

PACIFIC FOOD PRODUCTS, SDN, BHD.,	)	INTER PARTES CASE NO. 3430
)	
Opposer,	)	OPPOSITION TO:
)	
	)	Application Serial No. 66013
	)	Filed : October 19, 1988
	)	Applicant : Regent Foods
- versus -	)	Corporation
	)	Trademark : SMAX
	)	Used on : (snack foods)
	)	rice crackers
)	
	)	<u>DECISION NO. 94-5 (TM)</u>
)	
REGENT FOOD CORPORATION, Respondent-Applicant.)	)	January 12, 1994
x-----x)	

DECISION

This is an Opposition to the registration of the SMAX (for snack foods) under Serial No. 66013 which was published for opposition in Vol. II No. 6, p. 32 of the BPTTT Official Gazette and officially released on 03 July 1989. Said application was filed by Regent Food Corporation of Elisei Road, Bo. Kalawaan Sur, Pasig, Metro Manila under date of 19 October 1988.

Opposer, Pacific Food Products, SDNBHD, a company organized and existing under the laws of Malaysia with postal address at Lot 1, Air Keron Industrial Estate, 75450, Melaka Malaysia, believes that it will be damaged by the said registration and opposed the same on the following grounds:

- “1. The trademark “SMAX” sought to be registered by respondent-applicant is not only confusingly similar but identical to the trademark “SMAX” of the herein opposer which it had much earlier adopted and used in commerce and has been publicly known as a trademark belonging to the Opposer and for which it has existing trademark application in the Philippines;
2. The Opposer has spent much for the advertisement and promotion of the trademark “SMAX” and its business and goodwill will clearly be damaged and will suffer irreparable injury;
3. The trademark “SMAX” of the respondent-applicant as to be likely when applied to or used in connection with the goods of the respondent-applicant, to cause confusion, mistakes or to deceive purchasers. (Sec. 4(d) Republic Act No. 166, as amended);
4. Respondent-Applicant has expressly recognized opposer’s right of ownership of the mark when an agreement was entered into between the parties on March 27, 1989.”

Despite a motion for extension of time to file his Answer, Respondent-Applicant failed to submit the required pleading. Consequently, the Opposer moved to declare the Respondent in default and present its evidence ex-parte.

Subsequently, Respondent-Applicant, through Counsel, filed an ex-parte motion to admit his Answer (together with the required answer). These incidents were set for hearing on 17 April 1990.

Despite notice, neither the Respondent-Applicant nor his Counsel appeared at said hearing and thus, this Office issued Order No. 91-201 dated 21 February 1991 declaring the Respondent in default and scheduled this case for hearing on 14 March 1991 for the ex-parte presentation of Opposer's evidence.

No motion for reconsideration or motion to lift order of default was filed by the Respondent.

In the ex-parte presentation of evidence, the Opposer submitted and formally offered in evidence Exhibits A to K, with their respective submarkings. Likewise, it submitted a memorandum on 24 May 1991 and formally submitted this case for decision.

The main issue in this case is whether the Respondent-Applicant would be entitled to the registration of the mark "SMAX" for rice crackers. From the point of view of the consumers, this situation may cause confusion or mistake or to deceive purchasers as to the source or origin of the goods considering that the trademarks involved are identical and used on the same kind of goods, namely rice crackers. This is precisely what the law seeks to resolve.

By its continued use, a mark acquires goodwill and reputation through the expenditure of time, money, and effort through promotions, advertisement, sales and improvement of the product. As a result of such factors, the purchasers buy the product because of the mark associated with it. Thus, the law recognizes and protects the ownership or possession of a trademark by granting the owner thereof the right to use it to the exclusion of others.

The law also provides for factors where such right may be lost. Section 9-A of the Trademark Law states:

SEC. 9-A *Equitable principles to govern proceedings.* – In opposition proceedings and in all other inter partes proceedings in the Patent Office under this Act, equitable principles of laches, estoppel, and acquiescence where applicable, may be considered and applied. (As added by R.A. No. 638).

In the case at bar, the Agreement entered into by the parties herein (Annex "J" and its submarkings) could very well apply the spirit and intent of the foregoing provision of law. A perusal of the said document would readily reveal that the herein Respondent-Applicant has actually recognized the superior right of the opposer over the trademark in question. Under the Agreement, the Respondent obliged itself to withdraw from the market at a given point in time, all its products bearing the trademark in question. It has also agreed to destroy all of the existing labels existing as of December 1989 identical to the Opposer's "SMAX" label.

This Office therefore considers the Respondent-Applicant having lost its right from asserting any better right over the trademark "SMAX" as against the herein Opposer.

WHEREFORE, premises considered, this opposition is hereby SUSTAINED and Application Serial No. 60013 is hereby REJECTED.

SO ORDERED.

IGNACIO S. SAPALO
Director