

RE: APPEAL TO THE DIRECTOR
FROM FINAL REJECTION
OF TRADEMARK
APPLICATIONS

EX PARTE CASE NO. 210

Appln. Serial No. 45132
Filed : June 10, 1981
Applicant : Jarco Marketing
Corporation
Trademark : CAMPUS by Syvel's
Used on : Shoes

JARCO MARKETING COR-
PORATION,

Applicant-Appellant.

x-----x

DECISION NO. 88-12 (TM)
February 18, 1988

DECISION

This is an ex-parte appeal from the action of the Trademark Examiner finally rejecting Application Serial No. SR-7987 filed on April 22, 1981 and Application Serial No. 45132 filed on June 10, 1981 for registration in the Supplemental and Principal Registers, respectively, of the trademark "CAMPUS by Syvel's" used on shoes by the herein Appellant-Applicant, Jarco Marketing Corporation, a domestic corporation, with business address at Room 233 Regina Building, Escolta, Manila.

The rejection was based on the fact that the mark applied for is confusingly similar to the trademark "CAMPUS" under Registration No. 12586 issued to Campus Sweaters and Sportswear Co. of Ohio, U. S. A.

A review of the records show that the cited reference "CAMPUS" (Registration No. 12586) was cancelled by the Director of Patents effective December 9, 1972 under Cancellation Order No. 149 dated September 27, 1985 for failure of the registrant to file the fifth anniversary affidavit of use/non-use pursuant to Section 12 of Republic Act 166, as amended. On July 14, 1981, however, an application for registration of the same mark based on foreign registration (U. S. Certificate of Registration No. 925,567 issued December 14, 1971) was filed by Interco Incorporated, which ripened into Certificate of Registration No. 32136 on July 18, 1983. The registration has the legal effect of continuously using the mark "CAMPUS" as a valid reference of Appellant-Applicant's application.

Section 4(d) of Republic Act 166, as amended, in part reads:

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

x

x

x

(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;

Appellant-Applicant argues that the cited mark “CAMPUS” for sweaters, bathing suits, etc. is exclusively for garments, while “CAMPUS by Syvel's” is used exclusively for shoes, that there is distinguishing name - “by Syvel's” - therefore, there is no confusing similarity between them. Appellant-Applicant suggests that the contending mark be compared and contrasted with the buyers' memory (not in juxtaposition) of the trademark with which it is alleged to be confusingly similar; that such factors as appearance, form, style, shape, a format connoted by the mark, meaning, pronunciation of words used, and the setting in which the word appears may be considered. Appellant-Applicant likewise cited *Lim Hoa vs. Director of Patents* (100 Phil. 212) where the Court differentiated food seasoning products or kitchen or articles of daily consumption from commodities or articles of relatively great value, such as radio, television sets, air-conditioning units, machinery, etc.; *Ang Si Hong and Dee vs. Wellington Department Store* (92 Phil. 448) where it was held that while there is similarity between the trademark or tradename of “WELLINGTON COMPANY” and that of “WELLINGTON DEPARTMENT STORE”, no confusion or deception can possibly result or arise from such similarity because the latter is a department store while the former does not purport to be so; *Acoje Mining Co. vs. Director of Patents* (38 SCRA 481) whereby Acoje Mining Co. was allowed to register the trademark “LOTUS” for its soy sauce product even if there is already in existence one such registered mark in favor of the Philippine Refining Co. for its edible oil products; and the case of *Phil. Refining Co. vs. Ng* (G.R. No. L-26676, July 30, 1980) where the Court held that the use by a manufacturer of the trademark “CAMIA” on butter, cooking oil and soap does not prevent another manufacturer from using the same trademark on ham.

The Examiner, on the other hand, considers the mark “CAMPUS” as the dominant feature in “CAMPUS by Syvel's”. Thus, the marks are almost the same or closely resemble one another. The appellation of the words “by Syvel's” and some differences in the style and background of the mark are arguable differences insufficient to overcome the finding of confusing similarity.

This Office subscribes to the above findings and the citations of the Examiner that:

“Added distinction of color and markings on wrappers and labels does not ordinarily prevent confusion provoked by the similarity of words.” (3 Callmann, *Unfair Competition and Trademark*, 1483)

“Where the plaintiff had the very well known ‘JAC’, the defendant who used the same word could not prevent confusion by the addition of the phrase ‘Royal Palm’, and the same ‘Le Page’ for automobile will inevitably overcome any additional feature or mark that may be chosen.” (Callmann, *Unfair Competition and Trademark*, 1480)

The contention that the mark “CAMPUS” is used exclusively for garments while “CAMPUS by Syvel's” is used exclusively for shoes and therefore no possibility of confusion is of no moment. The goods of both marks belong to the same class (Class 25), both are wearing apparels, and pass through the same channel of trade.

The case at bar is similar to *Ang vs. Teodoro* (74 Phil. 50), the “ANG TIBAY” case, wherein Respondent Teodoro continuously used “ANG TIBAY” both as a trademark and as a tradename in the manufacture and sale of slippers, shoes and indoor baseballs since 1910. He formally registered it as a trademark on September 29, 1915 and as a tradename on January 3, 1933. Petitioner Ang registered the same trademark for pants and shirts on April 11, 1932, and established a factory for the manufacture of said articles in the year 1937. It was held that Petitioner's registration of the trademark “ANG TIBAY” should be cancelled, and that she should be perpetually enjoined from using said trademark on goods manufactured and sold by her for the reason, among others, that pants and shirts are goods similar to shoes and slippers.

WHEREFORE, premises considered, the Examiner's action is AFFIRMED. Accordingly, Applications Serial Nos. SR-7987 and 45132 for the registration of the trademark "CAMPUS by Syvel's" are hereby REJECTED.

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