CITRUS WORLD INC., Opposer-Appellant,	**APPEAL NO. 14-05-05**
-versus-	**IPC NO. 14-2004-00129** **Opposition to:** **App. Serial No. 4-2002-000863** **Date Filed: 31 January 2002**
GRAND EAST EMPIRE CORPORATION, Respondent-Applicant-Appellee.	**Trademark:** GROWER'S CHOICE

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DECISION

This concerns the appeal filed by Opposer-Appellant CITRUS WORLD INC. (Appellant)[1] from Order No. 2005-63 (D) dated 21 June 2005 rendered by the Director of the Bureau of Legal Affairs (Director) dismissing the opposition filed by the Appellant to Application Serial No. 4-2002-000863 for the mark GROWER'S CHOICE used for canned sea foods, meats, vegetables, fruits, soups, sauces, gravies, milk, fruit juices, and vegetables oil[2] filed by Respondent-Applicant-Appellee GRAND EAST EMPIRE CORPORATION (Appellee)[3]. The Director dismissed the opposition on the ground that it lacked a certification of non-forum shopping.

Records show that on 31 January 2002, Appellee filed the subject trademark application, and which was, after examination, published on page 130, Volume VII, No. 4 issue of the IPO Gazette[4]. On 30 August 2004, Appellant filed in the Bureau of Legal Affairs an Unverified Notice of Opposition to the Appellee's trademark application. Subsequently, on 26 November 2004, Appellant "filed" a faxed copy of the Verified Notice of Opposition. Four days later, on 30 November 2004, it filed the original copy of the Verified Notice of Opposition, alleging the following:

[1] A foreign corporation duly organized under the law of the United States of America, with offices at 650 Highway 27 North Lake Wales, Florida 32853, U.S.A.
[2] International Classes 29, 30, and 32.
[3] A domestic corporation with principal office at 22 Miller St., San Francisco Del Monte, Quezon City.
[4] Officially released for circulation on 28 July 2004.

"1. The trademark GROWER'S CHOICE being applied for by Respondent-Applicant is confusingly similar to Opposer's trademark Florida's Natural GROWERS PRIDE. The dominant feature or characteristics of Opposer's marks are the words GROWERS PRIDE. When applied to or used in connection with the goods of Respondent-Applicant, the mark GROWER'S CHOICE of Respondent-Applicant will most likely cause confusion, mistake and deception on the part of the purchasing public.

"2. The registration of the trademark GROWER'S CHOICE in the name of Respondent-Applicant will violate Section 123.1, subparagraph (d) of Republic Act No. 8293, otherwise known as the Intellectual Property Code of the Philippines and Section 6bis and other provisions of the Paris Convention for the Protection of Industrial Property to which the Philippines and U.S.A. are parties.

"3. The registration and use by Respondent-Applicant of the trademark GROWER'S CHOICE will diminish the distinctiveness and dilute the goodwill of Opposer's trademark Florida's Natural GROWERS PRIDE.

"4. The registration of the trademark GROWER'S CHOICE in the name of the Respondent-Applicant is contrary to other provisions of the Intellectual Property Code of the Philippines."

On 02 February 2005, Appellee filed its Answer to the Opposition denying the allegations by the Appellant. It also alleged that it is the lawful owner of the subject trademark GROWER'S CHOICE which is not confusingly similar to Appellant's mark GROWER'S PRIDE. Appellee claimed that the specific goods covered by its trademark are different in kind and value to those covered by the trademark of the Appellant. Appellee also argued that the opposition should be dismissed outright, to wit:

"15. The Opposition was not properly verified by a responsible officer of the opposer Citrus World, Inc. The Affiant, DAVID LATHAM, did not even submit with or attach to the Opposition a Board Resolution, Secretary's Certificate and/or Special Power of Attorney authorizing him to verify or execute the verification of the Opposition. Accordingly, the Verified Notice of Opposition should be treated as a mere scrap of paper for failure to comply with the requirements of this Honorable Office.

"16. The Verified Notice of Opposition has no Certification against Forum Shopping. The required certification of non-forum shopping is mandatory and the failure to comply with this requirement shall not be curable but shall be a cause for the dismissal of the Opposition. Therefore, for the failure of the opposer to comply with his mandatory requirement, the instant Opposition should be dismissed outright."

During the Pre-Trial Conference held on 01 March 2005, Appellee moved that the opposition should be dismissed for failure of the Appellant to attach a certification of non-forum shopping. Ordered by the BLA Hearing Officer, the Appellee and the Appellant submitted their position papers on the motion on 10 March 2005 and 12 April

2005, respectively. Appellee reiterated its arguments and sought dismissal of the case, while Appellant argued that the rules and regulations should be liberally construed to carry out the objective of the law and that litigation should be decided on the merits and not on mere technicalities.

On 21 June 2005, the Director issued the assailed Order No. 2005-63 (D), the dispositive portion of which read, as follows:

> "**WHEREFORE**, premises considered, this case is hereby **DISMISSED**. Consequently, trademark application bearing Serial No. 4-2002-00863 for the mark 'GROWER'S CHOICE' filed on January 31, 2002, used for canned sea foods, meats, vegetables, fruits, soups, sauces, gravies, milk, fruit juices and vegetable oil, is hereby **GIVEN DUE COURSE**.
>
> Let the filewrapper of the trademark 'GROWER'S CHOICE' subject matter under consideration be forwarded to the Administrative, Financial and Human Resources Development Services Bureau (AFHRDSB) for appropriate action in accordance with this Order with a copy to be furnished the Bureau of Trademarks (BOT) for information and to update its records.
>
> **SO ORDERED**."

Obviously not satisfied, the Appellant filed the instant appeal alleging that the Director erred, as follows:

> "I.
> "THE DIRECTOR OF THE BUREAU OF LEGAL AFFAIRS ERRED IN STRICTLY APPLYING THE RULES REQUIRING THE CERTIFICATION AGAINST FORUM SHOPPING IN THE SUBJECT OPPOSITION CASE.
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> II.
> "THE DIRECTOR OF THE BUREAU OF LEGAL AFFAIRS ERRED WHEN IT DECIDED THE OPPOSITION CASE ON A MERE TECHNICALITY RATHER THAN DECIDING THE CASE ON THE MERITS.
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> III.
> "THE DECISION OF THE DIRECTOR OF THE BUREAU OF LEGAL AFFAIRS ON RESPONDENT-APPLICANT/APPELLEE'S AFFIRMATIVE DEFENSE OF ABSENCE OF CERTIFICATION AGAINST FORUM SHOPPING WAS MADE CONTRARY TO SECTION 9 (c) RULE 2 OF THE REGULATIONS ON INTER PARTES PROCEEDINGS."

Appellant claims that the Director erred in applying the rules requiring certification of non-forum shopping strictly. According to the Appellant, the assailed order is contrary to well-established principle that procedural laws are liberally construed in order to protect the substantial rights of the parties and to promote substantial justice. Appellant also claims that the order defeated the purpose of the rule which is to focus on

substantive issues, and is contrary to Section 9 (c) of Rule 2 of the Regulations on Inter Partes Proceedings[5] which states that the resolution of all the grounds for dismissal pleaded as affirmative defenses shall be made in the decision on the merits.

For its part, the Appellee counter-argues that the Director was correct and did not commit reversible error in dismissing the opposition for the failure of the Appellant to incorporate, attach or annex the required certification. Appellee contends that under Supreme Court Administrative Circular No. 04-94, the certification against forum shopping must be strictly complied with in the filing of complaints, petitions, applications or other initiatory pleadings in all courts and agencies and that the Supreme Court in several of its decisions ruled that the requirement to file a certificate of non-forum shopping is mandatory. To grant Appellant's appeal, Appellee posits, will surely open the floodgates to every opposer or party in the future who fails to comply with the rules on the certification of non-forum shopping to equally demand for the relaxation of the application of said rules undermining and rendering nugatory the policy laid down in Administrative Circular No. 04-94 and Section 5, Rule 7 of the Rules of Court. Appellee claims that what Appellant is really demanding from this Office is not the relaxation of a procedural rule/requirement but to exempt it from complying with a mandatory requirement provided by the rules.

This Office's Ruling:

This Office finds no cogent reason to disturb the appealed order.

The Regulations on Inter Partes Proceedings provides that in the conduct of hearing of Inter Partes Cases, the Rules of Court may be applied suppletorily.[6] Rule 7 Section 5 of the Rules of Court provides that:

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[5] Section 9 (c) of Rule 2 of the Regulations on Inter Partes Proceedings provides that:
"(c) No motion to dismiss – No motion to dismiss shall be entertained. Instead, all grounds for dismissal shall be pleaded as affirmative defenses, the resolution of which shall be made in the decision on the merits. The Hearing Officer may, for good cause shown, conduct a hearing on any of the affirmative defenses if this will promote the expediency in the resolution of the pending case."

[6] See Rule 2 Section 5 of the Regulations on Inter Partes Proceedings as amended by Office Order No. 79, Series of 2005. This provision is similar to Rule 2 Section 6 of the Regulations on Inter Partes Proceedings before the effectivity of Office Order No. 79, Series of 2005.

"Sec. 5. Certification against forum shopping.- The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

"Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions."

By the clear language of the second paragraph of Rule 7, Section 5 of the Rules of Court, the requirement to file a certification of non-forum shopping is mandatory,[7] to which failure to comply with shall cause the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. In this instance, it is an undisputed fact that the Appellant failed to file the required certification of non-forum shopping.

Forum shopping has its roots in the rule that a party should not be allowed to pursue simultaneous remedies in two (2) different fora for it wreaks havoc to the rule on orderly procedure.[8] The requirement to file a certification of non-forum shopping was, therefore, promulgated to prevent the multiple filing of petitions or complaints involving the same issues in other tribunals or agencies.[9] Otherwise, there would be no end to litigation as one party hops from one tribunal or forum to another in hope of securing a favorable decision or relief. The Director is, thus, not in error to dismiss the case without prejudice for failure of the Appellant to file a certification on non-forum shopping.

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[7] See also Melo, et al vs. Court of Appeals, et al , G. R. No. 123686, 16 November 1999.
[8] Herrera, Remedial Law Vol. I, 2000 edition, p. 504.
[9] Barroso vs. Ampig, et al., G.R. No. 138218, 17 March 2000.

Under the rules of procedure in inter partes case, the Director is authorized to adopt such mode of proceedings which is consistent with the requirement of fair play and conducive to the just, speedy and inexpensive disposition of cases.[10] In this case, the Director correctly decided to adopt a proceeding that would resolve first the affirmative and special defense raised by the Appellee, in particular, the defense against the failure of the Appellant to file the certification of non-forum shopping. If the resolution of this issue would be made only in the decision on the merits, the rationale of having a certification of non-forum shopping would certainly be defeated and the policy which it seeks to achieve would be undermined. No less than the Supreme Court in the Melo et al vs. Court of Appeals et al[11] case, held that:

> "We are not unmindful of the adverse consequence to private respondent of a dismissal of her complaint, nor of the time, effort, and money spent litigating up to this Court solely on a so-called technical ground. Nonetheless, we hold that compliance with the certification requirement on non-forum shopping should not be made subject to a party's afterthought, lest the policy of the law be undermined."

This Office concurs with the Appellee's position that the Appellant does not only seek relaxation of the rules but actually, an exemption from them.[12] As correctly observed by the Appellee,

> "The records would show that the Appellant did not even make an attempt to at least comply with the requirements of Supreme Court Circular No. 04-94 and Section 5, Rules 7, of the Rules of Court. Even when it was made aware of the defect in its Notice of Opposition, the Appellant never even attempted to cure the defect by amending its Notice of Opposition to incorporate a certification against forum shopping. The Appellant by choosing to ignore to amend its Notice of Opposition does not give this Honorable Office any leeway to afford it some form of liberality or relaxation of procedural rules." [13]

While it is true that there were those cases wherein the Supreme Court excused non-compliance with the requirements of the certification of non-forum shopping, there were special circumstances or compelling reasons which made the strict application of

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[10] Rule 2 Section 5 of the Regulations on Inter Partes Proceedings as amended by Office Order No. 79, Series of 2005.
[11] G. R. No. 123686, 16 November 1999.
[12] COMMENT/OPPOSITION (Re: Opposer's Appeal dated July 15, 2005), p.2.
[13] Ibid.

said Circular clearly unjustified.[14] In the instant case, the Appellant not only failed to cite any reason for its failure to submit the certification of non-forum shopping when it filed its Opposition, it also did not attempt to submit one during the proceedings in the BLA.

WHEREFORE, the appeal is hereby **DENIED** and the Order of the Director of the Bureau of Legal Affairs is **AFFIRMED**.

Let the copy of this Decision be furnished the Director of the Bureau of Legal Affairs for appropriate action, and the trademark application as well as the records be returned to her for proper disposition. Further, let the Directors of the Bureau of Trademarks, the Administrative, Financial and Human Resource Development Service Bureau and the Documentation, Information and Technology Transfer Bureau be furnished copies hereof for information and guidance.

SO ORDERED.

APR 12 2006 City of Makati.

ADRIAN S. CRISTOBAL, JR.
Director General

[14] See Melo et al. vs. Court of Appeals et al. G. R. No. 123686, 16 November 1999.