

RE: APPEAL FROM EXAMINER'S  
FINAL REJECTION OF TRADEMARK  
APPLICATION

EX-PARTE CASE (UNNUMBERED)

- versus -

Application Serial No. 52066  
Filed : August 29, 1983  
Applicant : Games & Garments  
Int'l. Inc.  
Trademark : GG INSIDE A SQUARE  
Used on : T-shirts, shirts, etc.

GAMES & GARMENTS INT'L.  
INC.,

Applicant-Appellant.

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DECISION NO. 89-90 (TM)  
December 19, 1989

### DECISION

This is an Application appeal from the final rejection of Trade-mark Application Serial No. 52066 for the trademark "GG INSIDE SQUARE" filed by Gobind Hemandas (Games & Garments Int'l. Inc., assignee) on August 29, 1983 for T-shirts, shirts, skirts, pants, jeans, shorts, jogging, pants, handkerchiefs, panties, bras, socks, shoes, slippers, belts and wallets under Classes 18 and 25.

In the notice of appeal filed on March 29, 1989, Applicant's counsel alleged that the final rejection by the Trademark Examiner of this application is "contrary to law particularly paragraph (d) of Section 4 of R. A. 166, as amended".

The-final rejection contained in Official Action Paper No. 11 mailed on December 28, 1987 states as follows:

"Applicant's response to Office Action No. 9 mailed July 20, 1988 now designated as Paper No. 10 dated Oct. 18, 1988 is hereby acknowledged. However, the undersigned, upon further comparison of the subject mark with the cited 'GUCCI' mark still finds them confusingly similar, specifically with the manner the letter 'G' has been written. The only difference between the two marks is that the 2nd 'G' in this subject mark is not inverted. The 'GUCCI' device is an internationally well-known mark. And as held in the case of American Wire & Cable Co. vs. Director of Patents, 31 SCRA 544, 'the determinative factor in a contest involving registration of trademark is not whether the challenged mark would actually cause confusion or deception of the purchaser, but whether the use of such mark would likely cause confusion or mistake on the part of the buying public'. Hence, premises considered, this application is hereby FINALLY REJECTED. Applicant, should he desire, may appeal this rejection to the Director within three (3) months from mailing date in accordance with Rules 200-203 of the Revised Rules of Practice in Trademark Cases."

The issue to be resolved, therefore, is whether the Trademark Examiner acted in accordance with law in rejecting Trademark Application Serial No. 52066 for the "GG INSIDE A SQUARE". This issue can be narrowed down further as to whether the "GG INSIDE A SQUARE" mark if registered would not run counter to the provisions of Section 4(d) of Republic Act 166 which reads as follows, to wit:

"SEC. 4(d) Consists of or comprises a mark or trade-name which so resembles a mark or trade-name registered in the Philippines or a mark or trade-name 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 mistake or to deceive purchasers;

The quoted provision sets forth the rule that one cannot register in the Principal Register a trademark which so resembles the trademark registered in the Philippines or previously used therein by another and not abandoned as to likely cause confusion, mistake or deception on the part of the purchasers.

After a side-by-side comparison of the two marks, it is very convincing that there exists no likelihood of confusion or mistake or deception to the purchasing public between the "GG INSIDE A SQUARE" mark and the cited "GUCCI" device mark. As correctly raised by the Appellant in its Brief received by this Bureau on May 25, 1989, the Applicant has all the right in adopting a mark which is an abbreviation of its tradename "GAMES & GARMENTS" registered under Registration Certificate No. 34025 and 42167.

The rights of the Appellant to register its mark cannot be arbitrarily impaired and a publication of this application for purposes of opposition is indispensable to enable the interested parties to ventilate their controversies in an appropriate inter partes proceeding, should one exist between them.

WHEREFORE, premises considered, the final rejection of this application is hereby REVERSED and accordingly a publication of the "GG INSIDE A SQUARE" mark for purposes of opposition is hereby ordered.

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