

HERO CONSERVEN LENZBURG,
Opposer,

INTER PARTES CASE NO. 3041

INTERFERENCE BETWEEN:

Application Serial No. 46462
Filed : October 19, 1987
Applicant : Hero Conserven
Lenzburg
Trademark : HERO within blue oval
Used on : Jams, jellies, tinned fruits,
vegetable preserves, fruit syrups and
cooked dishes

-versus-

-and-

Cert. of Regn. No. 35392
Issued : April 1, 1981
Registrant : International Family
Food Services, Inc.
Trademark : HERO
Used on : Hamburger and other
sandwiches

INTERNATIONAL FAMILY FOOD
SERVICES, INC.,
Respondent-Applicant.

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DECISION NO. 88-109 (TM)
October 26, 1988

DECISION

This is an interference case declared by this Bureau between the above-identified trademark application and registration for trademark "HERO". After both parties have filed their respective motion to dissolve interference, the case was set for pre-trial conference. In the hearing conducted on October 21, 1988, parties through their counsels filed in open court a Joint Motion to Dissolve Interference, which reads:

"1. During the pre-trial hearings of the instant proceedings, the parties, after discussing the issues involved in the proceedings, arrived at the conclusion that no conflict in fact exists between their respective trademarks as Senior Party Applicant's mark HERO is used only for hamburgers and other sandwiches sold in Shakey's Restaurants or its outlets, while Junior Party-Applicant's mark HERO within an Oval Device is used for jams and jellies.

2. Junior Party Applicant has, therefore, agreed to move jointly with Senior Party Applicant for the dismissal of the instant interference proceedings; conditioned upon Senior Party-Applicant's undertaking and committing to: (i) limit the use of its mark HERO for hamburgers and other sandwiches sold in Shakey's Restaurants or its outlets, and (ii) offer no opposition to Junior Party-Applicant's Application Serial No. 46462 of the mark Hero within an Oval Device with this Honorable Bureau.

3. Accordingly, on 3 October 1988, Senior Party Applicant Executed a Deed of Undertaking in favor of Junior Party Applicant, the pertinent provisions of which are as follows, to wit:

'1. Senior Party Applicant undertakes and commits to limit the use of its mark "HERO" for hamburgers and other sandwiches sold in Shakey's restaurants or its outlets.

2. Senior Party Applicant Offers No Opposition to the Junior Party Applicant's Application Serial No. 46462 of the mark "HERO" within an Oval Device with BPTTT.

A copy of the said Deed of Undertaking is attached hereto and made an integral part hereof as Annex 'A'.

4. In view of the foregoing, the parties jointly move for the dissolution of the instant interference proceedings."

WHEREFORE, the interference case is DISSOLVED. Accordingly, Registration No. 35392 remains valid and Application Serial No. 46462 is given due course.

Let the records of the above registration and application be remanded, respectively, to the Patent/Trademark Registry and EDP Division and the Application, Issuance and Publication Division.

SO ORDERED.

IGNACIO S. SAPALO
Director