

MARAZZI CERAMICHE SpA,
Opposer,

INTER PARTES CASE NO. 3330

OPPOSITION TO:

- versus -

Application Serial No. 62141
Filed : July 15, 1987
Applicant : MARAZZI
Trademark : Domingo Que
Used on : Ceramic tiles

DOMINGO QUE,
Respondent-Registrant.
x-----x

DECISION NO. 89-86 (TM)
October 27, 1989

DECISION

On January 19, 1989, Marazzi Ceramiche SpA lodged a petition for extension of time (30 days) to file its Verified Notice of Opposition against the registration of the trademark "MARAZZI" used on ceramic tiles, applied for by Domingo Que on July 15, 1987 under Application Serial No. 62141, published on Page 28, Volume I, No. 10 of the BPTTT Official Gazette dated and officially released on December 20, 1988.

Opposer is a corporation organized and existing under the laws of Italy with office address at 1 Via Della Zecca, 1-40, 121 Bologna, Italy, while Respondent-Applicant is a Filipino citizen doing business at Projects Unlimited (Phils.) Inc., 620 Oriente Street, Binondo, Manila.

Opposer filed its Verified Notice of Opposition on April 4, 1984 based on the grounds that:

"1. The registration of the mark in the name of respondent-applicant is proscribed by Section 4(d) of Republic Act No. 166 as amended.

2. The provisions of Articles 6bis, 8 and 10bis of the Paris Convention of which both Philippines and Italy are signatories."

On February 22, 1989, Respondent-Applicant was notified of the herein opposition and was required to file its Answer thereto within fifteen (15) days from receipt, of said notice.

For failure to file its Answer, Respondent-Applicant was declared in default in Order No. 89-271 dated April 21, 1989 and Opposer was allowed to present its evidence ex-parte.

On June 7, 1989, Opposer presented its evidence ex-parte consisting of Exhibits "A" to "F-1", inclusive, which were formally offered in writing on June 19, 1989 and admitted in evidence in Order No. 89-408 dated June 21, 1989.

Since the contested marks are identical, the main issue to be resolved in the herein case is: Who between the parties is the true and real owner of the mark "MARAZZI"?

Opposer submitted in evidence a book on the history and development of the Marazzi Tile Industry in Italy from 1935 to 1985 (Exh. "C"), indicating the date it was established in September 1934 (Exh. "C", page 17); the year that it put up its first professionally built chimney (Exh. "C", page 23); the tile products that Opposer distributes to its customers (Exh. "A"); the

container of its tile products bearing the mark "MARAZZI" (Exh. "B"); the letter of Opposer dated September 11, 1981 to Jappeak International Trading of Manila Philippines (Exh. "D"); the response letter of Jappeak International Trading of Manila to the Opposer dated October 10, 1988 (Exh. "E"); the Bill of Lading dated November 11, 1988 (Exh. "F"), and the receipt issued therefor (Exh. "F-1"), all showing the use of the mark "MARAZZI" in the Philippines since 1981.

With the foregoing exhibits, Opposer has satisfactorily shown proofs of its prior adoption, ownership and continuous use of the mark "MARAZZI" than the herein Respondent-Applicant. In fact, Respondent never bothered to file his Answer to this opposition and was thus declared in default on April 21, 1989 in Order No. 39-271 (supra). For such failure, the Bureau hereby declares Respondent-Applicant to have lost interest in pushing through his opposed Application Serial No. 62141.

WHEREFORE, the herein Notice of Opposition is SUSTAINED and Application Serial No. 62141 is REJECTED.

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

SO ORDERED.

IGNACIO S. SAPALO
Director