



**FILCON MANUFACTURING CORPORATION}**  
**(FILCON),** }

Complainant, }

-versus- }

**KIMBERLY SHOE STORE, MAN** }

**HENG, Owner/Proprietor,** }

Respondents. }

x-----x

IPV CASE No. 10-2005-00002  
For: Violation of Republic Act 8293

Decision No. 2007- 05

### DECISION

For decision is the complaint for Violation of Republic Act 8293 filed by Filcon Manufacturing Corporation (Filcon), complainant, a corporation organized and existing under Philippine laws with address at Unit E-2801 C, East Tower, Philippine Stock Exchange Center, Exchange Road, Ortigas Center, Pasig City against Kimberly Shoe Store, a business establishment located at No.706 Rizal Avenue, Sta. Cruz., Manila and private respondent Man Heng, proprietor of respondent Kimberly Shoe Store. Complainant avers the following causes of action:

"4. **Complainant, Filcon Manufacturing Corporation,** is a firm engaged in the business of manufacture, distribution, and sale of rubber shoes and other footwear products under the brand name **CONVERSE.**

5. **Filcon Manufacturing Corporation** has an exclusive licensing agreement with **CONVERSE INC.,** a corporation engaged, among others, in the manufacture and distribution of the rubber shoes and other footwear, T-shirts and hosiery under the world-renowned brand name "**CONVERSE**". In addition to the aforementioned exclusive licensing agreement, **Filcon Manufacturing Corporation** is likewise authorized to institute before the proper court, agency or tribunal the appropriate action for unfair competition, infringement, damages and other violations of Intellectual Property Rights against any and all infringers and unfair competitors. (Attached herewith and made as integral part hereof as **ANNEXES "B" to "B-3"**, inclusive, is the duly authenticated certification issued by "**CONVERSE, INCORPORATED**" in favor of **Filcon Manufacturing Corporation**).

6. **Converse Incorporated** is the owner of the famous trademark "Chuck Taylor", "Converse", "Converse All Star", "Star and

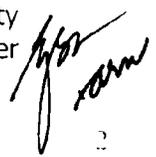
Chevron" and "All Star", Design. The latter's ownership is evidenced by the Certificate of Registration issued by the Intellectual Property Office, formerly the Bureau of Patents, Trademarks and Technology Transfer (BPTTT). (Photocopy of the Certificate of registration issued in favor of **CONVERSE, INCORPORATED** is hereto attached to form integral part hereof as **ANNEXES "C" to "G-4"**).

7. During the last quarter of the year 2004, complainant received numerous and alarming report that rubber shoes and other footwear products under the brand name "**CONVERSE**" with substandard materials and poor quality are openly sold in the market. On the basis of such information, complainant acting through its Executive Vice-President issued an order directing its field personnel to gather information and to conduct test buy on the establishments found to be engaged in selling the aforesaid substandard rubber shoes under the brand name "**CONVERSE**".

8. Acting pursuant to the instruction of the Executive Vice-President, on 21 January 2005, one of the employees of **Filcon Manufacturing Corporation** noticed that **Kimberly Shoe Store** located along Rizal Avenue, Sta. Cruz, Manila, is selling rubber shoes under the brand name '**CONVERSE**'. Considering that there is an outstanding instruction from the Executive Vice-President of herein complainant **Filcon Manufacturing Corporation** to monitor establishments selling substandard rubber shoes under the brand name "**CONVERSE**", the same made an initial examination of the rubber shoes bearing the mark "**CONVERSE**" being sold at respondent establishment, **Kimberly Shoe Store**, owned by a certain **Man Heng**. Based on the initial inspection of the rubber shoes bearing the mark "**CONVERSE**", the rubber shoes offered for sale is counterfeit.

9. To verify the initial examination, the employee of **Filcon Manufacturing Corporation** purchased a pair of "**CONVERSE**" rubber shoes. (Photocopy of the Affidavit of the buyer and the Cash Invoice issued respondent establishment is hereto attached to form part hereof as **ANNEXS "H" and "I"**, respectively). For the sample of rubber shoes bearing the counterfeit mark of "**CONVERSE**", herein complainant reserves the right to present the same in the course of the proceedings and upon the instruction of this Honorable Office.

10. The sample of rubber shoes bearing the counterfeit mark "**CONVERSE**" was immediately forwarded to the Quality Control Department of complainant **Filcon Manufacturing Corporation** for the conduct of appropriate examination. After a solicitous examination of the "**CONVERSE**" rubber shoes purchased from respondent, the Quality Control Department was able to ascertain that the rubber shoes under



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the brand name "**CONVERSE**" purchased from **Kimberly Shoe Store** is counterfeit. (Photocopy of the Official Certification of the Quality Control Department of **Filcon Manufacturing Corporation** is hereto attached to form part hereof as **ANNEX "J"**).

11. By juxtaposing the rubber shoes under the brand name "**CONVERSE**" bought from respondent **Kimberly Shoe Store** and the original "**CONVERSE**" rubber shoes manufactured by **Complainant Filcon Manufacturing Corporation**, the consumers, who, in general, are unaware of the specifications of the original "**CONVERSE**" rubber shoes will not be able to determine, with precision, the original from the sham. Hence, in order not to unduly prejudice the consuming public and ruin complainant's long established reputation, goodwill and good quality of products, the distribution and/or sale of feigned "**CONVERSE**" rubber shoes by **Kimberly Shoe Store** should be halted.

#### **SECOND CAUSE OF ACTION**

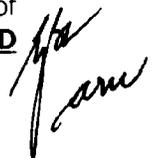
12. By reason of the **Respondent's** unlawful act of selling rubber shoes bearing counterfeit mark of "**CONVERSE**", complainant **Filcon Manufacturing Corporation** was constrained to institute the present action for violation of **Republic Act 8293**, otherwise known as the **Intellectual Property Rights Code of the Philippines**, thereby incurring litigation expenses.

#### **THIRD CAUSE OF ACTION**

13. On account of the well established goodwill and reputation of herein **Complainant** besmirched due to **Respondent's** unlawful act of selling counterfeit "**CONVERSE**" rubber shoes, an award of damages, representing the loss of profit of herein complainant, equivalent to **TWO MILLION PESOS (Php 2,000,000.00)**, in Philippine currency, in favor of **Complainant** is warranted.

#### **FOURTH CAUSE OF ACTION**

14. In order to deter the commission of similar act and to serve as example for public good, herein **Respondent** should be assessed exemplary damages, the amount of which, though incapable of pecuniary estimation, should not be less than **FIVE HUNDRED THOUSAND PESOS (Php 500,000.00)**.



## FIFTH CAUSE OF ACTION

15. For the protection of **Complainant's** interest, the same was constrained to engaged the services of a legal counsel for a fee of **TEN percent (10%)** of the amount recoverable."

In their Answer filed on March 14, 2005, respondents raised the following special and affirmative defenses:

"10. Respondent repleads all the material allegations contained in the preceding paragraphs.

11. Respondents orders and buys some rubber shoes for sales in its store from the complainant itself. Attached as Annexes "1" to "6" are some sale invoices for respondent's purchases of rubber shoes from the complainant in the past.

12. The complainant attached as Annex "H" the alleged cash invoice of the respondent for the purchase of shoes costing P450.00. The word "converse" in this cash invoice was clearly written by another person as it differs from the word "shoes" also appearing in the same sales invoice.

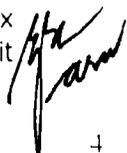
13. The Cash Invoice (Annex "H" of Complainant) does not even indicate or in anyway show that the shoes was sold to complainant Filcon, or any of its representative/agent.

14. In any event, the alleged "converse" shoes that was purchased by the complainant, or even a picture of the same, is not attached to the Complaint. Hence, respondent would not have any way of verifying its genuineness.

15. Finally, after the alleged sale the shoes that was purchased by the complainant and/or its representative was kept by the complainant. Hence, the possibility of its being changed or substituted is always present, or very possible.

16. If ever the complainant should have itself accompanied by a police officer when the purchased was made, and that the shoes that was purchased should have been deposited for safekeeping at the police station.

17. The Affidavit of certain Ronaldo Barros (attached as Annex "I" of the Complainant) and the Certificate of Purchase of Counterfeit



Converse Shoes (attached as Annex "j" of the Complaint) are both self-serving coming as they were from biased personnel of the complainant.

During the pre-trial conference initially scheduled on 2 May 2005 and reset to 20 June 2005 and 9 August 2005, the parties manifested their intention to submit the case for mediation. However, despite efforts to amicably settle the case, no mutual agreement was reached so the case proceeded to trial.

Complainant offered the testimony of two witnesses, namely: Randy Esguerra and Teresita Chan and the following documentary and object evidence consisting of exhibits "A" to "M", which consists of the following, to wit:

EXHIBITS	DESCRIPTION
"A"	Secretary's Certificate
"B"	Letter of Authority
"C"	Certificate of Registration "Chuck Taylor"
"D"	Certificate of Registration "Converse"
"E"	Certificate of Registration "Converse All Star & Chuck Taylor & Design"
"F"	Certificate of Registration "Star & Chevron Design"
"G"	Certificate of Registration "All Star"
"H"	Sample of Counterfeit Converse rubber shoes
"I"	Proof of Purchase
"J"	Certification of Quality Control personnel
"K"	Judicial affidavit of Randy Esguerra
"L"	Genuine Converse Chuck Taylor (Hi-cut)
"M"	Judicial affidavit of Ms. Teresita Chan



Respondent offered the testimony of two witnesses, namely Man Heng and Rosa Magat Porcalla and the following documentary and object evidence, consisting of Exhibits "1" to "11" as follows:

EXHIBITS	DESCRIPTION
"1"	Filcon Sales Invoice No. 163309
"2"	Filcon Sales Invoice No. 165041
"3"	Filcon Sales Invoice No. 163720
"4"	Filcon Sales Invoice No. 163281
"5"	Filcon Sales Invoice No. 160862
"6"	Filcon Sales Invoice No. 160861
"7"	Kimberly Shoe Store Cash Invoice No. 289940, dated 1/21
"8" to "8"-a	Kimberly Shoe Store Cash Invoice No. 289940 ("8"); word, "Converse" ("8-a")
"9" to "9"-c	Affidavit of Rosa Magat Porcalla consisting of four pages (9, 9-a, 9-b, 9-c); signature of Rosa Porcalla (9-b-1)
"10"	Filcon Sales Invoice No. 161996
"11"	Filcon Sales Invoice No. 162336
"12"	Filcon Sales Invoice No. 168790
"13"	Filcon Sales Invoice No. 172131
"14"	Filcon Sales Invoice No. 199407
"15"	Letter dated March 12, 2005 from the Puno Law Office to respondent Man Heng
"16" to "16"-a	Affidavit of Man Heng (16); signature of Man Heng (16-a)



The issue in this case is whether the respondent committed any violation of Republic Act 8293 for allegedly selling counterfeit Converse shoes and whether the complainants are entitled to claim damages.

Trademark infringement is committed by the unauthorized use of a registered mark. The law provides:

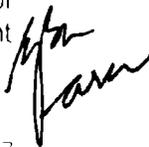
***"Sec. 155. Remedies; Infringement***

Any person who shall, without the consent of the owner of the registered mark:

155.1. Use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark or the same container or a dominant feature thereof in connection with the sale, offering for sale, distribution, advertising of any goods or services including other preparatory steps necessary to carry out the sale of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; or

155.2. Reproduce, counterfeit, copy or colorably imitate a registered mark or a dominant feature thereof and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive, shall be liable in a civil action for infringement by the registrant for the remedies hereinafter set forth: Provided, That the infringement takes place at the moment any of the acts stated in Subsection 155.1 or this subsection are committed regardless of whether there is actual sale of goods or services using the infringing material."

Complainant, under authority of the Converse, Inc. presented in evidence Converse, Inc.'s Philippine registrations of the marks "Chuck Taylor", Certificate of Registration No. 12170 issued in March 3, 1986; "Converse", Certificate of Registration No. 32021 issued June 30, 1983, "Converse All Star Chuck Taylor & Design", Certificate of Registration No. 46782, November 3, 1980 "Star & Chevron Design", Certificate of Registration No. 46782, issued on September 13, 1998 and "All Star" Certificate of Registration No. 32751 issued on October 19, 1983, (Exhibits "C", "D", "E" and "F" and "G"). A sample of complainant's goods, a pair of "Converse" shoes (Exhibit "L") was likewise submitted in evidence. Respondent was not able to present any evidence of authority to indicate that the registered owner of the "converse" marks gave its consent



or permission to apply its registered marks on respondent's goods. Thus, by respondent's sale of rubber shoes (Exhibit "H") which bear the "converse" mark on its inner sole, the "All Star" mark on its white border constitute trademark infringement.

Respondents admit that they used to purchase "converse shoes" from complainant and has shown sales receipts dated in 2000 (Exhibits "1" to "6"). It further admits having sold "Converse" shoes in 2000 and 2001 but its witness Man Heng testified that they stopped buying "Converse" after the period between 2001 to 2003. According to him, the proliferation of alternative stores in the Tutuban and Divisoria area and SM slowed down sales in the Avenida area. He also cites the economic hardships of customers as the main reason for the slump in sales which necessitated their action to stop buying from complainant.

It is respondents' assertion that since they no longer sold "Converse" shoes, it was impossible for complainant to have purchased a pair of converse shoes (Exhibit "L"). Respondents highlight the fact that their duplicate copy of the cash invoice No. 24446 (Exhibit "7") showing proof of purchase of converse shoes from Kimberly department store does not bear the words "Converse" which appears in the original receipt issued to complainant (Exhibit "I").

This Bureau gives more weight to testimony of complainant's witness regarding the purchase of counterfeit shoes from the respondent's business establishment.

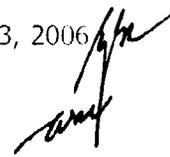
Firstly, the original cash invoice 24446 was submitted by complainant which bears the words "Converse" which appears to be a similar handwriting to the other entries on the said invoice. Moreover, respondent Man Heng admits that they do not normally write the item being purchased on an invoice unless requested. In his affidavit-direct testimony (Exhibit "16"), he states:

"15) Can you please inform this Honorable Office why you didn't describe the item in the Cash Invoice xxx

ANSWER: We normally don't put the item unless it is requested by the customer for reimbursement ma'am xxx"

It is not improbable that it was specifically requested by the purchaser that the word "CONVERSE" be reflected in the invoice as the same was undertaken as test buy for this case.

We give credence to the positive testimony of Randy Esguerra on March 3, 2006 where he testified:



(Page 14-17)

Atty. Lopez : Now in relation to IPV Case No. 00002, how will you be able to tell this Honorable Office that this pair of rubber shoes that bears the mark of Converse is counterfeit? Can you make an examination?

Witness : For the purpose of this style the very first consideration that we make in terms of determining a genuine or counterfeit is the quality of the material. We call this part the upper which actually has a very substandard execution of the upper. The printing is not clear. The canvass is not as bright as the black canvas of the original black. And the original products that we have do not bear the logo like this one. Usually, the counterfeit products bear several logos that are not consistent with the genuine. Like for example this one here says Chuck Taylor you can see it here in the foot bed Chuck Taylor All Star Peace Project which is actually not a bi-word or tag line which is being used by our company in these types of products.

Atty. Lopez : How about Mr. Witness on the materials xxx?

Witness : xxx When it comes to the material used here ,the weaving or the canvass used is much bigger. When you use a bigger weaving on the canvass, when you put color or dye in it, it is not as bright as the smaller weaving. So the effect of that on this product is that the color of the black is a little bit grayish not as black as th original one. xxx

Atty. Lopez : How about on the sole xxx

Witness : xxx There is a part here where in the original it is an asterisk. You can see it on the upper right side of the name Converse. But when you look at it here, it is a star. So these are actually small security issues that we put on it. Security checks that we put in just to make sure people like us or even the consumers we educate the consumers that the product is actually a counterfeit not an original. xxx"

On cross-examination, the witness testified:

(Page 33-36)

Atty. Yambot : And how about Kimberly Shoe Store, can you please describe the location where the converse shoes was allegedly displayed?

Witness : Yes, As far as I can recall, since I have a better viewing of Kimberly, we're talking about Kimberly right?

Atty. Yambot : Correct.



Witness : Kimberly also has a Converse shoe display at the window. And I believe they are around four to five faces (sic phases). You know if you are going to the right side of the store. It is situated on at least the right side of the wall display.

xxxx

Atty. Yambot : And why did you not go with Mr. Barros when he was checking the display?

Witness : Well, because it was Mr. Barros' job to mainly do the purchase, do the initial ocular and my job was really not to go with Mr. Barros inside the store. My job was merely to examine products as if I was staging along with Mr. Barros and just giving him a nod of approval, hey, that's a nice shoe you buy it. So that was more of my job right there.

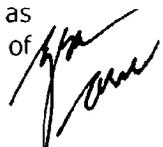
It is not incredible that Mr. Barros positioned himself near the entrance of the store. Neither is it peculiar to see shoppers who when shopping in a group consult each other before making purchases to solicit their opinion on the goods,

In view of these findings, this Bureau holds that the respondents committed trademark infringement because it used the registered marks "Converse" and "All Star" in the counterfeit goods. By dressing up the counterfeit goods to make it appear like the original "converse" shoes of the complainant, the respondents likewise committed unfair competition.

The Supreme Court in the case of Emerald Garment Manufacturing Corporation v. Court of Appeals, G.R. No. 100098, December 29, 1995 held:

"Proceeding to the task at hand, the essential element of infringement is colorable imitation. This term has been defined as "such a close or ingenious imitation as to be calculated to deceive ordinary purchasers, or such resemblance of the infringing mark to the original as to deceive an ordinary purchaser giving such attention as a purchaser usually gives, and to cause him to purchase the one supposing it to be the other."

Colorable imitation does not mean such similitude as amounts to identity. Nor does it require that all the details be literally copied. Colorable imitation refers to such similarity in form, content, words, sound, meaning, special arrangement, or general appearance of the trademark or tradename with that of the other mark or tradename in their over-all presentation or in their essential, substantive and distinctive parts as would likely mislead or confuse persons in the ordinary course of purchasing the genuine article."



The provision on unfair competition states:

**"SEC. 168. Unfair Competition, Rights, Regulation and Remedies**

168.1. A person who has identified in the mind of the public the goods he manufactures or deals in, his business or services from those of others, whether or not a registered mark is employed, has a property right in the goodwill of the said goods, business or services so identified, which will be protected in the same manner as other property rights.

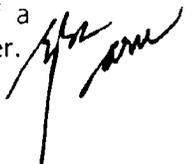
168.2. Any person who shall employ deception or any other means contrary to good faith by which he shall pass off the goods manufactured by him or in which he deals, or his business, or services for those of the one having established such goodwill, or who shall commit any acts calculated to produce said result, shall be guilty of unfair competition, and shall be subject to an action therefor.

168.3. In particular, and without in any way limiting the scope of protection against unfair competition, the following shall be deemed guilty of unfair competition:

(a) Any person, who is selling his goods and gives them the general appearance of goods of another manufacturer or dealer, either as to the goods themselves or in the wrapping of the packages in which they are contained, or the devices or words thereon, or in any other feature of their appearance, which would be likely to influence purchasers to believe that the goods offered are those of a manufacturer or dealer, other than the actual manufacturer or dealer, or who otherwise clothes the goods with such appearance as shall deceive the public and defraud another of his legitimate trade, or any subsequent vendor of such goods or any agent of any vendor engaged in selling such goods with a like purpose;

(b) Any person who by any artifice, or device, or who employs any other means calculated to induce the false belief that such person is offering the services of another who has identified such services in the mind of the public; or

(c) Any person who shall make any false statement in the course of trade or who shall commit any other act contrary to good faith of a nature calculated to discredit the goods, business or services of another.



The facts in Converse Rubber Corporation and Edwardson Manufacturing Corporation v. Jacinto Rubber & Plastics Co., Inc. [G.R. Nos. L-27425 & L-30505. April 28, 1980.] are similar to this case. The Supreme Court ruled:

"We find the shoes manufactured by defendants to contain, as found by the trial court, practically all the features of those of the plaintiff Converse Rubber Corporation and manufactured, sold or marketed by plaintiff Edwardson Manufacturing Corporation, except for their respective brands, of course. We fully agree with the trial court that "the respective designs, shapes, the colors of the ankle patches, the bands, the toe patch and the soles of the two products are exactly the same . . . (such that) "at a distance of a few meters, it is impossible to distinguish "Custombuilt" from "Chuck Taylor". These elements are more than sufficient to serve as basis for a charge of unfair competition. Even if not all the details just mentioned were identical, with the general appearances alone of the two products, any ordinary, or even perhaps even a not too perceptive and discriminating customer could be deceived, and, therefore, Custombuilt could easily be passed off for Chuck Taylor. Jurisprudence supports the view that under such circumstances, the imitator must be held liable. In R. F. & J. Alexander & Co. Ltd. et al. vs. Ang et al., 97 Phil. 157, at p. 160, this Court held:

"By 'purchasers' and 'public' likely to be deceived by the appearance of the goods, the statute means the 'ordinary purchaser'. And although this Court apparently shifted its position a bit in Dy Buncio vs. Tan Tiao Bok, 42 Phil. 190, by referring to simulations likely to mislead 'the ordinarily intelligent buyer', it turned to the general accepted doctrine in E. Spinner & Co. vs. Neuss Hesslein, 54 Phil. 224, where it spoke of 'the casual purchasers' 'who knows the goods only by name.'

"It stands to reason that when the law speaks of purchasers' it generally refers to ordinary or average purchasers.

'. . . in cases of unfair competition, while the requisite degree of resemblance or similarity between the names, brands, or other indicia is not capable of exact definition, it may be stated generally that the similarity must be such, but need only be such, as is likely to mislead purchasers of ordinary caution and prudence; or in other words, the ordinary buyer, into the belief that the goods or wares are those, or

that the name or business is that, of another producer or tradesman. It is not necessary in either case that the resemblance be sufficient to deceive experts, dealers, or other persons specially familiar with the trademark or goods involved. Nor is it material that a critical inspection and comparison would disclose differences, or that persons seeing the trademarks or articles side by side would not be deceived' (52 Am. Jur. pp. 600-601)." (Brief for Plaintiffs as Appellees, pp. 28-29, p. 71, Record.)"

In the instant case, guided by the testimony of the complainant's witness, a business development officer, one can observe the difference between the goods of complainant (Exhibit "L") and respondent (Exhibit "H"). However, an ordinary intelligent buyer can hardly tell one from the other when buying under ordinary circumstances at an ordinary store. Confusion, mistake and deception is the expected outcome of respondent's act of selling these fake shoes.

These circumstances resulted to the downtrend in sales experienced by complainant as testified to by witness Teresita Chan which warrants a finding for damages.

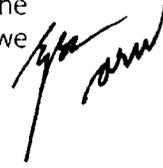
Section 156. provides:

"Section 156. Actions and Damages and Injunction for Infringement.-  
156.1. The owner of a registered mark may recover damages from any person who has infringed his right, and the measure of damages suffered shall be either the reasonable profit which the complaining party would have made, had the defendant not infringed his rights, or the profit which the defendant actually made out of the infringement, or in the event that such measure of damages cannot be readily ascertained with reasonable certainty, then the court may award as damages a reasonable percentage based upon the amount of gross sales of the defendant. Xxx"

Complainant's witness, Teresita Chan testified that:

Atty. Yambot : You mentioned in the same paragraph 7 that you estimated about four (4) pairs of Chuck Taylor All Star Shoes sold for one day in a store. Where did you get this estimate?

Witness : As I have mentioned earlier, it is a conservative estimate of any store that is selling Chuck Taylor or Converse shoes in the Rizal Avenue area because if we consider four (4) pairs in a day, that is a very very conservative estimate considering that from that we know, the stores had been selling predominantly Converse shoes before the case has been filed. So our conservative estimate of four (4) pairs is we think its even more than four.



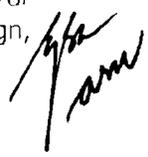
Complainant's prayer for actual damages and compensatory damages cannot be sustained. There is nothing in the records that will support a finding that Complainant suffered two million in damages as it did not present any competent proof to support its claim. For exemplary damages, this Bureau cannot likewise grant the same. The absence of malice and bad faith renders the award of exemplary damages improper. (Bank of the Philippine Islands vs. The Intermediate Appellate Court et al., G.R. 69162, February 21, 1992 citing Globe Mackay Cable and Radio Corp. vs. Court of Appeals, 176 SCRA 778). Exemplary damages maybe granted if Respondent/s acted with gross negligence or in a wanton, fraudulent, reckless, oppressive, or malevolent manner (Arts. 2231-2232, Civil Code; National Power Corporation vs. Honorable Court of Appeals et al., G.R. No. L-47379, May 16, 1988 and Engineering Construction, Inc. vs. Court of Appeals et al., G.R. No. L-47881, May 16, 1988). In the case at bench, Complainant was not able to prove the requirements of law and jurisprudence in regard to the grant of exemplary damages.

Complainant may find some comfort in Articles 2222 and 2224 of the Civil Code which allow for the recovery of temperate and nominal damages. Temperate damages may be awarded where there is some pecuniary loss suffered but its amount cannot, from the nature of the case, be provided with certainty while nominal damages may be awarded in every case where any property right has been invaded. In the case at bench, Complainant failed to present evidence of its capital nor amount of actual damages suffered but this Bureau finds that Respondents were in fact selling in commerce counterfeit Converse shoes though the volume and amount of such sale cannot be determined with certainty, vis-à-vis Complainant's sale of its Converse shoes to the latter's detriment.

**WHEREFORE**, in view of the foregoing, this Bureau finds that Respondents Kimberly Shoe, Man Heng Owner/Proprietor committed the following:

1. trademark infringement by using in commerce without Complainant's consent a counterfeit copy of Complainant's registered marks CONVERSE, ALL-STAR, CONVERSE ALL STAR CHUCK TAYLOR shoes in connection with the sale, offering for sale, or distribution of counterfeit CONVERSE, ALL-STAR, CONVERSE ALL STAR CHUCK TAYLOR shoes which such use is likely to cause confusion or mistake, or to deceive the buying public; and
2. unfair competition by employing deception or and other means contrary to good faith by which said Respondents passed off the shoes with the above-mentioned trademarks.

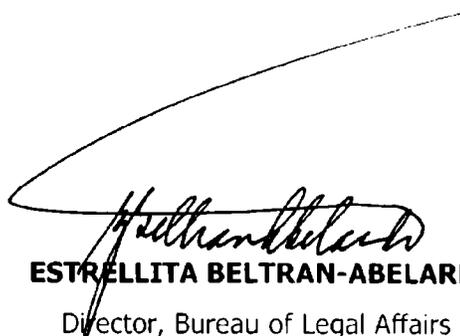
Consequently, Respondents Kimberly Shoe, Man Heng Owner/Proprietor is permanently enjoined to cease and desist from selling, offering for sale and/or distributing counterfeit Converse, All-Star, Converse All Star Chuck Taylor and Design, and is likewise ordered to pay the Complainant :



1. the amount of five hundred thousand pesos (P500, 000.00) as temperate damages and
2. fifty thousand pesos (P50,000.00) as attorney's fees.

**SO ORDERED.**

Makati City, March 30, 2007.



**ESTRELLITA BELTRAN-ABELARDO**  
Director, Bureau of Legal Affairs

