FRUIT OF THE LOOM, Opposer,	)	INTER PARTES CASE NO. 3637
	)	OPPOSITION TO:
	)	Serial No. 65166
	)	Filed : July 11, 1988
	)	Applicant : Nenita Salviejo
	)	Trademark : ROY ROWAN & DEVICE BY FRUTTI
- versus -	)	Used on : Jeans, shirts, jackets, t-shirts, briefs, towel, belts, blouses, bags, polo shirts and hand-kerchiefs
	)	DECISION NO. 94-38 (TM)
NENITA SALVIEJO, Respondent-Applicant.	)	October 24, 1994

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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 Americas, New York, New York, U.S.A., against the application for registration of the trademark ROY ROWAN BY FRUTTI and DEVICE for t-shirts, jackets, jeans, among others, filed on 11 July 1988 under Serial No. 65166 in the name of Nenita Salviejo, applicant which was published on page 62, 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 "ROY ROWAN BY FRUTTI" so resembles Opposer's trademark and tradename "FRUIT OF THE LOOM", which has been previously used in commerce in the Philippines and other parts of the world 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 "ROY ROWAN BY FRUTTI" 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 "ROY ROWAN BY FRUTTI" will diminish the distinctiveness and dilute the goodwill of Opposer's trademark and tradename "FRUIT OF THE LOOM".

4. The registration of the trademark "ROY ROWAN BY FRUTTI" in the name of the Applicant is contrary to the other provisions of the Trademark Law."

To support its opposition, Opposer relied upon, among other facts, the following:

"1. Opposer is a manufacturer of a wide range of clothing bearing the trademark "FRUIT OF THE LOOM" which have been marketed and sold in the Philippines and in other parts of the world. Opposer has been commercially using the trademark "FRUIT OF THE LOOM" internationally and in the Philippines prior to the use of "ROY ROWAN BY FRUTTI" by Applicant.

2. Opposer is the owner of the trademark and tradename "FRUIT OF THE LOOM" which was registered with the Bureau of Patents, Trademarks and Technology Transfer under Registration Certificate No. 37087 dated April 8, 1987 for goods in Classes 24 and 25. Opposer has also registered and used "FRUIT OF THE LOOM" as a trademark for clothing in the United States of America and in other countries.

3. Opposer is the first user of the trademark "FRUIT OF THE LOOM" on the goods included under the above-described registration which have been sold and marketed in various countries worldwide."

On 15 February 1991 an Answer to the Opposition was filed by Respondent-Applicant through her Counsel alleging as defense among others the following:

"1. That Opposer will not be damaged by the registration of her trademark "ROY ROWAN BY FRUTTI" since it is grossly different from the Opposers' "FRUIT OF THE LOOM".

2. That the trademark in question are visually and phonetically different.

3. That a registration under Section 37 of the Trademark Law does not affect rights acquired prior to the issuance of the certificate of registration."

The main issue to be resolved in this case is "Whether or not Respondent-Applicant's trademark "ROY ROWAN BY FRUTTI" used on t-shirts, shirts, jackets, briefs, among others is confusingly similar to that of Opposer's "FRUIT OF THE LOOM" trademark.

In cases involving infringement of trademark, it has been consistently held that there is infringement of trademark when the use of the mark involved would be likely to cause confusion or mistake in the mind of the public or to deceive purchasers as to the origin or source of the commodity. (Co Tiong Sa vs. Director of Patents, 95 Phil. 1, Alhambra Cigar & Cigarette Co. vs. Mojica, 27 Phil. 266)

The best evidence as to whether or not there is confusingly similarity between two competing marks is a side-by-side comparison of the said marks. One of the contentions of herein Opposer that, the test of dominancy is usually applied where the marks involved are composite marks and accordingly stated that the dominant feature of Oposer's "FRUIT OF THE LOOM" and design trademark is undoubtedly the word FRUIT and the picture of fruits is to this Office, not tenable.

As was held by the Supreme Court in the case Fruit of the Loom, Inc., vs. Court of appeals, 133 SCRA 405 November 29, 1984, "Standing by itself, FRUIT OF THE LOOM is wholly different from FRUIT FOR EVE. We do not agree with petitioner that the dominant feature of both trademarks is the word FRUIT for even in the printing of the trademark in both hang tags, the word FRUIT not at all made dominant over the other words." In this case, FRUTTI is not even similar to FRUIT.

IN VIEW OF THE FOREGOING, this Office concludes that there is no confusingly similar between the two competing marks. Accordingly, the Notice of Opposition is, as it is, hereby DENIED. Consequently, Application Serial No. 65166, filed by Respondent-Applicant for the

registration of the trademark “ROY ROWAN BY FRUTTI” used on t-shirts, jackets, briefs, etc. 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