

SPRINGS INDUSTRIES, INC.,  
Petitioner,

INTER PARTES CASE NO. 2026

PETITION FOR CANCELLATION

- versus -

Regn. No. SR-4474  
Registrant : Mandarin Weaving  
Mills, Inc.  
Trademark : SUMMERMAID &  
DEVICE  
Used on : Towels, bedspreads,  
blankets, etc.

MANDARIN WEAVING MILLS, INC.  
Respondent-Registrant.  
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DECISION NO. 88-28 (TM)  
June 1, 1988

### DECISION

This is a Petition for Cancellation filed by Springs Industries, Inc., a corporation organized and existing under the laws of South Carolina, with offices at 205 North White Street, City of Fort Mill, State of South Carolina, U.S.A., seeking the cancellation of Certificate of Registration No. SR-4474 for the trademark "SUMMERMAID & DEVICE" used on towels, bedspread, blankets, pillow cases issued on January 16, 1980 in favor of Mandarin Weaving Mills, Inc., a corporation organized and existing under the laws of the Republic of the Philippines and with principal office at 475-B MacArthur Highway, Km. 15 Dalandanan, Valenzuela, Metro Manila.

The grounds for the Petition for Cancellation are as follows:

"1. Respondent-registrant was not entitled to register the mark at the time of the application for registration thereof.

2. Registration of the mark SUMMERMAID and Device in the name of the respondent registrant has caused and will cause great irreparable injury and damage to the petitioner within the meaning of Section 19-A of Republic Act 166, as amended."

Petitioner relied on the following facts to support its Petition for Cancellation:

"1. Petitioner is the owner, as defined in Section 2-A of R.A. 166, as amended, of the trademarks a) SPRINGMAID, b) SPRINGMAID and Device, and c) Picture of a Maid which were all registered under Certificate of Registration Nos. 23372, 23500 and 23482, respectively, and have been used for many years in respect to sheets, pillow cases, draperies and bedspreads under International Class 24;

2. Through its long use in the Philippines starting April 3, 1968, petitioner's said trademarks have become popular and well known and enjoy widespread reputation prompt recognition and valuable goodwill among customers in the Philippines for the type of product which these trademarks distinguish;

3. Respondent's trademark is confusingly similar to that of petitioner and its use on goods identical to that of the petitioner is most unfair and unjust to petitioner and would mislead and deceive the public into confusing one trademark for the other and into believing that the products and/or the manufacturers are related or connected.

4. Petitioner's products and trademarks are extensively advertised and promoted worldwide, all involving considerable expenditures on the part of the petitioner.

5. Respondent has first used the trademark SUMMERMAID and Device in the Philippines only on January 11, 1977, long after the registration and use by petitioner of its trademarks SPRINGMAID, SPRINGMAID and Device and Picture of a Maid.

6. The petitioner has been prejudiced and damaged by the issuance to the respondent of Certificate of Registration No. SR-4474 for SUMMERMAID and Device."

Upon receipt of the verified Petition for Cancellation, a Notice to Answer together with the attached verified Petition for Cancellation was served on Respondent-Registrant, Mandarin Weaving Mills, Inc. at its address on record, requiring it to answer the same within fifteen (15) days from receipt thereof. Respondent-Registrant through counsel filed its Answer denying each and every allegations of the Petition for Cancellation.

After the pre-trial conference was terminated, Petitioner through counsel filed a Motion to Render Judgment, stating that:

"1. The challenged trademark registration of respondent was issued by this 'Honorable Office on January 16, 1980 for a term of twenty (20) years.

2. As required by Section 12 of Republic Act No. 166, as amended however, trademark registrants like respondent must file affidavits of use/non-use within one year following the fifth, tenth and fifteenth anniversaries of the date of issue of the certificate of registration. Otherwise, the trademark shall be cancelled by the Director of Patents.

3. Respondent's fifth-year affidavit of use/non-use was due to be filed January 16, 1986, but the same was not filed.

4. On April 15, 1986, this Honorable Office issued Cancellation Order No. 86-150 directing the cancellation of the respondent's subject trademark registration for SUMMERMAID & Device for failure to file the fifth year affidavit of use/non-use.

5. Thus, for all intents and purposes, petitioner's instant Petition for Cancellation has now become moot and academic by virtue of Cancellation Order No. 86-150."

and praying that judgment be rendered by this Bureau declaring the instant Petition for Cancellation as having become moot and academic by reason of Cancellation Order No.-86-150.

A verification of the available records of this Bureau reveals that Respondent-Registrant in this case did not file the corresponding affidavit of use/non-use for the registration in question; hence, in accordance with Section 12, Republic Act 166, as amended, subject registration (Certificate of Registration No. SR-4474) issued January 16, 1980 was already ordered cancelled, per Cancellation Order No. 86-150 dated April 15, 1986.

WHEREFORE, in view of the foregoing premises, the Motion to Render Judgment filed by counsel for the Petitioner is hereby GRANTED. Accordingly, this Petition for Cancellation is declared as having become moot and academic for the reason that the registration sought to be cancelled has already been cancelled, per Cancellation Order No. 86-150 dated April 15, 1986, pursuant to the provisions of Section 12, Republic Act 166, as amended.

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

SO ORDERED.

IGNACIO S. SAPALO  
Director