed to the OMB concerning the alleged stop operation of the company;

"32. Meanwhile, petitioner reserved his rights to question the validity of the numerous Secretary Certificates, Corporate Certifications and Corporate Affidavits and other corporate documents requiring approval of the Board of Directors which have been issued even without the required approval given by the Board of Directors;

"33. As earlier discussed, it is petitioner Shen Li Ming who is the author and creator of the trade names 'SUMAX' and 'MR. DATA.' Thereafter, petitioner decided to form a corporation to expand his business ventures. In doing so, petitioner allowed the corporation which later incorporated as 'Blue-Ray DVD-R King Inc.,' to use the trade names 'SUMAX' and 'MR. DATA' just so to lend the goodwill which he had established with his business partners especially importers more so to distinguish the DVD items and the like goods as pertaining to the petitioner notwithstanding the creation of the corporation;

"34. Jurisprudence holds that the right to register trademark is actually based on ownership. Further, only the owner of the trademark, trade name or service mark used to distinguish his goods, business or service from the goods, business or service of others is entitled to register the same. In this wise, the Supreme Court in the case of Unno Commercial Enterprises, Incorporated vs. General Milling Corporation et. al., G.R. No. L-28554, February 28, 1983, ruled that:

x x x

"35. In the same case of Unno Commercial Enterprises, Incorporated, the Supreme Court likewise had the occasion to rule that registration of a trademark does not perfect a trademark right and it merely creates a presumption of the validity of the registration. As a matter of fact, such presumption may be overcome especially by evidence of prior use, to wit:

x x x

"36. In the instant proceeding, herein petitioner's prior use of the trademarks is reasonably established by the fact that he directly deals with the present customers and importers of the corporation even before the creation of the corporation where the respondent happened to be one of the incorporators and board members. Said prior use is evidenced by the earlier bill of lading and sales invoices (attached as Annexes 'A to A-5') of the instant Petition) issued by the importer of the petitioner which later also was the same importer of the corporation;

"37. At any rate, respondent had made possible the access to the two subject trademarks only when he became part of the corporation 'Blue-Ray DVD-R King Inc.'



Hence, respondent has no right to register the subject trademarks in his own name or personal capacity. It must be remembered that the registration of the subject trademarks in the name of respondent is attended by fraudulent designs and schemes.

The Petitioner's evidence consists of copies of several import documents; copies of Certificate of Incorporation and Articles of Incorporation of Blue-Ray DVD-R King Inc.; copy of the license given by the OMB; copies of the bill of lading wherein Blue Ray DVD-R King Inc. is the consignee; copy of the Special Power of Attorney (SPA) in favor of Renato Antonia; affidavit of Renato Antonio; copies of several applications for Search Warrant filed/executed by PSINSP Allan A. Uy; copy of the certification issued by the Respondent-Registrant on 19 June 2012; copy of the Registrability Report for "SUMAX"; copy of the letter signed by the Respondent-Registrant to the Director of Trademarks; copy of the letter signed by the Respondent-Registrant to the OMB; and copy of the Corporate Secretary's Certificate approved and adopted on 02 May 2011.<sup>4</sup>

This Bureau notes, however, that the Petitioner did not submit or present the originals or certified true copies of the affidavits and documents attached to his petition. In Order No. 2017-1052 dated 12 May 2017, Petitioner was directed to submit the same.

This Bureau issued a Notice to Answer and sent a copy thereof upon Respondent-Registrant on 17 November 2015. Said Respondent-Registrant, however, did not file an Answer.

Should Trademark Registration No. 4-2011-015432 be cancelled?

Sec. 151, IP Code, states in part that:

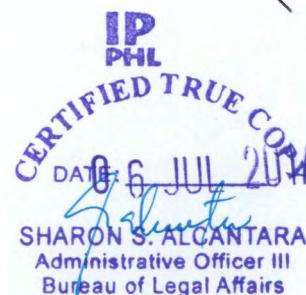
Sec. 151. *Cancellation.* - 151.1. A petition to cancel a registration of a mark under this Act may be filed with the Bureau of Legal Affairs by any person who believes that he is or will be damaged by the registration of a mark under this Act as follows:

(a) Within five (5) years from the date of the registration of the mark under this Act. x x x

This provision allows any person to file a petition to cancel a trademark registration if that person believes that he would be damaged by the registration. Once filed, the cancellation proceeding becomes, basically, a review of the trademark registration in question to determine if the legal requirements for registration have been satisfied and if the maintenance or continuance of Respondent-Registrant's trademark in the principal register would damage Petitioner.<sup>5</sup>

<sup>4</sup> Marked as Annexes "A" to "M", inclusive.

<sup>5</sup>Sec. 154 of the IP Code provides:



Section 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 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.

The trademark registration issued in favor of respondent-registrant constitutes *prima facie* evidence, hence, it is not conclusive and may be overturned by controverting evidence. Because of the presumption of validity, the burden of proof rests on Petitioner to prove that the registration of subject mark was invalid and that the original registrant is not the owner of the subject mark. Petitioner is required to submit substantial evidence to rebut the *prima facie* presumption of validity of Certificate of Registration No. 4-2012-010532.

Section 5 Rule 133 of the Rules of Court provides:

Sec. 5. *Substantial evidence.* – In cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. (n)"

Substantial evidences has been defined as follow:

"Due process in administrative process requires that evidences must be substantial, and substantial evidence means evidence that a reasonable mind might accept as adequate to support a conclusion." (China City Restaurant Corporation vs. NLRC, 217 SCRA 443 (1993) citing Associated Labor Union vs. NLRC, 189 SCRA 743 (1990))

"Substantial evidence which is the quantum of evidence required to establish a fact before administrative and quasi-judicial bodies is that amount of relevant evidence as a reasonable mind might accept as adequate to support a conclusion. It means such evidence which affords a substantial basis from which the fact in issue can be reasonably inferred" (Rubberworld (Phils.), Inc. vs. National Labor Relations Commissions, 175 SCRA 450); or "as adequate to justify a conclusion" (Remo Foods, Inc. vs. National Labor Relations Commission, 249 SCRA 379; Fulgeura vs. Linsangan, 251 SCRA 264).

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154. *Cancellation of Registration.* – If the Bureau of Legal Affairs finds that a case for cancellation has been made out, it shall order the cancellation of the registration. When the order or judgment becomes final, any right conferred by such registration upon the registrant or any person in interest of record shall terminate. Notice of cancellation shall be published in the IPO Gazette. (Sec. 19, R.A. No. 10669)





In the case of Emerald Garment Manufacturing Corporation vs. Court of Appeals, 251 SCRA 600 (1995), the Supreme Court ruled:

"The findings of facts of the Director of Patents are conclusive upon the Supreme Court provided they are supported by substantial evidence citing "Unno Commercial Enterprises, Inc. vs. General Milling Corp., 120 SCRA 804 91983; Kabushiki Isetan vs. Intermediate Appellate Court, 203 SCRA 583 (1991)."

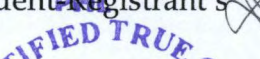
It is also a basic rule of evidence that each party must prove his affirmative allegations. If he claims a right granted by law, he must prove his claim by competent evidence, relying on the strength of his own evidence and not upon the weaknesses of that of his opponent. The test for determining on whom the burden of proof lies is found in the result of an inquiry as to which party would be successful if no evidence of such matters will be given." (Lolita Lopez vs. Bodega City, et. al., G.R. No. 155731, 03 September 2007, citing Martinez vs. National Labor Relation Commission, 339 Phil. 176, 183 (1997); Rufina Patis Factory vs. Alusitain, G.R. No. 146202, 14 July 2004, 434 SCRA 418, 428; Imperial Victory Shipping Agency vs. National Labor Relation Commission, G.R. No. 84672, 05 August 1991, 200 SCRA 178, 185).

The Petitioner asserts that the subject registration should be cancelled as it is he or, in the alternative, Blue Ray DVD-R, Inc., is the owner of the mark "SUMAX AND DESIGN".

Anent Petitioner's contention that he is the owner of the trademark "SUMAX AND DESIGN", the same must fail. His claim that he is the author, creator and/or prior user of the said mark is baseless and self-serving. He submitted import documents (Annexes "A", "A-1", "A-3" to "A-5") supposedly to corroborate the same and yet, the documents that were submitted including the affidavit/s attached to the Petition were mere photocopies.

As to the Petitioner's claim that it is the corporation Blue Ray DVD-R, Inc. which is the true owner of the subject mark, this Bureau finds that the same is likewise unsupported by substantial evidence. The affidavit and Applications for Search Warrants executed by one Renato Antonio and Police Inspector Allan A. Uy, respectively, merely proves that the Respondent-Registrant is the General Manager of the said corporation. These documents do not establish that the corporation contests the authority of the latter to register the mark "SUMAX AND DESIGN" under his name. Nor do these documents prove the corporation's use of the subject mark.

Therefore, this Bureau finds that the Petitioner failed to present substantial evidence to overcome the presumption of validity of the Respondent-Registrant's

  
CERTIFIED TRUE COPY  
DATE: 06 JUL 2017  
SHARON S. ALCANTARA  
Administrative Officer III  
Bureau of Legal Affairs

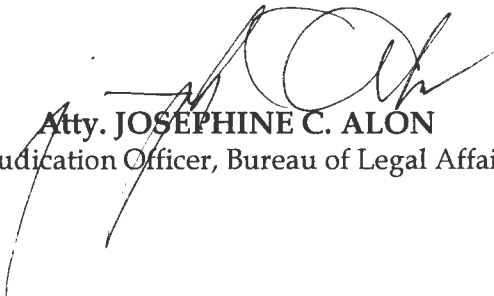


trademark registration. Substantial evidence is more than a mere scintilla of evidence. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise. The burden of proof still rests on the shoulder of the Petitioner, notwithstanding the fact that the Respondent-Registrant has been declared in default.

WHEREFORE, premises considered, the instant petition for cancellation is hereby DISMISSED. Let the filewrapper of Trademark Registration No. 4-2011-015432 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 05 JUL 2017

  
Atty. JOSEPHINE C. ALON  
Adjudication Officer, Bureau of Legal Affairs

