

CHARRY B. FRANCO,  
Junior Party Applicant,

INTER PARTES CASE NO. 3187

INTERFERENCE BETWEEN:

Application Serial No. 53988  
Filed : June 5, 1984  
Applicant : Charry B. Franco  
Trademark : OMNI-CHEM  
Used on : Industrial chemicals,  
such that as water  
treatment chemicals,  
oils and greases

- versus -

-and-

Application Serial No. 5171  
Filed : February 13, 1982  
Trademark : OMNI-CHEM  
Applicant : Rebecca S. Yrigan  
Used on : Maintenance of  
chemicals and  
water treatment  
chemicals

REBECCA S. YRIGAN  
Senior Party Applicant.

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DECISION NO. 89-6 (TM)

January 30, 1989

#### DECISION

This Bureau declared an interference case between Charry B. Franco, the herein Junior Party Applicant, for the trademark "OMNI-CHEM" used on industrial chemicals, such as water treatment chemicals, oils and greases, and Rebecca S. Yrigan, to herein Senior Party Applicant, for the same trademark "OMNI-CHEM" used on maintenance of chemicals and water treatment chemicals.

The Junior Party Applicant is a Filipino citizen doing business under the name and style "Consolidated Trade Center" located at Suite 306 Don Amvrosio Building, Buendia Avenue cor. Bautista Street, Makati, Metro Manila; while the Senior Party Applicant is also a Filipino citizen residing at No. 82 K-3<sup>rd</sup> Kamuning, Quezon City, Philippines.

On September 7, 1989, the Junior Party-Applicant, through counsel, filed a Motion to Dissolve Interference in its favor on the ground that the Senior Party Applicant is not the real owner of the mark under dispute.

The Senior Party Applicant did not file a motion to dissolve this interference or other motions of similar characters to protect its interests on subject mark.

The Office sent to the parties in September 29, 1988 a notice of setting the pre-trial conference to October 17, 1988.

On said date, the Senior Party Applicant did not appear. On motion made in open court, counsel for Junior Party Applicant was allowed to present its evidence ex-parte consisting of the following exhibits:

Exhibits "A" and "A-1"-

Invoice No. 039 dated July 27, 1983 to show that Junior Party Applicant, through its consolidated Trade Center, sold to the Philippine Airlines 5 gallons of "OMNI CHEM 109" (air fresheners) in the amount of 1,250.00 pesos;

Exhibits "B" and "B-1" –

Invoice No. 060 dated July 30, 1983 to show that Junior Party Applicant sold to its customer 20 gallons of OMNI CHEM 205-A (motor cleaner-slow drying) in the amount of 2,800.00 pesos;

Exhibits "C"

Certificate of copyright Registration issued on June 8, 1984 to show that Junior Party, proprietor of the consolidated Trade Center, is the registered owner of the mark "OMNI-CHEM" with the National Library;

Exhibits "D" and "D-1"-

Social Security System Form No. B-1A(Report of Employee Members) to show that Senior Party Applicant Rebecca Yrigan is merely an employee of the Consolidated Trade Center owned by the Junior Party Applicant; and

Exhibits "E"

Resolution of the Provincial Fiscal of Rizal finding a probable cause against Yrigan (Senior Party) for the crime charged (Violation of par. 3, Art. 189 of the Revised Penal Code).

From the above exhibits, it has been convincingly shown that:

- (a) The Junior Party Applicant owned and used the mark "OMNI-CHEM" in its products (industrial chemicals) through its business establishment, the Consolidation Trade Center (Exhs. "A" and "A-1" ; "B-1" and "C")
- (b) The Senior Party Applicant was a former employee (Sales Manager) of the Junior Party Applicant since July, 1983 (Exhs. "D" and "D-1").
- (c) The Senior Party Applicant has been found "prima facie" by the Provincial Friscal of Rizal to have violated par. 3 of Article 189 of the Revised Penal Code, subtitled "Unfair Competition, Fraudulent registration of Trademark x x x" (Exh. "E") and is now in hiding from the law.

Based on the foregoing facts, the Bureau finds the Junior Party Applicant to have the better right over, or the real owner of, the contested mark "OMNI-CHEM".

WHEREFORE, Junior Party Applicant`s Motion to dissolve this interference case in its favor is GRANTED. Hence, Senior Party`s Application, Serial No. 53171, for the same mark "OMNI-CHEM" is REJECTED.

Let the records of this case be transmitted to the Trademark Examining Division for appropriate action in accordance with this Decision.

SO ORDERED.

IGNACIO S. SAPALO  
Director