

D 'URBAN, INC.,
Opposer,

INTER PARTES CASE NO. 3005

OPPOSITION TO:

Application Serial No. 56336
Filed : May 8, 1983
Applicant : Victor Siasat
Trademark : IXI: Z
Used on : RTW jeans, slacks, polo shirts, etc.

- versus -

VICTOR SIASAT
Respondent-Applicant.
x-----x

Decision No. 88-94 (TM)
August 26, 1988

DECISION

On May 5, 1985, Victor Siasat, a Filipino citizen, filed an application for registration (Application Serial No. 56336) of the trademark "IXI:Z" used on goods under Classes 18 and 25, which application was published in the Official Gazette (Volume 82, No. 10, p. 181) on March 10, 1987 and officially released on October 29, 1987.

On November 17, 1987, D'Urban, Inc., a Japanese corporation, filed, through counsel an Urgent Motion for Extension of Time to File Opposition asking for an extension of thirty (30) days from November 29, 1987 within which to file a Notice of Opposition to the above-mentioned application.

Opposer filed, on December 28, 1987, its Unverified Notice of Opposition and, on May 13, 1988, its authenticated and Verified Notice of Opposition.

On June 17, 1988, Respondent-Applicant filed his Answer raising the affirmative defense, among others, that the Notice of Opposition was filed out of time.

Respondent-Applicant argued that from October 29, 1987, when the issue of the Official Gazette containing the application in question was officially released for circulation, up to May 13, 1988, when the Verified Notice of Opposition was filed, a period of one hundred ninety-eight (198) days had elapsed, which is definitely more than the period, including extensions allowed, under Rule 187,

Opposer, on the other hand, argued that although the Verified Notice of Opposition was filed outside the prescribed period, a Notice of Opposition was nevertheless effectively filed when an Unverified Notice of Opposition containing exactly the same averments of material facts as stated in the Verified Notice of Opposition was filed, within the extension period, and that the nature of the controversy warrants the relaxation of formal requirements and strict adherence to technical rules.

The issue to be resolved is whether or not the Opposition (Inter Partes Case No. 3005) should be dismissed for having been filed beyond the reglementary period.

There is no question that the Verified Notice of Opposition was filed out of time. Opposer, however, would like this Bureau to relax the requirements of the law or rules on the filing of opposition to registration.

Section 8 of Republic Act 166, as amended, requires, among others, the verification of an opposition, and Rule 187 of the Rules of Practice in Trademark Cases likewise requires such

verification and provides, among others, that an unverified opposition will be null and void unless verified within sixty (60) days after the filing of the unverified opposition.

Moreover, the pertinent provisions of Memorandum Circular No. 155/88-8 dated August 3, 1988 states as follows:

“x x x Upon the filing of an unauthenticated or unverified notice of opposition, as aforestated, the Legal Division, simultaneously with the sending of a notice to the applicant of such filing, will require the applicant to file an answer or responsive pleading within the period fixed by law, otherwise he may be declared in default, without prejudice to dismissal of the opposition motu proprio upon failure of the opposer to file an authenticated opposition, or to verify in person or by any person on his behalf who knows the facts, the notice of Opposition within sixty days from the date of filing of the authenticated or unverified opposition. In no case shall the period within which to file the authenticated or verified opposition exceed 120 days from the aforesaid date of release of the BPTTT Official Gazette. This rule is intended to expedite the opposition proceedings. x x x”

To consider the Notice of Opposition to have been effectively filed when Opposer filed its Unverified Notice of Opposition, or to relax the above requirements would render nugatory the aforesaid provision of the law and rules of this Bureau and set an unwarranted precedent causing unnecessary delay in the disposition of opposition cases. The above rules, therefore, should be strictly complied with.

WHEREFORE, Inter Partes Case No. 3005 is DISMISSED; Application Serial No. 56336 is given due course.

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

SO ORDERED.

IGNACIO S. SAPALO
Director