

FRUIT OF THE LOOM,
Opposer,

INTER PARTES CASE NO. 3275

OPPOSITION TO:

Application Serial No. 58951
Filed : May 15, 1986
Applicant : Jaime B. Lao
Trademark : TUTTI FRUTTI
Used on : T-shirts, socks,
jackets, pants,
Blouses and
briefs

- versus -

JAIME B. LAO,
Respondent-Applicant.
x-----x

DECISION NO. 89-48 (TM)
July 11, 1989

DECISION

On November 29, 1988, an opposition was filed by Fruit of the Loom, Inc. (herein Opposer) to the application for registration "TUTTI FRUTTI" within a semi-elliptical figure with rounded ends under Serial No. 58951 for T-shirts, socks, jackets, pants, blouses, briefs in the name of Jaime B. Lao (herein Respondent-Applicant.)

Opposer is a foreign corporation duly organized and existing under the laws of the State of New York, U.S.A, doing business at 1 Fruit of the Loom Drive, Bowling Green, Kentucky, U.S.A, while Respondent Applicant is a Filipino citizen, doing business at 81 R. Nicasio Street, San Rafael Village, Balut, Navotas, Metro Manila, Philippines.

The only issue submitted and agreed upon by the parties is whether or not Respondent-Applicant's trademark "TUTTI FRUITI" within a semi-elliptical figure with rounded ends" so reassemble's Opposer's trademark "FRUIT OF THE LOOM" as to be likely, when applied to or used in connection with the goods or business of Respondent-Applicant, to cause confusion or mistake to deceive purchasers.

The opposition must fail.

Opposer submitted photocopies of Certificates of Registration No. 37087 and No. R-2199 in its name, showing the mark "FRUIT OF THE LOOM" inside an oblong and an apple with a cluster of grapes device at the top. Opposer should have submitted actual labels of its mark instead of the photocopies of Certificates of Registration as best evidence. No less than the Supreme Court said, in a case to which the herein Opposer as a party, that "(i)n cases of this nature, there can be no better evidence as to whether there is a confusing similarity in the contesting trademarks than the labels or hang tags themselves. A visual presentation of the labels or hang tags is the best argument for one or the other x x x" (Fruit of the Loom, Inc. vs. CA, 133 SCRA 405, 410). Being a party to the said case, Opposer should have known the importance, of submitting an actual label here had it really believed that there is a confusing similarity between the marks here in contest. For reasons beyond comprehension, it did not.

Nevertheless, even comparing the Opposer's trademark, as submitted, with that of the actual labels of Registrant-applicant, the striking difference is already manifest. First, the Opposer's device consists of an apple with clusters of grapes and an oblong figure surrounding the word mark, while Respondent-Applicant's is a plain semi-elliptical figure with rounded ends. Second, as to the word mark, Opposer begins with the word "FRUIT" and ends with "LOOM", while Respondent-Applicant's begins with "TUTTI" and ends with "FRUTTI".

This problem has been squarely answered in the case of *Fruit of the Loom, Inc. vs. CA*, supra, 411 where, despite the similarity in the first word "FRUIT OF THE LOOM" comparing it with "FRUIT FOR EVE" and apple device, the Supreme Court said:

" x x x (a)s to the design and coloring scheme of the hang tags, we believe that while the similarities in the two marks like the red apple at the center of each mark, we also find differences or dissimilarities which are glaring and striking to the eye, such as:

1. The shapes x x x
2. The designs differ x x x
3. The colors of the hang tags are also very distinct from each other. x x x

The dissimilarities of the competing trademarks in this case are completely lost in the substantial differences in the design and general appearance of their respective hang tags."

WHEREFORE this opposition is hereby DENIED. Accordingly, Respondent-Applicant's application Serial No. 58951 for the registration of the trademark "TUTTI FRUTTI" within a semi-elliptical figure with rounded ends is ALLOWED.

Let the records of this case be forwarded to the Application, Issuance & Publication Division for proper action in accordance with this Decision.

SO ORDERED.

IGNACIO S. SAPALO
Director