JNW MANUFACTURING INC.,	}	IPC NO. 3870
Junior Party-Applicant.	}	Interference to:
	}	Serial No. 76104
	}	Date Filed: 05-17-91
-versus-	}	Trademark: "SWEAT STUDIO Shop Zero One & Oval Device"
	}	
	}	Serial No. 73281
	}	Date Filed: 09-14-90
	}	Trademark: "SWEAT STUDIO"
SANTOS CHENG,	}	
Senior-Party-Applicant.	}	Decision No. 2002-33

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D E C I S I O N

This is an interference case (Inter Partes Case No. 3870) a proceeding instituted for the purpose of determining the question of PRIORITY of ADOPTION and USE of the trademark "SWEAT STUDIO" between the Senior-Party-Applicant and the Junior-Party-Applicant.

The Senior-Party-Applicant is SANTOS CHENG, a Filipino citizen with address at 265-B Libertad Street, Pasay City, doing business under PRINCETON GARMENT MANUFACTURING.

On the other hand, the Junior-Party-Applicant is JNW MANUFACTURING INCORPORATED, a corporation organized and existing under the laws of the Philippines with business address at 106 Northern Hills, Malhacan, Meycauyan, Bulacan.

The Senior-Party-Applicant has filed his trademark application "SWEAT STUDIO" on September 14, 1990 bearing Serial No. 73281 claiming January 5, 1989 as the date of First Use of his mark on the goods and in commerce in the Philippines.

The Junior-Party-Applicant filed its trademark application "SWEAT STUDIO SHOP ZERO ONE & OVAL DEVICE" on May 17, 1991 and claiming the date of First Use of its mark on the goods and in commerce in the Philippines on January 5, 1988 as stated in its trademark application bearing Serial No. 76104.

The issue to be resolved is which of the parties owns the mark or, stated otherwise, who ADOPTED and USED the mark ahead of the other. It must be noted that Section 2-A of R.A. No. 166 as amended provides as follows:

> "SEC. 2-A. Ownership of the trademarks, trade names and service marks how acquired. Anyone who lawfully produces or deals in merchandise of any kind or who engages in any lawful business or who renders any lawful service in commerce, by actual use thereof in manufacture or trade, in business, and in the service rendered, may appropriate to his exclusive use a trademark, a trade name or a service mark not so appropriated by another, to distinguish his merchandise, business or service from the merchandise, business or service of others. xxx"

This Interference, upon recommendation of the Examiner, was declared by the Director pursuant to Section 10-A of R.A. No. 166, as amended which provides as follows:

> "SEC. 10-A. Interference – An Interference is a proceeding instituted for the purpose of determining the question of priority of adoption and use of a trademark, trade name or service mark between

two or more parties claiming ownership of the same or substantially similar trademark, trade name or service mark.

Whenever application is made for the registration of a trademark, trade name or service mark which so resembles a mark, trade name or service mark previously registered by another, or for the registration of which another had previously made application, as to be likely when applied to the goods or when used in connection with the business or services of the applicant to cause confusion or mistake or to deceive purchasers, the Director may declare that an Interference exist.

Upon the declaration of Interference the Director shall give notice to all parties and shall set the case for hearing to determine and decide the respective rights of registration.

In any Interference proceeding, the director may refuse to register any or all of several interfering marks or trade names for the person or persons entitled thereto, as the rights of the parties may be established in the proceedings. (as amended by R.A. No. 638)."

Accordingly, after notices of Interference were sent to both parties pursuant to Rule 182 of the Rules, the case was scheduled for pre-trial.

The parties having failed to settle the case amicably, they went to a full blown trial and submitted their respective evidences.

During the trial on the merits, the Junior-Party-Applicant submitted documentary evidences consisting of Exhibits "A" to "O" inclusive of submarkings (Resolution No. 2001-15) dated 03 October 2001.

On the other hand, the Senior-Party-Applicant did not submit any documentary evidence to support his claim over the trademark "SWEAT STUDIO" instead, on the last hearing of the case (February 21, 2002) as evidenced by the Transcript of Stenographic Notes the counsel for the Senior-Party-Applicant stated that:

"Atty. Oledan: x x x x x x x
But lately, I do not know, what I know is either they have not used the brand, trademark, because otherwise they would be calling, to know the status of the case. So we are constrained your honor to just have the case submitted for resolution. I cannot even get in touch with my client, and my client is sick. So, sorry I just have to inform this Honorable Court that we just submit this on the basis of Junior-Party-Applicant's evidence."

After a careful and extensive review of the records of this case including the various documentary and testimonial evidence of the Junior-Party-Applicant, it has been clearly established that said party-applicant is the PRIOR ADOPTER and USER of the mark "SWEAT STUDIO Shop Zero One & Oval Device".

Clearly as shown by the sales invoices, the date indicated therein is 1988, which shows that the Junior-Party-Applicant has been actually using the mark "SWEAT STUDIO SHOP ZERO ONE & DEVICE" on its goods in commerce in the Philippines on said date.

Exhibit “H”

Sales Invoice No. 002 dated November 28, 1988 of JNW Manufacturing Incorporated issued to Ricky Uy showing sale of 6 pieces of ladies t-shirts bearing the mark “SWEAT STUDIO SHOP ZERO ONE within an OVAL DEVICE”.

Exhibit “I”

Sales Invoice No. 005 dated December 1, 1988 of JNW Manufacturing Incorporated issued to Josie Tang showing sale of 8 pieces of ladies t-shirts bearing the mark “SWEAT STUDIO SHOP ZERO ONE within an OVAL DEVICE”.

Exhibit “J”

Sales Invoice No. 015 dated December 10, 1988 of JNW Manufacturing Incorporated issued to Josie Go showing sale of 2 pieces of ladies t-shirts bearing the mark “SWEAT STUDIO SHOP ZERO ONE within an OVAL DEVICE”.

Another important point to be taken into consideration is the Junior-Party-Applicant’s personality of which it was Incorporated on October 11, 1988 as shown by the certified true copy of Certificate of Incorporation together with Articles of Incorporation and By-Laws of JNW Manufacturing Incorporated issued on October 11, 1988 (Exhibit “O”).

Further, as testified to by the witness “Joey Co Teng” per paragraph 3 of his Affidavit, the herein Junior-Party-Applicant of which he was PRESIDENT as early as January 5, 1988, said party adopted and started using the trademark “SWEAT STUDIO SHOP ZERO ONE within an OVAL DEVICE” (Exhibit “A”).

With all the evidences presented above-mentioned, there is no doubt that the Junior-Party-Applicant has been using the mark “SWEAT STUDIO SHOP ZERO ONE within an OVAL DEVICE” since 1988. The Senior-Party-Applicant, although he stated in his trademark application bearing Serial No. 73281 that he used the mark “SWEAT STUDIO” on January 5, 1989 was not supported by evidence.

Rule 173 of the Rules of Practice in Trademark cases provides:

> “Allegations in the application not evidence on behalf of the applicant. In all Inter Partes proceedings, the allegations of date of use in the application for registration of the applicant or of the registrant cannot be used as evidence in behalf of the party making the same. In case no testimony is taken as to the date of use, the party will be limited to the filing date of the application as the date of his first use.”

Pursuant to the above-mentioned Rule 173, the herein Senior-Party-Applicant date of first use is limited to the filing date of his application which is September 14, 1990 as he failed to substantiate the date of first use stated in his trademark application.

Therefore, it is conclusive that the date of first use in commerce in the Philippines of the Junior-Party-Applicant is 1988 prior to the date of first use of the Senior-Party-Applicant which is September 14, 1990 and that Junior-Party-Applicant has a priority of right to registration in this Office for its trademark “SWEAT STUDIO SHOP ZERO ONE & OVAL DEVICE” over the Senior-Party-Applicant.

Wherefore, premises considered Inter Partes Case No. 3870 is, as it is hereby DISSOLVED. Accordingly, application for the mark “SWEAT STUDIO SHOP ZERO ONE & OVAL DEVICE” bearing Serial No. 76104 filed on May 17, 1991 by JNW MANUFACTURING INCORPORATED, is hereby GIVEN DUE COURSE. On the other hand, the application for the

registration of the mark “SWEAT STUDIO” bearing Serial No. 73281 filed on September 14, 1990 by SANTOS CHENG is hereby REJECTED.

Let the filewrapper of this case be forwarded to the Administrative, Financial, Human Resource Development Service Bureau (AFHRDSB) for appropriate action in accordance with this DECISION with a copy furnished the Bureau of Trademarks for information and to update its record.

SO ORDERED.

Makati City, December 10, 2002.

ESTRELLITA BELTRAN-ABELARDO
Director, Bureau of Legal Affairs
Intellectual Property Office