



INTELLECTUAL PROPERTY  
OFFICE OF THE PHILIPPINES

**ELIZER M. MEDINA,**  
*Petitioner,*

**-versus-**

**LUDINA SANCHEZ,**  
*Respondent-Registrant.*

X-----X

**IPC No. 14-2011-00108**  
Cancellation of:

Registration No. 4-2010-007867  
Date of Reg. 09 December 2010

**TM: ELLINE LABEL & DEVICE**

**NOTICE OF DECISION**

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**GREETINGS:**

Please be informed that Decision No. 2017 - 367 dated 09 November 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, 10 November 2017.

**MARILYN F. RETUTAL**  
IPRS IV  
Bureau of Legal Affairs

**ELIZER M. MEDINA,**  
Petitioner,

-versus-

**LUDINA SANCHEZ,**  
Respondent-Registrant.

x-----x } Decision No. 2017- 367

} **IPC NO. 14-2011-00108**  
} Cancellation of :  
}  
} Registration No. 4-2010-007867  
} Date of Registration: 9 December 2010  
}  
} Trademark: **ELLINE LABEL**  
} **& DEVICE**

### DECISION

ELIZER M. MEDINA (Petitioner)<sup>1</sup> filed a Petition for Cancellation of Registration No. 4-2010-007867. The registration, in the name of LUDINA SANCHEZ (Respondent-Registrant)<sup>2</sup>, covers the mark “ELLINE LABEL & DEVICE”, for use on “vinegar, soy sauce, patis, catsup, tomato sauce and hot sauce” under Class 30 of the International Classification of Goods<sup>3</sup>.

Petitioner anchors this petition for cancellation on the following grounds:

"1. Respondent Ludina Sanchez is not the owner of the trademark ELLINE LABEL AND DEVICE submitted in evidence as Exhibit 'B', at the time she applied for its registration with the Bureau of Trademarks on July 20, 2010, or after the business partnership and the common law husband and wife relationship between the petitioner and respondent Ludina Sanchez was terminated in mid 2009.

"2. The trademark ELLINE LABEL AND DEVICE is an original concept and creation of Petitioner Elizer Medina which proofing, layout and digital was done by Print Dream Enterprises on August 30, 2008 upon his approval, as shown by Sales Invoice No. 351 issued by Print Dream Enterprises dated August 30, 2008.xxx

"2.1. The printing of the trademark ELLINE LABEL AND DEVICE by Print Dream Enterprises upon the insistence and approval of petitioner Elizer M. Medina was affirmed by the owner of Print Dream Enterprises, Luzviminda Celestial, when she was summoned by the Counsel of Ludina

<sup>1</sup> Filipino with address at 1 McAllen Apartments Vanessa Homes Bucat, Calamba City

<sup>2</sup> Filipino with address at 116 del Rosario Street, Olivarez 7 Santo Tomas (Calabuso), Binan, Laguna

<sup>3</sup> The Nice Classification of Goods and Services is for registering trademarks and service marks based on 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.

Sanchez to testify during the hearing of IPV No. 10-2020-00016 on January 20, 2011 as contained in the transcript of stenographic notes on said date submitted in evidence for this Petition for Cancellation.xxx

"3. The trademark ELLINE LABEL AND DEVICE which matured into Registration No. 42010007867 issued on December 9, 2010 by the Bureau of Trademarks was fraudulently applied for on July 20, 2010 by respondent Ludina Sanchez by claiming and representing that it was her original concept and creation despite knowledge that it was petitioner Elizer M. Medina's original concept and creation and after knowing that petitioner's own applications for registration of the following marks were abandoned with finality for failure to respond to the official actions of the Trademark Examiner which were addressed at Baker Street, Filinvest, Binan, Laguna.

"3.1. ELLINE MASARAP NA PINASARAP PA! ENJOY YOUR HEALTH which Elizer Medina filed with the Bureau of Trademarks on 20 July 2009 bearing Serial No. 4-2009-7141.xxx

"3.2. ELLIMED MASARAP NA PINASARAP PA ENJOY YOUR HEALTH which Elizer Medina filed with the Bureau of Trademarks on 16 December 2009 bearing Serial No. 4-2009-12859. xxx

"3.3. ELLIE which Petitioner filed with the Bureau of Trademarks on 21 December 2009 bearing Serial No. 4-2009-13085 submitted in evidence as Exhibit 'G'.

"3.4. The above mentioned applications of petitioner for ELLINE LABEL & DEVICE bearing Serial No. 4-20097141 which petitioner filed on 20 July 2009; ELLIMED MASARAP NA PINASARAP PA ENJOY YOUR HEALTH which petitioner filed with the Bureau of Trademarks on 16 December 2009 bearing Serial No. 4-2009-12859 and ELLIE which Petitioner filed with on 21 December 2009 bearing Serial No. 4-2009-13085 were all abandoned by the Bureau of Trademarks for failure of Petitioner to respond to the official actions of the Trademark Examiner which were all sent to their address at Baker Street, Filinvest, Binan, Laguna as the existence of the documents were kept from him.

"4. The registration of ELLINE LABEL AND DEVICE bearing Registration No. 42010007867 issued on December 9, 2010 by the Bureau of Trademarks was likewise fraudulently applied for and obtained by respondent Ludina Sanchez after termination of their common law husband and wife was terminated and despite knowing that it was petitioner's original concept and creation."

The Petitioner alleges, among others, the following facts:

"5. Petitioner is a co-owner of the trademark ELLINE INSIDE A RIBBON DEVICE which was derived from the name of the name of their first born ELLINE, created during their business partnership and common law husband and wife relationship with respondent Ludina Sanchez which began in 1990 and lasted sometime in mid - 2009.

"6. E.L. Food Products which is registered with the Department of Trade and Industry as a sole proprietorship in the name of Ludina Sanchez is actually business partnership between petitioner Elizer M. Medina and respondent Ludina Sanchez who are business partners and their relationship as common law husband and wife started in 1990 up to mid 2009.

"6.1. As common law husband and wife, their relationship is governed by the Rules of Co-ownership in the Civil Code.

Art. 147. When a man and a woman, who are capacitated to marry each other, live exclusively with each other as husband and wife without the benefit of marriage or under a void marriage, their wages and salaries shall be owned by them in equal shares and the property acquired by both of them through their work or industry shall be governed by the rules on co-ownership.

In the absence of proof to the contrary, properties acquired while they lived together shall be presumed to have been obtained by their joint efforts, work or industry and shall be owned by them in equal shares."

"6.2. The trademark ELLINE INSIDE A RIBBON DEVICE which is an being used on 'vinegar, soy sauce, patis, catsup, tomato sauce and hot sauce products manufactured and sold by E.L. Food Products is an intellectual property recognized and protected in the same manner and to the same extent as are property rights known to the law (Republic Act No. 8293) hence ownership of trademark acquired by common law husband and wife during the union without marriage such as that of petitioner Elizer Medina and Ludina Sanchez with respect to trademarks is governed by the above quoted provision of the civil code. xxx"

To support its petition, the Petitioner submitted as evidence the following:

1. Affidavit of Elizer Medina dated 24 March 2011;
2. Certificate of Registration No. 4-2010-007867 for the mark "ELLINE LABEL & DEVICE" issued to Ludina Sanchez;
3. Sales invoice no351 dated 30 August 2008 issued by Print Dream Enterprise; .
4. Transcript of stenographic notes of the testimony of Luzviminda Celestial in IPV Case No. 19-2010-00015 of the hearing dated 20 January 2011;

5. Trademark application no. 4-2009-7141 for the mark "ELLINE MASARAP NA PINASARAP PA! ENJOY YOUR HEALTH" filed by Elizer Medina;
6. Trademark application no. 4-2009-12859 for the mark "ELLIMED MASARAP NA PINASARAP PA ENJOY YOUR HEALTH" filed by Elizer Medina;
7. Trademark application no. 4-2009-13085 for the mark "ELLIE" filed by Elizer Medina;
8. Affidavit of Ludina Sanchez dated 14 October 2010 in IPV Case No. 20100015; and
9. Transcript of stenographic notes (TSN) of the testimony of Ludina Sanchez dated 9 November 2010 conducted in IPV Case no. 2010-00015<sup>4</sup>

On 5 January 2012, the Bureau issued Order No. 2012-72 granting Petitioner's Motion to Declare Respondent-Registrant in Default for her failure to Answer.

Should the Respondent-Registrant's trademark registration for ELLINE LABEL & DEVICE be cancelled?

The issue raised is whether Respondent-Registrant's trademark registration for ELLINE INSIDE A RIBBON DEVICE be cancelled?

A perusal of the evidence, particularly, the transcript of stenographic notes<sup>5</sup> in Intellectual Property Violation (IPV) Case No. 10-2010-00015 reveals that the same parties are involved in an administrative complaint which was filed earlier than this instant case. The Bureau takes notice that IPV Case No. 10-2010-00015 filed on 14 October 2010 between Ludina N. Sanchez v. Elizer M. Medina, for trademark infringement, unfair competition and false designation, is a suit that excludes this Hearing Officer to assume jurisdiction over this instant petition for cancellation in accordance with Sec. 151.2 of Republic Act. 8293, otherwise known as the Intellectual Property Code of the Philippines ("IP Code"). The IP Code states:

Section 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 registration of the mark under this Act.
- (b) At any time if the registered mark becomes the generic name for the goods or services or a portion thereof, for which it is registered or has been abandoned, or its registration obtained fraudulently, or contrary to the provisions of this Act, or if the registered mark is used by, or with the permission of the registrant so as to misrepresent the source of the goods or services or in connection with which the mark is used.

x x x

<sup>4</sup> Exhibits "A" to "I"

<sup>5</sup> Exhibit "4"

151.2. Notwithstanding the foregoing provisions, the court or the administrative agency vested with jurisdiction to hear and adjudicate any action to enforce the rights to a registered mark shall likewise exercise jurisdiction to determine whether the registration of said mark may be cancelled in accordance with this Act. **The filing of a suit to enforce the registered mark with the proper court or agency shall exclude any other court or agency from assuming jurisdiction over a subsequently filed petition to cancel the same mark.** (Emphasis supplied)

Thus, Section 4, Rule 8 of the Regulations of *Inter Partes* Proceedings<sup>6</sup> provide:

Section 4. Effect of Filing of A Suit Before the Bureau or With the Proper Court. - The filing of a suit to enforce a registered with the proper Court or Bureau shall exclude any other court or agency from assuming jurisdiction over a subsequently petition to cancel the same mark. On the other hand, the earlier filing of petition to cancel the mark with the Bureau shall not constitute a prejudicial question that must be resolved before an action to enforce the rights to the same registered mark may be decided.

Therefore, the merits of whether the mark ELLINE LABEL AND DEVICE may be cancelled should be properly litigated in the earlier filed IPV case.

**WHEREFORE**, premises considered, the instant Petition for Cancellation of Trademark Registration No. 4-2010-007867 is hereby **DISMISSED**. Let the filewrapper of the subject trademark registration be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

**SO ORDERED.**

Taguig City, 09 NOV 2017

  
**ATTY. ADORACION U. ZARE, LL.M.**  
Adjudication Officer  
Bureau of Legal Affairs

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<sup>6</sup> 5 October 1998.