

FRUIT OF THE LOOM INC., )  
 Opposer, )  
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 RENE S. GONZALES, )  
 Respondent-Applicant. )  
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INTER PARTES CASE NO. 3638  
 OPPOSITION TO:  
 Serial No. 59963  
 Filed : September 26, 1986  
 Applicant : Rene S. Gonzales  
 Trademark : ADAM'S APPLE  
 Used on : T-shirt for men  
 and women, jackets,  
 shorts, sando  
 panty, half-slip  
 and jeans.  
DECISION NO. 94-33 (TM)  
 June 29, 1994

DECISION

This pertains to an opposition filed by Fruit of the Loom, Inc., a corporation duly organized under the laws of the State of New York, U.S.A., with principal office at 1290 Avenue of the Americans, New York, New York, U.S.A., against the application for registration of the trademark "ADAM'S APPLE" for t-shirts, jackets, and shorts among others, filed on September 26, 1986 under Serial No. 59963 in the name of Rene S. Gonzales, applicant, which was published on page 31, Volume III, No. 6, November-December 1990 issue of the Official Gazette, officially released for circulation on 31 December 1990.

The grounds for opposition are as follows:

1. The trademark "ADAM'S APPLE" so resembles Opposer's trademark "FRUIT OF THE LOOM" with an Apple Design, which has been previously used in commerce by Opposer and not abandoned, as to be likely when applied to or used in connection with the goods of the applicant, to cause confusion, mistake and deception on the part of the purchasing public.
2. The registration of the trademark "ADAM'S APPLE" in the name of the Applicant will violate Section 37 of the 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 Philippine and the United States of America are parties.
3. The registration and use by Applicant of the trademark "ADAM'S APPLE" will diminish the distinctiveness and dilute the goodwill of Opposer's trademark "FRUIT OF THE LOOM" with an Apple Design which was registered with this Office under Registration Certificate No. 37087 dated April 8, 1987, and with the U.S. Trademark Office and in other member countries of the Paris Convention.
3. Opposer is the first user of the trademark "FRUIT OF THE LOOM" with an Apple Design on the goods included under the above-described registration which have been sold and marketed in various countries worldwide."
4. By virtue of Opposer's prior and continued use of "FRUIT OF THE LOOM" with an Apple Design, said trademark has become popular and internationally well-known and has established valuable goodwill for Opposer

among consumers who have identified Opposer as the source of the goods bearing said trademark;

5. The registration and use of a confusingly similar trademark by the Applicant for use on identical or related goods will tend to deceive/and or confuse purchasers into believing that Applicant's products emanate from or under the sponsorship of Opposer. Applicant obviously intends to trade and is trading on Opposer's goodwill.

6. The registration and use of a confusingly similar trademark by Applicant will diminish the distinctiveness and dilute the goodwill of Opposer's trademarks.

On March 26, 1991, a verified Notice of Opposition was filed by Opposer through Counsel and on April 10, 1991 this Office mailed Order No. 91-321 informing Respondent-Applicant of such filing of Verified Notice of Opposition and giving him fifteen (15) days from receipt thereof, within which to submit his Answer thereto. The aforesaid Order was received by the Respondent-Applicant on April 15, 1991.

Due to the failure of Respondent-Applicant to file his Answer despite the lapse of the reglementary period given him, he was DECLARED IN DEFAULT under Order No. 91-700 dated August 23, 1991.

In view of the default order against Respondent-Applicant, herein Opposer was allowed to present its evidence ex-parte and accordingly, the Formal Offer of Evidence was filed on January 31, 1992.

The main issue to be resolved in this case is "Whether or not Respondent-Applicant's trademark "ADAM'S APPLE" used on t-shirts for men and women, jackets, shorts, sandos, panty, half-slip and jeans is confusingly similar to that of Opposer's FRUIT OF THE LOOM TRADEMARK" with an apple Design used on clothing for men, women and children.

This Office believes and concludes that there is no confusing similarity between the two competing marks.

In the case of Texwood Ltd. vs. Andres T. Lim, Decision No. 88-44, July 11, 1988 it was held that "Where the conflicting marks are combination marks i.e. a part consists of a word and the other consists of a device, the word portion is controlling in determining the issue of likelihood of confusion since it is most likely to be impressed upon the purchaser's memory and to serve as indicium of origin, and since it is the portion of the mark purchaser refer to order goods.

Moreover, in the case of Jordache Enterprises vs. Davila, C.A. G.R. SP Nos. 10997 and 10998, February 14, 1989 (affirmed by the Supreme Court in G.R. No. L-87993-94, July 24, 1989), the Court of Appeals ruled that the words "RAWHIDE" and "JORDACHE", which are printed boldly on the trademarks, more easily attract and catch the eye of the consuming public; and it is those words which would stick in their minds and not the horsehead design, when the public thinks of buying clothes. It is the words and not the image, the name rather than the figure which catches the attention of the public and which is etched in the minds eye when thinking of a particular product.

The conflicting marks are combination marks since a part consists of the word "FRUIT OF THE LOOM" and the other part consists of an Apple Design for the Opposer and "ADAM'S APPLE" and an apple design used on same goods for Respondent-Applicant. It is the words "FRUIT OF THE LOOM" and "ADAM'S APPLE" which catch the attention of the buying public rather than the Apple Design. It should be noted further that the device used by Opposer is not the fruit apple alone but several fruits in a basket while Respondent-Applicant's device consists mainly of outline of an apple with the words ADAM'S APPLE inside. This factor adds to the negation of Opposers claim.

Furthermore, it was held in the case of Fruit of the Loom vs. Court of Appeals, L-32747, November 29, 1984, 133 SCRA 405 that, "By merely pronouncing "FRUIT OF THE LOOM" and "FRUIT FOR EVE", it could hardly be said that it will provoke confusion and lead the purchaser to mistake one for the other; more so in the present case wherein the competing marks are "ADAM'S APPLE" and "FRUIT OF THE LOOM".

Despite the Order of Default rendered against herein Respondent-Applicant, this Office is constrained to hold in favor of Respondent-Applicant. In Gochangco vs. CFI Negros, 157 SCRA 40 (1988), the Court ruled that "a defaulted defendant is not actually thrown out of court. xxx If the evidence presented should not be sufficient to justify a judgment for the plaintiff, the complaint must be dismissed."

WHEREFORE, premises considered, the Notice of Opposition is, as it is hereby DENIED. Accordingly, Application Serial No. 59963 filed by Respondent-Applicant for the registration of the trademark ADAM'S APPLE used on t-shirts for men and women, jackets, shorts, sandos, panty, half-slips, and jeans is hereby GIVEN DUE COURSE.

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

SO ORDERED.

IGNACIO S. SAPALO  
Director