

JAIME NGO  
1<sup>ST</sup> Junior Party-Applicant,

INTER PARTES CASE NO. 1686

INTERFERENCE AMONG:

Application Serial No. 34465  
Filed : February 14, 1978  
Applicant : Jaime Ngo  
Trademark : MARCA CHAMPION  
C. HOC TONG & DEVICE  
Used on : Rum, wines, Siok Tong  
(Chinese wine)

-and-

WASHINGTON DISTILLERY INC.,

Application Serial No. 42903  
2<sup>ND</sup> Junior Party-Applicant,  
Filed : January 24, 1980  
Applicant : Washington Distillery,  
Inc.  
Used on : Liquor

-and-

Application Serial No. 21187  
Filed : October 16, 1971  
Applicant : Pacific Distillery Inc.  
Trademark : CHAMPION &  
DEVICE  
Used on : Distilled alcoholic liquors  
(wine)

PACIFIC DISTELLERY, INC.,  
Senior Party-Applicant.

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DECISION NO. 88-74 (TM)  
August 11, 1988

### DECISION

This is an interference case declared by the Bureau relative to:

- (1) Application Serial No. 34665 filed on February 14, 1978 by Jaime Ngo, the herein 1<sup>st</sup> Junior Party-Applicant, for the mark "MARCA CHAMPION C. HOC TONG & DEVICE" used in rum, wine and Siok Tong (Chinese wine);
- (2) Application Serial No. 42003 filed on July 24, 1980 by the Washington Distillery, Inc., the herein 2<sup>nd</sup> Junior Party-Applicant, for the mark "CHIN HOC TONG CHAMPION" used on compounded liquor; and
- (3) Application Serial No. 21187 filed on October 6, 1971 by the Pacific Distillery, Inc., the herein Senior Party-Applicant, for the trademark "CHAMPION & DEVICE" used on distilled alcoholic liquors (wine).

The 1<sup>st</sup> Junior Party-Applicant is a Filipino citizen doing business under the name and style of "Destileria La Copa", a single proprietorship, with business address at 235 B. Pilar Street, Mandaluyong, Metro Manila; the 2<sup>nd</sup> Junior Party-Applicant is a domestic corporation of the Philippines doing business at Sta. Lucia, San Fernando, Pampanga; and the Senior Party-

Applicant is likewise a domestic corporation of the Philippines with office and place of business at 2611 Old Panaderos Street, Sta. Ana, Manila.

The above marks applied for contain the common word "CHAMPION", all used on goods falling under the same class of goods (wines, spirits and liqueurs), which this Bureau considers as confusingly similar and a clear case for interference proceedings.

A Notice of Interference was sent to the parties pursuant to Rule 182 of the Revised Rules of Practice in Trademark Cases to adduce evidence for the Bureau to determine which has the prior use and adoption of the subject mark.

The 2<sup>nd</sup> Junior Party-Applicant (Washington Distillery, Inc.) filed on December 27, 1982 a Motion to Dissolve Interference on the ground "that the trademark of the Junior Party-Applicant is not confusingly similar to the trademarks of the Senior Party-Applicant as to sound, appearance, meaning and ideas connoted by the competing marks". The motion was denied in Office Order No. 83-23 dated January 10, 1983 for having been filed out of time.

The pre-trial stage of the case was terminated on February 3, 1983. On the hearing of September 20, 1983, the 2<sup>nd</sup> Junior Party-Applicant presented its evidence consisting of Exhibits "A" to "X".

On November 3, 1983, counsel for the Senior Party-Applicant, Atty. Narciso A. Manantan, filed his withdrawal of Appearance and left the responsibility of handling the case with his corroborating counsel, Atty. Bernardo S. Nera. In subsequent hearing, however, Atty. Nera never appeared.

On October 28, 1985, after more than two years from presentation (September 20, 1983) counsel for the 2<sup>nd</sup> Junior Party-Applicant submitted its Formal Offer of Evidence (Exhs. "A" to "X") which were all admitted in evidence in Office Order No. 85-367 dated December 3, 1985.

On the hearing of May 24, 1985, the Hearing Office, having been informed of a pending negotiation between the two remaining parties, directed the submission of their Compromise Agreement next hearing (June 24, 1985) but the parties failed to submit one.

The 1<sup>st</sup> Junior Party-Applicant submitted during the hearing of April 18, 1986 a draft Compromise Agreement between the two remaining interested parties.

No action having been taken by the 2<sup>nd</sup> Junior Party-Applicant, the Bureau on October 19, 1987 sent to all the parties a letter inquiring about their interest in the prosecution of this case.

In a letter dated November 7, 1987, the 1<sup>st</sup> Junior Party-Applicant signified his interest to prosecute the case. The other two parties did not respond.

The 1<sup>st</sup> Junior Party-Applicant, by counsel, presented his evidence ex-parte on December 8, 1987 consisting of Exhibits "A" to "K" which were all admitted in evidence in open court.

For not participating in the proceedings, except its Motion to dissolve which was denied, the case for the Senior Party-Applicant is considered dropped.

As to the issue of ownership of subject mark between the 1<sup>st</sup> Junior Party-Applicant and the 2<sup>nd</sup> Junior Party-Applicant, the records show:

- (1) Dates of Founding Respective Establishments –

- a. ) The last Junior Party-Applicant was established 1902, engaged in the manufacture of C Hoc Tong MARCA CHAMPION Chinese wine (Exhs. "A", "A-1", "A-2" and trademark application).
  - b. ) The 2<sup>nd</sup> Junior Party Applicant's predecessor was established in 1946 which started using the trademark CHAMPION. For Chinese wine which was later incorporated into the Washington Distillery, Inc. on December 20, 1976 (Exhs. "B", "B-1" to "B-6" for 2<sup>nd</sup> Junior Party-Applicant).
- (2) Dates of Issue of Permits to use Label/Operate Granted by the Bureau of Health/Food & Drug Administration.
- a. ) The 1<sup>st</sup> Junior Party-Applicant was permitted by the Chairman, Board of Food Inspection, Bureau of inspection, Bureau of Health, to use label for C. Hoc Tong MARCA CHAMPION 350 c.c. proof 51 to 35 Chinese wines on January 27, 1960 9Exhs. "B" and "B-1" for the 1<sup>st</sup> Junior Party-Applicant and to use the label C. Hoc Tong MARCA CHAMPION 350 c.c. proof 51 to 35 by the Food and Drug Administration on April 26, 1978 (Exhs. "G" and "G-1" for the 1<sup>st</sup> Junior Party-Applicant).
  - b. The 2<sup>nd</sup> Junior Party-Applicant was granted a Permit to Operate Washington Distillery in the operation of "food and food products manufacturing processing establishments" for the class of "food and food products" applied for, issued on July 3, 1975 in replacement of Permit No. 893 issued on July 3, 1968 by the Food and Drug Administration (Exhs. "U" and "U-1" for the 2<sup>nd</sup> Junior Party-Applicant ) ; and a License to Operate the Washington Distillery, Inc. in the operation of "food and food products" applied for issued on August 31, 1978 cancelling Permit No. 111-274 issued on July 3, 1975 (Exhs. "V" and "V-1" for the 2<sup>nd</sup> Junior Party-Applicant).

It may be noted from these exhibits that while the 1<sup>st</sup> Junior Party-Applicant was granted by the Bureau of Health to use the label C. Hoc Tong MARCA CHAMPION which is clear and specific, the 2<sup>nd</sup> Junior Party-Applicant was merely permitted/licensed to operate for the manufacture and processing of the "food and food products" applied for.

(3) Dates of Grant and Registration to Use Their Commercial Labels for Internal Revenue Purposes Only by the Bureau of International Revenue -

- (a) The 1<sup>st</sup> Junior Party-Applicant was granted by the Bureau of Internal Revenue to use, among others, the commercial label C. HOC TONG MARCA CHAMPION in 340 c.c. bottles 50 proof on December 4, 1978 9Exhs. "H" and "H-1" for the 1<sup>st</sup> Junior Party-Applicant).
- (b) The 2<sup>nd</sup> Junior Party-Applicant was granted by the Bureau of Internal Revenue to use, among others, the commercial label CHIN HOC TONG CHAMPION 50 proof on July 9, 1980 (Exh. "N" for the 2<sup>nd</sup> Junior Party Applicant).

(4) Dates of Filing Respective Applications-

- (a) The 1<sup>st</sup> Junior Party-Applicant filed its application for the registration of the trademark "C. HOC TONG MARCA CHAMPION" under Application Serial No. 34465 on February 14, 1978 (Trademark application; file wrapper).

The 1<sup>st</sup> Junior Party-Applicant clearly preceded the 2<sup>nd</sup> Junior Party-Applicant on the time their respective firms were established (1902 for the 1<sup>st</sup> Junior Party-Applicant as against 1946 for the 2<sup>nd</sup> Junior Party-Applicant), the granting of permits by the Bureau of Health/Food and Drug Administration (January 27, 1960 to use the contested label for the 1<sup>st</sup> Junior Party-

Applicant as against July 3, 1968 to operate as food product manufacturer or processor for the 2<sup>nd</sup> Junior Party-Applicant), the registration of their labels with the Bureau of Internal Revenue (December 4, 1978 for the 1<sup>st</sup> Junior Party-Applicant as against July 9, 1980 for the 2<sup>nd</sup> Junior Party-Applicant), and the filing of their trademark applications with this Bureau (February 14, 1978 for the 1<sup>st</sup> Junior Party-Applicant as against July 24, 1980 for the 2<sup>nd</sup> Junior Party-Applicant).

Finally, as stated above, on October 19, 1987, this Bureau sent to all parties concerned communication requesting them to inform this Office if they are still interested to pursue the prosecution of this case fifteen (15) days from receipt of said letters", but it was only the 1<sup>st</sup> Junior Party-Applicant who made a positive reply.

WHEREFORE, this Bureau finds and so holds that the 1<sup>st</sup> Junior Party-Applicant is the prior user and adopter of the herein contested mark; hence, Application Serial No. 34463 filed on February 14, 1978 by Jaime Ngo for the mark "C.HOC TONG MARCA CHAMPION" should be given due course. Accordingly, Application Serial No. 21187 filed by the herein Senior Party-Applicant and Application Serial No. 42003 filed by the herein 2<sup>nd</sup> Junior Party-Applicant are DENIED.

Let the records of this case be transmitted to the Trademark Examining Division for appropriate action in accordance with this Decision.

SO ORDERED.

IGNACIO S. SAPALO  
Director