

SECOND DIVISION

[G.R. No. 206779, April 20, 2016]

LEVI STRAUSS & CO., PETITIONER, VS. ATTY. RICARDO R. BLANCAFLOR, IN HIS OFFICIAL CAPACITY AS THE DIRECTOR GENERAL OF THE INTELLECTUAL PROPERTY OFFICE, RESPONDENT.

DECISION

BRION, J.:

We resolve the petition for review on *certiorari*^[1] filed by the petitioner Levi Strauss & Co. (*Levi's*) assailing the August 13, 2012^[2] and April 17, 2013^[3] resolutions of the Court of Appeals (CA) in CA-G.R. SP No. 123957.

THE FACTS

Levi's is a corporation registered under the laws of the State of Delaware, United States of America.^[4]

On October 11, 1999, Levi's filed an application^[5] before the Intellectual Property Office (*IPO*) to register the mark TAB DEVICE covering various goods.^[6]

The TAB DEVICE trademark is described as a small marker or tab of textile material, appearing on and affixed permanently to the garment's exterior and is visible while the garment is worn.^[7]

On February 17, 2006, the trademark examiner rejected^[8] Levi's trademark application because there is nothing in the subject mark that serves to distinguish Levi's goods; hence, the tab itself does not function as a trademark.^[9] The trademark examiner also stated that Levi's cannot exclusively appropriate the tab's use because a tab of textile is customarily used on the products covered by the trademark application.^[10]

On July 5, 2006, Levi's appealed the examiner's rejection of the trademark application to the IPO Director of Trademarks (*Director*).^[11] The Director issued a *decision*^[12] that affirmed the trademark examiner's findings. On August 22, 2007, Levi's filed a motion for reconsideration^[13] of the Director's decision, which the Director denied^[14] for "lack of merit."

On March 24, 2011, Levi's filed its Appeal Memorandum^[15] with the respondent IPO Director-General, Atty. Ricardo R. Blancaflor (*Director-General*), and provided a list of certificates of registration^[16] in other countries covering "nearly identical TAB

DEVICE trademark registrations."

THE IPO DIRECTOR-GENERAL RULING

On March 12, 2012, the Director-General issued a decision^[17] rejecting the TAB DEVICE trademark application and dismissing Levi's appeal.^[18]

The Director-General held that the TAB DEVICE mark is not distinctive because there is nothing in the mark that enables a person to distinguish it from other similar "tabs of textile."^[19] The subject mark consists solely of a rectangular tab of textile that does not point out the origin or source of the goods or services to distinguish it from another.^[20]

The Director-General adopted the Director's observations that there is the garment industry practice of sewing small tabs of textile in the seams of clothing, which Levi's cannot appropriate to its exclusive use by the registration of the TAB DEVICE mark.^[21]

The Director-General did not accord evidentiary weight to the certificates of registrations of Levi's in other countries and held that the rights to a mark are not acquired through registration in other countries.^[22] The Director-General explained that under the Intellectual Property Code, the mark's capability to distinguish one's goods or services from another is the very essence of a mark registration.^[23] The registered marks are different from the subject TAB DEVICE mark.^[24] The certificates of registration also do not show that they cover similar goods covered by the subject trademark application.^[25]

Levi's only recourse was to file a *Petition for Review* with the CA within 15 days from receipt of the IPO Director-General ruling, or until March 29, 2012, under Rule 43 of the Rules of Court to assail the IPO Director-General's ruling.^[26]

On March 28, 2012, Levi's filed a *Motion for Extension of Time* (first motion for extension) to file a verified petition for review with the CA; it sought an additional 15 days, or until April 13, 2012, to file the petition for review.^[27] Levi's counsel averred that it needed the extension because of pressure from other equally important professional work and it needed to gather further evidence.^[28]

On April 13, 2012, Levi's filed a *Second Motion for Extension of Time*;^[29] it asked this time for an additional 15 days, or until April 28, 2012, to file the petition for review.

Levi's claimed that while the draft of the petition was almost complete, there was yet again pressure from other equally urgent professional work; and the consularized special power of attorney (SPA) needed for the filing of the petition and its verification were still *en route* from the United States.^[30] Levi's claimed that the delay in the SPA consularization was due to the closed Philippine Consulate Office in San Francisco, USA, from April 5, 2012 to April 9, 2012, in observance of the Holy Week and the *Araw ng Kagitingan* holiday.^[31]

THE CA RULING

On April 27, 2012, Levi's filed its petition for review (*CA petition for review*).^[32]

On June 1, 2012, the CA granted the first motion for extension.^[33]

On August 13, 2012, the CA issued a Resolution^[34] dismissing Levi's petition outright. The CA held that Levi's failed to present a compelling reason for the CA to grant the second motion for extension.^[35] According to the CA, Levi's should have secured the necessary SPA earlier and anticipated the closure of the Philippine Consulate Office due to the Philippine holidays.^[36] Further, pressure from other equally urgent professional work is not a compelling reason for an extension.^[37]

On September 6, 2012, Levi's filed a motion for reconsideration of the CA dismissal of the petition.^[38] Levi's counsel explained that Levi's only decided to proceed with the filing of the CA petition for review on April 3, 2012 and it was only on that date that the SPA was executed and notarized.^[39]

In a CA Resolution dated April 17, 2013,^[40] the CA denied Levi's motion for reconsideration. The CA held that Levi's should have been diligent enough to decide before the end of the first fifteen days or until March 29, 2012 whether it would proceed with the filing of the petition for review.^[41] The first extension was not granted to give Levi's time to decide on whether to file its petition, but to give Levi's more time to gather further evidence and to finalize the petition.^[42]

THE PETITION

Levi's filed the present petition for review on *certiorari*^[43] to challenge the CA resolutions which dismissed Levi's CA petition for review.

Levi's principally argues that there are compelling reasons to grant the second motion for extension.^[44]

Levi's avers that its SPA had already been executed and notarized as early as April 3, 2012.^[45] In order to comply with Section 24,^[46] Rule 132 of the Revised Rules on Evidence, Levi's sought the Philippine consulate's authentication of the notarized SPA.^[47] Levi's, however, did not anticipate that the Philippine Consulate Office would be closed during the Holy Week and the *Araw ng Kagitingan* holiday since these were regular working days in the United States.^[48]

Levi's also avers that there was no point for the CA to deny the second motion for extension since the CA did not promptly act on Levi's first motion for extension and no prejudice would accrue to the respondent by granting the second motion for extension.^[49] Levi's pointed out that the Court belatedly granted the first motion for extension only on June 1, 2012, or only *after* three and a half months since Levi's filing of the CA petition for review on April 27, 2012.^[50]

THE ISSUE

The core issue of the petition is whether or not the CA gravely erred in dismissing Levi's CA petition for review on the ground that Levi's filed the CA petition beyond the extended reglementary period.

OUR RULING

We **deny** the petition for lack of merit.

Rule 43 of the Rules of Court governs the appeals from quasi-judicial agencies, such as the IPO, to the CA. Section 1 of Rule 43 provides:

Section 1. Scope. — This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized **by any quasi-judicial agency in the exercise of its quasi-judicial functions.** Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, **Bureau of Patents, Trademarks and Technology Transfer,** National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Invention Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law. (emphases supplied)

Section 4, Rule 43 of the Rules of Court provides for the period to appeal to the CA from the judgments or orders of quasi-judicial agencies:

Section 4. Period of appeal. — The appeal shall be taken within fifteen (15) days from notice of the award, judgment, final order or resolution, or from the date of its last publication, if publication is required by law for its effectivity, or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency *a quo*. Only one (1) motion for reconsideration shall be allowed. Upon proper motion and the payment of the full amount of the docket fee before the expiration of the reglementary period, **the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.** (emphasis and underscoring supplied)

The rule is clear that an appeal to the CA must be filed within a period of fifteen (15) days. While an extension of fifteen (15) days and a further extension of another fifteen (15) days may be requested, the second extension may be granted at the CA's discretion and only for the most compelling reason.

Motions for extensions are not granted as a matter of right but in the sound discretion of the court, and lawyers should never presume that their motions for extensions or postponement will be granted or that they will be granted the length