

CHONG KOH TENG,  
Opposer,

INTER PARTES CASE NO. 3016

OPPOSITION TO:

Application Serial No. 57696  
Filed : November 5, 1985  
Applicant : Top Modern Footwear  
Corp.  
Trademark : THUNDER & DEVICE  
Used on : Footwear (rubber shoes,  
sandals, slippers),  
sports-wear (sports  
socks, T-shirts, jogging  
outfit)

TOP MODERN FOOTWEAR CORP.,  
Respondent-Applicant.  
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DECISION NO. 89-60 (TM)

August 14, 1989

#### DECISION

On December 10, 1987, Chong Koh Teng filed Verified Notice of Opposition against the registration of the trademark "THUNDER & DEVICE" for footwear (rubber shoes, sandals, slippers); sportswear (sports socks, jogging outfits) applied for by Top Modern Footwear Corp, on November 5, 1985 under Application Serial No. 57696 published in the Philippine Star on November 28, 1987.

Opposer is a Filipino citizen with business address at 578 Hormiga Street, Binondo, Manila, while Respondent-Applicant is a corporation organized and existing under and by virtue of the laws of the Philippines with office address at No. 37 Industrial Avenue, Potrero, Malabon, Metro Manila.

The grounds alleged in the Notice of Opposition are:

"1. The approval of the application in question is contrary to Section 4, paragraph (d) of Republic Act 166, as amended and the Revised Rules of Practice in Trade-mark Cases;

2. The approval of the application in question will cause great and irreparable damage and injury to herein oppose."

In its Answer filed on February 10, 1968, Respondent-Applicant denied the material allegations stated therein and made the following special and affirmative defenses:

"11. That the first user and owner of the trademark THUNDER for footwear is the respondent-applicant who has been using said mark and who, to protect its rights, had applied for the registration of said trademark in its favor.

12. That the instant opposition was filed maliciously and intended to harass the respondent-applicant since opposer has not used the trademark THUNDER."

Thereafter, the pre-trial conference was set to March 15, 1988 and was terminated on April 14, 1988. The case was heard on the merits without prejudice to the result of a pending negotiation for the amicable settlement of the case.

On August 7, 1989 the parties, assisted by their respective counsels, submitted the attached Compromise Agreement, the terms and conditions of which are as follows:

“1. Opposer will withdraw, as it hereby withdraws, his opposition to the approval of Application Serial No. 57696;

2. In consideration for such withdrawal respondent-applicant will interpose as it hereby interposes no objection to the continued use of the trademark THUNDER & Device covered by Application Serial No. 63374 by Opposer up to December 31, 1989, as it (respondent-applicant) hereby waives any and all rights which it may have against opposer for such continued use.”

The foregoing provisions of the attached Compromise Agreement is hereby APPROVED as basis for the termination of the herein case.

WHEREFORE, this opposition is DISMISSED SUBJECT to the provisions of the attached Compromise Agreement. Accordingly, Application Serial No. 57696 for the registration of the mark “THUNDER & DEVICE” is hereby given due course.

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

SO ORDERED.

IGNACIO S. SAPALO  
Director