



2) That the trademark EDMONT is known all over the world to be exclusively owned by the Opposer; hence, the registration of the confusingly similar trademark ENIMONT will be a breach of the provisions of Article 6bis of the Paris Convention for the Protection of Industrial Property; and

3) That the registration of Respondent's trademark ENIMONT will cause grave and irreparable injury and damage to the business reputation and goodwill of the Opposer within the meaning of Section 8, R.A. 166, as amended.

In its "Answer" filed on February 04, 1991 Respondent specifically denied all the material allegations contained in the "Notice of Opposition", and raised thereafter the following special/affirmative defenses, to wit:

1) That Opposer has no legal capacity to sue; and

2) That the opposition failed to state a cause of action against Respondent.

The issues having been joined, the Office set the case for pre-trial conference on March 07, 1991 and duly notified the parties and their respective Counsels thereof.

However, on February 12, 1991 Opposer filed its "Motion for Judgment on the Pleadings" on the grounds that Respondent's Answer failed to tender an issue and admitted the material allegations in the Notice of Opposition.

"Apparently, in alleging that the Notice of Opposition failed to state a cause of action, Respondent-Applicant is attempting to enter a plea of confession and avoidance. Confession because a defense that complainant failed to state a cause of action carries with [it] a "hypothetical admission of the truth of the material facts alleged in the complaint." X X X Unfortunately, Respondent's plea ends with the confession part. No affirmative matter to avoid Opposer's right of action was pleaded. X X X This being the case, since the plea is purely a confession without an avoidance, all the material allegations in the Notice of Opposition are deemed and considered admitted leaving this Honorable Bureau without any matter or issue to resolve. The denial in the answer are considered waived by the special and affirmative plea that the Notice of Opposition failed to state a cause of action."

On March 07, 1991 Respondent, in open court, submitted its "Opposition to the Motion for Judgment on the Pleadings and Motion to File an Amended Answer," together with a copy of its "Amended Answer". Opposer, on the other hand, submitted in the same hearing its "Pre-trial Brief" but the pre-trial conference did not proceed in view of the standing motion mentioned above; hence, it was moved to April 11, 1991.

Meanwhile, on March 22, 1991 Opposer filed its "Reply" to the above opposition. Came April 11, 1991 but the scheduled pre-trial conference was only reset to May 15, 1991 as the standing motion has yet to be resolved by the Office.

On June 07, 1991 the Office issued Resolution No. 91-13 the dispositive portion which provides as follows:

"WHEREFORE, in view of the above considerations, the "Motion for Judgment on the Pleadings" is, as it is hereby, DENIED. On the other hand, the Motion for Leave to Amend the Answer and for the admission thereof are hereby, GRANTED. Consequently, the amendment herein is deemed and considered ADMITTED".

Before the trial could proceed any further, the parties, through their Counsels, manifested in open court, on October 31, 1991 that they have reached an agreement to amicably settle the case.

Eventually, on October 30, 1991 a "Joint Motion to Dismiss" was filed with the Office based on the Settlement Agreement which the parties have executed on August 05, 1991 a copy of which is thereto attached and marked as Annex "A". It has been agreed, among others, that Opposer will withdraw its Opposition to the Serial No. 67212 in the Philippines subject to Respondent's compliance not to use or register the mark "ENIMONT" anywhere in the world in connection with gloves or glove products of any kind.

WHEREFORE, premises considered, this Opposition is DISMISSED subject to the provisions of the above-cited Agreement executed by the parties herein on August 05, 1991.

Let the records of this case be forwarded to the Patents/Trademark Registry and EDP Division for appropriate action in accordance with this Decision.

SO ORDERED.

IGNACIO S. SAPALO  
Director