

STA. CLARA HOUSING
INDUSTRIES, INC.,
Junior Party-Applicant,

INTER PARTES, CASE NO. 3466

INTERFERENCE BETWEEN:

Application Serial No. 61144
Filed : March 9, 1987
Applicant : Sta. Clara Housing
Industries, Inc.
Trademark : SANTA CLARA
Used on : Plywood

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Application Serial No. 57909 & SR-11356
Filed : December 3, 1985
Applicant : Sta. Clara Lumber
Co., Inc.
Trademark : SANTA CLARA
Used on : Plywood products

STA. CLARA LUMBER CO., INC.,
Senior Party-Applicant.

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DECISION NO. 90-44 (TM)
November 18, 1990

DECISION

This is an interference case declared pursuant to Rules 179 and 180 of the Rules of Practice in Trademark Cases between trademark application Serial No. 58909 filed on December 3, 1985 by herein Senior Party-Applicant Sta. Clara Lumber Co. Inc. for the trademark "SANTA CLARA" used on plywood products and trademark application Serial No. 61144 filed on March 9, 1987 by herein Junior Party-Applicant Sta. Clara Housing Industries, Inc. for the mark "SANTA CLARA" used on plywood.

The Junior Party-Applicant is a Philippine corporation with business address at Room 502 Gammon House Building, Rada Street Legaspi Village, Makati, Metro Manila, while the Senior Party-Applicant is a domestic corporation organized and existing under the Philippine Laws with business address at 1360 L. Guinto Sr. Street, Ermita, Metro Manila.

The declaration of interference was premised on the fact that the application of the Junior Party-Applicant, though filed later, alleged an earlier date of use (August 13, 1963) of the mark in commerce than that, of the filing date of the Senior Party-Applicant: December 3, 1985. On September 27, 1989, a Notice of Interference was sent by this office to the herein contending parties, pursuant to Section 10-A of R.A. No. 166 as amended, and Rule 182 of the Revised Rules of Practice in Trademark Cases for the parties to adduce evidence in their respective sides in order to determine who between them has priority of use and adoption of the mark in controversy.

A pre-trial conference was scheduled on January 4, 1990 but the Senior Party-Applicant did not appear and thus the same was reset to January 31, 1990 but again the Senior Party-Applicant did not appear. As a result, counsel for the Junior Party-Applicant in open court moved that the Senior Party-Applicant be declared in default.

Thus Senior Party-Applicant, STA. CLARA LUMBER CO. INC., was declared as if in DEFAULT (ORDER NO. 90-55) for failure to appear at the January 4, 1990 and January 31, 1990 pre-trial hearings. Accordingly, Junior Party-Applicant was allowed to present its evidence ex-parte. Admitted were documentary exhibits marked as Exhibits "A" to "G" inclusive of sub-markings.

The issue to be resolved in this case is the determination of which between the parties has the priority of adoption and use of the trademark in question.

Based on the testimony of Mr. Jonathan M. Polines, the lone witness for the Junior Party-Applicant as contained in his affidavit (Exhibit "A"), Sta. Clara Housing Industries, Inc. was incorporated and registered to operate the STA. CLARA LUMBER Assets consisting mainly of plywood manufacturing plant machinery and equipment foreclosed by the Development Bank of the Philippines under a lease purchase agreement.

It has been further testified to that Sta. Clara Housing Industries, Inc. started manufacturing operations and selling plywood products using the trademark "STA. CLARA" in 1982 and continues to use the same mark up to now.

That on October 5, 1983, Sta. Clara Housing Industries, Inc. sold plywood products to DENVER BUILDER SUPPLY INC. amounting to P 150,904.00 as shown in sales invoice no. 0525 (Exhibit "A-2").

On August 31, 1984, STA. CLARA HOUSING INC. sold plywood products to Russel Stadelman & Co. in U.S.A. as shown in the sales invoice no. 0597 amounting to \$17,03838 (Exhibit "A-2-a").

Sta. Clara Housing Industries, Inc. is actually distributing and marketing plywood products not only locally but as well as to other foreign countries (Exhibits "A-3-b"), (Exhibit "A-C") and (Exhibit "A-3-C").

That the Senior Party-Applicant Sta. Clara Lumber Co. Inc. totally ceased in its business operation since 1982 upon the completion of the Extra-judicial foreclosure proceedings of its assets. Exhibits "B", "C" and "D" evidencing the said non-operation of its business operation were on the records of this case.

Likewise, Senior Party-Applicant did not have the Mayor's Permit to operate business in the City of Manila for the year 1985-1989 as shown in the Certification issued by the Office of the Mayor of Manila (Exhibit "E").

It is further shown that the Senior Party-Applicant, Sta. Clara Lumber Co. Inc. did not renew its registration with the Bureau of Domestic Trade, DTI which was expired on October 21, 1983 ("Exhibit -B")

Under (Exhibit "C") it has been certified by the Securities and Exchange Commission that STA. CLARA LUMBER CO. INC. has not submitted SEC required reports since 1982.

On the basis of the foregoing circumstances, it has been established that the Senior Party-Applicant Sta. Clara Lumber Co. Inc. has ceased to operate or do business, hence its claim for the actual use of the Trademark "STA. CLARA" is in violation of Sec. 5 of R.A. No. 166 as amended.

One factor which this Office could not miss to consider in the adjudication of this case is the fact that the Senior Party-Applicant has never made any effort to pursue its application. In such a situation, this office could not do less but to refer to the Rules on the matter which provides, thus:

“Applicant supposed to look after his own interests. – The Patent Office, represented look by the Principal Examiner, is not supposed to look after the interests of an applicant. That duty the law imposes upon the applicant himself.

xxx” Rule 85, Revised Rules of Practice in Trademark Cases.

From such a historical background of the Senior Party-Applicant’s case, this Office is constrained to conclude that it has utterly lost interest in the pursuit of the instant case; hence, it is deemed to have abandoned its application for registration of the trademark “STA. CLARA” in the Principal Register.

WHEREFORE, premises considered, INTER PARTES CASE NO. 3466 is as it is hereby, DISSOLVED. Accordingly, Application Serial No. 61144 filed on March 9, 1987 by the Herein Junior Party-Applicant for the trademark “SANTA CLARA” used on plywood under class 19 is hereby given due course, while Application Serial No. 57909 filed on December 3, 1985 by the herein Senior Party-Applicant “STA. CLARA LUMBER, CO. INC.” for the trademark “STA. CLARA” used on plywood products, class 19 is hereby REJECTED.

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