

FIRST BRANDS CORPORATION,	)	INTER PARTES CASE NO. 3443
Opposer,)	
	)	OPPOSITION TO:
	)	Serial No. 49295
	)	Filed : September 30, 1982
- versus -	)	Applicant : Apeco Products
	)	Enterprises
	)	Trademark : CLAD
	)	Used on : Sandwich bags
	)	and utility bags
)	
	)	<u>DECISION NO. 94-34 (TM)</u>
)	
APECO PRODUCTS ENTERPRISES,	)	June 29, 1994
Respondent-Applicant.)	
x-----x)	

DECISION

This pertains to an opposition filed by First Brands Corporation duly organized and existing under the laws of the State of Delaware, U.S.A., located and doing business at 39 Old Ridgebury Road, Danbury, Connecticut, U.S.A. against application for the registration of the trademark "CLAD" alleged used for sandwich bags & utility bags filed on September 30, 1982 under Serial No. 49295 by APECO Products Enterprises of 237 V. Ibanez Street, San Juan, Metro Manila and which application was published on page 22 of the July 31, 1989 issue of the Official Gazette officially released for circulation on August 1, 1989.

The grounds for the Opposition are as follows:

- "1. Applicant is not entitled to register the trademark "CLAD" which is identical with is identical with Opposer's trademark "GLAD" which has been registered with the BPTTT and used in commerce in the Philippines and other parts of the world. Applicant's use of the "CLAD" is likely to cause confusion or mistake and deception on the part of the purchasing public.
- "2. The registration of the trademark "CLAD" by Applicant will violate Section 37 of Republic Act No. 166, as amended, and Section 6bis and other provisions of the Paris Convention for the Protection of Industrial Property to which the Philippines and the U.S.A. are parties and which this Office has been implementing through the Memorandum of the then Minister of Trade to the Director of Patents dated November 20, 1980.
- "3. The registration and use by Applicant of the trademark "CLAD" will diminish the distinctiveness and dilute the goodwill of Opposer's registered trademark "GLAD".
- "4. The trademark "CLAD" is descriptive or misdescriptive when used on Opposers goods. The registration of the trademark "CLAD" in the name of the Applicant is contrary to other provisions of the Trademark Law."

To support its Opposition, Opposer relied on the following facts:

- "1. Opposer is the registered owner of the following trademarks:
- | | |
|------|-----------------|
| Mark | BPTTT Regn. No. |
|------|-----------------|

GLAD
GLAD

11645
20874

"2. The registration and use of an identical mark by Applicant on his goods are likely to confuse or deceive the purchasing public into believing that the goods of Applicant are made by, originate from or under the sponsorship of Opposer of the following reasons:

- (i) the marks are similar in terms of commercial appearance, pronunciation, spelling and other particulars;
- (ii) the marks are applied in identical or related goods;
- (iii) the parties are engaged in competitive business, and
- (iv) the goods on which the marks are used or purchased by the same channels of trade.

"3. Opposer is the first user of the trademark "GLAD" in the Philippines and elsewhere on sandwich bags, plastic wrap, garbage and trash bags, and aluminum wrap which the purchasing public have associated and identified with the Opposer.

"4. The trademark "GLAD" is an internationally well-known trademark. Opposer has been extensively using on a worldwide basis, the trademark "GLAD" on sandwich bags, plastic wrap, garbage and trash bags and aluminum wrap and other kinds of related goods. Opposer has registered the trademark "GLAD" in several countries of the world.

"5. The registration and use of a confusingly similar trademark by other persons like Applicant will certainly dilute and diminish the distinctiveness of Opposer's "GLAD"."

On April 10, 1990, Respondent-Applicant manifested that it is no longer interested in prosecuting its application.

However, despite such withdrawal, this Office has to determine the respective rights of the parties.

The issue in this case is whether or not applicant's mark CLAD is confusingly similar to the mark GLAD belonging to the opposer. Taking into consideration the respective appearance, pronunciation, spelling of the contending marks, that both marks are applied on identical or related goods such as sandwich bags, utility bags, and the like; that the parties are engaged in competitive business; and that the goods on which the marks are used are purchased by the same class of purchasers or flow through the same channels of trade, there is no doubt that the consumer would likely confuse the origin or source of goods bearing applicant's mark mistaking them for those manufactured by the opposer.

The most important factor to be considered in determining confusing similarity in this case is the similarity in sound and appearance of the trademark "CLAD" of Respondent-Applicant and the trademark "GLAD" of Opposer. The following jurisprudence are applicable:

1. Marvex Commercial Co., Inc. vs. Petra Haw Pia L-19297, December 22, 1966, 18 SCRA 1178 – It was held that the mark "LIONPAS" is confusingly similar with the mark "SALONPAS";

2. Sapolin vs. Balmaceda, 45502, May 2, 1939, 67 Phil. 705 – It was held that “SAPOLIN” and “LANOLIN” are confusingly similar with each other;
3. Operators, Inc. vs. Director of Patents L-17901, October 29, 1965 SCRA 127 – It was held that “CELDURA & CELDUARA” are confusingly similar with each other; and
4. Del Rosario vs. Quicequl, 15 Phil. 345 – It was held that the marks “LA NUEVA FUNERARIA PAZ” and “LA FUNERARIA PAZ” are confusingly similar with each other.

WHEREFORE, premises considered the herein Notice of Opposition is hereby SUSTAINED. Accordingly Application Serial No. 49295 for the registration of the mark “CLAD” in favor of the herein Respondent-Applicant is hereby REJECTED.

Let the filewrapper of this case be remanded to the Application, Issuance and Publication Division for appropriate action in accordance with this Decision and furnished the Trademark Examining Division for information and to update its records.

SO ORDERED.

IGNACIO S. SAPALO
Director