

GILRICHCO INC.,
Opposer,

INTER PARTES CASE NO. 3245
Opposition to:

- versus -

Trademark: "STYLE AUTO"

290TH CENTURY NYLON SHIRT
CO., INC.,
Respondent-Applicant.
X-----X

DECISION NO. 89-82 (TM)

DECISION

On September 22, 1988 GILRICHCO, INC. filed a Motion for extension of time to file a Notice of Opposition against the registration of the trademark "STYLE AUTO" for jeans, pants, jackets, T-shirts, polo shirts, polos, shirts and shorts, applied for by the 20TH CENTURY NYLON SHIRT CO. INC. on July 26, 1984 under Application Serial No. 59395 published on page 15, Volume I, No. 6 of the BFTTT Official Gazette dated August 22, 1988.

Opposer is a corporation with limited liability, incorporated in the State of California, U.S.A. with business address at 18730 Oxnard Street, Tarzana, California 91356, U.S.A.; while Respondent-Applicant is a corporation organized under the laws of the Philippines with business address at 632 Shaw Boulevard, Mandaluyong, Metro Manila.

Opposer filed its Verified Notice of Opposition on October 19, 1988 based on the following grounds:

1. The mark STYLE AUTO under Serial No. 59395 of Respondent-Applicant is not only confusingly similar but deliberately identical to the trademark STYLE AUTO of Opposer, which Opposer owns and has not abandoned;
2. The Opposer will be damaged and prejudiced by the registration of the mark STYLE AUTO in the name of Respondent-Applicant, and its business reputation and goodwill will suffer great and irreparable injury;
3. Respondent-Applicant's use of the mark STYLE AUTO for products which are identical to those of the Opposer constitutes an unlawful appropriation of a trademark owned and currently used by Opposer.

On April 3, 1989 Respondent-Applicant was notified of herein opposition and was required to file its Answer thereto within fifteen (15) days from receipt of said notice.

For failure to file its Answer despite receipt of the Notice, Respondent-Applicant was declared in default in Order No. 89-314 dated May 9, 1989 and Opposer was allowed to present its evidence ex-parte.

On August 25, 1989 Opposer presented its evidence ex-parte, consisting of Exhibits "A" to "1-4", inclusive, which were formally offered in writing on September 4, 1989 and were admitted in evidence for the Opposer in Order No. 89-696 dated September 7, 1989.

Considering that the trademarks applied for by both parties are identical (STYLE AUTO), the issue to be resolved is: Whether or not Respondent-Applicant is entitled to the registration of the trademark "Style Auto" pursuant to Sec. 4 (d) of R. A. No. 166, as amended.

Opposer presented proofs that Opposer's mark STYLE AUTO and Respondent's mark STYLE AUTO are identical (Exhs. "C" & "I-1"); that Opposer has adopted and used the mark "STYLE AUTO" since February 1977 (Exh. "D-1") and was issued a Certificate of Registration No. 1,244,541 on July 5, 1983 in the U.S. Patent and Trademark Office (Exh. "D"); has sold its products bearing the mark STYLE AUTO during the past eleven (11) years in Hong Kong, Saudi Arabia, Canada, Taiwan, Macaw, Mexico, Japan, Australia, France, Thailand, United States, Netherland, Antilla, England, Argentina, Sweden, Benelux, Germany, South Africa, Brazil and Venezuela (Exh. "E"); has been issued Certificates of Registration No. 335,929 on December 31, 1987 in Canada (Exh. "C"), Certificate of Registration No. 11342 on November 17, 1987 in Thailand (Exh. G-1); and said Opposer's mark has been advertised in The Banbaer Magazine (Exh. "H"), the Impression Magazine - June, March & May 1989 issue and the Wall Street Journal, issue of June 2 and 9, 1989 (Exhs. "H-1" to "H-4") at a cost of more than US \$ 1, 000, 000.00 (Exh. "A" item # 9).

Opposer presented evidence that it has filed an application for the registration of its mark "STYLE AUTO" with the Bureau of Patents & Technology Transfer in the Philippines on January 22, 1987 under Application Serial No. 60793 (Exh. "F").

From the foregoing exhibits, Opposer has presented sufficient evidence that it is the prior adopter, user and owner of the "STYLE AUTO" in its home country and in other countries, including the Philippines where it has a pending application for the registration of said mark.

On the other hand, despite receipt of the Notice to Answer on April 3, 1989 Respondent-Applicant did not file its Answer or any responsive pleading in connection with this case, it is hereby presumed to have lost interest in the prosecution of its contested application.

WHEREFORE, herein Notice of Opposition is GRANTED. Accordingly, Respondent's Application Serial No. 59395 is hereby declared ABANDONED.

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

SO ORDERED.

IGNACIO S. SAPALO
Director