



Republic of the Philippines
 Supreme Court
 Baguio City

SECOND DIVISION

LEVI STRAUSS & CO.,
 Petitioner,

G.R. No. 206779

Present:

- versus -

CARPIO, *Chairperson*,
 BRION,
 DEL CASTILLO,
 MENDOZA, and
 LEONEN, *JJ.*

ATTY. RICARDO R. BLANCAFLOR, in
 his official capacity as the DIRECTOR
 GENERAL of the INTELLECTUAL
 PROPERTY OFFICE,
 Respondent.

Promulgated:

20 APR 2016

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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, 2012² and April 17, 2013³ 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

¹ *Rollo*, pp. 9-59.

² *Id.* at 67-70. Penned by Associate Justice Angelita A. Gacutan and concurred in by Associate Justices Fernanda Lampas Peralta and Manuel M. Barrios.

³ *Id.* at 72-74. Penned by Associate Justice Angelita A. Gacutan and concurred in by Associate Justices Fernanda Lampas Peralta and Manuel M. Barrios.

⁴ *Id.* at 12.

On October 11, 1999, Levi's filed an application⁵ 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 rejected⁸ 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 reconsideration¹³ of the Director's decision, which the Director denied¹⁴ for "lack of merit."

On March 24, 2011, Levi's filed its Appeal Memorandum¹⁵ with the respondent IPO Director-General, Atty. Ricardo R. Blancaflor (*Director-General*), and provided a list of certificates of registration¹⁶ in other countries covering "nearly identical TAB DEVICE trademark registrations."

THE IPO DIRECTOR-GENERAL RULING

On March 12, 2012, the Director-General issued a decision¹⁷ 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

⁵ Application No. 4-1999-007715. *Id.* at 129-130.

⁶ *Id.* at 249.

The various goods covered are pants, bib overalls, coveralls, jackets, shirts, shorts, skirts, vests, blouses, denim, diaper covers, dresses, caps, shoes, hats, socks, belts, culottes, t-shirts, suspenders, gloves and scarves, attaché cases, brief cases, wallets, and eyeglass cases.

⁷ *Id.* at 20. The TAB DEVICE is applied to goods by stitching an end of the tab into one of the regular structural seams located on the garment's exterior, with a portion of the tab visibly extending from the edge of the seam.

⁸ *Id.* at 136.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 172.

¹² IPO Director of Trademarks Decision. *Id.* at 170-176.

¹³ *Id.* at 177-187.

¹⁴ Order dated March 7, 2011. *Id.* at 138-139.

¹⁵ *Id.* at 190-239.

¹⁶ *Id.* at 198-210.

¹⁷ *Id.* at 249-253.

¹⁸ *Id.* at 253.

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*

¹⁹ *Id.* at 251.

²⁰ *Id.* at 252.

²¹ *Id.* at 251.

²² *Id.* at 252.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 24.

²⁷ *Id.* at 68.

²⁸ *Id.*

²⁹ *Id.* at 75-77.

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 Resolution³⁴ 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.

³⁰ *Id.* at 75-76.

³¹ *Id.* at 76.

³² *Id.* at 80-122

³³ *Id.* at 24.

³⁴ *Id.* at 67-70.

³⁵ *Id.* at 69.

³⁶ *Id.* at 70.

³⁷ *Id.* at 69.

³⁸ *Id.* at 25.

³⁹ *Id.* at 73.

⁴⁰ *Id.* at 72-74.

⁴¹ *Id.* at 73.

⁴² *Id.* at 73-74.

⁴³ *Id.* at 9-51.

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,

⁴⁴ *Id.* at 27-31.

⁴⁵ *Id.* at 30.

⁴⁶ **Section 24. Proof of official record.** — The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office. (25a) (underscoring supplied).

⁴⁷ *Supra* note 1, at 29-30.

⁴⁸ *Id.* at 30.

⁴⁹ *Id.* at 31.

⁵⁰ *Id.*

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 of time they pray for.⁵¹ Further, the general rule is that a second motion for extension is not granted, except when the CA finds a compelling reason to grant the extension.⁵²

The CA correctly held that Levi's failed to present a compelling reason to grant the second motion for extension.⁵³

Levi's, by its own admission, only decided to proceed with the filing of the CA petition for review after the lapse of the first fifteen-day period for filing.⁵⁴ Levi's late decision necessarily delayed the execution and notarization of the SPA and, consequently, the Philippine Consulate Offices' authentication of the SPA. Levi's cannot excuse its delay by citing its failure

⁵¹ *Cosmo Entertainment Management, Inc. v. La Ville Commercial Corporation*, G.R. No. 152801, August 20, 2004, 437 SCRA 145, 150.

⁵² *Id.* at 150.

⁵³ *Supra* note 1, at 69.

⁵⁴ *Id.* at 73.

to anticipate the Philippine Consulate Office's closure due to the observance of the Philippine holidays. Certainly, Levi's own delay is not a compelling reason for the grant of a second extension to file a CA petition for review.

Levi's cannot also assume that its second motion for extension would be granted since the CA did not immediately act on the first and second motions for extension.

In *Go v. BPI Finance Corporation*,⁵⁵ we held that a party cannot use the CA's delayed action on a motion for extension as an excuse to delay the filing of the pleading as a party cannot make any assumption on how his motion would be resolved. "In fact, faced with the failure to act, the conclusion is that no favorable action had taken place and the motion had been denied."⁵⁶

While the CA's late action on Levi's motions for extension is a response that this Court does not approve of, Levi's cannot use the CA's delay as an excuse to assume that the CA granted its second motion for extension and delay the filing of the CA petition for review.

To stress, the right to appeal is a statutory right, not a natural nor a constitutional right.⁵⁷ The party who intends to appeal must comply with the procedures and rules governing appeals; otherwise, the right of appeal may be lost or squandered.⁵⁸ The perfection of an appeal in the manner and within the period permitted by law is not only mandatory, but jurisdictional, and the failure to perfect that appeal renders the judgment of the court final and executory.⁵⁹

It is true that in a number of instances, the Court has relaxed the governing periods of appeal in order to serve substantial justice.⁶⁰ The instant case, however, does not present itself to be an exceptional case to warrant the relaxation of the Rules on procedure. The following pronouncement is applicable to the present case:

While petitioner pleads that a liberal, not literal, interpretation of the rules should be our policy guidance, nevertheless procedural rules are not to be disdained as mere technicalities. They may not be ignored to suit the convenience of a party. Adjective law ensures the effective enforcement of substantive rights through the orderly and speedy administration of justice. Rules are not intended to hamper litigants or complicate litigation. But they help provide for a vital system of justice where suitors may be heard in the correct form and manner, at the prescribed time in a peaceful though adversarial confrontation before a judge whose authority litigants acknowledge. Public order and our system

⁵⁵ G.R. No. 199354, June 26, 2013, 700 SCRA 125, 131.

⁵⁶ *Id.* at 131.

⁵⁷ *Id.* at 132.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Boardwalk Business Ventures, Inc. v. Villareal*, G.R. No. 181182, April 10, 2013, 695 SCRA 468, 481.

of justice are well served by a conscientious observance of the rules of procedure x x x.⁶¹


Levi's request for the Court to review its case on the merits should be denied as well. The ruling of the IPO became final and executory after the period to appeal expired without the perfection of Levi's appeal. The Court, therefore, may no longer review it.

WHEREFORE, we hereby **DENY** the petition for review on *certiorari*. The resolutions dated August 13, 2012 and April 17, 2013, of the Court of Appeals in CA-G.R. SP No. 123957 are **AFFIRMED**. Costs against the petitioner.

SO ORDERED.


ARTURO D. BRION
 Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
 Associate Justice
 Chairperson

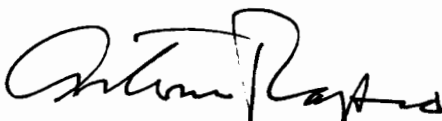

MARIANO C. DEL CASTILLO
 Associate Justice


JOSE CATRAL MENDOZA
 Associate Justice


MARVIC M.V.F. LEONEN
 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.


ANTONIO T. CARPIO
 Associate Justice
 Chairperson

⁶¹ *Cosmo Entertainment Management, Inc., supra* note 51, at 151, citing *Commissioner of Internal Revenue v. Court of Appeals*, 351 SCRA 436.

CERTIFICATION

Pursuant to 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