BURLINGTON INDUSTRIES PHILIPPINES, INC., *Opposer*,	}	Inter Partes Case No. 14-2000-00017 Opposition to:
	}	Application Serial. No.: 107826
	}	Filed : 02 May 1996
-versus-	}	Applicant : Faustino Lim
	}	Trademark : "TAKING CAMP"
	}	Goods : Children's T-shirts blouses and briefs under Class 25
FAUSTINO LIM, *Respondent-Applicant*.	}	
x--x		Decision No. 2003 – 23

D E C I S I O N

This is an opposition to the application for registration of the mark "TAKING CAMP" for children's t-shirts, blouses and briefs under Application Serial no. 107826 filed on 02 May 1996 by Faustino Lim of Valenzuela, Metro manila, which was published on page 75, vol. II, No. 6 of the November-December 1999 issue of the Official Gazette of the Intellectual Property Office and released for circulation on 19 June 2000.

Opposer, BURLINGTON INDUSTRIES PHILIPPINES, INC. (formerly: MIL-ORO MANUFATURING CORPORATION) is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at 7379 Bakawan Street, Makati City, Metro Manila.

On 23 May 1975, Opposer obtained Certificate of Registration No. 22374 in the Principal Register for its trademark "CAMP" for men's and children's socks, shirts and undershirts which was renewed on 23 May 1995 for another twenty (20) years.

Meanwhile on May 2, 1996, Respondent-Applicant Faustino Lim of Valenzuela, Metro Manila filed application under application serial no. 107826 for the mark "TAKING CAMP" for the goods: children's t-shirt, blouses & brief. The said application was allowed for publication and was published on page 75, vol. II, No. 6 of the November-December 1999 issue of the Official Gazette of the Intellectual Property Office and was released for circulation on 19 June 2000.

Believing it would be damaged by such registration, Opposer filed the instant opposition of the mark "TAKING CAMP" in the name of FAUSTINO LIM on the basis of the following:

"4. Opposer believes it would be damaged by the registration of the mark "TAKING CAMP" in the name of Respondent-Applicant for which reason it opposes said application on the following grounds:

"4.1. The mark "TAKING CAMP" sought to be registered by the Respondent-Applicant closely resembles the trademark "CAMP" owned by Opposer. The Opposer has previously used in commerce in the Philippines its trademark "CAMP" on a date earlier than 01 March 1989, the alleged date of first use of the mark "TAKING CAMP" by the respondent-applicant. Moreover, Opposer is the holder of a subsisting Certificate of Registration No. 22374 as Annex "B". Opposer duly renewed its Certificate of Registration on 23 March 1995 for which reason a certificate of renewal of registration no. 22374 was issued to Opposer by the IPO. A copy of the certificate of renewal of registration no. 22374 is attached herewith as Annex "C".

“4.2. The mark “TAKING CAMP” of the Respondent-Applicant would likely cause confusion and mistake, and would deceive purchasers when applied in connection with the goods of respondent-applicant, as the said mark is confusingly similar to and identical with Opposer’s trademark “CAMP” which is likewise use by the Opposer on the same or closely-related goods, namely men’s and children’s socks, shirts and undershirts.

“4.3. Through its long and continuous use of the trademark “CAMP” on its good, Opposer has acquired tremendous goodwill. Hence, the use and/or registration of confusingly similar trademark by Respondent-Applicant will clearly cause damage and injury to Opposer’s business and goodwill.

“4.4. Consequently, respondent-applicant cannot claim ownership and exclusive use of the mark “TAKING CAMP”.

In support of the foregoing grounds Opposer relied, among others, on the following facts and circumstances:

“5.1. Opposer is well-known in the business community as a manufacturer of high-quality socks, shirts and undershirts. Opposer has promoted and popularized its trademark “CAMP” through advertising media and its dealers nationwide.

“5.2. Opposer has been using its trademark “CAMP” on its goods since 08 March 1972. Thus Opposer’s first use of its trademark “CAMP” preceded the alleged first use by Respondent-Applicant of the mark “TAKING CAMP”.

“5.3. Opposer has been and is continuously using its trademark “CAMP” in Philippine Commerce, and goods bearing said trademark are sold, being sold and promoted or advertised for sale by the Opposer nationwide.

“5.4. By reason of Opposer’s continuous and uninterrupted use of its trademark “CAMP” long before Respondent-Applicant’s alleged first use of the confusingly similar “TAKING CAMP”, Opposer has established goodwill for its said trademark in Philippines commerce such that Opposer’s trademark has acquired or obtained general consumer recognition to the Opposer.

“5.5. On 23 May 1975, Opposer obtained Certificate of Registration No. 22374 in the then Principal Register for its trademark “CAMP” Opposer has duly renewed its Certificate of Registration on 23 May 1995, hence, Opposer’s registration subsists.

“5.6. Respondent-Applicant’s goods on which the mark “TAKING CAMP” is allegedly affixed is in connection with Opposer’s goods which bear its trademark “CAMP”. Respondent-Applicant intends to affix the mark “TAKING CAMP” on children’s t-shirts, blouses and briefs, which are similar to the very goods manufactured and sol by opposer being its trademark “CAMP”.

“5.7. In the case of “Burlington Industries Philippines, Inc. v Chong Yon Yon”, Inter Partes Case No. 3963 of the then Bureau of Patents, Trademarks and Technology Transfer, not the IPO, the Opposer’s opposition to application No. 75956 for the trademark “TAKING CAMP” for use on T-shirts filed by Chong Yon Yon was sustained and said application

rejected. In sustaining Opposer's opposition, the then Bureau of Patents, Trademarks and Technology Transfer held:

"The evidence, shows that the trademark applied for registration by the herein Respondent-Applicant CHONG YON YON for the mark "TAKING CAMP" used on t-shirts is confusingly similar to the trademark "CAMP" of the Opposer as both marks contained the word "CAMP" xxx and in the drawings of Respondent-Applicant's trademark being opposed bearing Serial No. 75956.

More importantly, the confusing similarity on the trademark of both parties is further compounded by the fact that the goods or products covered by the competing trademarks are similar and they belong to the same class (25) of the International classification of goods, hence, there is factual basis to hold that Respondent-Applicant's trademark is confusingly similar with the Opposer's trademark.

When one applies for the registration of a trademark or label which is almost the same of very closely resembles one already used and registered by another, the application should be rejected and dismissed outright even without any opposition on the part of the owner and user of a previously registered label or trademark. This is not only to avoid confusion on the part of the public but also to protect an already used and registered trademark and an established goodwill (Chuan Chow Soy & Canning Co. v. Director of Patents and Villasanta, 108 Phil 833, 836).

It has been observed that Respondent-Applicant did not appropriate Opposer's trademark in toto to avoid the likelihood of confusion by adding the word "TAKING" thereto. In Continental Connector corp. v. Continental Specialties Corp., 207 USPQ 60, it has been ruled that "Courts have repeatedly held that the confusion created by use of the same word as the primary element in a trademark is not counteracted by the addition of another term. Examples are: "MISS USA" and "MISS USA WORLD" (Miss Universe Inc. v. Patricelli 161 USPQ 129); "GUCCI" and "GUCCI-GOO" (Gucci Shop vs. R.H. macy & co., 446 F. Supp. 838); "COMFORT" and "FOOT COMFORT" (Scholl Inc. v. Tops E.H.R. Corp., 185 USPQ 754), "ACE" and "FEN-ACE" (Becton, Dickenson & Co. v. Wigwam Mills, Inc., 199 USPQ 607).

One significant factor to be given consideration in this particular case is the fact that Opposer's "CAMP" is registered in this Bureau bearing Reg. No. 22374 on May 23, 1975 xxx covering the goods men's and children's socks, shirts and undershirts xxx which registration has already been renewed.

Finally, those who desire to distinguish their goods from the goods of another have a broad field from which to select a trademark for their wares and there is no such poverty in the English language or paucity of signs, symbols, numerals, etc. as to justify one who really wishes to distinguish his product from those of all others in entering the twilight zone of the field already appropriated by another (Weco Products Co. v. Milton Ray Co., 143 2d 985, 31C.C.P.A. P 1214).

In its thus clear that Respondent-Applicant merely adopted its trademark "TAKING CAMP" from Opposer. The inescapable conclusion is that Respondent-Applicant is merely riding on the reputation of Opposer's mark, for, in the unlimited field of choice, what could have been Respondent-Applicant's purpose in selecting "TAKING CAMP" if not for its fame?" [at pp.4-5; emphasis and underscoring supplied]

In response Respondent-Applicant averred the following answers:

"1. That the Respondent is the holder of the Principal Register of "TAKING CAMP" with Registration No. 51817 registered on December 2, 1991. Attached herein is a copy of said Registration No. 51817 (Annex A);

"2. The Respondent-discovered his mistake that instead of filing an affidavit of use after the 5th year on May 2, 1996, an application for the same trademark, "Taking Camp" was again filed as Application Serial No. 107826, dated May 2, 1996 (Annex B) when in fact a certificate of principal register is already existing;

"3. That the amount of P606.00 with OR 0198100 was paid for the filing fee for an application of the same trademark. "Taking Camp", instead of the amount that should be paid for the filing of an affidavit of 5th year use; (Annex C)

"4. That Respondent has no intention of confusing purchasers of the use of "Taking Camp" as such was already registered under respondent's name;

"5. That Respondent has been using "Taking Camp" since March 1, 1989 for its t-shirts, blouse, briefs and no oppositions were presented until now;

"6. That Respondent use of "Taking Camp" has been established with its customers since 1989 and its certificate for principal register was issued on December 2, 1991 with registration no. 51817 proving it has ownership and exclusive use of the trademark "Taking Camp";

"7. That the fact that the Respondent-Applicant's Certificate for Principal Register No. 51817 was duly approved and issued by this office merely shows and proves that there is no justification for the opposition filed by the Opposer;

In reply, Opposer denied all that was alleged by the Respondent in its answer for the reasons that:

"1. In his Answer, Respondent-Applicant Lim claims that he is the holder of Certificate of Registration No. 51817 dated 02 December 1991 for the mark "TAKING CAMP". However, said registration is no effect since the same has been cancelled due to Respondent-Applicant Lim's admitted failure to file an affidavit of use {Section 12 of Republic Act No. 166 (the "old Trademark Law").

"1.1. By his own admission (cf. Answer dated 21 August 2000), Respondent-Applicant Lim failed to file the required affidavit of use or non-use within one (1) year following the fifth anniversary of the date of issue of Certificate of Registration No. 51817, or within one year from 02 December 1996. In view of the fact that Respondent-Applicant Lim failed to comply with the clear, express requirement of Section 12 of the Old Trademark law, Certificate of Registration No. 51817 has, since 02 December 1997, ceased to exist. Hence, Respondent-Applicant Lim cannot claim that he "is" the holder of Certificate of Registration No. 51817.

"1.2. Moreover, Respondent-Applicant Lim's failure to file an affidavit of use is clear proof that contrary to his

allegations in paragraph 5 and 6 of his answer, he has not used the mark in commerce as required under the old trademark law. Hence his registration was properly cancelled.

"1.3. Due to his failure to file the required affidavit of use within the time prescribed by law, Respondent-Applicant Lim, in his Answer dated 21 August 2000, now prays that Application Serial No. 107826 filed on 02 May 1996 be now converted to an affidavit of use. This is untenable. The old trademark law and its implementing rules required the submission of affidavit of use. Application Serial No. 107826 did not conform to the requirements required to be alleged in the affidavit of use (cf. Sec.142 of the Rules of Practice on Trademark Cases).

"2. In his answer dated 21 August 2000, Respondent-Applicant Lim also claims that he merely committed a mistake in filing Trademark Application Serial No. 107826 for the mark "TAKING CAMP", instead of filing the required affidavit of use for the said mark.

"1.4 Contrary to his allegation, Respondent Lim could not have committed a mere mistake but actually intended to file, as he did on 02 May 1996, Application Serial No. 107826 for the mark "TAKING CAMP".

"1.5 Respondent Lim could not have not known that what he was filing on 02 May 1996 was not an affidavit of use but a trademark application. The document that respondent Lim actually signed and filed with the then BPTTT on 02 May 1996 was clearly captioned as "TRADEMARK APPLICATION".

"1.6 Further, by respondent-applicant Lim's own admission, the amount that respondent-applicant's Lim actually paid to the BPTTT on 02 May 1996 was the amount that was being charged to trademark applications that were being filed at that time (cf. Answer dated 21 August 2000).

"1.7 In view of the foregoing, respondent-applicant Lim could not have possibly filed Trademark Application Serial No. 107826 and paid for the same by mere mistake. Respondent-applicant Lim's filing of and paying of fees for Trademark Application Serial No. 107826 showed his clear intention to file the said application."

"3. Respondent-Applicant Lim also alleged that he has no intention of confusing purchasers with his use of the mark "TAKING CAMP" as the said mark is already registered in his name.

"1.8 As previously discussed, Certificate of Registration No. 51817 has been cancelled and thus, has ceased to exist. Respondent-applicant Lim's use of the mark is therefore in violation of the Opposer's right as owner of the mark "CAMP"

“1.9 As already discussed by Opposer in its verified Notice of Opposition dated 18 July 2000, Opposer has been using its trademark “CAMP” on its goods since 08 March 1972. Thus, opposer’s first use of its trademark “CAMP” preceded the alleged first use on 01 March 1989 by respondent Lim of the mark “TAKING CAMP”.

“1.10 On 23 May 1975, Opposer obtained Certificate of Registration No. 22374 in the then principal Register for its Trademark “CAMP”. Opposer has duly renewed its Certificate of Registration on 23 May 1995, hence, Opposer’s registration subsists.

“1.11 Respondent-applicant Lim’s goods on which the mark “TAKING CAMP” is allegedly affixed is in competition with Opposer’s goods which bear its trademark “CAMP”. Respondent-applicant Lim intends to affix the mark “TAKING CAMP” on children’s wear, children’s t-shirts, blouses and briefs, which are similar to the very goods manufactured and sold by opposer bearing its trademark “CAMP”.

“1.12 Opposer’s exclusive use of the mark “CAMP” and the exclusion of any person from using the mark “TAKING CAMP”, are justified not only by virtue of Opposer’s existing valid Certificate of Registration No. 22374 for the mark “CAMP” but also confirmed by a Decision of the director of the BPTTT dated 25 October 1997in Inter-Partes Case No. 3963, “Burlington Industries Philippines, Inc. v. Chong Yon Yon”. In the said case, the Opposer’s opposition to Application No. 75956 for the trademark “TAKING CAMP” for use on t-shirts filed by Chong Yon Yon was sustained and the said application rejected. In sustaining Opposer’s Opposition, the Director held that the trademark applied for registration by the then respondent-applicant Chong Yon Yon for the mark “TAKING CAMP” used on t-shirts was confusingly similar to the trademark “CAMP” of the Opposer as both marks contained the word “CAMP” (cf. BPTTT Decision dated 25 October 1997).

“1.13 Also in the said decided Inter Partes Case No. 3963, the Director of the BPTTT held that confusing similarity between the marks of both parties was further compounded by the fact that the goods or products covered by the competing marks were similar and they belonged to the same class (25) of the International classification of goods. In the instant Inter Partes Case, there is the same issue of confusing similarity between the marks “CAMP” and “TAKING CAMP” the same competing marks in Inter Partes Cases 3963, for goods in the same international class (25). Hence, in the instant case there is undeniably confusing similarity between the marks “CAMP” and “TAKING CAMP” for which reason the instant opposition would be sustained and application Serial No. 107826 rejected.

Respondent-Applicant opposed the said reply by stating:

"1. That the respondent would like to stress that the mere fact that in spite of the existence of Opposer's Principal Register Certificate no. 22374 dated May 23, 1975 for "CAMP" (Annex A), the respondent's "Taking Camp" was given a Principal Register Certificate No. 51817 on December 02, 1991; (Annex B) why would the Honorable Director now contradicts itself by denying the filing of respondent's application for "Taking Camp"

"2. That respondent admitted that he committed a mistake out of ignorance on the part of the secretary and carelessness and negligence on respondent's part with regards to the filing of the affidavit of use and non-use instead respondent filed another application for the same trademark that he already possessed during the time of filing which is May 2, 1996; a clear proof of respondent's real intention and sincerity in the filing for the affidavit of use and non use was the date when; it was erroneously filed, which is May 2, 1996, the supposedly date to file for the fifth year anniversary. So it cannot be denied that respondent's real intention was to file an affidavit of use and non-use and not a trademark application of "TAKING CAMP" which he is already a holder of its Principal Register Certificate No. 51817 dated December 02, 1991;

"3. That respondent did not know that its principal register certificate no. 51817 dated December 02, 1991, has been cancelled due to its erroneous filing of application for trademark on May 2, 1996 instead of an affidavit of use and non-use until Opposer's letter "notice to answer";

"4. It is true that respondent cannot now claim ownership of Principal Register No. 51817 dated December 2, 1991 due to the erroneous filing of trademark application instead of an affidavit of use and non use of May 2, 1996, but that does not prevent us from re-applying for the same trademark "TAKING CAMP" since in the first place, it has already been approved before for principal Register, even when your Principal Register "CAMP" was in existence. Whatever basis that the Honorable Director applied in the approval of Respondent's "TAKING CAMP" before when "CAMP" was in existence still holds in the consideration for the application for "TAKING CAMP" dated May 2, 1996; it is his decision if he would deny or approve the re-application for said trademark "TAKING CAMP" due to respondent's erroneous filing of trademark application instead of an affidavit of use and non-use;

"5. That respondent "TAKING CAMP" was given a certificate of Principal Register 51817 on December 2, 1991 in spite of Opposer's allegation now that respondent's "TAKING CAMP" is now confusingly similar to Opposer's Camp; Why did not the Opposer raise any objections when respondent applied for "TAKING CAMP" on March 22, 1990 with Serial No. 71348 (Annex D), before it was finally approved for the principal Register No. 51817 on December 2, 1991?"

After all the issues were joined, a pre-trial conference was set by this Office. However, the Respondent failed to appear during the scheduled pre-trial and to submit its pre-trial brief. Prompting the Opposer to move to declare Respondent-Applicant as in default and likewise moved for judgment on the pleading.

On June 6, 2001, this Office issued Order no. 2001-285 declaring Respondent-Applicant as in default while denying the motion for judgment on the pleading. Moving to lift the Order of

Default the Respondent-Applicant through counsel moved for the reconsideration of the said Order which this Office denied in Resolution No. 2001-14 affirming Order 2001-285.

In the ex-parte trial, Opposer presented its sole witness Mr. Ruddy Tan, the General Manager of Burlington Industries. After which, Opposer rested its case and formally offered Exhibits "A" to "B-6" inclusive of their sub-markings which were also being offered as part of the testimony of Opposer Burlington's witness, Mr. Ruddy C. Tan. After admitting Opposer's evidence, the case was submitted for decision. Since Respondent-Applicant was declared as in default, this Office can only consider those documents which it can take judicial notice of.

Opposer raised the following issues:

Whether or not the ruling of the director of the then BPTTT in Inter-Partes Case no. 3963 entitled "Burlington Industries Philippines, Inc. v. Chong Yon Yon" finds application in the instant case.

Whether or not Opposer Burlington, as the prior user, adopter, and owner of the mark "CAMP" and the holder of a subsisting trademark registration for the mark "CAMP", can exclude others from, using the said mark, or one confusingly similar thereto, such as the mark "TAKING CAMP" sought to be registered by Respondent-Applicant.

Whether or not registration of the mark "TAKING CAMP" in the name of respondent-applicant would violate the proprietary rights, interests, business reputation and goodwill of Opposer Burlington over its mark "CAMP"

Whether or not what Respondent-Applicant filed on 02 May 1996 with the then BPTTT was the required affidavit of use for the fifth anniversary of certificate of registration no. 51817 dated 02 December 1991 for the mark "Taking Camp" and not trademark application serial no. 107826 for the mark "TAKING CAMP"

Certificate of Registration No. 51817 dated 02 December 1001 for the mark "TAKING CAMP" was properly cancelled due to Respondent-Applicant's failure to file the required affidavit of use for the fifth anniversary of the said mark.

As the records will show, this is not the first time that the Office was called upon to rule on a case involving the marks "CAMP" and "TAKING CAMP". In Inter Partes Case No. 3963 entitled Burlington Industries Phil. (Formerly Mil-Oro Manufacturing) vs. Chong Yon Yon wherein the trademark application for "TAKING CAMP" used on the goods: t-shirt was opposed by the registered owner of the mark "CAMP" used on men's and children's socks, shirts, and undershirts."

In resolving Inter Partes Case No. 3963, this Office in Decision No. 97-26 said that the mark "TAKING CAMP" used on t-shirts is confusingly similar to the trademark "CAMP" as both marks contained the word "CAMP". It further enunciated that the confusing similarity on the trademark of both parties is compounded by the fact that the goods or products covered by the competing trademarks are similar and they belong to the same class (25) of the international classification of goods, hence, there is factual basis to hold that Respondent-applicant's trademark is confusingly similar with the Opposer's trademark. (page 3 of Decision No. 97-26).

While it is true that each case should be decided on its own merit, however, the factual circumstances and legal questions involved in the case at bar falls squarely with Inter Partes Case No. 3963. Hence, Decision No. 97-26 is applicable to the case at bar.

Records show that Opposer duly applied for, and was granted Certificate of Registration No. 22374 for the mark "CAMP" for the goods: Men's and children's socks, shirts, and undershirts on 23 May 1975. While Respondent-Applicant trademark application under serial no.

107826 for the mark “TAKING CAMP” is for the goods: children’s t-shirt, blouses & brief. Both marks are used for goods falling under class 25. Therefore, applying Decision 97-26 in the instant case, this Office will arrive at a conclusion that there exists a confusing similarity between the competing marks.

It may be said that the Respondent-Applicant did not appropriate the Opposer’s trademark in toto because of the additional word “TAKING”, again this was already explained in Decision No. 97-26:

> “In Continental Connector Corp. vs. Continental Specialties Corp., 207 USPQ 60 it has been ruled that “courts have repeatedly held that the confusion created by use of the same word as the primary element in a trademark is not counteracted by the addition of another term.” Examples are: “MISS USA” and “MISS USA WORLD”, (Miss Universe Inc. vs. Patricelli 161 USPQ 129); “GUCCI” and “GUCCHI-GOO” (Gucci Shop vs. R.H. Macy & Co., 446 F. Supp. 838); “COMFORT” and “FOOT COMFORT” (Scholl Inc. vs. Tops E.H.R. Corp., 185 USPQ 754), “ACE” and “FEN-ACE” (Becton, Dickenson & Co. vs. Wigwam Mills, Inc. 199 USPQ 607)” (Underscoring supplied)

Moreover, aside from the fact that the goods on which the competing marks are used belong to the same class (25), it is also worth noting that 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 letters on the container but simply guided by the striking dominant word at the mark on the labels. Differences there will always be, but whatever they are, these will fade into insignificances in the face of evident similarity of the dominant feature and overall appearance of the labels (p. 4 of Decision No. 97-26 quoting Philippine Nut Industry Inc. vs. Standard Brand Inc., 65 SCRA 575).

Having resolved the issue of confusing similarity, the question on who between the parties has a better right to the marks CAMP and TAKING CAMP come into play. From the evidence presented, Opposer duly applied for, and was granted Certificate of Registration No. 22374 for the mark “CAMP” for the goods: men’s and children’s socks, shirts, and undershirts on 23 May 1975 under Republic Act No. 166 with a date of first use on May 8, 1972 (Exhibit B-2). Opposer duly renewed its Certificate of Registration for a term of twenty (20) years from 23 May 1995 (Exhibit B-5). It likewise filed the required Declaration of Actual Use (Exhibit B-%-2). Hence, Opposer’s Certificate of Registration No. 22374 for the mark “CAMP” subsists.

On the other hand, Respondent-Applicant claims in its application that its mark “TAKING CAMP” has a date of first use on March 1, 1989. In its answer it further claims that “TAKING CAMP” is registered with the principal register on December 2, 1991 under Registration No. 51817. However, it failed to adduce evidence when it has all the opportunity to do so, thus its claim of previous registration remains to be a mere allegation.

By comparing the date of issuance of the Certificate of Registration issued in the name of Burlington Industries Philippines Inc. (formerly Mil-Oro Manufacturing Corporation) on May 23, 1975 with a date of first use on March 8, 1972 and the date of filing of the Respondent-Applicant on May 2, 1996 and a claim of first use on March 1, 1989, there can be no other conclusion that the herein Opposer is the prior adopter and user of the trademark CAMP, proof that at the time Respondent-Applicant started using the mark “TAKING CAMP” and filed its application for registration, it has no right over the mark considering that it is confusingly similar to CAMP already used and appropriated by Opposer on similar or related goods.

In consideration of the foregoing, it is the Opposer who has the right to appropriate the mark “CAMP” for its exclusive use as the rightful owner thereof in accordance with Section 2-A of R.A. No. 166 as amended, the law applicable to the present controversy, which provides:

"Section 2-A. *Ownership of trade-marks, trade-names and service marks, how acquired.* – Anyone who lawfully produces or deals in merchandise of any kind or who engages in any lawful business, or who renders any lawful service in commerce, by actual use thereof in manufacture or trade, in business, and in the service rendered, may appropriate to his exclusive use a trade-mark, a trade-name, or a service-mark not so appropriated by another, to distinguish his merchandise, business or service from the merchandise, business, or services of others. – x x x' –" (Underscoring supplied)

It is thus clear that Respondent-Applicant merely adopted its trademark from Opposer. One conclusion which should be emphasized is that Respondent-Applicant is merely riding on the reputation of Opposer's mark CAMP, for, in the unlimited field of choice, what could have been Respondent-Applicant's purpose in selecting 'TAKING CAMP' if not for its fame.

Finally, as to whether what Respondent-Applicant filed on 02 May 1996 with the then BPTTT was the required affidavit of use for the fifth anniversary of the Certificate of Registration no. 51817 dated 02 December 1991 for the mark "TAKING CAMP" and not trademark application serial no. 107826 for the mark "TAKING CAMP"; and whether Certificate of Registration No. 51817 dated 02 December 1991 for the mark "TAKING CAMP" was properly cancelled due to Respondent-Applicant's failure to file the required affidavit of use for the fifth anniversary of the said mark, the records of Cert. of Regn. 51817 clearly show that Respondent Faustino Lim did not file the required Affidavit of Use for the 5th Anniversary of its registration hence, the said registration is now cancelled under Sec. 12 of R.A. 166, as amended and Rule 141 of the Rules of Practice in Trademark Cases. Accordingly, a Notice of Cancellation of said Regn. No. 51817, was sent by the Intellectual Property Office to herein Respondent last July 10, 2002. Therefore, said registration ceases to have force and effect. The case before us now is an opposition to Application No. 107826 for the registration of the mark TAKING CAMP filed by herein Respondent on 02 May 2003.

WHEREFORE, premises considered, the Notice of Opposition is hereby SUSTAINED. Consequently, application bearing Serial No. 107826 for the Trademark "TAKING CAMP" used on Children's t-shirts, blouses and briefs under Class 25 filed by Faustino Lim is hereby REJECTED.

Let the file wrapper of TAKING CAMP subject matter of this case be forwarded to the Administrative, Financial Human Resource Development Service Bureau (AFHRDSB) for appropriate action in accordance with this Decision, with a copy thereof to be furnished the Bureau of Trademarks (BOT) for information and to update its records.

SO ORDERED.

Makati City, 31 March 2003.

ESTRELLITA BELTRAN-ABELARDO
Director, Bureau of Legal Affairs
Intellectual Property Office