

PLAME MANUFACTURING CO., Junior Party-Applicant	)	INTER PARTES CASE NO. 3038
	)	INTERFERENCE BETWEEN:
)	
	)	Serial No. 31570
	)	Filed : 26 January 1977
	)	Applicant : Plame Manufacturing Co.
	)	Trademark : GOODY & LADY
	)	DEVICE
- versus -	)	Used on : Hair Clips
)	
	)	- and -
)	
	)	Reg. No. 16600
	)	Issued on : June 28, 1977
	)	Registrant : H. Goodman &
	)	Sons, Inc.
H. GOODY PRODUCTS, INC., (formerly H. GOODMAN & INC.), Senior Party-Applicant.	)	Trademark : GOODY
	)	Used on : Hair curlers
-----X)	
)	
GOODY PRODUCTS, INC., (formerly H. GOODMAN & INC.), Opposer	)	INTER PARTES CASE NO. 3061
	)	OPPOSITION TO:
)	
	)	Serial No. 31570
	)	Filed : 26 January 1977
	)	Applicant : Plame Manufacturing Co.
	)	Trademark : GOODY & LADY
	)	DEVICE
- versus -	)	Used on : Hair Clips
)	
PLAME MANUFACTURING CO., Respondent-Applicant.	)	<u>DECISION NO. 94-26(TM)</u>
-----X	)	March 9, 1994

DECISION

On 16 February 1988, this Office declared an interference between the mark "GOODY" under Registration No. 16600 issued on 28 June 1971 and the mark "GOODY & LADY DEVICE" UNDER Serial No. 31570 filed on 26 January 1977, GOODY PRODUCTS, INC. (formerly H. GOODMAN & SONS, INC.), the registrant in Reg. No. 16600 claims first use of mark "GOODY" on 10 March 1957 while FLAME MANUFACTURING CO., the applicant in Serial No. 31570, claims first use of the mark "GOODY & LADY DEVICE" on 05 January 1957.

Both parties filed separate Motions to Dissolve the Interference. The Junior Party (FLAME MANUFACTURING CO.) alleged, among others, that "the two marks are not substantially confusingly similar and there is no likelihood that one would be misled into buying the "one for the other", and "their simultaneous use would not deceive the purchasing public as to the source of the goods even when laid side by side. On the other hand, Senior Party (GOODY PRODUCTS, INC.) alleged that the Junior Party's trademark "cannot be registered pursuant to Sec. 4 of R.A. 166, as amended, since it is confusingly similar to the registered trademark "GOODY & DEVICE" to which the Senior Party has a better right". In its Resolution 93-19, this Office denied both Motions to Dissolve Interference declaring that the two subject marks are definitely confusingly similar and the allegation of the Senior Party in its Motion is premised on the assumption that it is the first to adopt and use the trademark which is the very fact sought to be determined in this interference proceedings. Thus, this case was set for initial hearing (pre-trial conference). Thereupon, Junior Party failed to appear for three (3) consecutive dates set for

hearing and was declared to have lost its interest in the prosecution of herein case (Order No. 88-571).

Meanwhile, on 05 April 1988, GOODY PRODUCTS, INC. (The Senior Party in the Interference proceeding) filed an Opposition to the same application, Serial No. 31570, filed by FLAME MANUFACTURING CO. (The Junior in the Interference proceeding). In its Opposition, GOODY PRODUCTS, Inc. (herein Opposer) alleges that the registration of the mark "GOODY and DESIGN" under Serial No. 31570 will cause great and irreparable injury and damage to it on the ground that the subject mark is confusingly similar to the trademark "GOODY" owned and unabandoned by the Opposer under Certificate of Registration No. 16600. After being notified of the Opposition, FLAME MANUFACTURING CO., (herein Respondent) did not file any Answer to the Opposition within the reglementary period. Thus again, Respondent was declared in DEFAULT per Order No. 88-569.

Thereafter, on 20 December 1988, Senior Party-Opposer moved for the consolidation of the two Inter Partes Cases (IPC 3038 for the Interference and IPC 3061 for the Opposition) on the ground that both cases involve the same parties, the same issues, and the same subject matter. Finding the motion to be proper, this Office granted the Motion for Consolidation.

On 14 July 1989, Senior Party-Opposer was allowed to present its evidence *ex-parte*. To support its claim of ownership over the mark "GOODY", Senior Party-Opposer presented the Certificate of Registration No. 16600 issued by this Office on 28 June 1971, together with the annotations thereon of the filing of Affidavits of Use (Exhibits B to B-4). In addition thereto, Senior Party-Opposer presented as evidence Certified True Copies of the existing Certificates of Registrations from the Republic of Korea (exhibit "W" & "W-1"), Hongkong, Sweden, Switzerland, Denmark, Chile and Argentina (exhibits "X", "Y", "Z", "Z-1", "AA", "AA-a", "BB", "BB-1 and "CC"). Likewise presented are photocopies of three US Certificate of Registration (exhibits "D", "E", & "F"), Senior Party-Opposer also presented evidence to prove actual use of the mark in commerce in the Philippines such as the photocopies of Purchase Orders, Assortments, Sales Invoices, Dock Receipt, and Packing List (exhibits "H" to "O-3"), all dated 1956. Likewise presented as evidence are the cashier's receipts from department stores, i.e. SM NORTH EDSA and CINDERELLA, together with the "GOODY" ITEMS ACTUALLY PURCHASED ON 06 July 1989 (exhibits "U" to "V-1"). Senior Party-Opposer also presented Affidavits (exhibit "R", "S", and "T") of three persons attesting to their similarity of the GOODY products and to the fact that said products are sold in commercial quantities in the major department stores of the busiest commercial centers in Metro Manila. All these exhibits were admitted in evidence.

Confusing similarity between the trademarks "GOODY" UNDER Cert. of Reg. No. 16600 and "GOODY and LADY DEVICE" under Application Ser. No. 31570 has already been found to exist per office Resolution No. 88-19. Rightly so, since the word marks are even identical. Thus, the issue left is whether who between the parties, has the better right over the mark.

We resolve in favor of the Senior Party-Opposer. The weight of the evidence presented by the Senior Party-Opposer is sufficient to support its claim of ownership. The prima facie presumption of ownership and exclusive right to use the same in connection with the goods (Sec. 20, R.A. 166) under Cert. of Registration No. 16600 enjoyed by Senior Party/Opposer has not been overcome; instead the documentary evidence presented, i.e., purchase orders, assortments, sales invoice, dock receipts, packing lists, cashiers receipts, and catalogs (exhibits "G, to "O-3" and "U" to "V-1") and the affidavits of the witnesses relating to (Exhibits "R", "S" and "T") the sales of the Senior Party-Opposer's goods bearing the mark "GOODY" in two department stores, one of which is the biggest and the widest chain of store in the country, (exhibits "U-1 to 7", "V", & "V-1"), establish clearly Senior Party-Opposer's ownership and exclusive right to use the mark in connection with the goods.

It bears repeating that Junior Party had been declared in Order No. 88-571 to have lost its interest in the prosecution of this case. It chose not to defend and protect the mark it claimed

to own. The conclusion is that it does not own the mark because “a person takes ordinary care of his concerns” (Sec. 4(d), Rule 131 of the Rules of Court).

WHEREFORE, Application Ser. No. 31570 for the mark “GOODY and LADY DEVICE” in the name of Junior Party-Respondent is hereby finally REJECTED.

Let the records of this case be forwarded to the Trademark Examining Division for proper action in accordance with this Decision.

SO ORDERED.

IGNACIO S. SAPALO
Director