

COMPTOIR NOUVEAU DE LA
PARFUMERIE and HERMES
Opposer,

-versus

TOMAS AGANDA
Respondent-Applicant.
x-----x

INTER PARTES CASE NO. 3431

OPPOSITION TO:

Application Serial No.: 48412
Filed: June 2, 1982
Applicant: Tomas Aganda
Trademark: CALECHE + Carriage
& Horse Device
Used On: T-shirts, jeans, pants
and polo shirts

DECISION NO. 90-10 (TM)
February 20, 1990

DECISION

On August 1, 1989, Comptoir Nouveau de la Parfumerie and Hermes filed their unverified Notice of Opposition against the registration of the trademark "CALECHE + Carriage & Horse Device" used on T-shirts, jeans, pants and polo shirts under Classes 24 and 25 applied for by Tomas Aganda on June 2, 1982 under Application Serial No. 48412 published for opposition on Page 28, Volume II, No. 6 of the BPTTT Official Gazette issue of June 30, 1989 and released for circulation on July 3, 1989.

Opposer Comptoir Nouveau de la Parfumerie is a foreign corporation organized and existing under the laws of France, with business address at 23, rue Boissy d'Anglas, Paris, France; co-Opposer Hermes is likewise a foreign corporation organized under the laws of France, with business address at 86, Hermes, 24 Faubourg SaintHonore, 750008 Paris, France; while Respondent-Applicant is a Filipino citizen residing at 572 Padre Rada Street, Tondo, Manila, Philippines.

The grounds alleged in the Verified Notice of Opposition filed on September 29, 1989 are:

"1. The Opposers are the owners of the Trademark 'CALECHE' (word) 'HERMES' (consists of a silhouette of a Horse-Drawn Carriage with the coachman standing) having been first to adopt and use it on clothing, T-shirts, jeans and goods belonging to Classes 3, 9, 14, 16, 18, 24, 25 and 34 which has been in actual use in Trade and Commerce in the Philippines.

2. Opposers' COMPTOIR NOUVEAU DE LA PARFUMERIE is the owner of the Trademark 'CALECHE' (words) and is registered in the Philippines under Certificate of Registration No. 23395 dated June 9, 1976; and HERMES is the owner of the trademark 'HERMES'+ Carriage & Horse Device and is registered in the Philippines under Certificate of Registration No. 41631 dated October 28, 1988.

3. Opposers have used the trademark 'CALECHE" (word) and 'HERMES' + Carriage & Horse Device in Trade and Commerce long prior to Respondent-Applicant's application of June 2, 1982.

4. Opposers' trademark "CALECHE" and 'HERMES' + Carriage & Horse Device are well known throughout the world for their good quality and high reputation."

On August 7, 1989, Respondent-Applicant was notified of this Opposition and was required to file its Answer thereto within fifteen (15) days from receipt of said notice.

For failure to file its Answer despite receipt of the above-cited notice, Respondent-Applicant was declared in default in Order No. 89-862 dated October 30, 1989 and Opposers were allowed to present their evidence ex-parte.

Opposers by counsel presented their evidence on December 28, 1989 consisting of Exhibits "A" to "F-7", inclusive, pursuant to the aforesaid default order. On that same hearing, Opposers' counsel, in open court, formally offered her exhibits and were admitted in evidence.

The main issue to be resolved in this case is which of the parties is the first adopter, user and real owner of the trademark "CALECHE + Carriage & Horse Device" in litigation, and which of the parties has the better right to the mark in litigation pursuant to Section 37 of Republic Act No. 166, as amended.

To prove ownership of the subject mark, Opposers submitted British Certificate of Registration No. 814847 covering goods under Class 3 showing registration date as of December 20, 1960 (Exhs. "F-5" and "F-5a"); Certificate of Renewal Registration No. 196,931 in Chile issued on June 6, 1988; Certificate of Trademark Registration No. 167340 in the People's Republic of China issued on December 15, 1982; Certificate of Trademark Registration No. 84183 in the Republic of South Korea issued on September 29, 1982; Cautionary Notice for the trademark Equipage and "Caleche" in the United Arab Emirates dated July-August, 1988 (Exh. "F-4"); French Certificate of Registration No. 1377454 dated October 31, 1986 which is a re-registration of the same mark issued on November 30, 1976 covering a very wide range of goods for the mark "HERMES" (Exh. "D"); French Certificate or, Registration No. 1135654 dated May 22, 1980 for the trademark "CALECHE" indicating that this is a renewal of a registration for the same mark issued on June 24, 1965.

Opposers also presented proofs that the mark "CALECHE" has been registered in the Philippines on June 9, 1976 under Certificate of Registration No. 23395 (Exh. "B"); and also the mark "HERMES & DEVICE" (silhouette and a Horse-Drawn Carriage with Coachman standing) covering a wide range of goods falling under Classes 3, 9, 14, 16, 18, 24, 25 and 34 in Certificate of Registration No. 41631 issued on October 28, 1988 pursuant to Section 37 of Republic Act No. 166, as amended, based on French Certificate of Registration No. 1,000,186 issued on May 2, 1978.

Opposers have shown sufficient proofs of ownership, prior use and earlier registrations of the mark "CALECHE & DEVICE" in several trading centers of the world and, in fact, have already registered the subject mark in the Philippines covering a wide range of goods including clothing falling under Classes 24 and 25 for which goods Respondent-Applicant has used its mark on.

On the other hand, Respondent-Applicant, despite receipt of notice of the herein opposition, did not exert any effort to file his Answer thereto, much less to defend its rights and interests on said mark in this litigation.

WHEREFORE, this Notice of Opposition is SUSTAINED. Accordingly, Respondent's Application Serial No. 48412 is REJECTED.

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

SO ORDERED.

IGNACIO S. SAPALO
Director