

CHLOE S.A.,  
Opposer,

INTER PARTES CASE NO. 2014

PETITION FOR CANCELLATION

- versus -

Cert. of Regn. No. 30254  
Issued : November 20, 1981  
Registrant : Lady Jeanne, Inc.  
Trademark : CHLOE inside a rectangle  
Used on : T-shirts, pants, etc.

LADY JEANNE, INC.,  
Respondent-Registrant.

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DECISION NO. 88-38 (TM)  
June 28, 1988

### DECISION

This is a petition for cancellation of trademark "CHLOE" inside a rectangle, Certificate of Registration No. 30254 for shirts, T-shirts, undershirts, blouses, pants, jeans, shorts, anklets, kneecaps, shoes, socks, swimsuits, all for men, women and children, under Class 25, filed on September 19, 1986 by Chloe S.A., hereinafter referred to as Petitioner.

Petitioner is a foreign, corporation organized and existing under the laws of France located and doing business at 71 Avenue, Franklin Roosevelt, Paris 8, France, whereas Lady Jeanne, Inc., hereinafter referred to as Respondent-Registrant, is a domestic corporation organized under the laws of the Philippines with business address at 25 Limbaga Street, Quezon City, Philippines.

The evidence presented revealed that Petitioner is the duly registered owner of the trademark "CHLOE" in the following countries:

- a) France (Exhibit "A-1")
- b) United States of America (Exhibit "C" )
- c) United States of America (Exhibit "D")
- d) Canada (Exhibit "G")
- e) Korea (Exhibit "H")
- f) Hong Kong (Exhibit "I")
- g) Ecuador (Exhibit "J")
- h) Denmark (Exhibit "K")
- i) Japan (Exhibit "L")
- j) United Kingdom (Exhibit; "M")

The World Intellectual Property Organization (WIPO) had issued two certificates of registration for "CHLOE" in its favor (Exhibits "E" and "F").

Petitioner's trademark is not, however, registered with this Office.

Its petition for cancellation alleged that it is a limited company organized and existing under the laws of France, located and doing business at 71 Avenue Franklin Roosevelt, Paris France and that Petitioner is the owner of the trademark "CHLOE" on various line of goods, including, among, others, perfumes, essential-oils, cosmetics, hair lotions, soaps, toothpaste, bath products and toiletries, leather and leather imitation, articles of these materials, shins, trunks, suit cases, purses, umbrellas, parasols, and canes, whips, harnesses, saddling of

materials, bedspreads, and tablecloths, clothing - including boots, shoes and slippers, and particularly readymade clothing, kerchiefs, embroideries, dantelles, ribbons and laces, buttons, snaps, hooks and eyes, pins and needles, and artificial flowers which have been and continued to be sold and advertised in the Philippines since 1980 up to the present (Exhs. "N" "N-1", "O", "O-1", "P", and "P-1"). And it has been and will be prejudiced and damaged by the grant of Certificate of Registration No. 30254 (Exh. "A").

Petitioner's witness, Juanita de Leon, Marketing Officer of Rustan Commercial Corporation, testified that "CHLOE" products and cosmetics were first sold in the Philippines sometime in October 1960, through the Tourist Duty Free Shops which were then operated by Rustan Commercial Corporation. "CHLOE" products were launched in Philippine department stores. In February 1987 and are being sold to date in this country principally by Rustan Commercial Corporation (Exh. "Q").

Petitioner alleged, as grounds for cancellation that the registration was obtained fraudulently or contrary to the Provisions of Section 17 and Section 14, Chapter II of Republic Act 166, as amended, and that the Registrant was not entitled to register the mark at the time of its application. Petitioner further cited the Minister of Trade's Memo to the Director of Patents dated November 20, 1980 which was upheld by the Supreme Court in "La Chemise Lacoste vs. Fernandez, May 21, 1984.

Respondent-Registrant, after being duly served with a "Notice to Answer" on October 1, 1986, failed to tender an answer and was subsequently declared in default on March 17, 1987 upon motion filed by Petitioner on March 2, 1987.

The sole issue on this case is whether or not there is a valid and legal ground for the cancellation of the trademark "CHLOE", Registration No. 30 &54.

Petitioner's cause of action is well founded. The Petitioner is a foreign corporation not doing business in the Philippines. The marketing of its products is done through an exclusive distributor, Rustan Commercial Corporation. The latter is an independent entity which buys and then markets the products of Petitioner. Rustan is neither an agent nor conduit of the Petitioner (P. D. 1789).

Petitioner being a foreign corporation not transacting business in the Philippines and which is unlicensed and unregistered to do business here but is known in the Philippines through the use of its products bearing its tradename, has a legal right to maintain an action in Philippine courts to restrain Respondent-Registrant from using its tradename on goods which are similar to those of Petitioner's in accordance with, Sections 14 and 17 of Republic Act 166 (La Chemise La Coste vs. Fernandez, 129 SCRA 373).

Petitioner having duly proven ownership of the trademark "CHLOE" (Exhs., "A-1", "C" "D", "E", "F", "G", "H", "I", "J", "K", "L", "M") and by virtue of the above cited legal provisions and jurisprudence, the herein "Petition for Cancellation" is hereby GRANTED.

Let the records of this case be remanded to the Trademark Examining Division for notation and appropriate action in accordance with this Decision.

SO ORDERED.

IGNACIO S. SAPALO  
Director