

EMERALD GARMENT MANUFACTURING CORPORATION INC.,	}	IPC N O. 14-2007-00054
Opposer,	}	Opposition to:
	}	
-versus-	}	Appl'n Serial No. 4-2001-009602
	}	Date filed: 21 Dec. 2001
LEE COMPANY INC.,	}	TM: "LEE & OGIVE CURVE THE H.D. DESIGN"
Respondent-Applicant.	}	
x-----x		Decision No. 2008-96

DECISION

This case pertains to an opposition to the registration of the mark "LEE & OGIVE CURVE DESIGN" bearing Application Serial No. 4-2001-009602 filed on December 21, 2001 covering the goods "outer clothing namely jeans, casual pants, trousers, slacks, shorts, jackets, vests, shirts, blouses, sweaters, tops, skirts, jumpers, caps, hats, socks, shoes, suspenders, belt and bandanas" falling under Class 25 of the International Classification of goods which application was published in the Electronic Gazette (E-Gazette) of the Intellectual Property Philippines (IPP) officially released on January 5, 2007.

The Opposer in the instant opposition is "EMERALD GARMENT MANUFACTURING CORPORATION", a corporation duly organized and existing under the laws of the Philippines, with principal office at No. 52 Santiago Street, San Antonio, San Francisco del Monte, Quezon City.

The Respondent-Applicant on the other hand, is "THE H.D. LEE COMPANY, INC." a corporation duly organized and existing under the laws of the State Delaware with principal office at 103 Springer Building, First Floor, Concord Plaza, 3411 Silverside Road, Wilmington, Delaware 19810, United States of America.

The grounds of the Opposition are as follows:

- "1. The approval of the application in question is contrary to Section 123.1 (d) of Republic Act No. 8293;
- "2. The approval of the application in question will violate Opposer's right to the exclusive use of the trademarks "DOUBLE CURVE LINE" and "DOUBLE REVERSIBLE WAVE LINE" which it owns and has been using on similar goods since 1980 and 1973, respectively;
- "3. The approval of the application in question has caused and will continue to cause great and irreparable damage and injury to herein Opposer;
- "4. Respondent-Applicant is not entitled to register the trademark "LEE & OGIVE CURVE DESIGN" in its favor."

To support the opposition, Opposer relied on the following facts:

- "1. The trademark LEE & OGIVE DESIGN, subject of the Application Serial No. 4-2001-009602 is a composite mark consisting of the word LEE and two parallel curve lines, which Respondent-Applicant describes as "OGIVE CURVE DESIGN".
- "2. The "OGIVE CURVE DESIGN" in Respondent-Applicant's mark "LEE & OGIVE CURVE DESIGN" is identical and/or confusingly similar to the

mark DOUBLE CURVE LINES which Opposer has been using in goods faith for clothing, particularly on jeans and pants falling under Class 25, since 1980.

- “3. Pursuant to Section 2-A of Republic Act No. 166, as amended, Opposer has become the owner of the mark DOUBLE CURVE LINES by actual continuous use thereof in good faith since January 8, 1980, which right of ownership has been confirmed by this Office no less when it allowed its registration in favor of Opposer.
- a) On May 5, 1981, Opposer was issued Certificate of Registration No. 5513 in the Supplemental Register, a certified copy of which is hereto attached as exhibit “A” x x x.
 - b) On May 31, 1982, Opposer was issued Certificate of Registration No. 30810 in the Principal Register, a certified copy of which is hereto attached as Exhibit “B” x x x.
 - c) On September 6, 1988, Opposer filed Application Serial No. 65682 for the registration of its mark DOUBLE CURVE LINES in the Principle Register. Certified copies of the Acknowledgement of Filing, Application Statement, Drawing, Recommendation for Allowance and Notice of Allowance and Payment of Publication Fee of Application Serial No. 65682 taken from the file of Inter Partes Case No. 3498, are herewith submitted as Exhibits “C”, “C-1” to “C-5” xxx.
 - d) The right of Opposer to the mark DOUBLE CURVE LINES is duly recognized by Section 236 of the Intellectual Property Code of The Philippines (IP Code), which provides:

“Section 236. Preservation of Existing Rights. – Nothing herein shall adversely affect the rights on the enforcement of right in patents, utility models, industrial designs, marks and works acquired in good faith prior to the effective date of this Act.”

- “4. Opposer continues to be the owner of the DOUBLE CURVE LINES through its continuous actual commercial use thereof in good faith. Opposer submits herewith certified copies of its representative sales invoices:
- a) As Exhibit “D”, “D-1” to “D-9”, certified copies of representative sales invoices Opposer, with Exhibit “D” being dated April 12, 1980, and all of them indicating the sales of jeans bearing Opposer’s registered mark KYNOCHE & PUPPY DESIGN and DOUBLE CURVE LINES mark.
- Submitted likewise is a copy of a certified copy of Certificate of Registration No. 50230 for the trademark KYNOCHE & PUPPY DESIGN, marked as Exhibit “E” x x x.

- b) As Exhibit "F", "F-1" to "F-9", certified copies of Certificate of Registration No. 64161 for the trademark STYLISTIC MR. LEE, marked as Exhibit "G" x x x.
- c) As Exhibit "H", "H-1" to "H-9", certified copies of representatives sales invoices of Opposer, with Exhibit "H" being dated January 8, 1980, and all of them indicating the sale of jeans bearing Opposer's registered trademark MODA BERRI & STYLIZED MB and the DOUBECURVE LINES mark.

Submitted likewise is a copy of the certified copy of Certificate of Registration No. 48161 for the trademark MODA BERRI & STYLIZED MB, marked as Exhibit "I" x x x.

- d) As Exhibit "J", "J-1" to "J-9", certified copies of representatives sales invoices of Opposer, with Exhibit "J" being dated June 30, 1980, and all of them indicating the sales Of jeans bearing Opposer's registered trademark JERVIS and the DOUBLE CURVE LINES mark.

Submitted likewise is a copy of the certified copy of Certificate of Registration No. 48161 for the trademark JERVIS, marked as Exhibit "K" x x x.

- "5. The OGIVE CURVE DESIGN in Respondent-Applicant's mark LEE & OGIVE CURVE DESIGN is identical and/or confusingly similar to the mark DOUBLE CURVE LINES which Opposer has been using in good faith for clothing, particularly on jeans has been using in good faith for clothing, particularly on jeans and pants falling under Class 25 since 1973.
- "6. Lat January 15, 1990, Opposer was issued by the National Library Certificate of Copyright Registration NO. 1-2998 for its DOUBLE REVERESEIBLE WAVE LINE BACK POCKET DESIGN. A certified copy of aforesaid certificate is hereto attached as Exhibit "L" x x x.
- "7. In addition, pursuant to Section 2-A of Republic Act No. 166, as amended, Opposer has become the owner of the mark DOUBLE REVERSIBLE WAVE LINE by actual continuous commercial use thereof in good faith since October 1, 1973 and up to the present.
 - a) As Exhibit "M", "M-1", to "M-8" , certified copies of representatives sales invoices of Opposer, with Exhibit "M" being dated October 1, 1973, and all of them indicating the sale of jeans bearing Opposer's registered trademark KYNOCHE & A PUPPY DESIGN (Exhibit "E") and the DOUBLE REVERSIBLE WAVE LINE mark.
 - b) As Exhibit "N", "N-1" to "N-14", certified copies of representative sales invoices of Opposer, with Exhibit "N" being dated May 2, 1975, and al of them indicating the sale of jeans bearing Opposer's registered trademark STYLISTIC MR. LEE (Exhibit "G") and the DOUBLE REVERSIBLE WAVE LINE mark.
 - c) As Exhibit "O", "O-1" to "O-11", certified copies of representative sales invoices of Opposer, with Exhibit

“O” being dated July 1, 1978, and all of them indicating the sale of jeans bearing Opposer’s registered trademark JERVIS (Exhibit “K”) and the DOUBLE REVERSIBLE WAVE LINE mark.

- “8. Late January 8, 1990, Opposer filed Application Serial No. 70497 for the registration of its trademark BOUBLE REVERSIBLE WAVE LINE (Back Pocket Design). After its Publication for opposition, Respondent-Applicant filed its Notice of Opposition thereto, which opposition has been docketed as Inter Partes Case No. 3743.

Certified copies of the Acknowledgement of Filing, Application Statement, Drawing and Facsimile, Recommendation for Allowance and Payment of Publication Fee taken from the file of IPC No. 3743 are herewith submitted as Exhibits “P”, “P-1” to “P-6” and made integral parts hereof.

- “9. The ownership by Opposer of the mark DOUBLE REVERSIBLE WAVE LINE and its exclusive right use the same in clothing falling under Class 25, is expressly recognized by Section 236 of the IP Code.

- “10. Opposer continues commercial use in good faith of its trademark DOUBLE REVERSIBLE WAVE LINE up to the present.

Submitted herewith as Exhibit “Q” is a pair of Opposer’s STYLISTIC MR. LEE jeans with the DOUBLE REVERSIBLE WAVE LINE (back Pocket Design) and a photograph thereof as Exhibit “Q-1”, particularly showing the back pockets with the DOUBLE REVERSIBLE WAVE LINE design/mark.

- “11. Opposers have not abandoned the use of its trademarks DOUBLE CURVE LINE and DOUBLE REVERSIBLE WAVE LINE. On the contrary it has continued the use of said marks up to the present as shown in the affidavit of its General Manager Johnson Gumba and the commercial documents submitted herewith.

- “12. The OGIVE CURVE DESIGN in the trademark of LEE & OGIVE CURVE DESIGN being applied for registration by Respondent-Applicant is identical and/or confusingly similar to the trademark DOUBLE CURVE LINE and DOUBLE REVERSIBLE WAVE LINE owned and continuously being used by Opposer and subject of Trademark Application Serial No. 65682 on September 6, 1988 (Exhibit “C” to “C-5”) and the Application Serial No. 70497 filed on January 8, 1990 (Exhibit “P” to “P-6”).

In addition, the goods covered by Respondent-Applicant’s application are identical to, and/or related to, the goods covered by Opposer’s application.

Accordingly, the approval of the application in question is contrary to Section 123.1 (d) of Republic Act No. 8293 x x x.

- “13. The approval of the application in question violates the right of Opposer to the exclusive use of its trademarks DOUBLE CURVE LINE and DOUBLE REVERSIBLE WAVE LINE which it owns and has used on clothing falling under Class 25. The approval of the application in question has caused and will continue great and irreparable damage and injury to Opposer.

“14. Respondent-Applicant is not entitled to register the trademark LEE & OGIVE CURVE DESIGN in its favor.”

On August 10, 1990, Respondent-Applicant filed its Verified Answer denying the grounds and facts alleged in eh Notice of Opposition and alleging the following Affirmative Defenses.

“24. Respondent-Applicant is the owner of the world famous trademark LEE & OGIVE CURVE DESIGN registered in its name in the United States of America on April 10, 1984 under Registration No. 1,273,602 for goods in International Class 25. A certified copy of the Certificate of Registration No. 1,273,602 is hereto attached as Annex “2”.

“25. As a national member of the above international conventions, Respondent-Applicant is entitled to invoke the legal benefits and protection under these conventions in edition to the rights which any owner of the Intellectual property right is otherwise entitled pursuant to Section 3 to the Intellectual Property Code.

“26. Respondent-Applicant is the owner of the world famous trademark LEE & OGIVE CURVE DESIGN displayed on the hip pockets of the jeans that it manufactures. Respondent-Applicant first used the LEE & OGIVE CURVE DESIGN trademark in the United States on or about February 18, 1946. Since then, Respondent-Applicant, as well as its licenses, has continuously used the trademark LEE & OGIVE CURVE DESIGN on its jeans and related products.

“27. Respondent-Applicant has expended many millions of United States dollars worldwide in advertising and promoting jeans and other wearing apparel bearing the LEE & OGIVE CURVE DESIGN trademark. Advertisements were made in various media, including the internet as well as newspapers and magazines of general circulation, such as Good Housekeeping, People and International Sportswear. Jeans and other wearing apparel bearing the LEE OGIVE CURVE DESIGN trademark were extensively advertised in radio and television commercials. Other advertisements were in the form of point of sale material in major department stores.

“28. As a result of this exclusive advertising, the jeans and other wearing apparel bearing the LEE & OGIVE CURVE DESIGN trademark have gained wide popularity and goodwill among its customers in the United States and in many parts of the world, including the Philippines. The LEE & OGIVE CURVE DESIGN trademark for jeans and other wearing apparel, and the labels and tags, have become associated with and recognized by the public as referring exclusively to the jeans and clothing business of Respondent-Applicant. The LEE & OGIVE CURVE DESIGN trademark is recognized throughout United States, and in many other nations, including the Philippines, as Respondent-Applicant’s trademark signifying fashionable jeans and clothing of unexcelled style and quality.

“29. To protect its property right and investment in the goodwill and reputation of the LEE & OGIVE CURVE DESIGN trademark, Respondent-Applicant also registered or has pending application for its registration of this trademark in various countries worldwide, including the Philippines. Respondent-Applicant is the registered owner of the trademark LEE & OGIVE CURVE DESIGN under several certificates of registration in many countries worldwide.

- “30. Respondent-Applicant is the prior user of the trademark LEE & OGIVE CURVE DESIGN for the specific goods served by the present application.
- “31. Respondent-Applicant’s trademark LEE & OGIVE CURVE DESIGN is a well trademark within the meaning of the Paris Convention, the TRIPS Agreement and the IP Code and should be protected against a subsequent user like the Opposer.”

In compliance with Office Order No. 79, Series of 2005, Opposer submitted in evidence Exhibit “A” to “T”, inclusive of sub-markings, together with its Notice of Opposition. During the preliminary conference held on September 5, 2007 and November 16, 2007, Opposer presented for comparison the originals/certified copies of Exhibit “A” to “T”.

Respondent-Applicant submitted the notarized affidavits of Helen L. Winston and Wilfredo T. Sy which were subsequently marked as Exhibit “1” and “2”, respectively.

Respondent-Applicant also submitted photocopies of several documents which were marked as Exhibits “1-A” and “1-B”; “2-A” to “2-M”; “3-A” to “3-R”. During the preliminary conference, Respondent-Applicant presented for comparison the originals of Exhibits “2-A”, “2-C” to “2-C-2”, “2-E”, “2-G” “2-G-4”, “2-H” “2-M”, “2-Q” and “2-R”, “2-U” and “2-V”; “2-Y” and “2-Z”, “2-BB” to “2-MM”; “3-A” “3-R”. Respondent-Applicant, however, failed to present the originals of Exhibits “1-A” and “1-B”; “2-B”; “2-D”; “2-F” “2-G-5” “2-G-9”, “2-N” to “2-P”; “2-S” and “2-T”, “2-W” and “2-Y”; and “2-AA” and confirmed during the preliminary conference held February 21, 2008, that the marking of these exhibit would remain provisionals.

The ultimate issue to be resolved in this case is:

WHETHER OR NOT RESPONDENT-APPLICANT IS ENTITLED
TO THE REGISTRSTION OF THE TRADEMARK “LEE & OGIVE CURVE
DESIGN” IN ITS FAVOR.

Section 123 (d) of Republic Act No. 8293, otherwise known as the Intellectual Property Code of the Philippines (IP Code), provides:

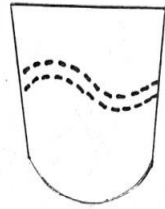
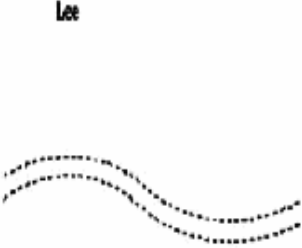
Sec 123. *Registrability* – 123.1 *A mark cannot be registered if it:*

- (d) Is identical with a registered mark belonging to a different proprietor or mark with an earlier filing or priority date, in respect of:
 - (i) The same goods or services, or
 - (ii) Closely related goods or services, or
 - (iii) If it resembles such a mark as to be likely to deceive or cause confusion:

The evidence on record disclose that on December 21, 2001, when Respondent-Applicant filed Application No. 4-2001-009602, Opposer’s Application Serial No. 4-65682 for the re-registration of the mark “DOUBLE CURVE LINES” was already pending as it was filed as early as September 6, 1988 (Exhibit “C” to “C-5”). In addition, long before December 21, 2001, Opposer adopted and has been using in commerce since January 8, 1980 the trademark “DOUBLE CURVE LINES” together with its other registered marks “KYNOCHE & A PUPPY DESIGN”; “STYLISTIC MR. LEE”; “MODA BERRI & STYLIZED MB” and “JERVIS” up to the present (Exhibit “D” to “D-9”; “E”; “F” to “F-9”; “G”, “H” to “H-9”; “I”; “J” to “J-9”; and “K”). Thus pursuant to Section 2-A of Republic Act No. 166, as amended, the law then in force and effect, Opposer has become the owner of the mark “DOUBLE CURVE LINES” through continuous

commercial use thereof. On May 5, 1981, said "DOUBLE CURVE LINES" was registered in favor of Opposer in the Supplemental Register under Registration No. 5513 (Exhibit "A"), and on May 31, 1982, in the PRINCIPAL Register under Registration NO. 30810 (Exhibit "B").

As shown below, the O'GIVE CURVE DESIGN in Respondent-Applicant's opposed mark nearly resembles Opposer's mark DOUBLE CURVE LINES.

	
<p style="text-align: center;">Opposer's mark DOUBLE CURVE LINES (Exhibit "C-3")</p>	<p style="text-align: center;">Respondent-Applicant's mark LEE & OGIVE CURVE DESIGN (As published in the e-Gazette)</p>

The near resemblance or confusing similarity between the competing marks of the parties is further heightened by the fact that both marks are used on identical goods, particularly, on jeans and pants falling under Class 25.

Because of the near resemblance or confusing similarity between Opposer's mark "DOUBLE CURVE LINES" and Respondent-Applicant's "OGIVE CURVE DESIGN", The H.D. LEE Company, Inc filed its Notice of Opposition to Opposer's Application Serial No. 65682 (a re-application since its previously issued Registration No. 30810 had lapsed), which was docketed as Inter Partes Case No. 3498. Last March 24, 2008, this Office promulgated Decision No. 2008-58, denying the opposition of The H.D. Lee Company, Inc. and giving due course to Emerald Garments Manufacturing Corporation's Application Serial No. 65682 for the registration of the mark "DOUBLE CURVE LINES". Decision No. 2008-58 states:

"WHEREFORE, premises considered, the Notice of Opposition filed by The H.D. Lee Company Inc., is as it is, hereby DENIED. Consequently, application bearing Serial No. 65682 for the registration of the mark "DOUBLE CURVE LINES" filed on September 6, 1988 by Emerald Garments Manufacturing Corporation is, as it is, hereby GIVEN DUE COURSE."

The evidence on record also discloses that on December 21, 2001, when Respondent-Applicant filed its opposed application, Opposer's Application Serial No. 70497 for the registration of the mark DOUBLE REVERSIBLE WAVE LINE was also pending, the same having been filed on January 8, 1990 (Exhibit "P" to "P-6"). In addition, long before December 21, 2001, Opposer adopted and has been using in commerce since October 1, 1973, the trademark "DOUBLE REVERSIBLE WAVE LINE" together with its other registered marks "KYNOCHES & PUPPY DESIGN"; STYLISTIC MR. LEE; and "JERVIS", up to the present (Exhibit "M" to "M-18"; "N" to "N-14"; and "O" to "o-11"). Thus, pursuant to Section 2-A of Republic Act No. 166, as amended, the law then in force and effect, Opposer has become the owner of the mark "DOUBLE REVERSAIBLE WAVE LINE" through continuous commercial use thereof.

Because of the near resemblance or confusing similarity between Opposer's mark "DOUBLE REVERSIBLE WAVE LINE", The H.D. Lee Company, Inc. filed its Notice of Opposition to Opposer's Application Serial No. 70497, which was docketed as Inter Partes Case No. 3743. Last June 29, 2007, this Office promulgated Decision No. 2007-86, the dispositive portion of which states:

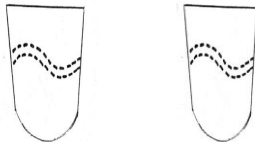
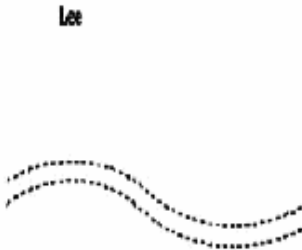
“WHEREFORE, premises considered, the Notice of Opposition is, as it is, hereby DENIED. Consequently, application bearing Serial No. 70497 for the mark “DOUBLE REVERSIBLE WAVE LINE (Back Pocket Design)” filed on January 8, 1990 by EMERALD GARMENTS MANUFACTURING CORPORATION is hereby GIVEN DUE COURSE.” (Exhibit “T”)

In Inter Partes Case No. 3743, this Office found out:

“That the trademark “DOUBLE REVERSIBLE WAVE LINE (Back Pocket Design)” has been adopted and used by the Respondent-Applicant on its goods under Class 25 on October 1, 1973 (Exhibit “23-b” and “23-c”). On said date, no other person and/or entity had appropriated and/or used, much less, registered the mark “DOUBLE REVERSIBLE WAVE LINE (Back Pocket Design)” in the Philippines.

Moreover, as shown by the records, it appeared that the Respondent-Applicant has been actually started selling goods using in commerce the mark “DOUBLE REVERSIBLE WAVE LINE (Back Pocket Design)” on October 1, 1973 (Sales Invoice No. 4994 dated October 1, 1973 showing sale of six (6) pieces of 1001 Kynoches jeans) [Exhibit “17”] and continuously using it since October 1, 1973 up to the present (Exhibit “17-a” to “17-r”; “19” to “19-n”, “21” to “21-k”). (Exhibit “T”)

The O’GIVE CURVE LINES id Respondent-Applicant’s opposed mark nearly resembles Opposer’s mark DOUBLE REVERSIBLE WAVE LINE as shown below:

	
<p>Opposer’s mark DOUBLE REVERSIBLE WAVE LINES (Exhibit “P-4”)</p>	<p>Respondent-Applicant’s mark LEE & OGIVE CURVE DESIGN (As published in the e-Gazette)</p>

The near resemblance or confusing similarity between the competing marks of the parties is further heightened by the fact that both marks are used on identical goods, particularly, on jeans and pants falling under Class 25.

Accordingly pursuant to Section 123.1 (d) of the Intellectual Property Code of the Philippines (IP Code), registration of the mark LEE& OGIVE CURVE DESING in favor of Respondent-Applicant is prescribed.

Moreover, it is a fundamental principle in Philippine Trademark Law that only the owner of a trademark is entitled to register a mark in his/its name and that the actual use in commerce in the Philippines is a prerequisite to the acquisition of ownership over a trademark. The evidence on record clearly and convincingly shows, that Opposer adopted and has been using the mark “DOUBLE REVERSIBLE WAVE LINE since October 1, 1973 (Exhibit “M”) and the mark

DOUBLE CURVE LINES since January 8, 1980 (Exhibit "H"). Although Respondent-Applicant claimed in its Answer that it first used the LEE & OGIVE CURVE DESIGNB trademark in the United States on or about February 18, 1946 (paragraph 26), it did not present any evidence to prove such claim of first use. The evidence presented by Respondent-Applicant shows that it entered into a License Agreement with Authentic American Apparel , Inc., only on January 1, 1996 (Exhibit "2-A") and its yearly sales reports stated only from October 1996 (Exhibits "2-C" to "2-D").

Respondent-Applicant also claimed in its Answer that it registered its LEE & OGIVE CURVE DESIGN mark in the United States on April 10, 1984 under Registration No. 1,273,602 (paragraph 24). Respondent-Applicant, however, failed to submit a duly certified and authenticated copy of its certificate of registration for Registration No. 1,273,602. In fact, Respondent-Applicant did not submit any certified and authenticated certificate of registration of its mark LEE & OGIVE CURVE DESIGN issued anywhere else. Instead, on record is the Certificate of Registration No. 5513 for the trademark DOUBLE CURVE LINES issued on favor of Opposer on May 5, 1981 (Exhibit "A"), Certificate of Registration No. 30810 issued on May 31, 1982 (Exhibit "B"), the application for re-registration of said mark under Application Serial No. 65682 filed by Opposer on September 6, 1988 (Exhibit "C" to "C-5") which was given due course under Decision No. 2008-58; and Application Serial No. 70497 for the registration of the mark DOUBLE REVERSIBLE WAVE LINE (Back Pocket Design) filed on January 8, 1990 which was given due course under Decision No. 2007-86 (Exhibit "T").

Finally, Respondent-Applicant claimed in its Answer that its trademark LEE & OGIVE CURVE DESIGN is world famous and well-known, registered, used and advertised worldwide.

Examination of the documentary evidence submitted by Respondent-Applicant will show that it did not submit any certified and authenticated certificate of registration of its mark anywhere else in the world; likewise, it did not submit any proof of use of its mark outside of the Philippines, while its use in the Philippines appears to have started only in October 1996 (Exhibit "2-C" to "2-C-2"), twenty three (23) years after Opposer started using its DOUBLE REVERSIBLE WAVE LINE (Back Pocket Design) on October 1, 1973 (Exhibit "M"). Respondent-Applicant did not submit proof of having promoted and advertised its mark outside the Philippines, while in the Philippines it started preparing its yearly advertising expenditures only on January 2000 (exhibit "2-G" to "2-G-4"). None of its advertising clippings submitted in evidence appeared before 2003 (Exhibit "3-A" to "3-R").

Having to show that it owns the OGIVE CURVE DESING nor that said OGIV CURVE DESIGN is well-known internationally and in the Philippines, Respondent-Applicant is not entitled to register the mark LEE & OGIVE CURVE DESIGN in its favor in the Philippines.

WHEREFORE, premises considered, the Notice of Opposition is, as it is, hereby SUSTAINED. Consequently, application bearing Serial No. 4-2001-0209602 for the mark "LEE & OGIVE CURVE DESIGN" filed on December 21, 2001 by THE H.D. LEE COMPANY, INC. is, as it is hereby, REJECTED.

Let the filewrapper of trademark "LEE & OGIVE CURVE DESIGN", subject matter of this case together with copy of this DECISION be forwarded to the Bureau of Trademarks (BTO) for appropriate action.

SO ORDERED.

Makati City, 27 February 2009.

ESTRELLITA BELTRAN-ABELARDO
Director, Bureau of Legal Affairs
Intellectual Property Office

