

WINSTON L. KAWSEK,
Appellant-Applicant,

- versus-

PEDRO VICENTE C. MENDOZA,
Respondent-Examiner.

x-----x
McDONALD`S CORPORATION
Petitioner,

- versus-

WINSTON L. KAWSEK,
Respondent-Registrant.

x-----x
McDONALD`S CORPORATION
Petitioner,

- versus-

WINSTON L. KAWSEK,
Respondent-Registrant.

x-----x

EX- PARTE CASE NO. 207

APPEAL TO THE DIRECTOR OF
PATENTS FROM FINAL REFUSAL
OF EXAMINER TO REGISTER

Application Serial No. 35429
Filed : June 9, 1978
Applicant : Winston L. Kawsek
Trademark : QUARTER POUNDER
Used on : Hamburgers, hotdogs,
potato chips, cheeseburgers, chicken
sandwiches

INTER PARTES CASE NO. 1872

PETITION FOR CANCELLATION

Cert. of Regn. No. SR-4007
Issued : May 7, 1979
Registrant : Winston L. Kawsek
Trademark : QUARTER POUNDER
Used on : Hamburgers, hotdogs,
potato chips, cheeseburgers, chicken
sandwiches

INTER PARTES CASE NO. 1873

PETITION FOR CANCELLATION

Cert. of Regn. No. SR-4025
Issued : May 25, 1979
Registrant : Winston L. Kawsek
Trademark : QUARTER POUNDER
PACKAGE
Used on : Hamburgers, hotdogs,
potato chips, cheeseburgers, chicken
sandwiches and all kinds of sandwiches

DECISION NO. 88-108 (TM)
October 26, 1988

DECISION

On June 9, 1978, Winston L. Kawsek, a Filipino citizen, filed an application for registration (Application Serial No. 3529) in the Principal Register of the trademark "QUARTER POUNDER" used on hamburgers, hotdogs, potato chips, cheeseburgers, chicken sandwiches and all kinds of sandwiches (Class 30).

On July 8, 1982, counsel for McDonald's Corporation sent a letter to this Bureau stating, among others, that said corporation is the exclusive owner and first user of the trademark QUARTER POUNDER, and requesting that Kawsek's application be remanded to the Principal Examiner for further examination and thereafter be rejected pursuant to Rule 110 of the Rules of Practice in Trademark Cases. In an Order dated July 28, 1982, this Bureau granted the request for remand of said application. The Principal Examiner, after examination, disallowed Kawsek's application on the ground that Applicant Kawsek is not the owner of the mark sought to be registered (see Paper No. 7 dated August 4, 1982, Exh. "C").

On November 4, 1982, Applicant Kawsek filed his Appeal (Ex-Parte Case No. 207) from the above action of the Principal Examiner. Thereafter, Applicant Kawsek and the Principal Examiner filed their respective Brief.

On September 4, 1982, McDonald's Corporation (herein after called Petitioner) filed Petitions for Cancellation (Inter Partes Cases Nos. 1872 and 1873) of Certificates of Registration Nos. SR-4007 and SR-4025 issued on May 7, 1979 and May 25, 1979 to Applicant Kawsek (hereinafter called Respondent) for the trademarks "QUARTER POUNDER" used the above-enumerated goods and "QUARTER POUNDER PACKAGE" used on package or container for said goods, respectively (Exhs. "D" and "C")

Respondent filed his Answer denying the material allegations of the Petitions and raising the special/affirmative defense. Among others, that he is the owner and prior user of the trademark "QUARTER POUNDER"

Inter Partes Cases Nos. 1872 and 1873 and Ex-Parte Case No. 207 were consolidated because the parties, subject matter and issues involved were the same (T.S.N., Sept. 23, 1985 hearing, pp.2 and 3).

On June 13, 1986, Petitioner filed a Memorandum in support of its petitions and Ex-Parte Case No. 207. On July 13, 1988, Petitioner filed a Manifestation and Motion for Early Resolution of the Case stating, among others, that Respondent's failure to file the requisite Memorandum should be considered as a waiver of his right to file such Memorandum and to contest the instant Petitions.

On July 25, 1988, this Bureau issued Order No. 88-257 requiring Petitioner's counsel to submit her additional evidence, exhibits and Formal Offer of Evidence and Respondent's counsel to submit his Formal Offer of Evidence and Memorandum within thirty (30) days from receipt of said Order.

On August 25, 1988, Petitioner submitted its exhibits and Formal Offer of Evidence, but manifest that no additional evidence would be submitted. Respondent, on the other hand, failed to file his Formal Offer of Evidence and Memorandum.

An examination of the records of Registration Nos. SR-4007 and SR-4025 reveals that Respondent likewise failed to file his Affidavits of Use or Non-Use for the fifth anniversary required by Section 12 in relation to Section 19-A of Republic Act 166, as amended. Accordingly, the Petitions should be dismissed for being moot and academic.

Respondent allowed his trademark registration to be cancelled in spite of the fact that one of his defenses is based on said registrations, and he failed to formally offer in evidence his documentary exhibits and file a Memorandum in support of his case. These are manifestations of Respondent's lack of interest pursue his application or to prosecute his defenses. Respondent is therefore deemed to have abandoned his application. Consequently, Ex-Parte Case No. 207 should likewise be dismissed.

WHEREFORE, Certificates of Registration Nos. SR-4007 and SR-4025 are CANCELLED; Application Serial No. 35429 is deemed ABANDONED. Accordingly, Inter Partes Cases Nos. 1872 and 1873 and Ex-Parte Case No. 207 are DISMISSED.

Let the records of Inter Partes Cases Nos. 1872 and 1873 and Ex-parte Case No. 207 be remanded to the Application, issuance and Publication Division and Trademark Examining Division, respectively, for appropriate actions in accordance with this Decision.

SO ORDERED.

IGNACIO S. SAPALO
Director