

BAYER AKTIENGESELLSCHAFT,
Opposer,

INTER PARTES CASE NO. 3374

OPPOSITION TO:

- versus -

Application Serial No. 61047
Filed : February 26, 1987
Applicant : Masagana Industrial
Corporation
Trademark : "DRAGON FLY"
Used on : Shoes and sandals for
men, women and
children

MASAGANA INDUSTRIAL CORPORATION
Respondent-Applicant.

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DECISION NO. 89-53 (TM)
July 20, 1989

DECISION

On May 2, 1989, Bayer Aktiengesellschaft filed an unverified Notice of Opposition against the registration of the trademark "DRAGON FLY" used on shoes, sandals, for men, women and children applied for by Masagana Industrial Corporation on February 26, 1987 under Application Serial No. 61047 published on Page 30, Volume II, No. 3 of the BPTTT Official Gazette dated and released for circulation on March 31, 1989.

Opposer is a foreign corporation doing business at 509 Leverkusen-Bayerwerk, West Germany, while Respondent-Applicant is a domestic corporation organized and existing under the laws of the Philippines, with business address at 431 Nueva Street, Binondo, Manila, Philippines.

The only ground alleged in the opposition is:

"The registration of the mark "DRAGON FLY" in the name of Respondent-Applicant is proscribed by Sec. 4 (d) of Republic Act No. 166, as amended."

In its Answer filed on May 23, 1989, Respondent-Applicant denied the material allegations stated therein and made the following special and affirmative defenses:

- (1) Respondent-Applicant's mark "DRAGON FLY" as used on shoes and sandals is not confusingly similar to the Opposer's mark "DRALON" as used on chemical fibers, yarns, woven and knitted fabrics because they are very different from each other in:
 - a) Word composition and spelling
 - b) Sound
 - c) Meaning
 - d) Appearance and color schemes
 - e) Goods/product each marked use on, and
 - f) Source/ origin of the marks

(2) Respondent-applicant's mark and opposer's mark are not confusingly similar to each other and the goods they are used on are not related.

Issues having been joined, the pre-trial conference was set to June 26, 1989. In said pre-trial hearing, only counsel for Respondent-Applicant appeared who submitted her pre-trial briefs and her Special Power of Attorney.

On July 7, 1989, Opposer through counsel filed a motion to dismiss herein opposition case "on the ground that he has received instructions from the Opposer to withdraw the Notice of Opposition".

WHEREFORE, this case (Inter Partes Case No. 3374) is DISMISSED. Accordingly, Application Serial No. 61047 seeking the registration of the trademark "DRAGON FLY" in the name of Respondent-Applicant is hereby given due course.

Let the records of this case be forwarded to the Application, Issuance & Publication Division for appropriate action in accordance with this Decision.

SO ORDERED.

IGNACIO S. SAPALO
Director