

WILSON CHUA,  
Petitioner,

INTER PARTES CASE NO. 1871

PETITION FOR CANCELLATION

- versus -

Cert. of Regn. No. 32873  
Issued : November 28, 1983  
Registrant : K.C William po  
Trademark : AUSTRALIAN & DEVICE  
OF A KANGAROO  
Used on : Shirts, T-shirts, etc.

K. C. WILLIAM PO,  
Respondent-Registrant.

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DECISION NO. 89-54 (TM)  
July 21, 1989

DECISION

On August 31, 1984, Wilson Chua (herein Petitioner) filed a Petition to Cancel Trademark Certificate of Registration No. 32873 for "AUSTRALIAN & DEVICE OF A KANGAROO" for shirts-T-shirts, blouses, pants, jeans, skirts, dresses, socks and handkerchiefs, briefs and jackets registered in the name of K.C William Po, which registration was later on assigned to Teofilo R. Nicolas (Respondent-Registrant).

Petitioner is a Filipino citizen, doing business at 649 Padre Herrera Street, Tondo, Manila and Respondent-Registrant is also a Filipino citizen, with business address at 75 15<sup>th</sup> Avenue Cubao, Quezon City.

Petitioner claims that he is damaged by the registration of said Trademark, alleging his earlier adoption and use of the trademark "KANGAROO & REPRESENTATION THEREOF" for the same or identical goods. As to how, Petitioner correctly pointed out that "(b)oth petitioner`s and respondent`s mark carry the representation of a kangaroo which is prominently placed at the left breast portion of the T-shirts they respectively manufacture and sell to the public. As a matter of fact, it is the representation of the kangaroo along that is visible when these T-shirts are worn: (Memorandum for the Petitioner, pp. 7-8).

To support its claim, Petitioner presented as evidence (1) Certificate of Registration No. SR-1568 originally registered in the name of Gan Ping Hong but was subsequently assigned to Petitioner, (2) various invoices covering the sale of T-shirts bearing the trademark "KANGAROO", (3) LABELS ACTUALLY USED, (4) various newspaper advertisements carrying the trademark "AUSTRALIAN & REPRESENTATION OF A KANGAROO" purportedly owned by L`Alphina, a foreign entity.

On the other hand, in a decision (No.86-66) dated November 25, 1986 by the then Director of Patents, Certificate of Registration No. SR-1568-A issued in favor of the herein Petitioner for the trademark "KANGAROO LABEL DEVICE" were ordered cancelled. Thus, Petitioner no longer has any basis to oppose the subject application on this grounds.

Petitioner attempted to establish his earlier adoption and use of the trademark "KANGAROO & ITS REPRESENTATION" by presenting various evidences, such as sales invoices and advertisements. The records show that there are two sets of sales invoices presented – one for sales from July 18, 1970 to November 29, 1971, all for boys` T-shirts and the

other set is for sales from September 3, 1984 to September 22, 1984, all for men`s T-shirts. Noteworthy is the fact that the first without reference to the trademark used, while the second set specifically identify the "KANGAROO" mark in the invoices; the hiatus of almost 14 years between the two sets of invoices is indicative of abandonment. Petitioner went on to explain that these invoices were only the "representative samples" but he did not present proof of use between these periods. What is more, the second set of sales invoices were all dated after the instant Petition to Cancel was filed on August 31, 1984. All these circumstances lead to the natural conclusion by the Petitioner are purely self-serving and should, therefore, be given less weight, if at all.

On his part, Respondent-Applicant was able to establish his first use of the mark in 1982 by presenting sales invoices showing the sale of goods bearing the mark "AUZTRALIAN" and advertisements thereof before acquiring the rights over that mark through assignment from K.C. William Po of Certificate of Registration No. SR-4392 K.C. William Po manifested in his affidavit his first use of the mark on January 12, 1978, his registration of the subject mark under Certificate No. SR-4392 issued on May 21, 1979 and subsequent assignment of the certificate of ownership on November 25, 1982.

Petitioner then questioned the claim of exclusive appropriation of the subject mark by Respondent-Applicant by Exhibiting an Italian made T-shirts bearing the same mark "AUZTRALIAN & REPRESENTATION OF A KANGAROO" which he claims he bought in 1974 from Cartimar Shopping Center. In addition, he presented various advertisements of the Italian made T-shirts in magazines of foreign language. Petitioner, however, was not able to present any invoice to support its claim. The fact of purchase was not, thereof, established. Likewise, the advertisements presented are in foreign language. And no proof that said magazines are in circulation in this country were presented. Even assuming that they have been in circulation here, they could not have served their purpose of promoting and making the mark known to the public, considering that they are in language not known to the people.

Premises considered, Petitioner`s claim of any damage by the registration of Respondent-Applicant`s mark has no basis at all.

WHEREFORE, the instant Petition to cancel is hereby DISMISSED.

Let the records of this case be forwarded to the Patent/Trademark Registry & EDP Division for proper Action in accordance with this Decision.

SO ORDERED.

IGNACIO S. SAPALO  
Director