

BLUE BELL, INC.,
Petitioner,

INTER PARTES CASE NO. 1848

- versus -

OPPOSITION TO:
Application Serial No. 41492
Filed : June 18, 1980
Applicant : Venancio C. Sambar
Trademark: WRANCO
Used on: Jeans and jackets

VENANCIO C. SAMBAR
Respondent-Applicant.
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DECISION NO. 90-31 (TM)
August 2, 1990

DECISION

For resolution is an opposition filed by Blue Bell, Inc. to trademark Application Serial No. 41492 applied to by Venancio C. Sambar for the mark "WRANCO" covering jeans and jackets.

Blue Bell, Inc. (herein Opposer) is a corporation organized and existing under the laws of the State of North Carolina, U.S.A., and doing business at 301 North Elm St., Greensboro, North Carolina 27422, U.S.A. On the other hand, Venancio C. Sambar (herein Respondent-Applicant) is a Filipino citizen, doing business at 72 Chicago St., U.S. Subdivision, Malabon, Rizal, Philippines.

The sole issue to be resolved in this case is whether Respondent-Applicant's mark "WRANCO" is confusingly similar with the Opposer's mark "WRANGLER", where both marks cover the same products.

Ownership over trademark "WRANGLER" is not disputed. Opposer is the registrant in Certificate of Registration No. 2443 issued on November 20, 1981 (originally Registration No. 8065 issued on February 4, 1960) for the trademark "WRANGLER" covering jeans, jackets and shirts, sport and play clothes for men, women and children. Likewise, it presented different certificates of registration issued by the U. S. Patent and Trademark Office and different labels for the different styles and appearances of the trademark "WRANGLER" (Exhs. "E", "F", "G", "H", "J", "K" and "L"). And to prove the existence of confusing similarity of its trademark "WRANGLER" with the mark it is opposing registration to, "WRANCO", Opposer presented a pair of pants with the labels "WRANCO" (Exhs. "B", "C" and "D") it bought from Shopex Department Store for P179.95 (Exh. "A"). With the addition of labels submitted by Respondent-Applicant upon application of its mark now being opposed, we now proceed to determine the existence of confusing similarity on the basis of these labels (Co Tiong Sa vs. Director of Patents, 95 Phil. 1; Philippine Nut Industry vs. Standard Brands, 65 SCRA 525; G.M. Luft Co. vs. Ngo Guan, 18 SCRA 944).

Comparing the respective labels containing the marks in contest, we arrive at the conclusion that no confusing similarity exists between the two marks. "WRANGLER" and "WRANCO" could not likely be mistaken to be the same, in sound and appearance. Under the principle of idem sonans, two names are said to be similar only "if the attentive ear finds difficulty in distinguishing them when pronounced" (p. 670, Blacks Law Dictionary, Fifth edition). It is not so in this case. No amount of tongue-twisting exercise could make "WRANCO" sound like "WRANGLER". There is not much phonetic similarity between the two. In "WRANGLER", the pronunciation of the suffix "GLER" includes a combination of the four letters G, L, E and R; whereas in "WRANCO", the pronunciation of the suffix "CO" consists only of a combination of two letters C and O. More importantly, we take note of the differences in appearance of the marks as actually used on the market, considering that the products covered by these marks are sold in

department stores where purchasers examine the products directly, as contradistinguished to those products bought over-the-counter. The label-patch attached above the right back pocket of the "WRANCO" pants (Exh. "B" of Opposer's evidence) appears in red background with the mark "WRANCO" visibly printed thereon. At the Upper left portion of the right back pocket is attached a small gray cloth with the mark "WRANCO" printed thereon. And both back pockets of the said pair of pants have no other design but the two thread lines at the sides. Attached to the pair of pants are two sample labels where the mark "WRANCO" is visibly shown. The first (Exh. "C") shows pictures of a rodeo cowboy and an Indian. On the other hand, Opposer's label patch is attached to the back pocket with the mark "WRANGLER" in a rope design with a brown background. The back pocket has its distinct "W" stitch design ("Exh. "L") The sample label (Exh. "J") in an ecru background had the mark "WRANGLER" visibly in rope design. The said label has the size almost twice that of Respondent-Applicant's labels (Exhs. "C" and "D"). On the uppermost portion of the label appears the phrase

"LOOK FOR THE  N THE POCKET"

which indicates the presence of the W stitch design in every product of the Opposer. The glaring and striking differences between the two subject marks as actually used on their respective products are then manifest. The color of the respective label patch and the clearly printed marks thereon; the pocket designs; the sample labels all point to the obvious dissimilarities between the two marks. The minute and immaterial similarities pointed out by the Opposer are not sufficient to establish confusing similarity between the marks. Thus, the showing of the western motif by printing of a rodeo cowboy and an Indian on one of the sample labels (Exh. "C") of Respondent-Applicant's product is a common practice in the business as these businessmen try to satisfy and cater to the colonial mentality of the market. Likewise, the gray cloth tab attached at the upper left corner of the right back pocket of Exhibit "B" pointed out by the Opposer's witness, Eugenio E. Perez III (TSN, June 9, 1988, pp.7-9, 13-16 18-19 and 21) to be similar with its mark "WRANGLER" because of the lines that cross the letters XXX and that is how the rope looks like is without factual basis. The tab referred to appears to be relatively small as compared to the other marks (patch and labels) attached to the product. Again, this practice of attaching a cloth tab at the upper left corner of the right back pocket is common in pants.

WHEREFORE, the opposition filed by Blue Bell, Inc. on July 20, 1984 to Application Serial No. 41492 is hereby DENIED. Accordingly, Application Serial No. 41492 is allowed for registration.

Let the records of this case be remanded to the Application, Issuance and Publication Division for appropriate action in accordance with this Decision.

SO ORDERED.

IGNACIO S. SAPALO
Director