

# Intellectual property law



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Digests Intellectual Property Law Michael Vernon Guerrero Mendiola 2004  
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 Philippines license. Some Rights Reserved. Table of Contents Asia Brewery  
 vs. CA, GR 103543, 5 July 1993 ..... 1 Western Equipment vs. Reyes, GR  
 27897, 2 December 1927 ..... 1 Philips Export BV vs. CA, Gr 96161, 21  
 February 1992 ..... 2 Asari Yoko v. Kee Boc, GR L-14086, 20 January  
 1961 ..... 2 Sterling Products Vs. Farbenfabriken Bayer, GR L-19906, 30  
 April 1969 ..... 3 Kabushi Kaisha Isetan vs. IAC, GR 75420, 15 November  
 1991 ..... 3 Emerald Garment v CA, GR 100098, 29 December 1995  
 ..... 4 Converse Rubber vs. Universal Rubber, GR L-27906, 8 January  
 1986 ..... 4 Pagasa Industrial vs. CA, GR L-54158, 31 August 1984  
 ..... 5 La Chemise Lacoste vs. Fernandez, GR 63796-97, 21 May 1984  
 ..... 5 Fruit of the Loom vs. CA, GR L-32747, 29 November 1984 .....  
 6 Del Monte vs. CA, GR L-78325, 23 January 1990 ..... 6 246 Corporation  
 v. Daway, GR 157 216, 20 November 2003 ..... 7 Pearl & Dean v.  
 Shoemart, GR 148222, 15 August 2003 ..... 7 This collection contains  
 fourteen (14) cases summarized in this format by Michael Vernon M.  
 Guerrero (as a junior law student) during the First Semester, school year  
 2004-2005 in the Intellectual Property Law class under Atty. Arnaldo Espinas  
 at the Arellano University School of Law (AUSL). Compiled as PDF, July 2011.  
 Berne Guerrero entered AUSL in June 2002 and eventually graduated from  
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 (April 2007). www.berneguerrero.com Digests (Berne Guerrero) [1] Asia  
 Brewery vs. CA GR 103543, 5 July 1993; En Banc, Grino-Aquino (J) Facts: In  
 1988, san Miguel Corporation filed a complaint against Asia Brewery Inc. for  
 infringement of trademark and unfair competition on account of the latter's  
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Beer Pale Pilsen or Beer na Beer product which has been competing with the former's San Miguel Pale Pilsen for a share of the local beer market. The trial court ruled in favor of Asia Brewery. The appellate court, however, overturned the trial court's ruling. Asia Brewery appealed. Issue: Whether Asia Brewery is guilty of unfair competition, arising from the allegedly "confusing similarity" in the general appearance of ABI's Beer Pale Pilsen against SMC's San Miguel Pale Pilsen. Held: No. The dominant feature of SMC's trademark is "San Miguel Pale Pilsen" while ABI's is "Beer Pale Pilsen". The word "Beer" does not appear in SMC's product, nor the words "San Miguel" appear in ABI's product. Neither the sound, spelling or appearance can Beer Pale Pilsen be said to be confusingly similar to San Miguel Pale Pilsen. San Miguel does not have exclusive rights to the generic or descriptive words "pale" and "pilsen". Neither does it have the exclusive right to use 320 ml. steinie bottle with white rectangular label. The amber color is a functional feature of the beer bottle as the color prevents the transmission of light and provides the maximum protection to beer. The bottle capacity is the standard prescribed by the Metric System Board of the Department of Trade. The white label is the most economical to use and presents the strongest contrast to the bottle. San Miguel cannot claim monopoly to such features as the protection provided by law is confined to non-functional features. Further, Beer Pale Pilsen is not being passed off as San Miguel Beer Pale Pilsen. It does not result to confusion inasmuch as beer is ordered by brand, and is not taken freely from supermarket shelves. The points of dissimilarity of the products outnumber their points of similarity. The appellate court is correct in its finding that Asia Brewery does not infringe upon SMC's trademark nor does it commit unfair competition. [2] Western Equipment vs. Reyes GR 27897, 2

December 1927; En Banc, Johns (J) Facts: In 1925, Western Equipment and Supply Co. applied for the issuance of a license to engage in business in the Philippines. On the other hand, Western Electric Co. has never been licensed to engage in business, nor has it ever engaged in business in the Philippines. Western Equipment, since the issuance of its license, engaged in the importation and sale of electrical and telephone apparatus and supplies manufactured by Western Electric. A local corporation, Electric Supply Co. Inc. has been importing the same products in the Philippines. In 1926, Electric Supply's president, Henry Herman, along with other persons sought to organize a corporation to be known as Western Electric Co. Inc. Western Equipment, et al. filed against Herman to prevent them from organizing said corporation. The trial court ruled in favor of Western Equipment, holding that the purpose of the incorporation of the proposed corporation is illegal or void. Issue: Whether the foreign corporation Western Electric Co. Inc. has right of action to prevent an officer of the government from issuing a certificate of incorporation to Philippine residents who attempt to pirate the corporate name of the foreign corporation and engage in the same business. Held: Yes. A trademark acknowledges no territorial boundaries of municipalities, states or nations, but extends to every market where the trader's goods have become known and identified by the use of the mark. Intellectual Property Law, 2004 ( 1 ) Digests (Berne Guerrero) Rights to the use of its corporate name or trade name is a property right, a right in rem, which it may assert and protect against the whole world, in any of the courts in the world — even in jurisdictions where it does not transact business — just the same as it may protect its tangible property, real or personal, against trespass or conversion. The trial court was correct in holding that the

purpose of the proposed corporation by Herman, et. al. as fraudulent and contrary to law, as it attempts to unjustly compete with the real Western Electric Co. Inc. and deceive Filipinos into thinking that the goods they propose to sell are goods of manufacture of the real Western Electric Co. [3] Philips Export BV vs. CA Gr 96161, 21 February 1992; Second Division , Melencio-Herrera (J) Facts: Philips Export BV is a foreign corporation organized in Netherlands and not engaged in business in the Philippines. It is the registered owner of the trademark “ Phillips” and “ Phillips Shield Emblem”. Philips Electrical Lamp, Inc. and Philips Industrial Development Inc. besides PEBV, are corporations belonging to the Philips Group of Companies. In 1984, PEVB filed a letter-complaint with the SEC for the cancellation of the word “ Phillips” from Standard Philip’s corporate name. The SEC en banc affirmed the dismissal of PEBU’s complaint by one of its hearing officers. The Court of Appeals dismissed PEVB’s petition for review certiorari, as referred by the Supreme Court. Issue: Whether there is confusing similarity between the corporate names to warrant the removal of “ Philips” in Standard Philip’s corporate name. Held: Yes. The right to exclusive use of a corporate name with freedom from infringement by similarity is determined by priority of adoption. PEBV, et al. have priority in adoption, as Standard Philips was issued a Certificate of Registration 26 years after Philips Electrical and Philips Industrial acquired theirs. A reading from said corporate names, it is obvious that “ Philips” is the dominant word in all companies affiliated with the principal corporation, PEVB. Given that standard Philip’s primary purpose does not prevent it from dealing in the same line of business of electrical devices, products or supplies, as that of Philips Electrical, it can only be said that the subsequent appropriator of the name or one confusingly similar

thereto usually seeks an unfair advantage, a free ride on another's goodwill. Inasmuch as Standard Philips has submitted an undertaking to the SEC " manifesting its willingness to change its corporate name in the event another person, firm or entity has acquired a prior right to the use of the said firm name or one deceptively or confusingly similar to it. Standard Philips must now be held in its undertaking. [4] *Asari Yoko v. Kee Boc* GR L-14086, 20 January 1961; En Banc, Labrador (J) Facts: In 1953, Kee Boc filed a petition for the registration of the trademark " Race" to be used in shirt and undershirts manufactured by him. Opposition was interposed by Asari Yoko Co. Ltd. of Japan on the ground that it was the owner of such trademark both in Japan and in the Philippines. The director of Patents dismissed Asari Yoko's opposition. Hence, the petition for review. Issue: Whether Asari Yoko was the rightful owner of the " Race Brand" trademark. Intellectual Property Law, 2004 ( 2 ) Digests (Berne Guerrero) Held: The trademark" RaceBrand" applied for is exactly the same as the trademark " RaceBrand" applied for is exactly the same as the trademark " RaceBrand" registered in 1937 in Tokyo, Japan. Paper sheets pasted in Kee Boc's boxes covered the words " registered Trademark by the oppositor, thus, is proven conclusively by evidence. No evidence was found whether the trademark was registered by a Japanese in the Philippines before the war to warrant its confiscation under the Trading with the enemy Act. As commercial relations with Japan had existed and continued, and that the goods bearing the trademark entered the Philippines legally, the owner of the trademark is entitled to the right to use the same to the exclusion of others. Existence of formal commercial agreement between the countries is unnecessary for the recognition of trademarks as such is inconsistent with the freedom of trade recognized in

modern times. [5] *Sterling Products Vs. Farbenfabriken Bayer* GR L-19906, 30 April 1969; En Banc, Sanchez (J). Facts: The Bayer Cross in circle “ trademark was registered in Germany in 1904 to Farbenfabriken vorm. Friedr. Bayer (FFB), successor to the original Friedr. Bauyer et. Comp., and predecessor to Farbenfabriken Bayer aktiengesellschaft (FB2). The “ Bayer, and “ Bayer Cross in circle” trademarks were acquired by Sterling Drug Inc. when it acquired FFB’s subsidiary Bayer Co. of New York as a result of the sequestration of its assets by the US Alien Property Custodian during World War I. Bayer products have been known in the Philippines by the close of the 19th century. Sterling Drugs, Inc., however, owns the trademarks “ Bayer” in relation to medicine. FBA attempted to register its chemical products with the “ Bayer Cross in circle” trademarks. Sterling Products International and FBA seek to exclude each other from use of the trademarks in the Philippines. The trial court sustained SPI’s right to use the Bayer trademark for medicines and directed FBA to add distinctive word(s) in their mark to indicate their products come from Germany. “ Both appealed. Issue: Whether SPI’s ownership of the trademarks extends to products not related to medicine. Held: No. SPI’s certificates of registration as to the Bayer trademarks registered in the Philippines cover medicines only. Nothing in the certificates include chemicals or insecticides. SPI thus may not claim “ first use” of the trademarks prior to the registrations thereof on any product other than medicines. For if otherwise held, a situation may arise whereby an applicant may be tempted to register a trademark on any and all goods which his mind may conceive even if he had never intended to use the trademark for the said goods. Omnibus registration is not contemplated by the Trademark Law. The net result of the decision is that SPI may hold on its

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Bayer trademark for medicines and FBA may continue using the same trademarks for insecticide and other chemicals, not medicine. The formula fashioned by the lower court avoids the mischief of confusion of origin, and does not visit FBA with reprobation and condemnation. A statement that its product came from Germany anyhow is but a statement of fact. [6] *Kabushi Kaisha Isetan vs. IAC GR 75420*, 15 November 1991; Second Division, *Gutierrez Jr., (J)* Facts: Kabushi Kaisha Isetan is a Japanese corporation, and owner of the trademark “ Isetan” and the “ Young leave design”. Isetann Department Store, on the other hand, is a domestic corporation, and owner fo the trademark “ Isetann” and “ flover design. ” In 1980, Kabushi Kaisha Isetan field petitions for the cancellation of the supplemental registration of Isetann with the Philippine Patent Office. It also filed for the cancellation Intellectual Property Law, 2004 ( 3 ) Digests (Berne Guerrero) of the mark Isetan from the corporate name of Isetann Department Store with the SEC. Both the SEC and the Director of Patents, eventually, ruled against Kabushi Kaisha Isetan. It appealed to the intermediate Appellate Court, which denied the petition for being filed out of time. Issue: Whether Kabushi Kaisha Isetan has the right to seek for the cancellation of the word “ Isetan” from the corporate name of Isetann Department Store. Held: No. A Fundamental principle in Trademark Law is that the actual use in commerce in the Philippines is a pre-requisite to the acquisition of ownership over a trademark or a tradename. Kabushi Kaisha Isetan has never conducted any business in the Philippines. It has never promoted its trademark or tradename in the Philippines. It has absolutely no business goodwill in the Philippines. It is unknown to Filipinos except the very few who may have noticed it while traveling abroad. It has never paid a single centavo of tax to the Philippine



Government. Under the law, it has no right to the remedy it seeks. Isetann Department Store is entitled to use its trademark in the Philippines. [7] Emerald Garment v CA GR 100098, 29 December 1995; First Division, Kapunan (J): Facts: HD Lee Co. owns the trademarks “ Lee”, “ Lee Riders” and “ Lee sures” in both the supplementary and principal registers, as early as 1969 to 1973. In 1981, it filed for the cancellation for the registration of the trademark “ stylistic Mr. Lee”, applied/owned by Emerald Garment Manufacturing Corp. In 1988, the Director of Patents ruled in favor of HD Lee. In 1990, the Court of Appeals affirmed the decision of the Director of Patents. Hence, the petition for review on certiorari. Issue: Whether the trademark “ stylistic Mr. Lee” is confusingly similar to HD Lee’s trademarks to warrant its cancellation in the supplemental Registry. Held: No. Stylistic Mr. Lee is not a variation of the Lee mark. HD Lee’s variation follows the format lee riders, “ leesure”, and “ leeleens” and thus does not allow the conclusion that “ Stylistic Mr. Lee” is another variation under HD Lee’s mark. Although on stylistic Mr. Lee’s label, the word “ lee” is prominent, the trademark should be considered as a whole and not piecemeal. Further, “ Lee” is a surname. Personal names nor surnames cannot be monopolized as trademarks or tradenames as against others of the same name or surname. Furthermore, inasmuch as Emerald Garment has shown the use of stylistic Mr. Lee since 1975 through sales invoice from stores and retailers; and that HD Lee was not able for transactions period to 1981; the Supreme Court allowed the use of stylistic Mr. Lee by Emerald Garment. [8] Converse Rubber vs. Universal Rubber GR L-27906, 8 January 1986; Second Division, Fernan (J): Facts: Universal Rubber Products filed an application with the Patents office for the registration of the trademark “ Universal Converse and Device” used on <https://assignbuster.com/intellectual-property-law-2/>

rubber shoes and rubber slippers. Converse Rubber Corp. filed its opposition on the ground that the trademark is confusingly similar to the word “converse” which was part of its corporate name, and which would result in injury to its business reputation and goodwill. The director of Patents dismissed Converse Rubber’s opposition. With its motion for reconsideration denied, it filed a petition for review with the Supreme Court. Issue: Whether Universal Rubber can appropriate “Converse”. Intellectual Property Law, 2004 (4) Digests (Berne Guerrero) Held: No. Converse Rubber has earned a business reputation and goodwill in the Philippines. The word “converse” has been associated with its products, “converse chuck Taylor,” “Converse All Star,” “All Star Converse Chuck Taylor,” or “Converse Shoes Chuck and Taylor.” “Converse” has grown to be identified with Converse rubber products and has acquired a second meaning within the context of trademark and tradename laws. There is confusing similarity between “Universal converse and Device” and “Converse chuck Taylor” and “All Star Device” which would confuse the public to the prejudice of Converse Rubber’ inasmuch as “Universal Converse and Device” is imprinted in a circular manner on the side of its rubber shoes, similar to that of “Converse Chuck Taylor.” [9] Pagasa Industrial vs. CA GR L-54158, 31 AUGUST 1984; En Banc, Aquino (J) Facts: Yoshida Kogyo Kabushiki Kaisha was issued a certificate of Registration in 1961 for the trademark YKK for slide fastener and zippers. The trademark is claimed to have been used since 1950. Notwithstanding the prior registration, a certificate of registration was issued to Pagasa Industrial for the same trademark for zippers in 1966. In 1975, Yoshida asked the Director of Patents to cancel the registration of Pagasa, which it did. Pagasa appealed. The appellate court affirmed the cancellation. Pagasa

appealed to the Supreme Court. Issue: Whether Pagasa is entitled to the trademark YKK. Held: No. Pagasa has not shown any semblance of justification for usurping the trademark YKK. In fact, Pagasa knew prior to 1968 that Yoshida was the registered owner and user of the YKK trademark, which is an acronym of its corporate name. The registration of Pagasa was admittedly a mistake. Pagasa's application should have been denied outright. Further, Pagasa's knowledge of the trademark's prior use precludes the application of the equitable principle of laches, estoppel and acquiescence. He who comes into equity must come with clean hands. [10] *La Chemise Lacoste vs. Fernandez* GR 63796-97, 21 May 1984; First Division, Gutierrez Jr. (J) Facts: La chemise Lacoste is a French corporation and the actual owner of the trademarks " Lacoste, " " Chemise Lacoste, " " Crocodile Device" and a composite mark consisting of the word " Lacoste" and a representation of a crocodile/alligator, used on clothings and other goods sold in many parts of the world and which has been marketed in the Philippines (notably by Rustans) since 1964. In 1975 and 1977, Hemandas Q. Co. was issued certificate of registration for the trademark " Chemise Lacoste and Q Crocodile Device" both in the supplemental and Principal Registry. In 1980, La Chemise Lacoste SA filed for the registration of the " Crocodile device" and " Lacoste". Games and Garments (Gobindram Hemandas, assignee of Hemandas Q. Co.) opposed the registration of " Lacoste. " In 1983, La Chemise Lacoste filed with the NBI a letter-complaint alleging acts of unfair competition committed by Hemandas and requesting the agency's assistance. A search warrant was issued by the trial court. Various goods and articles were seized upon the execution of the warrants. Hemandas filed motion to quash the warrants, which the court granted. The <https://assignbuster.com/intellectual-property-law-2/>

search warrants were recalled, and the goods ordered to be returned. La Chemise Lacoste filed a petition for certiorari. Intellectual Property Law, 2004 ( 5 ) Digests (Berne Guerrero) Issue: Whether the proceedings before the patent office is a prejudicial question that need to be resolved before the criminal action for unfair competition may be pursued. Held: No. The proceedings pending before the Patent Office do not partake of the nature of a prejudicial question which must first be definitely resolved. The case which suspends the criminal action must be a civil case, not a mere administrative case, which is determinative of the innocence or guilt of the accused. The issue whether a trademark used is different from another's trademark is a matter of defense and will be better resolved in the criminal proceedings before a court of justice instead of raising it as a preliminary matter in an administrative proceeding. Inasmuch as the goodwill and reputation of La Chemise Lacoste products date back even before 1964, Hemandas cannot be allowed to continue the trademark " Lacoste" for the reason that he was the first registrant in the Supplemental Register of a trademark used in international commerce. Registration in the Supplemental Register cannot be given a posture as if the registration is in the Principal Register. It must be noted that one may be declared an unfair competitor even if his competing trademark is registered. La Chemise Lacoste is world renowned mark, and by virtue of the 20 November 1980 Memorandum of the Minister of Trade to the director of patents in compliance with the Paris Convention for the protection of industrial property, effectively cancels the registration of contrary claimants to the enumerated marks, which include " Lacoste. " [11] Fruit of the Loom vs. CA GR L-32747, 29 November 1984; Second division, Makasiar (J) Facts: Fruit of the Loom is the registrant of the trademark " Fruit of the

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Loom", while General Garments corp. is the registrant of the trademark "Fruit for Eve." Both trademarks cover clothing. In 1976, k Fruit of the Loom filed with the trial court a complaint for infringement and unfair competition against General Garments. The trial court ruled in favor of Fruit of the Loom. General Garments appealed. The appellate court reversed the trial court's decision. Hence, the petition for review on certiorari. Issue: Whether there was an infringement of the trademark of Fruit of the Loom. Held: No. The trademarks "Fruit of the Loom" and "Fruit for Eve" do not resemble each other as to confuse or deceive an ordinary purchaser. No confusion would arise in the pronunciation of the two marks. Further, the similarities of the competing trademarks are completely lost in the substantial difference in the design and general appearance of their respective hang tags. For one to be confusingly similar to another, the discerning eye of the observer must focus not only on the predominant words but also on the other features appearing in the labels. [12] Del Monte vs. CA GR L-78325, 23 January 1990; First Division, Cruz (J) Facts: Del Monte granted Philippine Packing corp. the right to manufacture, distribute and sell in the Philippine various products under the Del Monte trademark and logo. Del Monte was able to acquire certificate of registration for its marks "del monte" and its logo; besides the Del Monte catsup bottle configuration. Years later, Sunshine Sauce Manufacturing acquired certificate of registration for the logo of its Sunshine Fruit Catsup. Sunshine's product is contained in various bottles, including Del Monte bottles. Having received reports that Sunshine was using its exclusively designed bottles and a logo confusingly Intellectual Property Law, 2004 ( 6 ) Digests (Berne Guerrero) similar to Del Monte's PhilPack warned sunshine to desist from doing so. Ignored, PhilPack and Del Monte sued. The trial court <https://assignbuster.com/intellectual-property-law-2/>

ruled in favor of sunshine. The Court of Appeals affirmed the decision. Hence, the petition for certiorari. Issue: Whether the Sunshine label is a colorable imitation of the Del Monte trademark. Held: Yes. The predominant colors used in both labels are green and red orange. The word “ catsup” in both bottles is printed in white and the print/letter style is the same. Although the logo of sunshine is not a tomato, it approximates that of a tomato. The person who infringes a trademark does not normally copy out but only makes colorable changes, employing enough points of similarity to confuse the public and enough points of differences to confuse the courts. When a manufacturer prepares to package his product, he has before him a boundless choice of words, phrases, color and symbols sufficient to distinguish his product from others. When sunshine chose, without reasonable explanation, to use the same colors and letters as used by Del Monte, when the field of selection is so broad, the inevitable conclusion is that it was done deliberately to deceive. Further, despite the many choices available to it, Sunshine opted to use Del Monte’s bottle to market a product which PhilPack also produces, notwithstanding the caution “ Del Monte Corporation, not to be refilled. ” This shows Sunshine’s bad faith and its intention to capitalize<sup>3</sup> on the reputation of Del Monte, and pass off its product as that of the latter. [13] 246 Corporation v. Daway GR 157 216, 20 November 2003; First division, Ynares-Santiago Facts: In 1998, Montres Rolex SA and Rolex Centre Phil. Ltd., owners and proprietors of Rolex and Crown Device filed against 246 Corporation, doing business as Rolex Music Lounge, a suit for trademark infringement and damages. In 2000, 246 Corp. filed a motion for preliminary hearing on its affirmative defense; which the court thereafter issued a subpoena ad testificandum to Atty. Atienza.

Montres Rolex opposed, and the trial court quashed the subpoena. 246 corp. filed a petition for certiorari before the Court of Appeals, which was dismissed. Hence, the petition for review on certiorari. Issue: Whether the junior use of a registered mark on entirely different goods subsists. Held: The rule, that there is no infringement in the use of a ' junior user of the registered mark on the entirely different goods, has been modified b Section 123. 1 (f) of RA 8293 (Intellectual Property code). His use is precluded when that the mark is well known internationally and in the Philippines, the use of the mark would indicate a connection or relationship between the user and the registrant, and that the interests of the wellknown mark are likely to be damaged. The court however cannot resolve the merits considering the facts as to the existence/absence of the requisites should be addressed in a full-blown hearing and not on a mere preliminary hearing. [14] Pearl & Dean v. Shoemart GR 148222, 15 August 2003; Third division, Corona (J) Facts: Pearl & Dean is a corporation engaged in the manufacture of advertising display units (Poster Ads) referred as light boxes. It acquired a Certificate of Copyright Registration over the illuminated display units, and acquired trademark for " Poster Ads". Pearl & Dean negotiated with Shoemart for the lease and installation of the light boxes in Shoemart Malls. After Pearl & Dean's contract was rescinded, exact copies of its light b oxes were installed in various SM malls (fabricated by Metro Industrial Services, and later EYD Intellectual Property Law, 2004 ( 7 ) Digests (Berne Guerrero) Rainbow Advertising Corp.) Pearl & Dean sent a letter to Shoemart and it sister company. North EDSA Marketing, to cease using the light boxes and to remove them from the malls, and demanded the discontinued use of the trade mark " Poster Ads. " Unsatisfied with the compliance of its demands,

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Pearl & Dean sued. The trial court ruled in favor of Pearl & Dean, while the appellate court reversed the decision of the trial court. Issue: Whether Pearl & Dean's copyright registration for its light boxes and the trademark registration of "Poster Ads" preclude Shoemart and North Edsa Marketing from using the same. Held: No. Pearl & Dean secured its copyright under the classification class "o" work. This being so, its protection extended only to the technical drawings and not to the light box itself. Pearl & Dean cannot exclude others from the manufacture, sale and/or commercial use over the light boxes on the sole basis of its copyright, certificate over the technical drawings. It cannot be the intention of the law that the right of exclusivity would be granted for a longer time (30 years in copyright, and 17 years in patent) through the simplified procedure of copyright registration with the National Library, without the rigor of defending the patentability of its "invention" before the IPO and the public. On the other hand, there has been no evidence that Pearl & Dean's use of "Poster Ads" was distinctive or well known. "Poster Ads" was too generic a name to identify it to a specific company or entity. "Poster Ads" was generic and incapable of being used as a trademark because it was used in the field of poster advertising, the very business engaged by Pearl & Dean. Furthermore, Pearl & Dean's exclusive right to the use of "Poster Ads" is limited to what is written in its certificate of registration. Shoemart, et. al. cannot be held liable for the infringement of the trademark. Intellectual Property Law, 2004 ( 8 )