

VIRGINIA R. ZEPEDA,	)	INTER PARTES CASE NO. 3190
Junior Party-Applicant)	
	)	INTERFERENCE BETWEEN:
)	
	)	Application Serial No. 54144
	)	Filed : June 29, 1984
	)	Applicant : Virginia R. Zepeda
	)	Trademark : DAIMARU & DEVICE
)	
- versus -	)	- and -
)	
	)	Application Serial No. 50111 & 50109
	)	Filed : January 18, 1983
	)	Trademark : DAIMARU WITH
	)	JAPANESE
	)	CHARACTERS
)	
	)	<u>DECISION NO. 91-3 (TM)</u>
KABUSHIKI KAISHA DAIMARU,)	
Senior Party-Applicant.)	)	February 14, 1991
x-----x)	

DECISION

This pertains to an interference docketed as IPC-3190, which was declared between Senior-Applicant KABUSHIKI KAISHA DAIMARU and Junior Party-applicant VIRGINIA ZEPEDA.

It appears that pursuant to Order No. 89-047 dated January 16, 1989, Junior Party-Applicant was declared in default due to her failure and that of her counsel to appear at the pre-trial conference set on January 10, 1989 despite due notice thereof.

On February 16, 1989, Junior-Applicant filed a Motion for Reconsideration of the above order. This was immediately opposed on February 23, 1989 by Senior Party-Applicant. Resolving the two motions, the Office issued Order No. 89-10 dated May 16, 1989 denying Junior Party-Applicant's motion and allowing Senior Party-Applicant to present its evidence ex-parte.

To date, however, Senior Party-Applicant has not submitted any evidence in its behalf. This being the case, the Office deems it proper to now consider the above-entitled case as submitted for decision on the basis of the records thereof.

Records show that Senior Party-Applicant's application was filed on January 18, 1983. On the other hand, Junior Party-Applicant filed her application on June 29, 1984. There being no testimony taken or submitted as to the date of use, this interference proceeding is hereby resolved in accordance with Rule 173, Rules of Practice in Trademark Cases.

Under the aforementioned Rule it is provided that "in all inter partes proceedings, the allegations of date of use in the application for registration of the applicant or of the registrant cannot be used. In case no testimony is taken as to the date of use, the party will be limited to the filing date of the application as the date of his first use."

WHEREFORE, in view of the foregoing, the Office finds Senior Party-Applicant, KABUSHIKI KAISHA DAIMARU, as the first adopter and user of the trademark DAIMARU with JAPANESE CHARACTERS.

Accordingly, application Serial No. 54144 filed on June 29, 1984 by Virginia R. Zepeda is hereby REJECTED. On the other hand, let Application Serial Nos. 50111 and 50109 filed by Kabushiki Kaisha Daimaru on January 18, 1983 be given DUE COURSE.

Let the records of this case be forwarded to the AIDP for proper action in accordance with this decision.

SO ORDERED.

IGNACIO S. SAPALO
Director