

THIERRY MUGLER,
Petitioner,

INTER PARTES CASE NO. 2057

- versus -

PETITION FOR CANCELLATION
Cert. of Regn. No. SR-6357
Issued : November 18, 1983
Registrant : Lakeview Garments, Inc.
Trademark : THIERRY MUGLER
Used on : Jeans, trousers, slacks,
polos, T-shirts, shirts, blouses, sweaters
and jackets

LAKEVIEW GARMENTS, INC.,
Respondent-Registrant.

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DECISION NO. 89-16 (TM)
March 7, 1989

DECISION

For action is a Petition for Cancellation filed by Petitioner, thru counsel, on March 25, 1985 seeking cancellation of Registration No. SR-6357 for the trademark "THIERRY MUGLER" for jeans, trousers, slacks, polos, T-shirts, shirts, blouses, sweaters and jackets issued on November 18, 1983 in favor of the herein Respondent-Registrant.

Petitioner is a foreign corporation organized under the laws of France, with principal office and place of business at 130 Faubourg Saint Honore 75008, Paris, France, while Respondent-Registrant is a domestic corporation with principal place of business at 1st Avenue, Bagumbayan, Taguig, Metro Manila, Philippines.

On April 23, 1987, a Notice to Answer with enclosed copy of the petition was sent to respondent-Registrant by registered mail, with return card. The notice was returned to this Bureau, unserved, on May 5, 1987 with annotations on the envelope "RTS-Factory Closed". On June 10, 1987, Petitioner filed a Motion for appointment of Special Process Server which this Bureau granted by issuing Order No. 87-130 appointing Mr. Bobby A. Ledesma and/or Mr. Ric C. Brua of the law firm Saludo, Ledesma & Associates as Special Process Servers of the Notice to Answer. In an Affidavit executed by Ricardo Brua, the appointed Special Process Server, an allegation was made that on the day that the Notice to Answer was tendered to a certain Mr. Tan, President and Chairman of the Board of the herein respondent corporation, the latter stated that respondent corporation ceases to operate as of 1986 and that the company had in fact stopped using the trademark "THIERRY MUGLER" upon its goods even before the company closed down. (Please see Annex "C"- Motion to Declare Respondent in Default.) No answer having been filed, Order No. 87-353 was issued on November 10, 1987 declaring Respondent-Registrant in default and petitioner was allowed to present its evidence ex-parte.

Admitted as Petitioner's evidence are pieces of documentary exhibits marked as Exhibits "A" to "I-50", inclusive of their submarkings.

A cursory review of the records of the case shows that Respondent-Registrants trademark "THIERRY MUGLER" and the trademark "THIERRY MUGLER" of the Petitioner are not only confusingly similar by identical with each other (Exh. "G" and Registration No. SR-6357). The appearance, style, sound, spelling and the goods on which the marks are used are identical.

The trademark "THIERRY MUGLER" was registered by Petitioner on February 29, 1978 in France ("C"), which is a member of the Paris Convention for the Protection of Industrial Property. In 1979, Petitioner was able to register its mark with World Intellectual Property

Organization (WIPO) covering the following countries: Algeria West Germany (Federal Republic of Germany), Australia, Benelux, Egypt, Spain, Hungary, Italy, Liechtenstein, Morocco, Monaco, Portugal, Democratic Republic of Germany, Romania, Switzerland, Czechoslovakia, Tunisia, Soviet Union and Yugoslavia. (Exhs. "D"). Petitioner has established prior adoption and use of the mark "THIERRY MUGLER" than alleged date of first use by Respondent-Registrant (January 30, 1980) of the same mark by presenting sales invoices of the goods, particularly clothing bearing trademark "THIERRY MUGLER" (Exhs. "E" to "E-3"). Likewise, continues adoption and use of the said mark by the petitioner is supported by Petitioner's extensive advertisement in various design and/or fashion magazines published in different countries in the world (Exh. "I-50").

With the findings of identity between the parties trademarks and the prior adoption of the "THIERRY MUGLER" by Petitioner, the latter deserves the protection accorded by the provisions of the Memorandum Circular issued by then Minister of Trade and Industry pursuant to Executive Order No. 913 of 7 October 1983, considering that France and the Philippines are signatories to the Paris Convention for the Protection of Industrial Property. The said Memorandum Circular partly states:

"3. The Philippine Patent Office shall refuse all applications for, or cancel the registration of, trademarks which constitute a reproduction, translation or imitation of a trademark owned by a person, natural or corporate, who is a citizen of a country signatory to the PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY."

Moreover, the discontinuance of use of the trademark "THIERRY MUGLER" by Respondent-Registrant even before the closure of its establishment is deemed an abandonment of the said mark in favor of the herein Petitioner, which is the real owner thereof.

WHEREFORE, premises considered, this Bureau GRANTS the Petition for Cancellation. Registration No. SR-6357 issued on November 18, 1983 is CANCELLED.

Let the records of this case be remanded to the Patent/Trademark Registry & EDP Division for appropriate action in accordance with this Decision.

SO ORDERED.

IGNACIO S. SAPALO
Director