



REPUBLIC OF THE PHILIPPINES

Supreme Court

Manila

THIRD DIVISION

June 7, 2017

G.R. No. 210693**EMERALD GARMENT MANUFACTURING CORPORATION**, Petitioner

vs.

THE H.D. LEE COMPANY, INC., Respondent**R E S O L U T I O N****REYES, J.:**

Before the Court is the Petition for Review on *Certiorari* ¹ filed by Emerald Garment Manufacturing Corporation (Emerald) against The H.D. Lee Company, Inc. (H.D. Lee) to assail the Decision ² and Resolution ³ of the Court of Appeals (CA), dated April 8, 2013 and January 6, 2014, respectively, in CA-G.R. SP No. 126253. The CA reversed the Decision ⁴ dated August 10, 2012, of the Intellectual Property Office's (IPO) then Director General Ricardo R. Blancaflor (DG Blancaflor) in Inter Partes Case No. 14-2007-00054, approving H.D. Lee's application for registration of the trademark "*LEE & OGIVE CURVE DESIGN*."

On December 21, 2001, H.D. Lee filed before the IPO an application for the registration of the trademark, "*LEE & OGIVE CURVE DESIGN*." H.D. Lee claimed that the said mark was first used in the Philippines on October 31, 1996. Relative thereto, Application No. 4-2201-009602, on outer clothing categorized under Class 25, which includes jeans, casual pants, trousers, slacks, shorts, jackets, vests, shirts, blouses, sweaters, tops, skirts, jumpers, caps, hats, socks, shoes, suspenders, belts and bandannas, was filed. Within three years from the filing of the application, H.D. Lee submitted to the IPO a Declaration of Actual Use of the mark. ⁵

H.D. Lee's application was published in the Intellectual Property Philippines' Electronic Gazette for Trademarks, which was belatedly released on January 5, 2007. ⁶

Emerald opposed H.D. Lee's application; hence, Inter Partes Case No. 14-2007-00054 arose. Emerald argued that the approval of the application will violate the exclusive use of its marks, "*DOUBLE REVERSIBLE WA VE LINE*," and "*DOUBLE CURVE LINES*," which it has been using on a line of clothing apparel since October 1, 1973 ⁷ and 1980, respectively. Further, Section 123.I (d) ⁸ of Republic Act No. 8293, otherwise known as the Intellectual Property Code (IPC), will likewise be breached because the "*LEE & OGIVE CURVE DESIGN*" is confusingly similar or identical to the "*DOUBLE CURVE LINES*" previously registered in Emerald's name. ⁹

Refuting Emerald's opposition, H.D. Lee insisted that it is the owner and prior user of "*LEE & OGIVE CURVE DESIGN*." H.D. Lee maintained that it initially used the said mark on February 18, 1946, and registered the same in the United States of America (USA) on April 10, 1984 under Registration No. 1,273,602. The mark has been commercially advertised and used all over the world as well. ¹⁰

Decision of the IPO's Director of the Bureau of Legal Affairs On February 27, 2009, the then Director of Bureau of Legal Affairs (BLA), Atty. Estrellita Beltran Abelardo (Atty. Abelardo), denied H.D. Lee's application. In its Decision, ¹¹ Atty. Abelardo explained that H.D. Lee established neither its ownership of the mark "*LEE & OGIVE CURVE DESIGN*" nor its international reputation, viz.:

The evidence on record disclose that on December 21, 2001, when [H.D. Lee] filed Application No. 4-2001-009602, [Emerald's] Application Serial No. 4-65682 for the re-registration of the mark "DOUBLE CURVE LINES" was already pending as it was filed as early as September 6, 1988 x x x. In addition, long before December 21, 2001, [Emerald] adopted and has been using in commerce since January 8, 1980 the trademark "DOUBLE CURVE LINES" together with its other registered marks x x x up to the present x x x. Thus[,] pursuant to Section 2-A of Republic Act No. 166,¹² as amended, the law then in force and effect, [Emerald] has become the owner of the mark "DOUBLE CURVE LINES" through continuous commercial use thereof. On May 5, 1981, said "DOUBLE CURVE LINES" was registered in favor of [Emerald] in the Supplemental Register under Registration No. 5513 x x x, and on May 31, 1982, in the Principal Register under Registration N[o]. 30810 x x x.

x x x x

The evidence on record also discloses that on December 21, 2001, when [H.D. Lee] filed its opposed application, [Emerald's] Application Serial No. 70497 for the registration of the mark DOUBLE REVERSIBLE WA VE LINE was also pending, the same having been filed on January 8, 1990 x x x. In addition, long before December 21, 2001, [Emerald] adopted and has been using in commerce since October 1, 1973, the trademark "DOUBLE REVERSIBLE WAVE LINE[.]" together with its other registered marks x x x, up to the present x x x. Thus, pursuant to Section 2-A of Republic Act No. 166, as amended, the law then in force and effect, [Emerald] has become the owner of the mark "DOUBLE REVERSIBLE WA VE LINE" through continuous commercial use thereof.

x x x x

The near resemblance or confusing similarity between the competing marks of the parties is further heightened by the fact that both marks are used on identical goods, particularly, on jeans and pants falling under Class 25.

x x x x

Moreover, it is a fundamental principle in Philippine Trademark Law that only the owner of a trademark is entitled to register a mark in his[/her]/its name and that the actual use in commerce in the Philippines is a prerequisite to the acquisition of ownership over a trademark. The evidence on record clearly and convincingly shows (sic), that [Emerald] adopted and has been using the mark DOUBLE REVERSIBLE WA VE LINE since **October 1, 1973** x x x and the mark DOUBLE CURVE LINES since **January 8, 1980** x x x. Although [H.D. Lee] claimed in its Answer that it first used the LEE & OGIVE CURVE DESIGNB [sic] trademark in the [USA] on or about February 18, 1946 x x x, it did not present any evidence to prove such claim of first use. The evidence presented by [H.D. Lee] shows that it entered into a License Agreement with Authentic American Apparel, Inc., only on **January 1, 1996** x x x and its yearly sales reports started only from **October 1996** x x x.

[H.D. Lee] also claimed in its Answer that it registered its LEE & OGIVE CURVE DESIGN mark in the [USA] on April 10, 1984 under Registration No. 1,273,602 x x x. [H.D. Lee], however, failed to submit a duly certified and authenticated copy of its certificate of registration for Registration No. 1,273,602. In fact, [H.D. Lee] did not submit any certified and authenticated certificate of registration of its mark LEE & OGIVE CURVE DESIGN issued anywhere else. x x x.

x x x x

Examination of the documentary evidence submitted by [H.D. Lee] will show that it did not submit any certified and authenticated certificate of registration of its mark anywhere else in the world; likewise, it did not submit any proof of use of its mark outside of the Philippines, while its use in the Philippines appears to have started only in October 1996 x x x, twenty[-]three (23) years after [Emerald] started using its **DOUBLE REVERSIBLE WA VE LINE (Back Pocket Design)** on **October 1, 1973** x x x. [H.D. Lee] did not submit any proof of having promoted and advertised its mark outside the Philippines, while in the Philippines[,] x x x it started preparing its yearly advertising expenditures only on January 2000 x x x. None of its advertising clippings submitted in evidence appeared before 2003 x x x.¹³ (Citations omitted, underlining ours and emphasis in the original)

Decision of the IPO's DG

On appeal, DG Blancaflor rendered on August 10, 2012 a Decision¹⁴ reversing the findings of Atty. Abelardo based on the grounds cited below:

[H.D. Lee] has established by substantial evidence that it is the owner of LEE & OGIVE CURVE DESIGN. It has adduced evidence showing that it has registered and/or applied in 115 countries around the world the mark LEE & OGIVE CURVE DESIGN and that it secured a certificate of

registration for this mark in the [USA] on April 1984. [H.D. Lee] also submitted proof of its advertising activities and sales invoices.

That [Emerald] has trademark applications and/or registrations in the Philippines on marks similar to [H.D. Lee] and which were filed and/or registered earlier than [H.D. Lee's] trademark application is not sufficient to overcome the pieces of evidence proving [H.D. Lee's] ownership of LEE & OGIVE CURVE DESIGN. It is not the application or the registration that confers ownership of a mark but it is the ownership thereof that confers the right to registration.

Moreover, [H.D. Lee] has shown that LEE & OGIVE CURVE DESIGN is a well-known mark. x x x

x x x x

[H.D. Lee's] pieces of evidence satisfy a combination of the criteria x x x such as the duration, extent and geographical area of any use of the mark, the extent to which the mark has been registered in the world, and the extent to which the mark has been used in the world. [H.D. Lee] cited the over 100 countries where it has registered and/ or applied for the registration of LEE & OGIVE CURVE DESIGN. The affidavits of Helen L. Winslow and Wilfred T. Siy explained the long, continuous and global use of [H.D. Lee's] mark. These pieces of evidence are sufficient enough to consider [H.D. Lee's] mark as well-known internationally and in the Philippines.

Furthermore, there is nothing in the records which explained how [Emerald] came to use a highly distinctive sign such as a "Back Pocket Design" or the "Double Curve Lines" which are identical or confusingly similar to the well-known mark LEE & OGIVE CURVE DESIGN. The absence of any explanation on how [Emerald] conceived these marks gives credence to the position that [H.D. Lee] is the owner and creator of LEE & OGIVE CURVE DESIGN and is, therefore, entitled to the registration of this mark. ¹⁵ (Citations omitted and underlining ours)

Ruling of the CA

Undaunted, Emerald filed a petition for review ¹⁶ under Rule 43 of the Rules of Court, which the CA denied in the herein assailed decision. ¹⁷

According to the CA, H.D. Lee substantially complied with the procedural requirements in filing before the IPO a petition for registration of the mark "*LEE & OGIVE CURVE DESIGN*."

Further, the CA considered the following factors in H.D. Lee's favor: (1) while the mark "*LEE & OGIVE CURVE DESIGN*" is registered only in India and Greece, with pending application in the Philippines, the "*OGIVE CURVE DESIGN*" is registered and/or applied

for registration in about 100 countries; ¹⁸ (2) the inconsistent dates, to wit, 1946 and 1949, which H.D. Lee claimed as the year when it initially used the mark "*LEE & OGIVE CURVE DESIGN*," will not affect its position as being the first and prior user thereof for at least 20 years before Emerald utilized the marks "*DOUBLE REVERSIBLE WA VE LINE*" and "*DOUBLE CURVE LINES*" in 1973 and 1980, respectively; ¹⁹ (3) registration in the Principal Register is limited to the actual owner of the trademark, hence, the Certificate of Registration issued to Emerald by the IPO on May 31, 1982 covering the mark "*DOUBLE CURVE LINES*," which pre-dated the registration in the USA of the mark "*OGIVE CURVE DESIGN*" on April 10, 1984, merely gave rise to a *prima facie* but rebuttable proof of registrant's ownership of a mark; ²⁰ (4) even if the mark "*LEE & OGIVE CURVE DESIGN*" is not locally registered, it is entitled to protection as a well-known brand under the IPC and international treaties entered into by the Philippines; ²¹ (5) H.D. Lee cannot be blamed regarding the confusing similarity between the marks "*DOUBLE REVERSIBLE WAVE LINE*" and "*OGIVE CURVE DESIGN*" considering that it has been using the latter design for at least two decades earlier than Emerald; ²² and (6) it is of judicial notice that in the 1950s movie, "*Rebel Without a Cause*," James Dean wore H.D. Lee's jeans with the "*OGIVE CURVE DESIGN*" sewn in the back pockets. ²³

Emerald moved for reconsideration, pointing out that in G.R. No. 195415, ²⁴ the Court issued Resolutions, dated November 28, 2012 ²⁵ and January 28, 2013, ²⁶ which denied with finality H.D. Lee's opposition against Emerald's registration of the mark "*DOUBLE REVERSIBLE WAVE LINE*." In the Resolution dated November 28, 2012, the Court's reasons were unequivocal, *viz.*:

First, the evidence proffered by [Emerald] sufficiently proves that it has been actually using the mark "*DOUBLE REVERSIBLE WA VE LINE (Back Pocket Design)*" since October 1973. The sales invoices established actual commercial use of the mark more than two months prior to [Emerald's] application for its registration in 1990.

Second, [H.D. Lee] was not able to prove that the mark "*OGIVE CURVE DEVICE*" was well known internationally and in the Philippines at the time of the filing of [Emerald's] application for registration. For a trademark to be protected, the same must be "well known" in the country where protection is

sought. Such is not the case here, since the sale of garments in the Philippines bearing [H.D. Lee's] mark "OGIVE CURVE DEVICE" began only in 1996. Prior to said date, there was no substantial evidence proving commercial use of goods bearing the mark in the Philippines. ²⁷

In the herein assailed Resolution ²⁸ dated January 6, 2014, the CA denied Emerald's motion for reconsideration. According to the CA, it was belatedly notified of the Court's Resolutions dated November 28, 2012 and January 28, 2013 in G.R. No. 195415 only on April 10, 2013. ²⁹ Further, even if the aforementioned resolutions were promptly brought to the CA's attention, the rule on "*conclusiveness of judgment*" still finds no application. In G.R. No. 195415, the issue was the non-registrability of Emerald's mark "*DOUBLE REVERSIBLE WAVE LINE*" based on the opposer H.D. Lee's claim that "*OGIVE CURVE DESIGN*" is internationally well-known and legally protected by the Paris Convention and other pertinent trademark laws. The issues, which were resolved, centered on the goodwill and prior use of Emerald's mark in the Philippines. ³⁰ On the other hand, in CA-G.R. SP No. 12625, from which the petition now before the Court arose, the issue was the non-registrability of H.D. Lee's mark "*LEE & OGIVE CURVE DESIGN*" for being confusingly similar to the marks "*DOUBLE REVERSIBLE WAVE LINE*" and "*DOUBLE CURVE LINES*," which are registered in Emerald's name. The focal issue is "*LEE & OGIVE CURVE DESIGN*'s" alleged international reputation, hence, the dispensability of its prior use in the Philippines. ³¹

The Proceedings Before the Court

In the instant petition for review on *certiorari*, ³² Emerald argues that the herein assailed decision and resolution are in conflict with the final and executory dispositions rendered in G.R. No. 195415. The Court already upheld the registration of Emerald's mark "*DOUBLE REVERSIBLE WAVE LINE (Back Pocket Design)*," and an Entry of Judgment ³³ was thereafter recorded on March 20, 2013. ³⁴ Further, Emerald's prior application for the registration of its mark "*DOUBLE CURVE LINES*" ³⁵ had likewise been resolved with finality by the IPO DG on June 5, 2008, and the corresponding Entry of Judgment was recorded on October 21, 2008. ³⁶ Hence, the principle of conclusiveness of judgment under Rule 39, Section 47(b) and (c) ³⁷ of the Rules of Court applies. The issues of confusing similarity between the marks involved herein and their prior use had been determined with finality by the Court and the IPO DG. The same issues can no longer be raised before the CA in CA-G.R. SP No. 126253 from which the instant petition arose.

Repetitive as it may be, in G.R. No. 195415, the Court had adjudged that Emerald had prior actual use in the Philippines of the mark "*DOUBLE REVERSIBLE WAVE LINE (Back Pocket Design)*" since October of 1973. In Inter Partes Case No. 3498, the IPO DG had ruled that Emerald started using the mark "*DOUBLE CURVE LINES*" on January 8, 1980. On the other hand, H.D. Lee initially sold in the Philippines garments with the mark "*OGIVE CURVE DEVICE*" only in 1996, and filed an application for the said mark in the USA on November 9, 1981. ³⁸

Emerald likewise emphasizes the following: (1) on January 19, 1990, H.D. Lee applied for the registration of the mark "*OGIVE CURVE DESIGN*," but the same was abandoned with finality as indicated in the IPO's website; ³⁹ (2) contrary to H.D. Lee's representations, the mark "*LEE & OGIVE CURVE DESIGN*" is not registered in the USA, its home country, as USA Registration No. 1,273,602 issued on April 10, 1984 merely covers the mark "*OGIVE CURVE DESIGN*"; ⁴⁰ (3) the mark "*LEE & OGIVE CURVE DESIGN*" was only registered in Greece and India in 1996, while in other countries, the pending applications for registration pertain to "*OGIVE CURVE DESIGN*"; ⁴¹ and (4) in the Declaration of Actual Use filed before the IPO on May 13, 2002, H.D. Lee indicated that it first used the mark "*LEE & OGIVE CURVE DESIGN*" in the Philippines only on October 31, 1996. ⁴²

In the Resolution ⁴³ dated March 24, 2014, the Court initially denied the instant petition for failure to sufficiently show any reversible error committed by the CA.

Emerald moved for reconsideration ⁴⁴ primarily anchored on the argument that the non-registrability of H.D. Lee's mark "*LEE & OGIVE CURVE DESIGN*" is a foregone conclusion in view of the finality of the Resolution issued by the Court relative to the mark "*DOUBLE REVERSIBLE WAVE LINE (Back Pocket Design)*" in G.R. No. 195415.

It was further argued that "*OGIVE CURVE DESIGN*," being the dominant feature of the mark "*LEE & OGIVE CURVE DESIGN*," can no longer be registered by H.D. Lee due to its confusing similarity to Emerald's "*DOUBLE REVERSIBLE WAVE LINE (Back Pocket Design)*" and "*DOUBLE CURVE LINES*." Section 123.I (d) of the IPC precludes registration of a mark identical with another with an earlier filing or priority date. ⁴⁵

Emerald concluded that the principle of conclusiveness of judgment applies. The Court's disposition in G.R. No. 195415 and the IPO's ruling in Inter Partes Case No. 3498, both of which had become final and executory, proscribe H.D. Lee from further pursuing the registration of the mark "*LEE & OGIVE CURVE DESIGN*." ⁴⁶

In the Comment ⁴⁷ on the Motion for Reconsideration, H.D. Lee averred that Emerald merely reiterated the arguments raised in the petition, which had already been judiciously resolved by the Court. ⁴⁸ Further, there exists no identity of issues raised in G.R. No. 195415, on one hand, and in the instant petition, on the other. In G.R. No. 195415, the issue was the non-registrability of the mark "*DOUBLE REVERSIBLE WAVE LINE*" in view of the alleged international use and well-renowned character of the mark "*OGIVE CURVE DESIGN*" In the instant petition, the

issue is the non-registrability of the mark "*LEE & OGIVE CURVE DESIGN*," which has confusing similarity with the already registered marks "*DOUBLE CURVE LINES*" and "*DOUBLE REVERSIBLE WAVE LINE*."⁴⁹

In its Reply,⁵⁰ Emerald insisted that the instant petition still involves the issue of the confusing similarity between "*OGIVE CURVE DESIGN*," on one hand, and "*DOUBLE REVERSIBLE WAVE LINE*" and "*DOUBLE CURVE LINES*," on the other. While H.D. Lee claims that the issue herein is the registrability of "*LEE & OGIVE CURVE DESIGN*," the dominant feature of the mark sought to be registered remains to be the "*OGIVE CURVE DESIGN*." The latter had been among the foci of G.R. No. 195415. Moreover, "*LEE & OGIVE CURVE DESIGN*" is a composite mark, the parts of which can be registered separately. H.D. Lee already registered "*LEE*" in its name, but it abandoned the application to register "*OGIVE CURVE DESIGN*" which was filed before the IPO on January 19, 1990.⁵¹ Emerald also stressed anew that on April 4, 2013, before the promulgation of the herein assailed Decision on April 8, 2013, the CA had been furnished with copies of the Court's Resolutions dated November 28, 2013 and January 28, 2014 in G.R. No. 195415.⁵²

On November 28, 2016, the Court issued a Resolution⁵³ reinstating the instant petition to afford the contending parties ample opportunities to argue their respective stances.

In its Comment⁵⁴ on the instant petition, H.D. Lee once again stresses the lack of identity between the facts and issues presented herein with those resolved in G.R. No. 195415 and Inter Partes Case No. 3498. H.D. Lee posits that G.R. No. 195415 and Inter Partes Case No. 3498 dealt with the registrability of the mark "*OGIVE CURVE DESIGN*," which is distinct and separate from "*LEE & OGIVE CURVE DEVICE*," subject of the instant petition.⁵⁵

Further, even granting for argument's sake that by reason of the similarities of the marks involved, the issues are indeed identical, prior decisions cannot bar a contrary disposition from being subsequently rendered as the result would be the preclusion of any application for registration of variants of a mark.⁵⁶

By way of a Reply⁵⁷ to H.D. Lee's Comment, Emerald reiterates its contentions already raised in the instant petition.

Ruling of the Court

The instant petition is impressed with merit.

The present controversy arose from H.D. Lee's application for the registration of the mark "*LEE & OGIVE CURVE DESIGN*," which was filed in 2001, **pending** the final resolution of Emerald's separate applications for the registration of the marks "*DOUBLE CURVE LINES*" and "*DOUBLE REVERSIBLE WAVE LINE (Back Pocket Design)*."

In 2009, then BLA Director Atty. Abelardo denied H.D. Lee's application for registration of "*OGIVE CURVE DESIGN*" by reason of opposer Emerald's proven prior commercial use of "*DOUBLE REVERSIBLE WAVE LINE*." Back then, Atty. Abelardo already took note of the pendency of Emerald's two separate applications for the registration of "*DOUBLE CURVE LINES*" and "*DOUBLE REVERSIBLE WAVE LINE*."⁵⁸

Despite the foregoing, the IPO's DG and CA proceeded to resolve the case unmindful of the pending applications for the registration of "*DOUBLE CURVE LINES*" and "*DOUBLE REVERSIBLE WAVE LINE*" previously filed by Emerald.

Meanwhile, in G.R. No. 195415, the Court, *via* the Resolutions dated November 28, 2012 and January 28, 2013, made the following findings with finality: (1) Emerald has been using the mark "*DOUBLE REVERSIBLE WAVE LINE (Back Pocket Design)*" since October 1973, with sales invoices proving actual commercial use of the mark more than two months before the application for its registration in 1990; (2) H.D. Lee's sale of its garments in the Philippines only began in 1996; and (3) H.D. Lee failed to prove that the mark "*OGIVE CURVE DEVICE*" was well-known locally and internationally at the time Emerald filed its application for the registration of the mark "*DOUBLE REVERSIBLE WAVE LINE (Back Pocket Design)*."⁵⁹

On the other hand, Emerald's application for the registration of its mark "*DOUBLE CURVE LINES*" had likewise been resolved with finality by the IPO DG on June 5, 2008, and the corresponding Entry of Judgment was recorded on October 21, 2008.⁶⁰

In *Pryce Corporation v. China Banking Corporation*,⁶¹ the Court declared that:

[W]ell-settled is the principle that a decision that has acquired finality becomes immutable and unalterable and may no longer be modified in any respect even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of the land.

The reason for this is that litigation must end and terminate sometime and somewhere, and **it is essential to an effective and efficient administration of justice** that, once a judgment has become final, the winning party be not deprived of the fruits of the verdict. Courts must guard against any

scheme calculated to bring about that result and must frown upon any attempt to prolong the controversies.⁶²

The Court also emphatically instructs anent the concept and application of *res judicata*, viz.:

According to the doctrine of *res judicata*, "a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on all points and matters determined in the former suit."

The elements for *res judicata* to apply are as follows: (a) the former judgment was final; (b) the court that rendered it had jurisdiction over the subject matter and the parties; (c) the judgment was based on the merits; and (d) between the first and the second actions, there was an identity of parties, subject matters, and causes of action.

Res judicata embraces two concepts: (1) bar by prior judgment and (2) conclusiveness of judgment.

Bar by prior judgment exists "when, as between the first case where the judgment was rendered and the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action."

On the other hand, the concept of conclusiveness of judgment finds application "when a fact or question has been squarely put in issue, judicially passed upon, and adjudged in a former suit by a court of competent jurisdiction." This principle only needs identity of parties and issues to apply.⁶³ (Citations omitted)

H.D. Lee argues that the principle of conclusiveness of judgment does not apply since no identity of issue exists between the instant petition, on one hand, and G.R. No. 195415, on the other. The Court finds the foregoing **untenable** as the issues all point to the **registrability of the confusingly similar marks "DOUBLE CURVE LINES," "DOUBLE REVERSIBLE WAVE LINE," and "OGIVE CURVE DESIGN."** Further, H.D. Lee's claim that the instant petition involves the mark "**LEE & OGIVE CURVE DESIGN**" and not "**OGIVE CURVE DESIGN**" is **specious** and a clear attempt to engage into hair-splitting distinctions. A thorough examination of the pleadings submitted by H.D. Lee itself shows that indeed, the focus is the "**OGIVE CURVE DESIGN**," which remains to be the dominant feature of the mark sought to be registered.

The Court needs to stress that in G.R. No. 195415 and Inter Partes Case No. 3498 before the IPO, Emerald had already **established with finality its rights** over the registration of the marks "**DOUBLE CURVE LINES**" and "**DOUBLE REVERSIBLE WAVE LINE**" as against H.D. Lee's "**OGIVE CURVE DESIGN**."

As a final note, the courts are reminded to be *constantly vigilant in extending their judicial gaze to cases related to the matters submitted for their resolution as to ensure against judicial confusion and any seeming conflict in the judiciary's decisions.*⁶⁴

WHEREFORE, the instant petition is **GRANTED**. The assailed Decision and Resolution, of the Court of Appeals dated April 8, 2013 and January 6, 2014, respectively, in CA-G.R. SP No. 126253, are **REVERSED** and **SET ASIDE**. The H.D. Lee Company, Inc.'s application for the registration of the mark "**LEE & OGIVE CURVE DESIGN**" is **DENIED**.

SO ORDERED.

BIEVENIDO L. REYES

Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.

Associate Justice

Chairperson

LUCAS P. BERSAMIN

Associate Justice

FRANCIS H. JARDELEZA

Associate Justice

NOEL GIMENEZ TIJAM

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.

PRESBITERO J. VELASCO, JR.

Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to the 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.

MARIA LOURDES P.A. SERENO

Chief Justice

Footnotes

¹ *Rollo*, pp. 43-107.

² Penned by Associate Justice Samuel H. Gat:rlan, with k;sociate Justices Rebecca L. De GuiaSalvador and Apolinario D. Bruselas, Jr. conrnring; id. al 17-34.

³ *Id.* at 36-41.

⁴ *Id.* at 323-332.

⁵ *Id.* at 18.

⁶ Please see the Decision dated February 27, 2009 of the IPO's Bureau of Legal Affairs, id. at 280.

⁷ Please see CA Decision dated September 29, 2010 in CA-G.R. SP No. 105537; *rollo* (G.R. No. 195415), pp. 10-29, at 11.

⁸ Sec. 123. Registrability. - 123.1. A mark cannot be registered if it:

X X X X

(d) Is identical with a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date, in respect of:

(i) The same goods or services, or

(ii) Closely related goods or services, or

(iii) If it nearly resembles such a mark as to be likely to deceive or cause confusion;

X X X X

⁹ *Rollo*, p. 280.

¹⁰ *Id.* at 18-19.

¹¹ *Id.* at 280-292.

¹² AN ACT TO PROVIDE FOR THE REGISTRATION AND PROTECTION OF TRADE-MARKS, TRADENAMES AND SERVICE-MARKS, DEFINING UNFAIR COMPETITION AND FALSE MARKING AND PROVIDING REMEDIES AGAINST THE SAME. AND FOR OTHER PURPOSES. Approved on Juno 20, 1947.

¹³ *Rollo*, pp. 288-292.

¹⁴ *Id.* at 323-332.

¹⁵ *Id.* at 331-332.

¹⁶ *Id.* at 333-388.

¹⁷ *Id.* at 17-34.

- ¹⁸ *Id.* at 25.
- ¹⁹ *Id.* at 30.
- ²⁰ *Id.* at 30-31.
- ²¹ *Id.* at 31.
- ²² *Id.* at 32.
- ²³ *Id.*
- ²⁴ H.D. Lee v. Emerald
- ²⁵ *Rollo*, pp. 198-199.
- ²⁶ *Id.* at 436-437.
- ²⁷ *Id.* at 198.
- ²⁸ *Id.* at 36-41.
- ²⁹ *Id.* at 37.
- ³⁰ *Id.* at 38.
- ³¹ *Id.* at 38-39.
- ³² *Id.* at 43-107.
- ³³ *Id.* at 202-203.
- ³⁴ *Id.* at 60.
- ³⁵ Inter Partes Case No. 3498 before the IPO.
- ³⁶ *Rollo*, pp. 54, 79.
- ³⁷ *Sec. 47. Effect of judgments or final orders.* - The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows: x x xx
- (b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been missed in relation thereto, conclusive between the parties and their successors in interest, by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity; and
- (c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.
- ³⁸ *Rollo*, pp. 72-75.
- ³⁹ *Id.* at 61, 144.
- ⁴⁰ *Id.* at 91.
- ⁴¹ *Id.* at 90.
- ⁴² *Id.* at 92.
- ⁴³ *Id.* at 562.
- ⁴⁴ *Id.* at 563-580.
- ⁴⁵ *Id.* at 571-572.
- ⁴⁶ *Id.* at 572-575.
- ⁴⁷ *Id.* at 802-810.

⁴⁸ *Id.* at 803.

⁴⁹ *Id.* at 805.

⁵⁰ *Id.* at 817-827.

⁵¹ *Id.* at 820.

⁵² *Id.* at 822.

⁵³ *Id.* at 841-844.

⁵⁴ *Id.* at 847-855.

⁵⁵ *Id.* at 849.

⁵⁶ *Id.* at 850.

⁵⁷ *Id.* at 859-873.

⁵⁸ *Id.* at 288-289.

⁵⁹ *Id.* at 198-199; 436-437.

⁶⁰ *Id.* at 54.

⁶¹ 727Phil. I (2014).

⁶² *Id.* at 15, citing *Siy v. National labor Relations Commission*, 505 Phil. 265, 274 (2005).

⁶³ *Pryce Corporation v. China Banking Corporation*; *id.* at 11-12.

⁶⁴ *Id.* at 27.