

## INTELLECTUAL PROPERTY UPDATE

In *Republic Gas Corporation v. Petron Corporation et, al.* (G.R. No. 194602, June 17, 2013), the Supreme Court held that, aside from trademark infringement, the unauthorized distribution of liquefied petroleum gas (LPG) using tanks that bear the marks of known and duly-registered corporations is an act of unfair competition.

Petron Corporation and Pilipinas Shell are two of the largest bulk suppliers and producers of LPG in the Philippines. Petron is the registered owner of the trademark GASUL and GASUL cylinders used for its LPG products. Shell, on the other hand, is the authorized user of the trademark SHELLANE in connection with the production, sale and distribution of its LPGs.

Petron and Shell received reports that certain entities were engaged in the unauthorized refilling, sale and distribution of LPG cylinders bearing their registered trade-names and trademarks. The National Bureau of Investigation acted upon the letter-complaint of

## FILLING UP ANOTHER'S MARKED CONTAINER ALSO UNFAIR COMPETITION

Petron and Shell and conducted an undercover operation wherein several NBI agents posed as customers of these LPG refillers, including Republic Gas Corporation (REGASCO). After the agents had their empty LPG containers refilled by REGASCO, they were able to obtain a warrant to search REGASCO's premises and confiscate several empty and filled SHELLANE and GASUL cylinders.

The Department of Justice dismissed the criminal complaint contending that refilling of the marked cylinders does not constitute an offense in itself and the consumers knew that cylinders did not come from Petron nor Shell after being re-filled by REGASCO.

The High Tribunal reversed the DOJ and found REGASCO liable not only for trademark infringement but also unfair competition.

Citing *Superior Commercial Enterprises v. Kunnan Enterprises* (G.R. No. 169974, April 20, 2010) which involved KENNEX sporting goods and equipment, the Supreme Court reiterated that unfair competition is defined as the passing off or attempting to pass off upon the public of the goods or business of one person as the goods or business of another with the end and probable effect of deceiving the public. This usually happens when a person uses imitative devices on the general appearance of the goods, which in turn misleads prospective purchasers into buying his products instead of those of his competitors.

Such deceit exists here when REGASCO refilled and sold its LPG containers bearing the registered marks of Petron and Shell. The Court observed that the consumers may be misled into believing that the LPGs contained in the cylinders

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bearing the marks GASUL and SHELLANE are those goods or products of REGASCO when, in fact, they are not.

On the other hand, trademark infringement, which consists of the unauthorized use of a container bearing a registered trademark in connection with the sale, distribution or advertising of goods and services which is likely to cause confusion, mistake or deception among the buyers or consumers, was also present in this case as REGASCO refilled the marked containers without Petron and Shell's consent. The High Court allowed the criminal prosecution of REGASCO's corporate officers to proceed.  
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