

CAMAR S.p.A.,	}	Inter Partes Case No. 14-2004-00141
<i>Opposer</i>	}	Opposition to:
	}	
	}	Appln. Serial No.: 04-2001-002641
-versus-	}	Date Filed : 16 April 2001
	}	Trademark : "CAMAR"
	}	
OMGE TRADING CORPORATION,	}	Used on:
<i>Respondent-Applicant.</i>	}	
x-----x	}	Decision No. 2006-08

DECISION

This is an opposition to the registration of the mark "CAMAR" used on suspension brackets for cabinets under Class 20, bearing Serial No. 4-2001-002641 which application was published on page 122 of Volume VII, No. 5 issue of the Official Gazette of the Intellectual Property Office (IPO), released for circulation to the public on August 18, 2004.

Opposer (CAMAR S.P.A.) is a corporation formed and existing under the laws of Italy, WITH BUSINESS ADDRESS AT Via Leopardi 8, 1-22060 Figino Serenza, Province of Como, Italy. On the other hand, the herein Respondent-Applicant is "OMGE TRADING CORPORATION", a domestic corporation duly organized and existing under the law of the Republic of the Philippines, with business address at B, Gotesco Twin Towers, 1129 Concepcion Street, Ermita, Manila.

The grounds for opposition are as follows:

- "1. Opposer is the true owner of the mark "CAMAR". Opposer is the prior adopter and user of the said mark which has been used in international commerce since the early 170's or for over thirty (30) years.
- "2. Opposer has registered the marks "CAMAR" and "CAMAR & Device" in the related International Classes 6 and 20 in various countries in the world, most of which, if not all, are members of the Paris Convention and/or the TRIPS. The list of Opposer's trademark registrations indicating their respective countries and classes of goods covered, and their annexes references in the instant Opposition, are as follows:

COUNTRY	MARK	FILING DATE	REGISTRATION DATE	REGISTRATION NO.	CLASS (ES)	ANNEX
Austria Benelux Denmark Germany Finland France Italy Portugal Spain Sweden United Kingdom	"CAMAR & Device"	29 May 2001	18 September 2001	Community Trademark Registration No. 1680925	6 and 20	A
Argentina Austria Benelux	"CAMAR & Device"		22 September 1988	Madrid Protocol Registration No. 532608	6 and 20	A-1

Bulgaria Croatia Czech Republic Egypt France Germany Hungary Kazakhstan Korea Liechtenstein Macedonia Monaco Mongolia Morocco Portugal Romania Russian Federation San Marino Serbia and Montenegro Slovakia Spain Sudan Switzerland Ukraine Vietnam						
Brazil	"CAMAR & Device"	11 October 1994	3 November 1999	818005831	L.20.10 and 6	
Canada	"CAMAR & Device"	31 May 1988	21 April 1989	354907	6 and 20	A-2
Canada	"CAMAR & Device"	31 May 1988	21 April 1989	354908	6 and 20	A-3
Chile	"CAMAR & Device"	2 November 1994	16 January 1996	455815	6	
China	"CAMAR"	5 November 1998	20 April 2000	1386776	20	A-4
China	"CAMAR"	08 March 2000	07 May 2003	2021407	20	A-5
China	"CAMAR"	08 March 2003		2000025777 (pending application)	6	
China	"CAMAR & Device"	5 November 1998		1397207 (pending application)	6	
Denmark	"CAMAR & Device"	08 June 1988	11 May 1990	VR 1990 02945	6 and 20	A-6
Finland	"CAMAR & Device"	06 June 1988	05 February 1991	110519	6 and 20	A-7
Italy	"CAMAR & Device"	Renewed 17 March 1997	17 March 1975	545968	6	A-8

Italy	"CAMAR & Device"	Renewed 26 September 1997	04 December 1987	811706	6 and 20	A-9
Mexico	"CAMAR & Device"	30 November 1994	29 June 1995	496100	6	
Norway	"CAMAR & Device"	03 June 1988	11 July 1991	145922	6 and 20	
Sweden	"CAMAR & Device"	07 June 1988	26 July 1991	225225	6 and 20	
U.S.A.	"CAMAR"	18 December 1987	20 June 1989	1544165	6 and 20	A-10
U.S.A.	"CAMAR & Device"	08 April 1988	20 January 1990	1578599	6 and 20	A-11

Opposer reserves the right to submit to the honorable Bureau and/or to present during the course of the proceedings for the instant case the certificates of registration mentioned in the table above that are not hereto attached.

- "3. All of Opposer's trademark registrations for International Class 20 were filed even before 16 April 2001, the date when Respondent-Applicant filed its Philippine trademark application for the mark "CAMAR" for the same Class 20, thereby proving that Opposer is the true owner, prior user and adopter of the mark "CAMAR", and not Respondent-Applicant.
- "4. Opposer has been widely selling goods bearing the mark "CAMAR" and "CAMAR & Device" worldwide. Opposer has sold its goods in the following countries:

Continent	Country	
Europe	Armenia	Austria
	Belgium	Belorussia
	Bulgaria	Croatia
	Cyprus	Denmark
	Estonia	France
	Finland	Germany
	Great Britain	Greece
	Ireland	Iceland
	Italy	Kosovo
	Lithuania	Malta
	Norway	Poland
	Portugal	Czech Republic
	Romania	Russia
	Slovakia	Russia
	Spain	Sweden
	Switzerland	Turkey
	Hungary	Ukraine
America	Argentina	Brazil
	Canada	Chile
	Costa Rica	El Salvador

	Guadalupe	Martinique
	Mexico	Panama
	U.S.A.	Venezuela
Africa	Morocco	South Africa
	Tunisia	
Asia	China	Hong Kong
	India	Indonesia
	Iran	Israel
	Japan	Jordan
	Korea	Kuwait
	Lebanon	Philippines
	Saudi Arabia	Sri Lanka
	Taiwan	U.A.E.
Oceania	Australia	New Zealand

- “5. Furthermore, as early as 1981, Opposer has displayed its products bearing the mark “CAMAR” and “CAMAR & Device” in exhibitions in Europe such as in Cologne, Germany. Opposer has also held products exhibitions in Japan, (1993 and 1995), Singapore (1993 and 1997), Iran (2001 and 2002) and the U.A.E. (2003).
- “6. In the Philippines, the marks “CAMAR” and “CAMAR & Device” are also being used by Opposer in connection with its business of selling goods. Opposer’s marks have been known in the Philippines as early as 1983 when Opposer began receiving inquiries from Philippine companies interested in purchasing its products. Thus, Opposer’s goods are well-known in the Philippines among retailers and shoppers in the furniture industry. Products bearing the trademark “CAMAR” and “CAMAR & Device” have also been sold in the Philippines.
- “7. The mark “CAMAR” is also being used by Opposer as the middle domain name of Opposer’s website, www.camar.it, which is accessible in the Philippines.
- “8. Clearly, Opposer’s marks “CAMAR” and “CAMAR & Device” are not only internationally well-known marks, but are also well-known here in the Philippines. In any event, on 12 October 2004, Opposer filed Trademark Application No. 4-2004-009526 with the Intellectual Property Office (IPO) for the mark “CAMAR and Device”. Copies of the Intellectual Property Office Acknowledgement and Trademark Application No. 4-2004-009526 as filed with the IPO are attached hereto as Annexes “B” and “B-1” respectively.
- “9. The marks “CAMAR” and “CAMAR and Device” are internationally well-known by reason of Opposer’s continuous use thereof, and the numerous registrations that Opposer has obtained for said marks worldwide. By reason of Opposer’s exclusive, continuous and uninterrupted use of the marks “CAMAR” and “CAMAR & Device” for more than thirty two (32) years, Opposer has established worldwide over the said marks such that they have acquired or obtained general international recognition as belonging to one owner or source, i.e., Opposer.

- “10. The mark “CAMAR” sought to be registered by Respondent-Applicant is identical with the trademarks “CAMAR” and “CAMAR & Device” owned and being used by Opposer as to be likely deceive purchasers of goods on which it is used to an extent that Respondent-Applicant’s goods might be mistaken by the unwary buying public to be manufactured by, or originated from, Opposer.
- “11. A comparison of the competing marks as pictured below unmistakably shows that Respondent-Applicant’s mark “CAMAR” is identical to Opposer’s marks.

Respondent-Applicant’s mark



Opposer’s mark



Opposer’s mark



The word “CAMAR” is the dominant feature of Opposer’s mark and the mark subject of Respondent-Applicant’s trademark application. Respondent-Applicant’s use of the word “CAMAR” is of the exact font and style that is being used by Opposer. Respondent-Applicant’s intent to imitate Opposer’s “CAMAR” and “CAMAR & Device” can be readily inferred from the competing marks’ evident similarity in appearance. When a competitor adopts a distinctive or dominant feature of another trademark and with it makes use of the same color ensemble, employs similar words written in a style, type and size of lettering almost identical with those found in the other label, the intent to pass to the public his products as that of the other is quite obvious. [*Phil. Nut Industry, Inc., vs. Standard Brands, Inc., 65 SCRA 575 (1975)*]

- “12. Respondent-Applicant’s application for “CAMAR” also covers goods falling under International Class 20, which is the same class for which Opposer’s marks are registered worldwide.
- 12.1 The identity of the competing marks would certainly cause confusion considering that Respondent-Applicant’s use of the mark on “suspension brackets for cabinets” would indicate a close connection with the goods that are being manufactured and sold by Opposer on which the marks “CAMAR” and “CAMAR & Device” are being used, e.g., leveling devices, adjustable fastenings and assembly squares for furniture such as tables and cabinets.
- 12.2 Considering that the goods covered by the trademark application subject of this opposition and Opposer’s goods are identical, the unwary public will be most definitely misled into thinking that the products of Respondent-Applicant are manufactured and/or endorsed by Opposer herein, which should not be allowed. In view thereof, Respondent-Applicant’s trademark application should be denied registration.

The issues to be resolved in this particular case are as follows:

1. WHETHER OR NOT RESPONDENT-APPLICANT'S MARK "CAMAR" IS CONFUSINGLY SIMILAR TO RESPONDENT-APPLICANT'S MARK "CAMAR" AND
2. WHETHER OR NOT RESPONDENT-APPLICANT IS ENTITLED TO THE REGISTRATION OF THE MARK "CAMAR".

The applicable provision of law is Sec. 123.1 paragraph (d) of Republic Act No. 8293, which provides:

"SEC. 123.1 *A mark cannot be registered if it:*

- (d) is identical with a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date in respect of:
 - (i) The same goods or services, or;
 - (ii) Closely related goods or services, or;
 - (iii) If it nearly resembles such a mark as to be likely to deceive or cause confusion."

In the history of trademark cases in the Philippines, particularly in ascertaining whether trademark is confusingly similar to or is a colorable imitation of another, no set of rules can be deduced. Each case must be declared on its own merits.

The decisive issue at bar is simple one of *confusing similarity*.

A practical approach to the problem of similarity or dissimilarity is to go into the whole of the two trademarks pictured in their manner of display. Inspection should be undertaken from the viewpoint of prospective buyer. The trademark complained of should be compared and contrasted with the purchaser's memory (not in juxtaposition) of the trademark said to be infringed. (87 C.J.S. pp. 288-291) Some such factors as sound, appearance, form, style, shape, size or format, color, ideas connoted by the marks; the meaning, spelling and pronunciation of words used and the setting in which the words appear may be considered, (87 C.J.S. pp. 291-292) For indeed, trademark infringement is a form of unfair competition (Clark vs. Manila Candy Co., 36 Phil. 100, 1006; Co Tiong Sa vs. Director of Patents, 95 Phil. 1,4)

Confusion is likely between trademarks only if their over-all presentation in any of the particulars of *sound*, appearance, or meaning are such as would lead the purchasing public into believing that the products to which the marks are applied emanated from the same source.

A mere comparison of the contending marks reveals that both marks contain the identical word "CAMAR" which is dominant feature in both marks.

The Respondent-Applicant's mark consists only of the word "CAMAR". On the other hand, the Opposer's mark consist of the word "CAMAR" and "CAMAR" with added design. Indeed, the competing marks, are unmistakably *confusing similar* to each other as both marks contain the same word "CAMAR", and the spelling and pronunciation are the same.

Records show that Opposer's marks "CAMAR" and "CAMAR and Device" are registered in various countries of the world (Exhibits "B" to "T"), the earliest of which was in Italy bearing Registration No. 545968 on 17 May 1975. (Exhibit "N")

In Canada, the mark "CAMAR" was registered on 21 April 1989 bearing Registration No. 354907 (Exhibit "E").

In the United States of America, the mark "CAMAR" was registered on 20 June 1989 bearing Registration No. 1544165 (Exhibits "S" and "S-1").

As proven by the abovementioned exhibits, nearly all of the Opposer's trademark registrations for International Class of goods, Class 20, were filed and issued before 6 April 2001, the date when Respondent-Applicant filed its Philippines trademark application for the mark "CAMAR".

However, the fact of exclusive ownership cannot be made to rest solely on registration since dominion over trademarks is not acquired by the mere fact of registration alone and does not perfect a trademark right (*Philip Morris, Inc., vs. Court of Appeals Corporation, 120 SCRA*).

Exclusive right to a trademark grows out of their actual use for trademark is a creation of use. (*Sterling Products International, Inc., vs. Farbenfabriken Bayer Aktiengesellschaft, L-19906, April 30, 1969 27 SCRA 1214 and 1224, citing Esso Inc., vs. Standard Oil Co., 98 p 2d 1; Hanover Star Milling Cp. Vs. Metcalf, 240 US 403, 365 cf. 357, 60 l ed. 713*)

The ruling of foreign courts are likewise unanimous to the effect that the right to a trademark or tradename is dependent on priority of adoption and use in trade, and that the ownership does not stem from its registration.

Since the exclusive right to use a mark or trade name is dependent on priority of adoption and use in commerce and does not stem from registration, the issue now to be resolved is: WHO between the Opposer and the Respondent is the first to actually adopt and use the mark "CAMAR" in commerce in the Philippines?

Records show that Opposer's products bearing the marks "CAMAR" and "CAMAR & Device" are well-known in the Philippines among the retailers and shoppers in the furniture industry and that Opposer's products have been sold in the Philippines as early as 1993 (Exhibits "U" to "U-9").

On the other hand, the Respondent-Applicant whose application bearing Serial No. 4-2001-002641 was filed on 16 April 2001, first used its trademark "CAMAR" in the Philippines in 1996, as indicated in the Declaration of Actual Use (DAU) filed on 30 April 2001.

Without a doubt, the evidence clearly shows that herein Opposer is actually the *first to adopt and use* the mark "CAMAR" and "CAMAR & Device", in commerce in the Philippines.

Another point to be taken into consideration is the fact that the mark "CAMAR" is actually the Opposer's trade name which cannot be appropriated by any third party without its consent.

In *Philip Exports B.V. vs. Court of Appeals (206 SCRA 457)*, the Supreme Court held that:

"A corporation's right to use its corporate and trade name is a property right, a right *in rem* which it may assert and protect against the whole world in the same manner as it may protect its tangible property, real or personal against trespass or conversion. A corporation has the exclusive right to the use of its name which may be protected by injunction upon a principle similar to that upon which a person is protected in the use of trademarks and trade names. It is fraud on the corporation which has acquired a right to that name and perhaps carried on its business thereunder, that another should attempt to use the same name or the same name with a slight variation, in such a way to induce persons to deal with it in the belief that they are dealing with the corporation which has given reputation to the name."

“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 products from those of all others entering the twilight zone of a field already appropriated by other.” (*Weco products Co. vs. U.S. Milton Ray Co.*, 143 F. 2d, 985, 32 C.C.P.A. Patents 1214)

“Why of all the million of terms and combinations of letters and designs available, the appellee had to choose those so closely 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)

One vital point to be emphasized is the fact that the Respondent-Applicant has been declared in DEFAULT. (Order No. 2005-334 dated 01 June 2005).

Fundamentally, default orders are taken on the legal presumption that in failing to comply the order issued, the Defendant does not oppose the allegations and relief demanded in the complaint.

Indeed, this Office cannot but notice the lack of concern the Respondent-Applicant had shown in protecting the mark which is contrary to the norm that: “A person takes ordinary care of his concern” (Sec. 3(d) Rule 131 of the Rules of Court).

With all the foregoing, the opposition is, as it is hereby, SUSTAINED. Consequently, trademark application bearing Serial No. 4-2001-002641 filed on 16 April 2001 for the mark “CAMAR” by OMGE TRADING CORPORATION for the goods *suspension bracket for cabinets* under Class 20 of the International Classification of Goods is hereby REJECTED.

Let the filewrapper of CAMAR subject matter of this case be forwarded to the Administrative, Financial and Human Resource Development Services Bureau (AFHRDSB) for appropriate action in accordance with this DECISION with a copy furnished the Bureau of Trademarks for information and to update its record.

SO ORDERED.

Makati City, 31 January 2006.

ESTRELLITA BELTRAN-ABELARDO
Director, Bureau of Legal Affairs