

INTERCO INCORPORATED,
Junior Party-Registrant,

INTER PARTES CASE NO. 3040

INTERFERENCE BETWEEN:

Cert. of Regn. No. 32136
Issued : July 18, 1983
Registrant : Interco Incorporated
Trademark : CAMPUS
Used on : Sweaters, shirts, dress shirts, sports shirt, knit shirts, athletic shirts, cloth and leader jacket, sports coats, suits, jumpsuits, vest suits, all weather coats, raincoats, slacks, walk shorts, robes, pajama boxer, boxer shorts, bathing trunks, gym trunks and t-shirts

- versus -

-and-

Serial No. 44465
Filed : March 31, 1981
Applicant : Ngo Tiao, assignor to Olympia Knitting & Garment Mfg., Inc.
Trademark : CAMPUS
Used on : Undershirts, T-shirts, sandos, blouses and briefs,

NGO TIAO, assignor to
OLYMPIA KNITTING & GARMENT
MFG., INC.,
Senior Party-Applicant.

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DECISION NO. 89-9 (TM)
February 6, 1989

DECISION

This interference case was declared by this Bureau between Application Serial No. 44465 filed on March 31, 1981 by Ngo Tiao, assignor to Olympia Knitting & Garment Mfg., Inc., the herein Senior Party-Applicants, for the trademark "CAMPUS" used on undershirts, T-shirts, sandos, blouses and briefs; Certificate of Registration No. 32136 issued on July 18, 1983, whose Application Serial No. 45427 was filed on July 14, 1981 in the name of Incorporated the herein Junior Party-Registrant, for the same trademark "CAMPUS" used on sweaters, shirts, dress shirts, sportshirts, knit shirts, etc.

Senior Party-Applicant/Assignor, Ngo Tiao is a Chinese Citizen, residing at 556 Ascuncion Street, Binondo, Manila, Philippines, and Senior Party-Applicant/Assignee, Olympia Knitting Garment, Inc., is a domestic corporation, with business address & Garment., Inc., is a domestic corporation, with business address at 45-50 Justicia Street, Don Pedro Subdivision, Valenzuela, Metro Manila; while Junior Party-Registrant is a corporation organized under the laws of the United States of America with business address located at 10 Broadway, St. Louis, Missouri, U.S.A.

The mark applied for by both parties is the word "CAMPUS" used on the same class of goods. (Class 25). This interference case was declared based on the alleged fact the senior Party/Applicant's "first use" of the mark in contest was on January 15, 1960, which is 21 years before it filed its application for registration on March 31, 1981 while there is no available record as to the date of "first use" on the part of the Junior Party-Registrant which was filed on July 14, 1981.

On February 16, 1981, a Notice of Interference was sent to the parties pursuant to rule 182 of the Revised Rule of Practice and Trademark Cases to advise evidence to enable the Bureau to determine which has the prior use and adoption of the subject mark.

On May 26, 1988, the Bureau received letter from Atty. Vicente B. Amador on behalf of its client, Junior Party-Registrant Interco Incorporated, objecting to the allowance of the rival mark "CAMPUS" in the name of Senior Party-Applicant, Olympia Knitting and Garment Mfg., Inc., and requested the bureau to refuse motu proprio the registration of the said mark by citing the Supreme Court ruling in Chuanchow soy and Canning Co. vs. The Director of Patents, G.R. No. L-13942, June 30, 1960.

The Junior Party-Registrant through counsel filed on March 18, 1988 a Motion to dissolve herein interference against Senior Party-Applicant, Ngo Tiao, on the ground that the mark "CAMPUS" applied for by the said Junior Party is a registration of the subject mark originally registered under Certificate No. 12586, which was cancelled for failure to file its Affidavit of Use.

The Senior Party-Applicant did not reply to the Junior Party's Motion to dissolve this interference case. At the third scheduled hearing on August 22, 1988 the Senior Party-Applicant or his counsel for the third time failed to appear. The bureau, in order to avoid delay, allowed the Interco Incorporated to present its evidence ex-parte. The hearing proceeded as scheduled and counsel for Junior-Party registrant move for the resolution of its Motion to Dissolve in its favor.

Records show that despite the fact that Senior Party Applicant (Ngo Tiao) filed its application seemingly earlier (March 31, 1981), Junior Party-Registrant (Interco Incorporated) was issued Certificate of Registration No. 32136 on July 18, 1983 (Annex "D") on the ground that the Junior Party was previously a holder of Certificate of Registration No. 12586 for the same mark. This is now only a re-registration of the contested mark which was cancelled for failure to file its Affidavit of Use (Annexes "B" and "C").

The records further show that herein interference case was declared because of the fact that Senior-Party-Applicant was alleged in its application filed on March 31, 1981, an unusually early date (January 15, 1960) of first use of the said mark. Hence, this case to determine which of the parties has the prior use of the contested mark. With the foregoing circumstances obtaining, the Bureau cannot motu proprio refuse action on the Application for registration of the same mark by its rival. For this reason, the issue cannot be considered moot.

The Senior Party-Applicant, however failed to file any pleading or motion relative to its application within the forty-day period required in the declaration of interference, and having failed thrice to appear in person or through counsel in the scheduled hearings, the Senior Party-Applicant is hereby declared to have abandoned its application Serial No. 44465 filed on March 31, 1981.

WHEREFORE, Junior Party-Registrant's Motion to dissolve this interference case in its favor is GRANTED. Hence, Certificate of Registration No. 32136 issued on July 18, 1983 in favor of Interco Incorporated remains valid and subsisting until otherwise so declared. Accordingly, Senior Party's Application Serial No. 44465 is REJECTED.

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

SO ORDERED.

IGNACIO S. SAPALO
Director