

RE: APPEAL FROM DECISION OF  
EXAMINER REJECTING  
TRADEMARK APPLICATION

EX PARTE CASE (UNNUMBERED)

Application Serial No. 53424  
Filed : March 20, 1984  
Applicant : Camiceria Pancaldi  
& B S.p.A.  
Trademark : PANCALDI & B DEVICE  
Used on : Manufacturing clothes  
and dresses for men and  
women, etc.

CAMICERIA PANCALDI & B  
S.p.A.,

Applicant-Appellant.

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DECISION NO. 89-92 (TM)  
October 30, 1989

### DECISION

This is an appeal from the decision of the Trademark Examiner finally rejecting the application for registration of the trademark "PANCALDI & B DEVICE" under Serial No. 53424 filed by Camiceria Pancaldi & B S.p.A. of Italy on March 20, 1984 for manufacturing of clothes and dresses for men and women and also shirts, pajamas, dressing gowns, bodices, outer knitted goods, ties, foulards (neckerchiefs) clothing and belts.

Applicant-Appellant argues that the Examiner committed an error in making her "FINAL REJECTION" after only one response was filed. We disagree.

Rule 200 of this Rules of Practice in Trademark Cases provides:

"Appeals to the Director. – Every applicant for the registration of a mark or trade name or name or other mark of ownership may, upon the final refusal of the Principal Examiner to allow registration appeal the matter to the Director. Appeal may also be taken to the Director from any adverse action of the Executive Examiner in any matter over which these Rules of Practice give him original jurisdiction. A second adverse decision by the Principal or Executive Examiner on the same grounds may be considered as final by the applicant, petitioner, or registrant for purposes of appeal."

Hence, the "FINAL REJECTION" made by the Examiner is proper and in order. Furthermore, a perusal of the records on file shows that response to Examiner's first action was received on November 26, 1985. The final rejection of the Examiner was mailed on June 5, 1986. This means that it required more than seven (7) months for the Examiner to decide on the merits of Applicant's mark which is quite a long period.

The rejection is based on the citation of an identical mark, Application Serial No. 42484 filed on September 9, 1980 by Tony Ong King published in the Official Gazette on February 20, 1984 and registered on April 19, 1989. The ground for rejection is Section 4 (d) of R.A. 166, as amended, on confusing similarity. The trademark Examiner ruled that the mark sought to be registered is confusingly similar with the mark "PANCALDI & B DEVICE" under Registration No. 43931 for shirts, T-shirts, pants, jeans, blouses, jackets, socks, briefs and shorts.

Without doubt, "PANCALDI & B DEVICE" is the dominant feature in both marks. The similarity lies in the spelling, pronunciation and appearance of the competing marks. The only difference is the appearance of the horizontal bar below the word mark which is present in the Applicant's mark. This difference, however, does not disturb the finding of confusing similarity.

The difference is disregarded when both marks are perceived in their entirety. Moreover, the goods of both marks belong to the same classification of goods and, therefore, flow in the same channels of trade.

Applicant's mark may not be registrable pursuant to Section 4 of Republic Act No. 166, as amended, which provides:

"SEC. 4. x x x The owner of a trademark, trade name or service mark used to distinguish his goods, business or service from the goods, business or service of others shall have the right to register the same on the principal register, unless it:

xxx

d) Consists of or comprises a mark or tradename which so resembles a mark or tradename registered in the Philippines or a mark or tradename previously used in the Philippines by another and not abandoned, as to be likely, when applied to or used in connection with the goods, business or services of the applicant, to cause confusion or to deceive purchasers."

WHEREFORE, Applicant's appeal is hereby DENIED and the Examiner's "FINAL REJECTION" dated June 5, 1986 is hereby AFFIRMED.

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

SO ORDERED.

IGNACIO S. SAPALO  
Director