

LEE COOPER GROUP, P.L.C.,
Opposer,

INTER PARTES CASE NO. 1889

OPPOSITION TO:

Application Serial No. 42660

Filed : September 2, 1980

Applicant : Tee Liong Chai

Trademark : COOPER

Used on : Jeans, pants, blouses,
jackets, etc.

- versus -

DECISION NO. 88-97 (TM)

August 31, 1988

TEE LIONG CHAI,
Respondent-Applicant.

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DECISION

This opposition case was filed by Lee Cooper Group, P.L.C. against the registration of the trademark "COOPER" used on jeans, pants, blouses, jackets, pajamas, polo shirts and T-shirts in Class 25 applied for on September 24, 1980 by Tee Liong Chai under Application Serial No. 42660, published for opposition on Page 31 of the Official Gazette, Volume 80, No. 22 dated May 28, 1984, officially released on October 19, 1984.

Opposer is a public company organized under the laws of England and doing business at No. 6 Cork Street, London, W1X 1BO, England, while Respondent-Applicant is a Filipino citizen with business address at No. 535 Rizal Avenue, Sta. Cruz, Manila, Philippines.

Herein opposition is based on the following grounds:

"1. The mark 'LEE COOPER' has been registered by the opposer under Certificate of Registration No. 28750 issued on December 29, 1980. The mark likewise has been registered in Great Britain, the home country of the opposer, under Certificate of Registration No. 948046 issued on September 10, 1969, and renewed on September 10, 1976.

2. The mark 'LEE COOPER' is used and registered on the goods covered under Class 25 of the International Classification of Goods and Services.

3. The mark 'LEE COOPER' is well known internationally and has an excellent reputation because of the high quality of the products bearing the said mark. The said mark has been advertised in many countries in the world. The said mark is known in the Philippines since the products carrying the mark has been sold here.

4. The mark 'LEE COOPER' is likewise a tradename of the opposer.

5. The respondent-applicant filed its application only on September 24, 1980.

Respondent-Applicant was informed on December 17, 1984 about the filing of an Unverified Notice of Opposition against the registration of subject mark. On February 1, 1985, Opposer submitted the Verified Notice of Opposition and Respondent-Applicant was furnished a copy thereof to answer within fifteen (15) days from receipt of said Notice. Despite receipt thereof, no Answer was filed by Respondent-Applicant even after the lapse of several months. Thus, in the hearing of May 30, 1985, Respondent-Applicant was declared in default (Order No. 85-171).

Opposer presented its evidence ex-parte on November 15, 1985 consisting of Exhibits "A" to "L", which were all admitted per Office Order No. 86-18.

The issue to be resolved is whether or not Respondent's application should be allowed registration without violating the provisions of Section 4(d) of Republic Act No. 166, as amended, on confusing similarity.

It has been established that Opposer is the registered owner of the trademark "LEE COOPER" in England issued on September 10, 1969 and renewed on September 10, 1976 for the goods, namely, shirts, jumpers, skirts, blouses, jackets, windcheaters, trows, slacks, trousers, shorts and jeans (Exhs. "B"-and "B-1"); that Opposer also registered "LEE COOPER" in the Philippines under Certificate of Registration No. 28750 issued on December 29, 1980 for the same goods (Exh. "A"), much earlier than Respondent's application for the mark "COOPER" filed on September 24, 1980 for the same class of goods. Opposer further presented evidence showing that it also registered its mark in the United States of America on July 6, 1982 (Exh. "C") and in Japan on May 12, 1975 (Exh. 'ID'). It is also established that the goods on which both marks are used on fall under the same class -- Class 25 (-Exh. "B-1" and Respondent's trademark application).

Is Respondent-Applicant's trademark "COOPER" confusingly similar to the Opposer's mark "LEE COOPER"? The Bureau agrees with the contention of the Opposer that it is. Respondent's mark is an exact copy or duplication of the second word of the Opposer's mark "LEE COOPER".

In such a case, an authority on Trademark and Unfair Trade Competition observed:

"Most business man know enough not to adopt a mark identical to that already in use in the-market. But the pressure of competition may prompt a seller to get as close as he can to a well-known mark, in an attempt to share the wealth of a good reputation and goodwill built up at another's expense." (J. Thomas McCarthy, p. 40, Vol. 2, 1973 ed., Trademarks and Unfair Trade Competition; underscoring supplied)

Where confusing similarity exists between the contending marks, our Supreme Court ruled:

"In cases involving infringement of trademark brought before this Court, it has been consistently held that there is infringement of trademark when the use of the mark involved would be likely to cause confusion or mistake in the mind of the public or to deceive purchasers as to the origin or source of the commodity." (Fruit of the Loom, Inc. vs. Court of Appeals, et al., 133 SCRA 405, citing Co Tiong Sa vs. Director of Patents; 95 Phil. Alhambra Cigar & Cigarette Co. vs. Mojica, 27 Phil. 266, etc.)

WHEREFORE, the opposition is GRANTED. Accordingly, Respondent's Application Serial No. 42660 filed September 24, 1980 for the trademark "COOPER" is REJECTED.

Let the records of this case be forwarded to the Application, Issuance and Publication Division for appropriate action in accordance with this Decision.

SO ORDERED.

IGANACIO S. SAPALO
Director