

FABERGE, INCORPORATED,
Opposer,

INTER PARTEED CASE NO. 1702

OPPOSITION TO:

Appln. Serial No. 43185
Filed : November 14, 1980
Applicant : Ramon Tan Eng Guan
Trademark : BRUTUS,
Used on : Jeans, pants

RAMON TAN ENG GUAN,
Respondent-Applicant.

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DECISION NO. 88-58 (TM)

August 2, 1988

DECISION

This is an Opposition for Registration of trademark BRUTUS, under Application Serial No. 43185, for jeans, pants, in class, 25, filed on November 14, 1980 by Petitioner FABERGE INCORPORATED.

Opposer is a corporation duly organized under the laws of the state of Minnesota, United States of America, Located and doing, business at 1345 Avenue of the Americas, City and State of New York, United States of America, whereas, Respondent-Applicant, Ramon Tan Ang Guan, a Filipino citizen, with business address at 61 C. Dorado St., Damar Village, Quezon City, Philippines.

The records show that opposer is the duly registered owner of the trademarks BRUT 33 under Certificate of Registration No. 23889 issued on July 26, 1976, for antiperspirant, personal deodorant, cream shave, after shave, shower lotion, hair spray, and hair shampoo under class 8 and 51 (Int. cl. 3) (Exh. D), and BRUT under Cert. of Reg'n No. 13265 issued on October 31, 1967 for after shave lotion, shaving cream, deodorant, and talcum powder in class 51 and toilet soap in class 52.

Opposer alleged that the trademark BRUTUS, sought to be registered by Respondent-Registrant, is similar to its own trademark, therefore, the buying public would likely be mistaken, confused, or deceived regarding the origin of the goods

Served with the Notice to Answer, Respondent-Applicant filed instead a Motion to Dismiss, alleging that no such confusion, mistake, or deception among consumers would happen because the good, involved are unrelated, Respondent-Applicant claimed that its product lines covers only jeans, pants, and clothing under class 25, whereas, Opposer's product lines (supra) fall under classes 8 and 51 (Int.cl. 3), Section 169-C, par. d of the Rules of Practice in Trademark Cases does not sanction filing of a Motion to Dismiss, and Respondent-Applicant was declared in Default on July 12, 1983 upon motion of the Opposer. Despite notice, the respondent failed to appear at the hearing of the motion to declare him in default; neither did he file a motion to lift order of default or a motion for reconsideration of said order.

Opposer thereafter presented its evidence ex parte and the case was submitted for decision.

The filing of a Motion to Dismiss, in lieu of the answer required by Sec. 169 of the Rules of Practice in Trademark Cases, resulted in the admission of all material and relevant facts excluding inferences, conclusions of law surplusage, and irrelevant matters (De Dios vs. Bristol

Laboratories Phil. Inc. et. al., L-25530, Jan. 29, 1974, 55 SCRA 349; Banez Electric Ltd. Co., 119 SCRA 90; Tan vs. Director of Forestry, L-24548, October 27, 1983, 125 SCRA 302). Thus, Opposer's allegation that it is the owner of the trademark BRUT, for after shave lotion, shaving cream, deodorant and talcum powder and toilet soap, in class 3 duly registered under Cert. of Reg'n No. 13265 issued on October 31, 1967, and BRUT 33, for anti-perspirant, personal deodorant, cream shave, after shave, shaver lotion, hair spray and hair shampoo in class 3 under Cert, Reg'n No. 23889 issued on July 27, 1976 and that the abovementioned trademark have been continuously used in the Philippines and acquired a considerable amount of goodwill, are all admitted.

Failure of Respondent-Applicant to file an answer to the Opposition and his subsequent failure to file a motion to set aside the Order of Default, dated July 12, 1983, indicates lack of interest on the part of Respondent-Applicant in establishing and protecting whatever rights he has over the trademark BRUTUS. His application is therefore deemed abandoned.

Wherefore, the Opposition is hereby given due course. Accordingly, Application Serial No. 43185 for trademark BRUTUS is rejected.

Let the records of this case be remanded to the Trademark Examining Division for appropriate action.

SO ORDERED.

IGNACIO S. SAPALO
Director