

BURLINGTON INDUSTRIES PHILS.,	}	Inter Partes Case No. 3965
INC., (formerly MIL-ORO	}	Opposition to:
MFG., CORP.,)	}	
Opposer,	}	
	}	Serial No. : 81949
-versus-	}	Date Filed : August 10, 1992
	}	Trademark : "CAMP MAGIC"
ALEXANDER UY,	}	
Respondent-Applicant.	}	Decision No. 2002 – 23
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DECISION

On November 19, 1993, the herein Opposer BURLINGTON INDUSTRIES PHILIPPINES, INC. (Formerly MIL-ORO MANUFACTURING CORPORATION), a corporation 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, Metro Manila, filed an opposition for the registration of the mark "CAMP MAGIC" bearing application No. 81949 for t-shirts, polo shirts, socks, jackets, pants, jeans, sandos and briefs falling under class 25 of the International Classification of goods which trademark application was filed August 10, 1992 and published on page 34 Vol. VI, No. 4 of the July-August 1993 issue of the Official Gazette of the Bureau of Patents, Trademarks and Technology Transfer.

The Respondent-Applicant in the above-entitled case is ALEXANDER UY doing business under the name and style of FASHION HANG-OUT ENTERPRISES at 1131 Severino St., Sta. Cruz, Manila.

The grounds for the opposition are as follows:

- "1. The mark "CAMP MAGIC" sought to be registered by the Respondent-Applicant closely resembles the trademark "CAMP" owned by Opposer. Opposer has previously used in commerce in the Philippines its trademark "CAMP" on a date earlier than 20 January 1989, the alleged date of first use of the mark "CAMP MAGIC" by the Respondent-Applicant. Moreover, Opposer is the holder of a subsisting Certificate of Registration No. 22374 in the Principal Register over its trademark "CAMP" issued on 23 May 1975.
  
- "2. The mark "CAMP MAGIC" 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 used by Opposer on the same or clearly related goods, namely socks, shirts and undershirts.
  
- "3. Through its long and continuous use of the trademark "CAMP" on its goods. Opposer has acquired tremendous goodwill. Hence, the used and/or registration of a confusingly similar trademark of Respondent-Applicant will clearly cause damage and injury to Opposer's business and goodwill.

- “4. Consequently, Respondent-Applicant cannot claim ownership and exclusive use of the mark “CAMP MAGIC”.

The Opposer relies on the following facts to support its opposition.

- “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 dealer nationwide.
- “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 “CAMP MAGIC”.
- “3. Opposer has been and continuously using its trademark “CAMP” in the Philippines commerce, and goods bearing said trademark are sold, being sold and promoted or advertised for sale by the Opposer nationwide.
- “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 “CAMP MAGIC”, Opposer has established goodwill for its said trademark in Philippine commerce such that Opposer’s trademark has acquired or obtained general consumer recognition as belonging to one owner or source, that is, belonging to the Opposer.
- “5. On 23 May 1975, Opposer obtained Certificate of Registration No. 22374 in the Principal Register for its trademark “CAMP”. Opposer has duly renewed its Certificate of Registration, hence, Opposer’s registration subsists.
- “6. Respondent-Applicant’s goods on which the mark “CAMP MAGIC” is allegedly affixed is in competition with the Opposer’s goods which bear its trademark “CAMP”. Respondent-Applicant intends to affix the mark “CAMP MAGIC” on t-shirts, polo-shirts, sandos and briefs, the very goods manufactured and sold by Opposer bearing its trademark “CAMP”. Moreover, Respondent-Applicant intends to affix the mark “CAMP MAGIC” on other articles of clothing such as jackets, pants and jeans, which is similar and related to Opposer’s goods. Should Respondent-Applicant be allowed to register the mark “CAMP MAGIC”, it will unduly restrict Opposer’s natural expansion of its business.

On January 25, 1994, Respondent-Applicant through counsel filed his Answer to the Notice of Opposition denying all the material allegations therein and further alleged that:

- “1. Opposer’s trademark registration for CAMP is null and void.

- “2. Opposer has no actual bonafide use in commerce in the Philippines of the trademark “CAMP”.
- “3. On account of non-use, the Opposer is deemed to have abandoned the trademark CAMP”.
- “4. The alleged trademark “CAMP” of the Opposer is incapable of exclusive appropriation because it is a weak mark or has become a weak mark as a result of the proliferation of trademarks that bears the said word “CAMP”.
- “5. Opposer’s trademark “CAMP” is graphically, phonetically and connotatively different from the trademark “CAMP MAGIC” of Respondent-Applicant;
- “6. Opposer will not be damaged by the continuous use and registration of the trademark “CAMP MAGIC” of Respondent-Applicant.

The parties having failed to have the case amicably settled for which trial on the merit was conducted.

The ultimate issue to be resolved in the instant case is: WHETHER OR NOT the application for the mark “CAMP MAGIC” for the Respondent-Applicant is CONFUSINGLY similar to the mark “CAMP” of the Opposer.

Considering that this case was filed prior to the effectivity of Republic Act No. 8293, the applicable Law is Republic Act No. 166, as amended specifically Sec. 4 (d) thereof which provides as follows:

“SEC. 4. Registration of trademarks, trade names and service marks on the principal register. These is hereby established a register of trademarks, trade names and service marks which shall be known as the principal register. The owner of a trademark, trade name or service mark used to distinguish his goods, business or services of others shall have the right to register the same on the principal register unless it:

x x x

“(d) Consists of or comprises a mark or trade name which so resembles a mark or trade name registers in the Philippines or a mark or trade name 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.”

Well settled is the rule that the determining factor in a contest involving registration of trademarks is not whether the challenged mark would actually cause confusion or deception on the purchasers but whether the use of such mark would likely to 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 as shown by the evidence presented, the Respondent-Applicant's trademark "CAMP MAGIC" is confusingly similar to Opposer's trademark "CAMP" which is registered with this office formerly known as "PHILIPPINES PATENT OFFICE" on 23 May 1995 and the date of first use is 8 March 1972 bearing Registration No. 22374 (Exhibit "13") and the only difference is the presence of the word "MAGIC" in the Respondent-Applicant's mark.

The law is very clear, that when a mark is already registered it can not be appropriated by any third party anymore.

Respondent-Applicant may not appropriate Opposer's trademark in TOTO and avoid likelihood of confusion by adding the word "MAGIC" thereto. Thus, in *Continental Connector Corp., vs. Continental Specialist Corp.*, 207 USPQ 60, it has been ruled "courts have repeatedly held that the confusion created by use of the same word as to primary element in a trademark is not counteracted by the addition of another term."

Examples:

("Gucci" and "Gucci-Goo")  
*Gucci Shops vs. R.H. Macy & Co.*, 446 F: Supp. 838

("Comfort" and "Foot Comfort")  
*School, inc., vs. Tops E.H.R. Corp.*, 185 UAPQ 754

("Washington Mint" and "Geo Washington Mint")  
*George Washington Mint, Inc. vs. Washington Mint Inc.*, 176 USPQ 251

("Ace" and "Ten-Ace")  
*Becton, Dickson & Co., vs. Wiguaram Mills, Inc.* 199 USPQ 607

It has been consistently held that infringement of a trademark is to be determined by the TEST OF DOMINANCY. Similarity in size, forms, and colors, while relevant, is not CONCLUSIVE. If the competing trademarks contain the main essential or dominant features of another, and confusion and deception is likely to result, infringement takes place. Duplication or imitation is not necessary; nor is it necessary that the infringing label should suggest an effort to imitate. (*CO TIONG S.A. vs. DIRECTOR OF PATENTS*, G.R. No. L-5338)

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., vs. MILTON RAY CO.*, 143 2d 985, 31 C.C.P.A. Patents 1214)

"Why if the million of terms and combinations of letters and designs available, the appellee had choose those so clearly similar to another's trademark if there was no intent to take advantage of the goodwill generated by the other mark (*AMERICAN WIRE & CABLE CO., vs. DIRECTOR OF PATENTS*, 31 SCRA 544)."

Why with all the birds in the air, and all the fishes in the sea, and all the animals on the face of the earth to choose from the defendant company (*MANILA CANDY CO.*) elected two (2) rooster as its trademark, although its directors and managers must have been well aware of the long continued use of a rooster by the plaintiff with the sale and achievement of its good? x x x a

cat, a dog, a carabao, a shark, or an eagle stamped upon the container in which candies are sold would serve as well as a rooster for purposes of identification as the product of defendant's factory. Why did defendant select two (2) roosters as its trademark? (CLARKE vs. MANILA CANDY CO., 36 PHIL. 100)

The validity of the cause for infringement is predicted upon colorable imitation. The phrase "COLORABLE IMITATION" denotes such a close or ingenious imitation as to be calculated to deceive ordinary persons, or such a resemblance to the original as to deceive an ordinary purchaser giving such attention as a purchaser usually gives and to cause him to purchase the one supposing it to be the other." (87 C.T.S. p. 287)

It should be emphasized that the trademark "CAMP" of the herein Opposer is registered with the Philippines Patent Office on May 23, 1975 (Exhibit "13") which is very much ahead of the Respondent-Applicant's claim of first use which is January 2, 1989 as alleged in the trademark application subject of the instant opposition proceedings. There is therefore, no doubt as to the Opposer's ownership and prior use of the mark "CAMP".

Another vital point to be emphasized in this particular case is the fact that Respondent-Applicant failed to present any evidence as a proof of his claim of ownership over the mark "CAMP MAGIC" having declared his right to file his Formal Offer of Evidence waived (Order No. 2001-67) dated January 31, 2001.

Rule 132, Section 34 of the Rules of Court provides:

"SEC. 34. Offer of Evidence – The Court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified."

As the rightful owner and prior user of the trademark "CAMP", Opposer should be given protection from unlawful copying or imitation as mandated by the Law on Intellectual Property Rights. Thus, the Supreme Court has declared in several cases that:

"The objects of trademark are to point out distinctly the origin or ownership of the article to which it is affixed, to secure to him, who has been instrumental in bringing into the market a superior article or merchandise; the fruit of his industry and skill, and to prevent fraud and imposition." (ETEPHA vs. DIRECTOR OF PATENTS, 16 SCRA 495; LA CHEMISE LACOSTE S.A. vs. FERNANDEZ, 129 SCRA 373)

WHEREFORE, premises considered, the Notice of Opposition is hereby SUSTAINED. Consequently, trademark application bearing Serial No. 81949 for the mark "CAMP MAGIC" filed on August 10, 1992 by ALEXANDER UY used on t-shirts, polo shirts, socks, jackets, pants, jeans, sandos and briefs is hereby REJECTED.

Let the filewrapper of "CAMP MAGIC" trademark application subject 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 update of its records.

SO ORDERED.

Makati City, 29 November 2002.

EDWIN DANILO A. DATING  
Assistant Director / Officer-in-  
Charge  
Bureau of Legal Affairs