

LARRY HARMON PICTURES
CORPORATION

Opposer,

INTER PARTES CASE NO. 1715

OPPOSITION TO:

Application Serial No. 35488
Filed : June 19, 1978
Applicant : Laurel & Hardy's
Food Corporation
Trademark : LAUREL & HARDY'S
FOOD CORPORATION
Used on : Business of selling
hamburgers

- versus -

LAUREL & HARDY'S FOOD
CORPORATION,
Respondent-Applicant.

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DECISION NO. 88-48 (TM)
July 19, 1988

DECISION

On February 14, 1983, Larry Harmon Pictures Corporation, a foreign corporation organized under the laws of the State of California, U.S.A., filed an Unverified Notice of Opposition (Inter Partes Case No. 1715) to the application for registration of the trademark "LAUREL & HARDY'S FOOD CORPORATION" (the words "Food Corporation" disclaimed) for use in the business of selling hamburgers (Class 35) filed on June 19, 1978 by Laurel & Hardy's Food Corporation, a domestic corporation, under Application Serial No. 35488 which was published in the Official Gazette (Vol. 78, No. 42, Page 5789) on October 18, 1982 and officially released on January 14, 1983.

On April 22, 1983, Opposer filed its Verified Notice of Opposition, alleging the grounds, among others, that Respondent-Applicant is not entitled to register the mark "LAUREL & HARDY'S", and that Opposer's trademark "LAUREL HARDY" is well known throughout the world including the Philippines, for which reason Respondent-Applicant's application for registration of the trademark "LAUREL & HARDY'S FOOD CORPORATION" should not be given due course and be refused registration as mandated by Section 4, Republic Act 166, as amended, Article 6bis of the Convention of Paris for the Protection of Industrial Property, and in line with the policy of the then Ministry of Trade contained in a Memorandum (dated November 20, 1980) directing the Director of Patents to reject and/or cancel unauthorized registration of world-famous trademarks.

On April 27, 1983, a Notice to Answer was sent to Respondent-Applicant. Despite receipt of the said Notice on May 19, 1983, Respondent-Applicant failed to file an Answer.

On October 31, 1985, this Bureau, in line with its desire to update the records of pending inter partes cases, sent a letter by mail to Respondent-Applicant requesting it to inform this Bureau within fifteen (15) days from receipt whether it is still interested in pursuing this case so that the necessary action will be made. A similar letter was received by Opposer's counsel on November 5, 1985. Both parties, however, failed to respond. On January 22, 1986, another letter with the same request was sent by mail to Respondent-Applicant while Opposer's counsel received a similar letter on January 23, 1986. Respondent-Applicant again failed to respond. On the other hand, Opposer, by way of response, filed a Motion to Declare Respondent-Applicant in Default for failure to file an Answer. Thus, this Bureau declared Respondent-Applicant in default

(Order No. 86-85 dated March 31, 1986) and allowed Opposer to present its evidence ex-parte. On June 19, 1986, Opposer formally offered its documentary evidence.

On May 24, 1988, Opposer submitted its Memorandum, arguing that Respondent-Applicant should be considered to have abandoned its application for registration (Application Serial No. 35488) for failure to file an Answer to the Notice of Opposition; and that the decision in Inter Partes Case No. 1516 (also an opposition case between the herein Opposer and Respondent-Applicant involving the same trademark), to the effect that Application Serial No. 32101 for the trademark "LAUREL & HARDY'S" is considered abandoned and rejected for failure of Respondent-Applicant to appear at the pre-trial conference thrice despite due notice, is now res judicata in the present case (Inter Partes Case No. 1715).

The relief sought by Opposer, therefore, is a rejection of Application Serial No. 35488 by reason of abandonment of application and by virtue of the above-stated decision in Inter Partes Case No. 1516 which is allegedly res judicata in this case. Opposer, in effect, would like this Bureau to declare or rule a second abandonment of application by Respondent-Applicant.

The issue to be resolved is whether or not the decision in Inter Partes Case No. 1516 (Decision No. 87-7 dated January 30, 1987) is res judicata in the present case (Inter Partes Case No. 1715). In other words, should Application Serial No. 35488 be considered as an abandoned application?

The pertinent discussion and dispositive portion of the decision in Inter Partes Case No. 1516 are hereunder set forth:

"All the preceding discussions notwithstanding, the Office has to reject Application Serial No. 32101 of Respondent-Applicant. It must be recalled that Respondent-Applicant and/or its counsel failed to appear in the pre-trial conference of the case for three times despite due notice. This apparent lack of concern manifested by Respondent-Applicant can be interpreted as lack of interest or abandonment on its part to defend and pursue further the application for registration subject of the instant Opposition. The Office is thus constrained to consider Application Serial No. 32101 as abandoned.

WHEREFORE, premises considered, the Opposition is, as it is hereby, DISMISSED considering that Respondent-Applicant's Application Serial No. 32101 covering the trademark LAUREL & HARDY'S used on sandwiches and hamburger is considered ABANDONED and REJECTED."

Since there is no question or doubt as to the jurisdiction of this Bureau, the finality of its decision on the merits, the identity of parties, subject matter (trademark) as well as cause of action, and pursuant to the above-quoted decision, this Bureau holds that the decision in Inter Partes Case No. 1516 is already res judicata in the present case. Consequently, Application Serial No. 35488 for the trademark "LAUREL & HARDY'S FOOD CORPORATION" is likewise considered as an abandoned application.

Furthermore, the failure of Respondent-Applicant to file an Answer despite receipt of the Notice to Answer and to respond to the letters requesting it to inform this Bureau whether it is still interested in pursuing this case constitute clear manifestations of Respondent-Applicant's lack of concern or interest in pursuing further its application.

WHEREFORE, this Opposition (Inter Partes Case No.1715) is GRANTED and Application Serial No. 35488 for the trademark "LAUREL & HARDY'S FOOD CORPORATION" is considered ABANDONED.

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