

HSIN TUNG YANG CO., LTD.
Opposer,

INTER PARTES CASE NO. 3373

OPPOSITION TO:

Application Serial No.: 41324
Filed: May 12, 1980
Applicant: All State Merchandizing
Corporation
Trademark: HSIN TUNG YANG
Used on: Candies, juices, canned
sardines, salmon, dried meat products

ALL STATE MERCHANDIZING
CORPORATION,
Respondent-Applicant.
x-----x

DECISION NO. 90-32 (TM)
August 29, 1990

DECISION

Captioned case pertains to a Notice of Opposition filed by Hsin Tung Yang Co., Ltd. against the application for registration of "HSIN TUNG YANG" under Application Serial No. 41324 filed on May 12, 1980 by All State Merchandizing Corporation, used on candies, juices, canned goods, salmon and dried meat products, and published for opposition on Page 36, Volume 11, No. 3, March 31, 1989 issued of the BPTTT's Official Gazette.

Opposer is a foreign corporation organized and existing under the laws of Taiwan with postal address at 11F, 289 Chung Hsiao E. Rd., Sec. 4, Taipei, Taiwan, Republic of China, while Respondent-Applicant is a domestic corporation with postal address at Arnal Building, 435 Juan Luna Street, Manila, Philippines.

For failure to file an Answer within the reglementary period, Respondent-Applicant was declared in default under Order No. 89-675 dated August 30, 1989. Accordingly, Opposer was allowed to present its evidence ex parte on September 25, 1989 at 9:00 A.M.

Admitted as Opposer's evidence are Exhibits "A" to "MM", inclusive of their submarkings, and the testimonies of two (2) witnesses in the form of Affidavits marked as Exhibits Affidavits "1" and "2".

After a circumspect evaluation of the admitted evidence, this Bureau finds that a case for the opposition has been made, Opposer having proved the following:

1. That it is a corporation organized and existing under the laws of Taiwan, Republic of China, doing business under the tradename "Hsin Tung Yang Co. Ltd" (Exh. "A1");
2. That it is the lawful owner of the trademark "HSIN TUNG YANG" used on various kind of salted meat and marine delicacies, various kinds of confections, and fruits as shown by its trademark registrations in Taiwan (Annexes "B" to "E" 'of Exh. "A.-1");
3. That it has registered the trademark "HSIN TUNG YANG" in many countries in the world, such as in Hongkong, France, Argentina, Singapore, Indonesia, Australia, South Korea, Benelux, Thailand, United Kingdom, Canada and United States of America (Annexes "F" to "Z" of Exh. "A-1");

4. That Opposer's products under the trademark "HSIN TUNG YANG" are distributed all over the world, and fully advertized and promoted as evidenced by Annexes "AA" to "DD", and Annex "EE" of Exh. "A-1"; and
5. That Opposer has a bona fide establishment in Malaysia, a member of the World Intellectual Property Organization (WIPO) and a signatory to the Paris Convention (Exh. "KK-1"); and
6. That Respondent-Applicant has not sold nor has even distributed in the Philippines any product bearing the trademark "HSIN TUNG YANG" (Tsn., Dec. 20, 1989, P. 17).

Applying Section 37 of Republic Act 166,

"SEC. 37. Rights of foreign registrants. - Persons who are nationals of, domiciled in, or have a bona fide or effective business or commercial establishment in any foreign country, which is a party to any international convention or treaty relating to marks or trade-names or the repression of unfair competition to which the Philippines may be a party, shall be entitled to the benefits and subject to the provisions of this Act to the extent and under the conditions essential to give effect to any such convention and treaties so long as the Philippines shall continue to be a party thereto, except as provided in the following paragraphs of this section."

and Article 6bis of the Paris Convention for the Protection of Industrial Property:

"(1) The countries of the Union undertake, ex officio if their legislation so permits, or at the request of an interested party, to refuse or to cancel the registration, and to prohibit the use, of a trademark which constitutes a reproduction, an imitation, or a translation, liable to create confusion, of a mark considered by the competent authority of the country of registration or use to be well known in that country being already the mark of a person entitled to the benefits of this Convention and used for identical or similar goods. These provisions shall also apply when the essential part of the mark constitutes a reproduction of any such well-known mark or an imitation liable to create confusion therewith."

it is clear that herein Opposer is entitled to claim protection under the Philippine Trademark Law.

Moreover, Respondent-Applicant's failure to file its Answer to the herein Notice of Opposition is a clear manifestation of lack of interest to pursue further its application for registration. Hence, it is deemed to have abandoned its application for registration.

WHEREFORE, this Opposition is SUSTAINED. Application Serial No. 41324 for the trademark "HSIN TUNG YANG" is hereby refused registration.

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

SO ORDERED.

IGNACIO S. SAPALO
Director