

SANRIO COMPANY LIMITED,	)	INTER PARTES CASE NO. 3563
Opposer,)	
	)	OPPOSITION TO:
)	
	)	Application Serial No. 43526
	)	Filed : December 19, 1980
- versus -	)	Applicant : Sun Moon Star Int'l
	)	Corp.
	)	Trademark : SUPERSTAR
	)	Used on : Detergent bar
)	
	)	<u>DECISION NO. 93-2 (TM)</u>
SUN MOON STAR)	
INTERNATIONAL CORP.,	)	August 9, 1993
Respondent-Applicant.)	
x-----x)	

DECISION

This is an Opposition to the Application for Registration of the trademark SUPERSTAR for detergent bars filed by SUN MOON STAR INTERNATIONAL CORP. with postal address at 46-A Gery Angeles Street, Paso de Blas, Valenzuela, Metro Manila under Serial No. 43526. The said application was filed on 19 December 1980 and was published for opposition on the January-February issue of the Official Gazette of this Bureau.

The Opposer, UNILEVER PLC, a corporation organized and existing under the laws of England with principal office at Port Sunlight, Wirral, Merseyside, England, opposed the registration of the said mark on the ground that the registration of the mark Superstar in the name of the Respondent-Applicant is proscribed by Section 4(d) at Republic Act 166 as amended.

The Opposer filed its Notice of Opposition on 29 June 1990 and a Notice to Answer was mailed on 17 July 1990. Respondent-Applicant received the said Notices on 21 July 1990 as evidenced by the Return Card of the Postal Services Office.

On 05 June 1991, this Office issued Order No. 91-507 motu proprio declaring the Respondent IN DEFAULT for failure to answer the Notice of Opposition within the reglementary period.

On 08 July 1991, the Opposer presented evidence ex-parte consisting of a certified true copy of Trademark Registration No. 23786 (Exhibit "A" and submarkings) issued by this Office on 22 July 1976 for the trademark SUPERWHEEL used for laundry soaps in favor of Philippine Refining Company. The trademark was assigned to herein Opposer, Unilever PLC. Opposer also established use of SUPERWHEEL in the Philippines in connection with laundry soap since 1974.

The only issue in this case is whether or not the trademark SUPERSTAR of the Respondent is confusingly similar to Opposer's SUPERWHEEL, when used for detergent bars.

The determinative factor in a contest involving registration of trademarks is not whether the challenged mark would actually cause confusion or deception of the purchasers but whether the use of such mark would likely cause confusion or mistake on the part of the buying public. To constitute infringement, the law does not require that the competing trademarks be so identical as to produce actual error or mistake. It would be sufficient for that similarity between the two labels is such that there is a possibility or likelihood of the purchaser of the older brand

mistaking the newer brand for it (American Wire & Cable Co. vs. Director of Patents 31 SCRA 544).

In the case at bar, the competing marks have a common prefix: SUPER. This fact would lead purchasers and unwary customers to confuse the Opposer as the source or origin of the SUPERSTAR detergent bars.

In *Co Tiong Sa v Director of Patents*, (L-5378, May 24, 1954, 95 Philippines 1) the application for the trademark FREEDOM was rejected over the existing registration of the trademark FREEMAN for the same class of goods. In *American Wire & Cable Co. vs. Director of Patents*, (31 SCRA 544) the trademark DYNAFLEX for electric wires was held to be confusingly similar to the trademark DURAFLEX also for electric wires which was already registered in the name of another company.

Moreover, the merchandise or goods being sold by the parties herein are ordinary commodities purchased by average persons who are at times ignorant and unlettered. These are the persons who will not as a rule examine the printed small letters on the container but will simply be guided by the strikingly dominant mark SUPER on the label. Differences there will always be what-ever they are, these pale into insignificance in the face off an evident similarity of the dominant feature (the word "SUPER") and overall appearance of the labels (*Phil. Nut Industry Inc. vs. Standard Brand Inc.* 65 SCRA 575).

WHEREFORE, premises considered, this Opposition is hereby SUSTAINED and Trademark Application Serial No. 43526 is hereby REJECTED.

Let the records of this case be forwarded to the Application, Issuance and Publication Division for proper and a copy of this Decision be furnished the Trademark Examining Division to update its records.

SO ORDERED.

IGNACIO S. SAPALO
Director