

RE: APPEAL TO THE DIRECTOR OF
THE BUREAU OF PATENTS,
TRADEMARKS AND TECHNOLOGY
TRANSFER FROM EXAMINER'S
FINAL REJECTION OF TRADEMARK
APPLICATION

EX PARTE CASE NO. 222

Application Serial No. 41086
Filed: April 10, 1980
Applicant: Universal Robina Corporation
Trademark: MUNCHEES & DEVICE
Used on: Crackling cheese

UNIVERSAL ROBINA CORPORATION,
Applicant-Appellant.

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DECISION NO. 90-16 (TM)
March 6, 1990

DECISION

On April 10, 1980, Universal Robina Corporation filed an application for the registration of the mark "MUNCHEES & DEVICE" bearing Serial No. 41086.

Upon examination of the above subject trademark application, it was objected to on grounds of confusing similarity with Registration No. 18424 for "MUNCHIES" owned by Kraft Food, Inc. (Phil.) pursuant to Section 4(d) of Republic Act No. 166 as amended.

With the findings of the Examiner, applicant filed a Motion for Reconsideration stating, among others:

- a) That subject trademark and the trademark allegedly owned by Kraft Food, Inc. (Phil.) are different both in spelling and pronunciation;
- b) That the presentation of the label of the two marks are different as that of "MUNCHIES" is elongated while that of "MUNCHEES" is not;
- c) That "MUNCHIES" has no dotted marks while "MUNCHEES" which is rectangular with four corners with dotted marks; and
- d) That both trademarks have different uses and representation as the above subject mark is composed of the word "MUNCHEES" and a device while the cited mark is a plain word without a device.

After evaluation of the Motion filed by the applicant through counsel, the Examiner has come to the conclusion that registration of the above subject mark is violative of Section 4(d) of Republic Act No. 166, as amended; hence, it was finally rejected and the action to this effect has been sent to the applicant dated April 16, 1986.

With the final rejection undertaken by the Examiner, the applicant through counsel appealed to the Honorable Director of Patents, Trademarks and Technology Transfer.

Upon further verification of the status of the trademark bearing Registration No. 18424, cited against this trademark application, it was found out that the registrant has not filed or failed to file the Affidavit of Use on the fifteenth anniversary of the date of issue of the certificate of registration, particularly or specifically on February 6, 1989 and, in such a case, the registration is deemed cancelled pursuant to Section 12 of Republic Act No. 166, as amended.

Under the circumstances, the issue of confusing similarity provided under Section 4(d) of Republic Act No. 166 has become moot and academic.

WHEREFORE, the appeal is hereby GRANTED, and application bearing Serial No. 41086 filed on April 10, 1980 for the trademark "MUNCHEES & DEVICE" by Universal Robina Corporation be given due course.

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