

KATSUJI FUJIWARA,
Petitioner-Registrant.

INTER PARTES CASE NO. 3175

PETITION FOR CANCELLATION

- versus -

Registrant No. 33575
Issued : August 29, 1984
Applicant : TLV
Trademark : George Lee
Used on : Steam trap

GEORGE LEE,
Respondent-Registrant.

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DECISION NO. 89-4(TM)
January 26, 1989

DECISION

On July 15, 1988, Katsuji Fujiwara filed a Petition seeking for the cancellation of Certificate of Registration No. 33575 for the trademark "TLV" used on steam trap issued on August 29, 1984 to George Lee.

Petitioner is a Japanese citizen residing at 191 Nishitani, Hiraoka-cho, Kanagawa-shi, Japan, while Respondent-Registrant is doing business at 358 G. Araneta Avenue, Quezon City, Philippines.

The grounds alleged in the petitions are:

"(1) THE REGISTRANT WAS NOT ENTITLED TO REGISTER THE MARK 'TLV' AT THE TIME OF HIS APPLICATION FOR REGISTRATION THEREOF;

(2) THE REGISTRATION IS PROSCRIBED BY SEC. 4 (D) OF REPUBLIC ACT NO. 166, AS AMENDED."

The bureau sent to Respondent-Registrant on August 3, 1988, by registered mail no. 1265, a Notice to Answer the Petition within fifteen (15) days after receipt thereof.

For failure to file its answer within the period set by the Rules, counsel for Petitioner filed on September 15, 1988 a Motion to declare Respondent-Registrant in default, which was granted in Order No. 88-392 dated September 22, 1988 and allowed thereby to present its evidence ex-parte.

On December 13, 1988, counsel for Petitioner present as its evidence:

1. Exh. "A"- to show that Petitioner is also a holder of a local Certificate of Registration No. 18978 issued on May 6, 1973 for the trademark "TLV" used on steam traps;
2. Exhs. "B", "C" and "D"- to show that the petitioner filed its Affidavits of Use of its mark on May 15, 1979; October 4, 1983, and June 6, 1988 respectively; and
3. Exh. "E"- to show the kind and manner on how the Petitioner`s mark 'TLV' is used on its products.

The above exhibits were formally offered during the hearing and were all admitted in evidence for the petitioner.

The issue to be resolved is: Which of the parties is the real owner of the mark "TLV"?

From the foregoing exhibits, Petitioner has shown sufficient proof of its prior ownership (Exh."A") of the mark since May 16, 1973 as against Respondent's who was issued a certificate of registration only on August 29, 1984, and the continuous use of it by filing dutifully three (3) Affidavits of Use since then (Exhs. "B", "C" and "D"), the last of which was filed recently on June 6, 1988. Respondent's failure to defend its interest on said mark makes the position of Petitioner stronger and more convincing.

WHEREFORE, the Petition is Granted; hence, Certificate of Registration No. 33575 is ordered CANCELLED from the registry of this Bureau.

Let the records of this case be forwarded to the Patent/Trademark Registry of EDP Division for appropriate action in accordance with the Decision

SO ORDERED.

IGNACIO S. SAPALO
Director