Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

MANUEL T. ZULUETA,
Petitioner,

- versus -

CYMA GREEK TAVERNA CO.,
Respondent.

G.R. No. 205699

Present:
LEONEN, *SAJ.*, Chairperson,
LAZARO-JAVIER,
LOPEZ, M.
LOPEZ, J., and
KHO, JR., *JJ.*

Promulgated:
JAN 23 2023

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D E C I S I O N

KHO, JR., *J.*:

Assailed in this Petition for Review on *Certiorari*[1] are the Decision[2] dated October 15, 2012 and the Resolution[3] dated February 5, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 123047, which affirmed the Decision[4] dated January 9, 2012 of the Intellectual Property Office of the Philippines – Office of the Director General (IPOPHL-ODG), which affirmed

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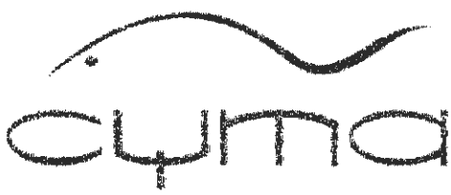
1 Dated March 27, 2013; *rollo*, pp. 13–37.
2 Id. at 40–50. Penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Romeo F. Barza and Ramon A. Cruz.
3 Id. at 52–53.
4 Id. at 55–66. Penned by Director General Ricardo R. Blancaflor.

the Decision[5] dated December 19, 2008 of the IPOPHL-Bureau of Legal Affairs (IPOPHL-BLA), which rejected petitioner Manuel T. Zulueta's (Zulueta) application for registration of Trademark Application No. 4-2006-010623 for the mark "CYMA & LOGO" under Class 43 of the International Classification Goods and Services for the Purposes of the Registration of Marks (Nice Classification).

The Facts

Zulueta claimed to have conceptualized the Greek restaurant "Cyma." To set up the first branch of the restaurant in Boracay, Zulueta supposedly invited Raoul Roberto P. Goco (Raoul Goco) to help put together the menu. The Cyma Boracay restaurant was launched at D'Mall, Boracay on December 28, 2005. To formalize the arrangements, Zulueta formed a partnership with Raoul Goco called "Cyma Greek Taverna Company" (Cyma Partnership)–herein respondent–which was registered as a partnership with the Securities and Exchange Commission (SEC) in 2006. As Cyma Boracay became successful, Zulueta and Raoul Goco decided to open a branch in Edsa Shangri-La Plaza Mall. To manage this branch, "Cyma Greek Taverna Shangri-La Corporation" was formed and was duly registered with the SEC.[6]

On September 25, 2006, Zulueta filed, in his own name, Trademark Application No. 4-2006-010623,[7] claiming that he had done so as he was certain that the mark was solely his own creation,[8] depicted as follows:



On October 19, 2006, Zulueta went to the United States with a trade delegation for business and a brief vacation. He returned to the Philippines on November 26, 2006. Zulueta averred that while he was away, Raoul Goco, along with his sister Maria Anna Eugenia P. Goco (Anna Goco), issued an allegedly fraudulent Deed of Assignment[9] dated November 21, 2006 wherein Zulueta supposedly assigned all his partnership interests to Anna Goco in consideration of ₱500,000.00. The deed was signed by Zulueta, Anna Goco, and Raoul Goco. Zulueta emphasizes that it is physically impossible for him

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5 Id. at 69-83. Penned by BLA Director Estrellita Beltran-Abelardo.
6 Id. at 15.
7 Id. at 122-123.
8 Id. at 16.
9 Id. at 130-131.

to have signed the document as he was in the United States at the time of its execution.[10]

On March 13, 2007, five (5) months after Zulueta filed the aforesaid trademark application, the Cyma Partnership filed its own trademark application for the mark "CYMA GREEK TAVERNA AND LOGO" with Trademark Application No. 4-2007-002633,[11] also under Class 43 of the Nice Classification.[12] The illustration accompanying the application is as follows:

On August 13, 2007, Zulueta's Trademark Application No. 4-2006-010623 was published by the IPOPHL for opposition. On October 15, 2007, after several prayers for extension duly granted by IPOPHL, Cyma Partnership filed a Verified Notice of Opposition[13] to Zulueta's trademark application.[14] In their opposition, Cyma Partnership claimed that Zulueta falsely represented that he was the originator of the trademark when in truth, it had been copied from Cyma Partnership's trademark which Raoul Goco had created while on vacation in Greece. The verified opposition then averred that Cyma Partnership was the first to use the Cyma trademark, the same having been used on a test kitchen restaurant in Boracay around December 2005 by Cyma Partnership's director, founder, and executive chef, Raoul Goco.[15]

On November 7, 2007, Zulueta received a copy of the Notice to Answer[16] the opposition from the IPOPHL-BLA. He was directed to file his answer within 30 days from receipt. On December 30, 2007, during the pendency of the proceedings on Zulueta's trademark application, the IPOPHL approved Cyma Partnership's Trademark Application No. 4-2007-002633, and accordingly, was given a Registration No. 2633.[17] No opposition was filed against Cyma Partnership's trademark application. Zulueta alleged that he failed to oppose the application as he had been unaware that it existed.[18]

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[10] Id. at 16–17.
[11] Id. at 160–161.
[12] Id. at 18. See also id. at 132.
[13] Id. at 134–142.
[14] Id. at 18.
[15] Id. at 70.
[16] Id. at 168–169.
[17] Id. at 18.
[18] Id. at 187.

On March 4, 2008, after several motions for extension duly approved by the IPOPHL-BLA, Zulueta filed his Verified Answer.[19] The IPOPHL-BLA set a Preliminary Conference[20] on April 8, 2008. As the parties failed to reach settlement, the IPOPHL-BLA issued an Order[21] dated October 15, 2008 directing the parties to file their respective position papers, if desired, within ten (10) days from receipt of the Order. Thereafter, the parties seasonably filed their position papers.[22]

The IPOPHL-BLA Ruling

In a Decision[23] dated December 19, 2008, the IPOPHL-BLA rejected Zulueta's Trademark Application No. 4-2006-010623.[24] The IPOPHL-BLA held that the registration in favor of Cyma Partnership is *prima facie* evidence of exclusive ownership and the rights corollary thereto. Thus, Cyma Partnership is deemed the owner of the trademark. As to the issue of the deed of assignment and the rights of the partners, these issues are of criminal and civil in nature, and are not within the IPOPHL's jurisdiction under Republic Act No. (RA) 8293,[25] otherwise known as the "Intellectual Property Code of the Philippines" (IPC). The IPOPHL-BLA cannot arrogate unto itself the authority to resolve a controversy which is not of its special competence.[26]

Aggrieved, Zulueta appealed to the IPOPHL-ODG.

The IPOPHL-ODG Ruling

In a Decision[27] dated January 9, 2012, the IPOPHL-ODG affirmed the IPOPHL-BLA's ruling.[28] The IPOPHL-ODG found that in support to its trademark registration, Cyma Partnership was able to adduce substantial evidence to prove its ownership of the subject trademark. The IPOPHL-ODG further pointed out that Cyma Partnership was the first to have *bona fide* used the "Cyma" mark, as evinced by its continued commercial use since 2005, which, thus, predates Zulueta's trademark application over the said mark. In this regard, the IPOPHL-ODG opined that while petitioner was the first to file a trademark application, nothing in Section 122 of the IPC states that it is the first person or entity to apply for registration who necessarily obtains ownership of the mark. More importantly, Zulueta failed to show that he had

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[19] Id. at 170–191.
[20] Titled "Notice of Preliminary Conference;" id. at 222–223.
[21] Id. at 224.
[22] Id. at 19.
[23] Id. at 69–83.
[24] Id. at 82–83.
[25] Entitled "AN ACT PRESCRIBING THE INTELLECTUAL PROPERTY CODE AND ESTABLISHING THE INTELLECTUAL PROPERTY OFFICE, PROVIDING FOR ITS POWERS AND FUNCTIONS, AND FOR OTHER PURPOSES," approved on June 6, 1997.
[26] *Rollo* p. 82.
[27] Id. at 55–66.
[28] Id. at 66.

used the trademark in any business enterprise or restaurant.[29] The IPOPHL-ODG further held that the partnership has a separate juridical personality from its partners; hence, Zulueta's alleged rights to the partnership do not justify the registration of the trademark in his name. Finally, the IPOPHL-ODG reiterated that the IPOPHL does not have the jurisdiction to rule on the validity of the Deed of Assignment, nor can it rule on the existence or nonexistence of Zulueta's alleged rights in the partnership.[30]

Not satisfied with the IPOPHL-ODG ruling, Zulueta appealed to the CA.[31]

The CA Ruling

In a Decision[32] dated October 15, 2012, the CA affirmed the ruling of the IPOPHL-ODG.[33] The CA held that Cyma Partnership had been consistent in using the Cyma Greek Taverna mark and logo in its trade and commerce and the mark has been the symbol of the partnership's group of restaurants since 2005. In this regard, the CA pointed out that while Zulueta claims prior use of the trademark, records show that the trademark was not personally used by Zulueta, but by Cyma Partnership, in which he was one of the partners. It further pointed out that the records of the case are bereft of any evidence that would show that Zulueta managed to coin the word "Cyma" as opposed to Cyma Partnership's claim that it had been Raoul Goco who came up with the name while on vacation in Greece in 2002, after meeting a child with the same name. Pursuant to the IPC, a mark cannot be registered if it is identical with a mark already being used and registered by another. The CA stressed that the IPOPHL-ODG, by reason of their special knowledge and expertise, is in a better position to pass upon the registrability of a trademark. It is not the task of the CA 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.[34]

Petitioner moved for reconsideration,[35] but was denied in a Resolution[36] dated February 5, 2013. Hence, Zulueta filed the instant petition.[37]

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29 Id. at 65.
30 Id. at 66.
31 See Petition for Review dated February 21, 2012, id. at 331–356.
32 Id. at 40–50.
33 Id. at 50.
34 Id. at 47–50.
35 Id. at 444–457.
36 Id. at 52–53.
37 Id. at 13–37.

The Issue Before the Court

The core issue for the Court's resolution is whether or not the CA correctly affirmed the denial of Zulueta's application for registration of Trademark Application No. 4-2006-010623 for the mark "CYMA & LOGO" under Class 43 of the Nice Classification.

Petitioner asserts that his earlier application gave him a priority right which renders Cyma Partnership's subsequent trademark application, and IPOPHL's grant thereof, void. He reiterates that he had conceived of the Cyma mark on his own and that he had been unlawfully excluded from the partnership.

For its part, Cyma Partnership asserts in its Comment[38] dated February 9, 2014 that it had obtained a valid Certificate of Registration[39] as it had been the only entity ever to use the mark and the mark had been conceptualized by Raoul Goco, not Zulueta. Cyma Partnership cites *E.Y. Industrial Sales, Inc. v. Shen Dar Electricity and Machinery Co., Ltd.* (*Shen Dar*),[40] which, the Court, through Associate Justice Presbitero J. Velasco, Jr., states that "[e]vidence 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."[41]

The Court's Ruling

The petition is denied.

The IPC defines a "mark" as "any visible sign capable of distinguishing the goods (trademark) or services (service mark) of an enterprise." Verily, trademarks deal with the psychological function of symbols and the effect of these symbols on the public at large. It is a merchandising shortcut, and, whatever the means employed, the aim is the same—to convey through the mark, in the minds of potential customers, the desirability of the commodity upon which it appears. Thus, the protection of trademarks as intellectual property is intended not only to preserve the goodwill and reputation of the business established on the goods or services bearing the mark through actual use over a period of time, but also to safeguard the public as consumers against confusion on these goods or services. As viewed by modern authorities on trademark law, trademarks perform three (3) distinct functions: (1) they indicate origin or ownership of the articles to which they are attached; (2) they

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[38] Id. at 490-516.
[39] Id. at 193
[40] 648 Phil. 572 (2010) [First Division]; citation omitted.
[41] Id. at 593.

guarantee that those articles come up to a certain standard of quality; and (3) they advertise the articles they symbolize.[42]

Ownership of a mark is acquired through registration made validly in accordance with the IPC.[43] Under the first-to-file rule, "a registered mark or a mark with an earlier filing or priority date generally bars the future registration of—and the future acquisition of rights in—an identical or a confusingly similar mark, in respect of the same or closely-related goods or services, if the resemblance will likely deceive or cause confusion."[44] Prior use is no longer required to obtain ownership of a trademark.[45] However, the first-to-file rule should not be interpreted to mean that the first application to be filed should, in all cases, be the application that is granted. In this relation, it should be emphasized that trademark controversies must be scrutinized according to their peculiar circumstances, such that jurisprudential precedents should only be made to apply if they are specifically in point.[46]

Where the first application is unregistrable, it will not obtain the priority right provided for under Section 123(d) of the IPC. Registrations resulting from trademark applications which are tainted with bad faith or fraud are void *ab initio*;[47] thus, it follows that such trademark applications are inherently unregistrable and do not confer any priority rights on the part of the applicant. In relation to trademark registration, "[b]ad faith means that the applicant or registrant has knowledge of prior creation, use and/or registration by another of an identical or similar trademark. In other words, it is copying and using somebody else's trademark. Fraud, on the other hand, may be committed by making false claims in connection with the trademark application and registration, particularly, on the issues of origin, ownership, and use of the trademark in question, among other things."[48] At this juncture, it bears reiterating that the presence of bad faith is a question of fact,[49] and the factual findings of the IPOPHL are accorded great respect by the Court in consideration of their special knowledge and expertise over matters falling under their jurisdiction.[50]

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[42] See *W Land Holding, Inc. v. Starwood Hotels and Resorts Worldwide, Inc.*, 822 Phil. 23, 32–33 (2017) [Per J. Perlas-Bernabe, Second Division], citations omitted.

[43] See *Zuneca Pharmaceutical v. Natrapharm, Inc.*, G.R. No. 211850, September 8, 2020 [Per J. Caguioa, *En Banc*], citing Section 122 of RA 8293.

[44] See id., citing Section 123 of the IPC.

[45] Id., citing Record of the Senate, October 8, 1996, Vol. II, No. 29, pp. 131–132; *rollo*, vol. I, pp. 436–437.

[46] *UFC Philippines, Inc. v. Barrio Fiesta Manufacturing Corp.*, 778 Phil. 763, 791 (2016) [Per J. Leonardo-De Castro, First Division], citing *Dermaline, Inc. v. Myra Pharmaceuticals, Inc.*, 642 Phil. 503, 511 (2010) [Per J. Nachura, Second Division].

[47] See *Kolin Electronics Co., Inc., v. Kolin Philippines International, Inc.*, G.R. No. 228165, February 9, 2021 [Per J. Caguioa, *En Banc*]. See also *Zuneca Pharmaceutical v. Natrapharm, Inc.*, supra.

[48] *Medina/Rackey Crystal Top Corporation v. Global Quest Ventures, Inc.*, G.R. No. 213815, February 8, 2021 [Per J. Leonen, Third Division], citing *Zuneca Pharmaceutical v. Natrapharm, Inc.*, supra.

[49] See *Medina/Rackey Crystal Top Corporation v. Global Quest Ventures, Inc.*, id.

[50] *UFC Philippines, Inc. v. Barrio Fiesta Manufacturing Corp.*, supra, at 791, citing *Berris Agricultural Co., Inc. v. Abyadang*, 647 Phil. 517, 533 (2010) [Per J. Nachura, Second Division].

Unlike the rule on acquisition of ownership, the pronouncements of the Court relative to registrations obtained in bad faith under the Trademark Law, as amended, still subsist even after the effectivity of the IPC.[51] Thus, while the Court has expressly abandoned[52] its ruling in *Shen Dar*,[53]—holding that prior use no longer determines ownership and no longer defeats the *prima facie* assumption of ownership conferred by registration—prior use may still be considered in determining the existence of bad faith and the registrability of trademark applications. Where in the course of a trademark application, it is found that: (*i*) an entity has prior use, creation and/or registration of a trademark; and (*ii*) the applicant has knowledge of the said prior use, creation and/or registration—the trademark application is unregistrable due to the attendance of bad faith on the part of the applicant, and the same should be denied.

Applying the foregoing in the instant case, the Court notes that although it was not categorically stated, the IPOPHL's factual findings show that Zulueta's trademark application was made in bad faith. As a partner, Zulueta, was without a doubt aware of the prior use of the trademark by the partnership, and that it had been Raoul Goco who conceptualized the mark for the partnership while on vacation in Greece. Even if the Court were to believe Zulueta's version of story–*i.e.*, that it had been him and not Goco who had conceived the Cyma mark–it is clear from Zulueta's own narration that the mark had been conceived for the exclusive use of the partnership and its sister company, Cyma Greek Taverna Shangri-La Corporation. As opined by the court *a quo*, only Cyma Partnership had used the Cyma trademark in its commercial dealings, and Zulueta had never used the same in his individual capacity. Despite the fact that Zulueta was the first to file a trademark application, his knowledge of the prior use by Cyma Partnership of the trademark meant that Zulueta's trademark application was filed in bad faith. As a consequence, his trademark application cannot be granted and he did not obtain any priority rights under Section 123(d) of the IPC.

On the other hand, Cyma Partnership validly obtained a Certificate of Registration and ownership over the subject mark. Section 138 of the IPC states that a certificate of registration 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." In this light, and further considering Zulueta's bad faith in filing Application No. 4-2006-010623 for the mark "CYMA & LOGO" under Class 43 of the Nice Classification, the Court rules that the IPOPHL-BLA, IPOPHL-ODG, and the CA correctly ruled for the denial of Zulueta's aforementioned trademark application.

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[51] *Zuneca Pharmaceutical v. Natrapharm, Inc.*, supra.
[52] Id.
[53] 648 Phil. 572 (2010) [Per J. Velasco, Jr., First Division].

As to the validity of the Deed of Assignment in favor of Anna Goco, and Zulueta's rights to Cyma Partnership, the same should be determined in a proper separate proceeding. Although party litigants have the option to join causes of action, this is subject to the condition that neither action should be governed by special rules.[54] A trademark application is governed by rules duly promulgated by the IPOPHL, such as IPOPHL Memorandum Circular No. 17-010,[55] and not the Rules of Court. Further, the instant case was originally filed with the IPOPHL which has no jurisdiction to determine the validity of the Deed of Assignment, and not with the Regional Trial Court as the Rules of Court require.[56] Thus, there can be no valid joinder of cause of action in this case.

At any rate, Zulueta filed the application in his own name, and not on behalf of the partnership. It is well established that partnerships have a separate juridical personality from its partners;[57] thus, whether Zulueta has rights to Cyma Partnership does not affect his rights to the Cyma trademark.

ACCORDINGLY, the petition is **DENIED.** The Court of Appeals Decision dated October 15, 2012 and the Resolution dated February 5, 2013 in CA-G.R. SP No. 123047 are hereby **AFFIRMED**. Petitioner Manuel T. Zulueta's Trademark Application No. 4-2006-010623 for the mark "CYMA & Logo," under Class 43 of the International Classification Goods and Services for the Purposes of the Registration of Marks (Nice Classification) filed on September 25, 2006, is hereby **REJECTED**.

SO ORDERED.

ANTONIO T. KHO, JR.
Associate Justice

WE CONCUR:

MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson

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[54] Section 5(b), Rule 2 of A.M. No. 19-10-20-SC entitled "2019 PROPOSED AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE," (May 1, 2020).

[55] Entitled "RULES AND REGULATIONS ON TRADEMARKS, SERVICE MARKS, TRADE NAMES AND MARKED OR STAMPED CONTAINERS OF 2017," (July 7, 2017).

[56] Section 5(c), Rule 2 of A.M. No. 19-10-20-SC entitled "2019 PROPOSED AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE," (May 1, 2020).

[57] New Civil Code, Art. 1768. See *Salvado, Jr. v. Philippine National Bank*, 839 Phil. 37, 56 (2018) [Per J. Jardeleza, First Division] and *Guy v. Gocotano*, 778 Phil. 308, 320 (2016) [Per J. Mendoza, Second Division].

AMY C. LAZARO-JAVIER
Associate Justice

MARIO V. LOPEZ
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ALEXANDER G. GESMUNDO
Chief Justice