

[G.R. No. 161295. June 29, 2005.]

**JESSIE G. CHING**, *petitioner*, vs. **WILLIAM M. SALINAS, SR., WILLIAM M. SALINAS, JR., JOSEPHINE L. SALINAS, JENNIFER Y. SALINAS, ALONTO SOLAIMAN SALLE, JOHN ERIC I. SALINAS, NOEL M. YABUT** (*Board of Directors and Officers of WILAWARE PRODUCT CORPORATION*),  
*respondents*.

This petition for review on *certiorari* assails the Decision and Resolution of the Court of Appeals (CA) in CA-G.R. SP No. 70411 affirming the January 3, 2002 and February 14, 2002 Orders of the Regional Trial Court (RTC) of Manila, Branch 1, which quashed and set aside Search Warrant Nos. 01-2401 and 01-2402 granted in favor of petitioner Jessie G. Ching.

Jessie G. Ching is the owner and general manager of Jeshicris Manufacturing Co., the maker and manufacturer of a Utility Model, described as "Leaf Spring Eye Bushing for Automobile" made up of plastic.

On September 4, 2001, Ching and Joseph Yu were issued by the National Library Certificates of Copyright Registration and Deposit of the said work described therein as "Leaf Spring Eye Bushing for Automobile."

On September 20, 2001, Ching requested the National Bureau of Investigation (NBI) for police/investigative assistance for the apprehension and prosecution of illegal manufacturers, producers and/or distributors of the works.

After due investigation, the NBI filed applications for search warrants in the RTC of Manila against William Salinas, Sr. and the officers and members of the Board of Directors of Wilaware Product Corporation. It was alleged that the respondents therein reproduced and distributed the said models penalized under Sections 177.1 and 177.3 of Republic Act (R.A.) No. 8293. The applications sought the seizure of the following:

- a.) Undetermined quantity of Leaf spring eye bushing for automobile that are made up of plastic polypropylene;
- b.) Undetermined quantity of Leaf spring eye bushing for automobile that are made up of polyvinyl chloride plastic;
- c.) Undetermined quantity of Vehicle bearing cushion that is made up of polyvinyl chloride plastic;
- d.) Undetermined quantity of Dies and jigs, patterns and flasks used in the manufacture/fabrication of items a to d;
- e.) Evidences of sale which include delivery receipts, invoices and official receipts.

The RTC granted the application and issued Search Warrant Nos. 01-2401 and 01-2402 for the seizure of the aforesaid articles. In the inventory submitted by the NBI agent, it appears that the following articles/items were seized based on the search warrants:

Leaf Spring eye bushing

a)	Plastic Polypropylene		
	C190	27}	
	C240 rear	40}	
	C240 front	41}	BAG 1
b)	Polyvinyl Chloride Plastic		
	C190	13}	
c)	Vehicle bearing cushion		
	center bearing cushion	11}	
	Budder for C190 mold	8}	
	Diesel Mold		
a)	Mold for spring eye bushing rear		1 set
b)	Mold for spring eye bushing front		1 set
c)	Mold for spring eye bushing for C190		1 set
d)	Mold for C240 rear		1 piece of the set
e)	Mold for spring eye bushing for L300		2 sets
f)	Mold for leaf spring eye bushing C190 with metal		1 set
g)	Mold for vehicle bearing cushion		1 set

The respondents filed a motion to quash the search warrants on the following grounds:

2. The copyright registrations were issued in violation of the Intellectual Property Code on the ground that:

- a) the subject matter of the registrations are not artistic or literary;
- b) the subject matter of the registrations are spare parts of automobiles meaning — there (*sic*) are original parts that they are designed to replace. Hence, they are not original.

The respondents averred that the works covered by the certificates issued by the National Library are not artistic in nature; they are considered automotive spare parts and pertain to technology. They aver that the models are not original, and as such are the proper subject of a patent, not copyright.

In opposing the motion, the petitioner averred that the court which issued the search warrants was not the proper forum in which to articulate the issue of the validity of the copyrights issued to him. Citing the ruling of the Court in Malalooan v. Court of Appeals, the petitioner stated

that a search warrant is merely a judicial process designed by the Rules of Court in anticipation of a criminal case. Until his copyright was nullified in a proper proceeding, he enjoys rights of a registered owner/holder thereof.

On January 3, 2002, the trial court issued an Order granting the motion, and quashed the search warrant on its finding that there was no probable cause for its issuance. The court ruled that the work covered by the certificates issued to the petitioner pertained to solutions to technical problems, not literary and artistic as provided in Article 172 of the Intellectual Property Code.

His motion for reconsideration of the order having been denied by the trial court's Order of February 14, 2002, the petitioner filed a petition for *certiorari* in the CA, contending that the RTC had no jurisdiction to delve into and resolve the validity of the copyright certificates issued to him by the National Library. He insisted that his works are covered by Sections 172.1 and 172.2 of the Intellectual Property Code. The petitioner averred that the copyright certificates are *prima facie* evidence of its validity, citing the ruling of the United States Court of Appeals in *Wildlife Express Corporation v. Carol Wright Sales, Inc.* The petitioner asserted that the respondents failed to adduce evidence to support their motion to quash the search warrants. The petitioner noted that respondent William Salinas, Jr. was not being honest, as he was able to secure a similar copyright registration of a similar product from the National Library on January 14, 2002.

On September 26, 2003, the CA rendered judgment dismissing the petition on its finding that the RTC did not commit any grave abuse of its discretion in issuing the assailed order, to wit:

It is settled that preliminarily, there must be a finding that a specific offense must have been committed to justify the issuance of a search warrant. In a number of cases decided by the Supreme Court, the same is explicitly provided, thus:

"The probable cause must be in connection with one specific offense, and the judge must, before issuing the warrant, personally examine in the form of searching questions and answers, in writing and under oath, the complainant and any witness he may produce, on facts personally known to them and attach to the record their sworn statements together with any affidavit submitted.

"In the determination of probable cause, the court must necessarily resolve whether or not an offense exists to justify the issuance or quashal of the search warrant."

In the instant case, the petitioner is praying for the reinstatement of the search warrants issued, but subsequently quashed, for the offense of *Violation of Class Designation of Copyrightable Works under Section 177.1 in relation to Section 177.3 of Republic Act 8293*, when the objects subject of the same, are patently not copyrightable.

It is worthy to state that the works protected under the Law on Copyright are: literary or artistic works (Sec. 172) and derivative works (Sec. 173). The Leaf Spring Eye Bushing and Vehicle Bearing Cushion fall on neither classification. Accordingly, if, in the first place, the item subject of the petition is not entitled to be protected by the law on copyright, how can there be any violation?

The petitioner's motion for reconsideration of the said decision suffered the same fate. The petitioner forthwith filed the present petition for review on *certiorari*, contending that the revocation of his copyright certificates should be raised in a direct action and not in a search warrant proceeding.

The petitioner posits that even assuming *ex argumenti* that the trial court may resolve the validity of his copyright in a proceeding to quash a search warrant for allegedly infringing items, the RTC committed a grave abuse of its discretion when it declared that his works are not copyrightable in the first place. He claims that R.A. No. 8293, otherwise known as the Intellectual Property Code of the Philippines, which took effect on January 1, 1998, provides in no uncertain terms that copyright protection automatically attaches to a work by the sole fact of its creation, irrespective of its mode or form of expression, as well as of its content, quality or purpose. The law gives a non-inclusive definition of "work" as referring to original intellectual creations in the literary and artistic domain protected from the moment of their creation; and includes original ornamental designs or *models for articles of manufacture*, whether or not registrable as an industrial design and other works of applied art under Section 172.1(h) of R.A. No. 8293.

As such, the petitioner insists, notwithstanding the classification of the works as either literary and/or artistic, the said law, likewise, encompasses works which may have a bearing on the utility aspect to which the petitioner's utility designs were classified. Moreover, according to the petitioner, what the Copyright Law protects is the author's intellectual creation, regardless of whether it is one with utilitarian functions or incorporated in a useful article produced on an industrial scale.

The petitioner also maintains that the law does not provide that the intended use or use in industry of an article eligible for patent bars or invalidates its registration under the Law on Copyright. The test of protection for the aesthetic is not beauty and utility, but art for the copyright and invention of original and ornamental design for design patents. In like manner, the fact that his utility designs or models for articles of manufacture have been expressed in the field of automotive parts, or based on something already in the public domain does not automatically remove them from the protection of the Law on Copyright.

The petitioner faults the CA for ignoring Section 218 of R.A. No. 8293 which gives the same presumption to an affidavit executed by an author who claims copyright ownership of his work.

The petitioner adds that a finding of probable cause to justify the issuance of a search warrant means merely a reasonable suspicion of the commission of the offense. It is not equivalent to absolute certainty or a finding of actual and positive cause. He asserts that the determination of probable cause does not concern the issue of whether or not the alleged work is copyrightable. He maintains that to justify a finding of probable cause in the issuance of a search warrant, it is enough that there exists a reasonable suspicion of the commission of the offense.

The petitioner contends that he has in his favor the benefit of the presumption that his copyright is valid; hence, the burden of overturning this presumption is on the alleged infringers, the respondents herein. But this burden cannot be carried in a hearing on a proceeding to quash the search warrants, as the issue therein is whether there was probable cause for the issuance of the search warrant. The petitioner concludes that the issue of probable cause should be resolved without invalidating his copyright.

In their comment on the petition, the respondents aver that the work of the petitioner is essentially a technical solution to the problem of wear and tear in automobiles, the substitution of materials, *i.e.*, from rubber to plastic matter of polyvinyl chloride, an oil resistant soft texture plastic material strong enough to endure pressure brought about by the vibration of the counter bearing and thus brings bushings. Such work, the respondents assert, is the subject of copyright under Section 172.1 of R.A. No. 8293. The respondents posit that a technical solution in any field of human activity which is novel may be the subject of a patent, and not of a copyright. They insist that the certificates issued by the National Library are only certifications that, at a point in time, a certain work was deposited in the said office. Furthermore, the registration of copyrights does not provide for automatic protection. Citing Section 218.2(b) of R.A. No. 8293, the respondents aver that no copyright is said to exist if a party categorically questions its existence and legality. Moreover, under Section 2, Rule 7 of the Implementing Rules of R.A. No. 8293, the registration and deposit of work is not conclusive as to copyright outlay or the time of copyright or the right of the copyright owner. The respondents maintain that a copyright exists only when the work is covered by the protection of R.A. No. 8293.

The petition has no merit.

The RTC had jurisdiction to delve into and resolve the issue whether the petitioner's utility models are copyrightable and, if so, whether he is the owner of a copyright over the said models. It bears stressing that upon the filing of the application for search warrant, the RTC was duty-bound to determine whether probable cause existed, in accordance with Section 4, Rule 126 of the Rules of Criminal Procedure:

SEC. 4. *Requisite for issuing search warrant.* — A search warrant shall not issue but upon probable cause in connection with one specific offense to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and, particularly, describing the place to be searched and the things to be seized.

In *Solid Triangle Sales Corporation v. The Sheriff of RTC QC*, Br. 93, the Court held that in the determination of probable cause, the court must necessarily resolve whether or not an offense exists to justify the issuance of a search warrant or the quashal of one already issued by the court. Indeed, probable cause is deemed to exist only where facts and circumstances exist which could lead a reasonably cautious and prudent man to believe that an offense has been committed or is being committed. Besides, in Section 3, Rule 126 of the Rules of Criminal Procedure, a search warrant may be issued for the search and seizure of personal property (a) subject of the offense; (b) stolen or embezzled and other proceeds or fruits of the offense; or (c) used or intended to be used as the means of committing an offense.

The RTC is mandated under the Constitution and Rules of Criminal Procedure to determine probable cause. The court cannot abdicate its constitutional obligation by refusing to determine whether an offense has been committed. The absence of probable cause will cause the outright nullification of the search warrant.

For the RTC to determine whether the crime for infringement under R.A. No. 8293 as alleged in an application is committed, the petitioner-applicant was burdened to prove that (a) respondents Jessie Ching and Joseph Yu were the owners of copyrighted material; and (b) the copyrighted material was being copied and distributed by the respondents. Thus, the ownership of a valid copyright is essential.

Ownership of copyrighted material is shown by proof of originality and copyrightability. By originality is meant that the material was not copied, and evidences at least minimal creativity; that it was independently created by the author and that it possesses at least some minimal degree of creativity. Copying is shown by proof of access to copyrighted material and substantial similarity between the two works. The applicant must thus demonstrate the existence and the validity of his copyright because in the absence of copyright protection, even original creation may be freely copied.

By requesting the NBI to investigate and, if feasible, file an application for a search warrant for infringement under R.A. No. 8293 against the respondents, the petitioner thereby authorized the RTC (in resolving the application), to delve into and determine the validity of the copyright which he claimed he had over the utility models. The petitioner cannot seek relief from the RTC based on his claim that he was the copyright owner over the utility models and, at the same time, repudiate the court's jurisdiction to ascertain the validity of his claim without running afoul to the doctrine of estoppel.

To discharge his burden, the applicant may present the certificate of registration covering the work or, in its absence, other evidence. A copyright certificate provides *prima facie* evidence of originality which is one element of copyright validity. It constitutes *prima facie* evidence of both validity and ownership and the validity of the facts stated in the certificate. The presumption of validity to a certificate of copyright registration merely orders the burden of proof. The applicant should not ordinarily be forced, in the first instance, to prove all the multiple facts that underline the validity of the copyright unless the respondent, effectively challenging them, shifts the burden of doing so to the applicant. Indeed, Section 218.2 of R.A. No. 8293 provides:

218.2. In an action under this Chapter:

(a) Copyright shall be presumed to subsist in the work or other subject matter to which the action relates if the defendant does not put in issue the question whether copyright subsists in the work or other subject matter; and

(b) Where the subsistence of the copyright is established, the plaintiff shall be presumed to be the owner of the copyright if he claims to be the owner of the copyright and the defendant does not put in issue the question of his ownership.

A certificate of registration creates no rebuttable presumption of copyright validity where other evidence in the record casts doubt on the question. In such a case, validity will not be presumed.

To discharge his burden of probable cause for the issuance of a search warrant for violation of R.A. No. 8293, the petitioner-applicant submitted to the RTC Certificate of Copyright Registration Nos. 2001-197 and 2001-204 dated September 3, 2001 and September 4, 2001, respectively, issued by the National Library covering work identified as Leaf Spring Eye Bushing for Automobile and Vehicle Bearing Cushion both classified under Section 172.1(h) of R.A. No. 8293, to wit:

SEC. 172. *Literary and Artistic Works.* — 172.1. Literary and artistic works, hereinafter referred to as "works," are original intellectual creations in the

literary and artistic domain protected from the moment of their creation and shall include in particular:

xxx xxx xxx

(h) Original ornamental designs or models for articles of manufacture, whether or not registrable as an industrial design, and other works of applied art.

Related to the provision is Section 171.10, which provides that a "work of applied art" is an artistic creation with utilitarian functions or incorporated in a useful article, whether made by hand or produced on an industrial scale.

But, as gleaned from the specifications appended to the application for a copyright certificate filed by the petitioner, the said Leaf Spring Eye Bushing for Automobile is merely a utility model described as comprising a generally cylindrical body having a co-axial bore that is centrally located and provided with a perpendicular flange on one of its ends and a cylindrical metal jacket surrounding the peripheral walls of said body, with the bushing made of plastic that is either polyvinyl chloride or polypropylene. Likewise, the Vehicle Bearing Cushion is illustrated as a bearing cushion comprising a generally semi-circular body having a central hole to secure a conventional bearing and a plurality of ridges provided therefore, with said cushion bearing being made of the same plastic materials. Plainly, these are not literary or artistic works. They are not intellectual creations in the literary and artistic domain, or works of applied art. They are certainly not ornamental designs or one having decorative quality or value.

It bears stressing that the focus of copyright is the usefulness of the artistic design, and not its marketability. The central inquiry is whether the article is a work of art. Works for applied art include all original pictorials, graphics, and sculptural works that are intended to be or have been embodied in useful article regardless of factors such as mass production, commercial exploitation, and the potential availability of design patent protection.

As gleaned from the description of the models and their objectives, these articles are useful articles which are defined as one having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information. Indeed, while works of applied art, original intellectual, literary and artistic works are copyrightable, useful articles and works of industrial design are not. A useful article may be copyrightable only if and only to the extent that such design incorporates pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of the utilitarian aspects of the article.

We agree with the contention of the petitioner (citing Section 171.10 of R.A. No. 8293), that the author's intellectual creation, regardless of whether it is a creation with utilitarian functions or incorporated in a useful article produced on an industrial scale, is protected by copyright law. However, the law refers to a "work of applied art which is an artistic creation." It bears stressing that there is no copyright protection for works of applied art or industrial design which have aesthetic or artistic features that cannot be identified separately from the utilitarian aspects of the article. Functional components of useful articles, no matter how artistically designed, have generally been denied copyright protection unless they are separable from the useful article.

In this case, the petitioner's models are not works of applied art, nor artistic works. They are utility models, useful articles, albeit with no artistic design or value. Thus, the petitioner described the utility model as follows:

## LEAF SPRING EYE BUSHING FOR AUTOMOBILE

Known bushings inserted to leaf-spring eye to hold leaf-springs of automobile are made of hard rubber. These rubber bushings after a time, upon subjecting them to so much or intermittent pressure would eventually wore (*sic*) out that would cause the wobbling of the leaf spring.

The primary object of this utility model, therefore, is to provide a leaf-spring eye bushing for automobile that is made up of plastic.

Another object of this utility model is to provide a leaf-spring eye bushing for automobiles made of polyvinyl chloride, an oil resistant soft texture plastic or polypropylene, a hard plastic, yet both causes cushion to the leaf spring, yet strong enough to endure pressure brought about by the up and down movement of said leaf spring.

Yet, an object of this utility model is to provide a leaf-spring eye bushing for automobiles that has a much longer life span than the rubber bushings.

Still an object of this utility model is to provide a leaf-spring eye bushing for automobiles that has a very simple construction and can be made using simple and ordinary molding equipment.

A further object of this utility model is to provide a leaf-spring eye bushing for automobile that is supplied with a metal jacket to reinforce the plastic eye bushing when in engaged with the steel material of the leaf spring.

These and other objects and advantages will come to view and be understood upon a reading of the detailed description when taken in conjunction with the accompanying drawings.

Figure 1 is an exploded perspective of a leaf-spring eye bushing according to the present utility model;

Figure 2 is a sectional view taken along line 2-2 of Fig. 1;

Figure 3 is a longitudinal sectional view of another embodiment of this utility model;

Figure 4 is a perspective view of a third embodiment; and

Figure 5 is a sectional view thereof.

Referring now to the several views of the drawings wherein like reference numerals designated same parts throughout, there is shown a utility model for a leaf-spring eye bushing for automobile generally designated as reference numeral 10.



Said leaf-spring eye bushing 10 comprises a generally cylindrical body 11 having a co-axial bore 12 centrally provided thereof.

As shown in Figs. 1 and 2, said leaf-spring eye bushing 10 is provided with a perpendicular flange 13 on one of its ends and a cylindrical metal jacket 14 surrounding the peripheral walls 15 of said body 11. When said leaf-spring bushing 10 is installed, the metal jacket 14 acts with the leaf-spring eye (not shown), which is also made of steel or cast steel. In effect, the bushing 10 will not be directly in contact with steel, but rather the metal jacket, making the life of the bushing 10 longer than those without the metal jacket.

In Figure 2, the bushing 10 as shown is made of plastic, preferably polyvinyl chloride, an oil resistant soft texture plastic or a hard polypropylene plastic, both are capable to endure the pressure applied thereto, and, in effect, would lengthen the life and replacement therefor.

Figure 3, on the other hand, shows the walls 16 of the co-axial bore 12 of said bushing 10 is insertably provided with a steel tube 17 to reinforce the inner portion thereof. This steel tube 17 accommodates or engages with the leaf-spring bolt (not shown) connecting the leaf spring and the automobile's chassis.

Figures 4 and 5 show another embodiment wherein the leaf eye bushing 10 is elongated and cylindrical as to its construction. Said another embodiment is also made of polypropylene or polyvinyl chloride plastic material. The steel tube 17 and metal jacket 14 may also be applied to this embodiment as an option thereof.

## VEHICLE BEARING CUSHION

Known bearing cushions inserted to bearing housings for vehicle propeller shafts are made of hard rubber. These rubber bushings after a time, upon subjecting them to so much or intermittent pressure would eventually be worn out that would cause the wobbling of the center bearing.

The primary object of this utility model therefore is to provide a vehicle-bearing cushion that is made up of plastic.

Another object of this utility model is to provide a vehicle bearing cushion made of polyvinyl chloride, an oil resistant soft texture plastic material which causes cushion to the propeller's center bearing, yet strong enough to endure pressure brought about by the vibration of the center bearing.

Yet, an object of this utility model is to provide a vehicle-bearing cushion that has a much longer life span than rubber bushings.

Still an object of this utility model is to provide a vehicle bearing cushion that has a very simple construction and can be made using simple and ordinary molding equipment.

These and other objects and advantages will come to view and be understood upon a reading of the detailed description when taken in conjunction with the accompanying drawings.

Figure 1 is a perspective view of the present utility model for a vehicle-bearing cushion; and

Figure 2 is a sectional view thereof.

Referring now to the several views of the drawing, wherein like reference numeral designate same parts throughout, there is shown a utility model for a vehicle-bearing cushion generally designated as reference numeral 10.

Said bearing cushion 10 comprises of a generally semi-circular body 11, having central hole 12 to house a conventional bearing (not shown). As shown in Figure 1, said body 11 is provided with a plurality of ridges 13 which serves reinforcing means thereof.

The subject bearing cushion 10 is made of polyvinyl chloride, a soft texture oil and chemical resistant plastic material which is strong, durable and capable of enduring severe pressure from the center bearing brought about by the rotating movement of the propeller shaft of the vehicle.

A utility model is a technical solution to a problem in any field of human activity which is new and industrially applicable. It may be, or may relate to, a product, or process, or an improvement of any of the aforesaid. Essentially, a utility model refers to an invention in the mechanical field. This is the reason why its object is sometimes described as a device or useful object. A utility model varies from an invention, for which a patent for invention is, likewise, available, on at least three aspects: first, the requisite of "inventive step" in a patent for invention is not required; second, the maximum term of protection is only seven years compared to a patent which is twenty years, both reckoned from the date of the application; and third, the provisions on utility model dispense with its substantive examination and prefer for a less complicated system.

Being plain automotive spare parts that must conform to the original structural design of the components they seek to replace, the Leaf Spring Eye Bushing and Vehicle Bearing Cushion are not ornamental. They lack the decorative quality or value that must characterize authentic works of applied art. They are not even artistic creations with incidental utilitarian functions or works incorporated in a useful article. In actuality, the personal properties described in the search warrants are mechanical works, the principal function of which is utility *sans* any aesthetic embellishment.

Neither are we to regard the Leaf Spring Eye Bushing and Vehicle Bearing Cushion as included in the catch-all phrase "other literary, scholarly, scientific and artistic works" in Section 172.1(a) of R.A. No. 8293. Applying the principle of *ejusdem generis* which states that "where a statute describes things of a particular class or kind accompanied by words of a generic character, the generic word will usually be limited to things of a similar nature with those particularly enumerated, unless there be something in the context of the state which would repel such inference," the Leaf Spring Eye Bushing and Vehicle Bearing Cushion are not copyrightable, being not of the same kind and nature as the works enumerated in Section 172 of R.A. No. 8293.

No copyright granted by law can be said to arise in favor of the petitioner despite the issuance of the certificates of copyright registration and the deposit of the Leaf Spring Eye Bushing and Vehicle Bearing Cushion. Indeed, in Joaquin, Jr. v. Drilon and Pearl & Dean (Phil.), Incorporated v. Shoemart, Incorporated, the Court ruled that:

Copyright, in the strict sense of the term, is purely a statutory right. It is a new or independent right granted by the statute, and not simply a pre-existing right regulated by it. Being a statutory grant, the rights are only such as the statute confers, and may be obtained and enjoyed only with respect to the subjects and by the persons, and on terms and conditions specified in the statute. Accordingly, it can cover only the works falling within the statutory enumeration or description.

That the works of the petitioner may be the proper subject of a patent does not entitle him to the issuance of a search warrant for violation of copyright laws. In Kho v. Court of Appeals and Pearl & Dean (Phil.), Incorporated v. Shoemart, Incorporated, the Court ruled that "these copyright and patent rights are completely distinct and separate from one another, and the protection afforded by one cannot be used interchangeably to cover items or works that *exclusively* pertain to the others." The Court expounded further, thus:

Trademark, copyright and patents are different intellectual property rights that cannot be interchanged with one another. A trademark is any visible sign capable of distinguishing the goods (trademark) or services (service mark) of an enterprise and shall include a stamped or marked container of goods. In relation thereto, a trade name means the name or designation identifying or distinguishing an enterprise. Meanwhile, the scope of a copyright is confined to literary and artistic works which are original intellectual creations in the literary and artistic domain protected from the moment of their creation. Patentable inventions, on the other hand, refer to any technical solution of a problem in any field of human activity which is new, involves an inventive step and is industrially applicable.

The petitioner cannot find solace in the ruling of the United States Supreme Court in Mazer v. Stein to buttress his petition. In that case, the artifacts involved in that case were statuettes of dancing male and female figures made of semi-vitreous china. The controversy therein centered on the fact that although copyrighted as "works of art," the statuettes were intended for use and used as bases for table lamps, with electric wiring, sockets and lampshades attached. The issue raised was whether the statuettes were copyright protected in the United States, considering that the copyright applicant intended primarily to use them as lamp bases to be made and sold in quantity, and carried such intentions into effect. At that time, the Copyright Office interpreted the 1909 Copyright Act to cover works of artistic craftsmanship insofar as their form, but not the utilitarian aspects, were concerned. After reviewing the history and intent of the US Congress on its copyright legislation and the interpretation of the copyright office, the US Supreme Court declared that the statuettes were held copyrightable works of art or models or designs for works of art. The High Court ruled that:

"Works of art (Class G) — (a) — *In General*. This class includes works of artistic craftsmanship, in so far as their form but not their mechanical or utilitarian aspects are concerned, such as artistic jewelry, enamels, glassware, and

tapestries, as well as all works belonging to the fine arts, such as paintings, drawings and sculpture. . . ."

So we have a contemporaneous and long-continued construction of the statutes by the agency charged to administer them that would allow the registration of such a statuette as is in question here.

The High Court went on to state that "[t]he dichotomy of protection for the aesthetic is not beauty and utility but art for the copyright and the invention of original and ornamental design for design patents." Significantly, the copyright office promulgated a rule to implement Mazer to wit:

. . . [I]f "the sole intrinsic function of an article is its utility, the fact that the work is unique and attractively shaped will not qualify it as a work of art."

In this case, the bushing and cushion are not works of art. They are, as the petitioner himself admitted, utility models which may be the subject of a patent.

IN LIGHT OF ALL THE FOREGOING, the instant petition is hereby DENIED for lack of merit. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 70411 are AFFIRMED. Search Warrant Nos. 01-2401 and 01-2402 issued on October 15, 2001 are ANNULLED AND SET ASIDE. Costs against the petitioner.

SO ORDERED.