

21768	09/21/89	New Zealand
162908	01/06/89	New Zealand
<u>162398</u>	<u>12/03/85</u>	<u>Pakistan</u>
<u>55696</u>	<u>07/01/71</u>	<u>Philippines</u>
<u>17535</u>	<u>06/28/72</u>	<u>Philippines</u>
<u>30908</u>	<u>05/29/82</u>	<u>Philippines</u>
<u>18328</u>	<u>01/29/73</u>	<u>Philippines</u>
<u>18778</u>	<u>05/02/73</u>	<u>Philippines</u>
<u>24994</u>	<u>10/07/77</u>	<u>Philippines</u>
31949	06/23/83	Philippines
36848	03/25/87	Philippines
<u>220/16</u>	<u>12/26/89</u>	<u>Saudi Arabia</u>
<u>54260</u>	<u>10/16/87</u>	<u>Sri Lanka</u>
<u>54261</u>	<u>10/16/87</u>	<u>Sri Lanka</u>
<u>51058</u>	<u>02/01/71</u>	<u>Taiwan</u>
<u>543147</u>	<u>12/01/91</u>	<u>Taiwan</u>
<u>549429</u>	<u>02/01/92</u>	<u>Taiwan</u>
<u>21517</u>	<u>07/18/90</u>	<u>Vietnam</u>

Likewise, based on the records made available to undersigned counsel, Opposer has pending applications for registration of the trademark "MAGNOLIA" in the following countries:

<u>Regn. No.</u>	<u>Date of Filing</u>	<u>Country</u>
24615	11/18/86	Bangladesh
5833/89	10/30/89	Hong Kong
8534/89	10/30/89	Hong Kong
8533/89	10/30/89	Hong Kong
<u>612813</u>	<u>08/10/88</u>	<u>Canada</u>
<u>91-44441</u>	<u>09/09/91</u>	<u>China</u>
<u>353216</u>	<u>12/27/91</u>	<u>Colombia</u>
<u>353217</u>	<u>12/27/91</u>	<u>Colombia</u>
<u>353218</u>	<u>12/27/91</u>	<u>Colombia</u>
<u>567779</u>	<u>12/18/92</u>	<u>India</u>
<u>048262/92</u>	<u>03/31/92</u>	<u>Japan</u>
<u>048263/92</u>	<u>03/31/92</u>	<u>Japan</u>
<u>048264/92</u>	<u>03/31/92</u>	<u>Japan</u>
<u>048266/92</u>	<u>03/31/92</u>	<u>Japan</u>
<u>91/20698</u>	<u>07/16/91</u>	<u>Korea</u>
<u>91/20699</u>	<u>07/16/91</u>	<u>Korea</u>
<u>268</u>		<u>Laos</u>
<u>269</u>		<u>Laos</u>
<u>270</u>		<u>Laos</u>
<u>11.475M</u>	<u>01/20/91</u>	<u>Macau</u>
<u>11.475M</u>	<u>01/20/92</u>	<u>Macau</u>
<u>11.476M</u>	<u>01/20/92</u>	<u>Macau</u>
<u>91/04624</u>	<u>08/13/91</u>	<u>Malaysia</u>
<u>1534</u>	<u>02/28/91</u>	<u>Ras Al-Khaimah</u>
<u>7535</u>	<u>02/28/91</u>	<u>Ras Al-Khaimah</u>
<u>7536</u>	<u>02/28/91</u>	<u>Ras Al-Khaimah</u>
<u>7537</u>	<u>02/28/91</u>	<u>Ras Al-Khaimah</u>
<u>(80)38506</u>	<u>08/24/91</u>	<u>Taiwan</u>
<u>1,344,658</u>	<u>05/17/88</u>	<u>United Kingdom</u>
<u>1,344,659</u>	<u>05/17/88</u>	<u>United Kingdom</u>
<u>1,344,660</u>	<u>05/17/88</u>	<u>United Kingdom</u>
<u>74/207923</u>	<u>09/30/91</u>	<u>United States</u>

2. Opposer respectfully submits herewith a specimen of the trademark "MAGNOLIA" and made an integral part hereof as Annex "A".
3. The trademark "MAGNOLIA" was first used in the Philippines on 1 July 1925.
4. Opposer manufactures and offers for sale in the Philippine products including goods covered under Classes 29, 30 and 31 (the "Products"). A complete list of the Products is found in Annex "B" hereof. Opposer also markets the Products abroad."
5. To support the marketing of the Products Opposer maintain extensive advertising promotional campaigns through various forms of media. By reason of such marketing activities and extensive promotional campaigns, not to mention its registrations and pending applications for registration of its trademark both in the Philippines and other countries, Opposer's trademark "MAGNOLIA" has become a by word in Filipino households and has attained international recognition. Consequently, the application of Respondent-Applicant must be rejected.
6. On 21 February 1990, Respondent-Applicant applied for registration of the mark "MAGNOLIA" for "Straw", undoubtedly to take advantage of the popularity and goodwill connected with Opposer's trademark "MAGNOLIA". There are numerous words available to Respondent-Applicant, yet Respondent-Applicant decided to adopt "MAGNOLIA" undoubtedly to confuse, mislead or deceive purchasers into believing that the goods of Respondent-Applicant are those of, or sponsored by, Opposer.
7. There are limitless names available to Respondent-Applicant which it can use for its Products and yet Respondent-Applicant chose to adopt and apply for registration of the mark "MAGNOLIA", which is an exact reproduction of Opposer's mark. It is clear that Respondent-Applicant intentionally adopted, and fraudulently applied for registration of the mark "MAGNOLIA" in order to illegally appropriate for its own use the mark "MAGNOLIA" because of the goodwill attached to the same, which goodwill Opposer built at great effort and expense.
8. The use and adoption by Respondent-Applicant of the work "MAGNOLIA" for its goods would falsely tend to suggest a connection with Opposer, especially considering that Opposer and Respondent-Applicant carry goods which are closely related and would therefore, constitute a fraud on the general public, and would further cause the dilution of the distinctiveness of the mark "MAGNOLIA" to the prejudice and irreparable damage of Opposer.
9. The use and adoption by Respondent-Applicant of the mark "MAGNOLIA" which is confusingly identical to Opposer's "MAGNOLIA" constitutes an unlawful appropriation of a mark previously used in the Philippines and not abandoned as Opposer continues to use the same on the products it sells. Accordingly, Application Serial No. 70931 filed by Respondent-Applicant for the registration of the mark "MAGNOLIA" is in violation of Section 4(d) of the Republic Act No. 166, as amended.

On September 10, 1992, ORDER NO. 92-645 was issued admitting the amended verified Notice of Opposition filed by the Opposer and requiring the Respondent-Applicant to file his Answer thereto.

On March 1, 1993, Opposer through Counsel filed a Motion to Declare Respondent-Applicant in Default for failure to file his Answer for more than three (3) months have passed since 5 December 1992.

The Motion to Declare Respondent-Applicant in Default was granted (ORDER NO. 93-233 dated April 12, 1993) whereby Opposer was allowed to present its evidence Ex-Parte.

The main issue to be resolved is whether or not the use of the trademark "MAGNOLIA" on Respondent-Applicant's products would likely cause confusion, mistake or deception upon purchasers as to the source or origin thereof.

Our Trademark Law, particularly Section 4(d) thereof provides as follows:

Sec. 4. Registration of trademarks, tradenames and service marks on the Principal Register. - There is hereby established a register of trademarks, tradenames and service marks which shall be known as the principal register. the owner of a trademark, tradename or service mark used to distinguish his goods, business or services from the goods, business or services of others shall have the right to register the same on the principal register unless it:

xxx

(d) Consists of or comprises a mark or tradename which so resembles a mark or tradename registered in the Philippines or a mark or tradename previously used in the Philippines by another and not abandoned, as to be likely, when applied to or used in connection with the goods, business or service of the applicant, to cause confusion or mistake or to deceive purchasers".

For failure of the Respondent-applicant to file his Answer, he was declared as in default (ORDER NO. 93-233 dated April 12, 1993).

Pursuant to the ORDER OF DEFAULT, Opposer presented its evidence ex-parte consisting of documentary exhibits marked as Exhibits "A" to "E" inclusive of submarkings.

An examination of Respondent-Applicant's trademark "MAGNOLIA" discloses that it is identical with the trademark of the opposer "MAGNOLIA". Both marks contained the same number of letters, the same sound, the same spelling and the same in appearance.

As shown by the evidence submitted, Respondent-Applicant's date of First Use as stated in his trademark application subject of this opposition proceedings Serial No. 70931 is "FEBRUARY 1, 1989" while the Opposer's dated of First Use as stated in the opposition field is July 1, 1925 (Exhibit "E-34") Certificate of Registration No. 18778 issued on May 2, 1973.

Worthy to be remembered is the fact that the mark "MAGNOLIA" has been registered not only in the Philippines, but in various countries of the world in the name of the herein Opposer.

From the foregoing, there is no doubt that Opposer has already appropriated the mark "MAGNOLIA" before that of the Respondent-Applicant.

On the basis of the evidence submitted, Opposer has shown concrete and convincing proofs that it owns the subject mark in question and the registration of the same mark in the name of the Respondent-Applicant is contrary to Section 4(d) of R.A. No. 166 as amended.

The non-filing of the requisite Answer to the Notice of Opposition nor any motion to lift the order of default despite notice is indicative of Respondent-Applicant's lack of interest in his application, thus he is deemed to have abandoned the same.

Therefore, Opposer deserves protection under Section 4(d) of R.A. No. 166, as amended.

WHEREFORE, the Opposition is GRANTED. Application Serial No. 70973 filed by SO YEE SIN for the trademark "MAGNOLIA" is hereby DENIED.

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

SO ORDERED.

IGNACIO S. SAPALO
Director