

U. S. CHEMICAL & PLASTICS, INC.,
Petitioner,

INTER PARTES CASE NO. 3070

PETITION FOR CANCELLATION

Cert. of Regn. No. Sr-7243
Issued : March 11, 1986
Registrant : Dynex Industrial
Corporation
Trademark : "KWIK MAGIC"
Used on : Flexible auto body with
cream hardeners

-versus-

-and-

INTER PARTES CASE NO. 3071

OPPOSITION TO:

Application Serial No. 51763
Filed : July 26, 1983
Applicant : Dynex Industrial
Corporation
Trademark : KWIK MAGIC SUPER
Used on : Flexible auto body fillers

DYNEX INDUSTRIAL CORPORATION,
Respondent-Applicant.

x-----x

DECISION NO. 89-13 (TM)
February 15, 1989

DECISION

This is a consolidation of two cases, namely;

- (1) Inter Partes Case No. 3070 filed by U.S Chemical & Plastics, Inc. seeking for the cancellation of Certificate of Registration No. SR-7243 bearing the trademark "KWIK MAGIC" issued on March 11,1986 in the name of Dynex Industrial Corporation; and
- (2) Inter Partes Case No. 3071 also filed by U.S. Chemical & Plastics, Inc. opposing the registration in the Principal Register of the mark "KWIK MAGIC SUPER" used on flexible auto body filler, applied for on July 26, 1983 by the same firm, Dynex Industrial Corporation, under Application Serial No. 51763, published in Volume I, No. 1 of BPTTT Official Gazette and released for circulation on March 9, 1988.

Petitioner/Opposer, respectively in both cases, is a foreign corporation organized and existing under the laws of the State of Ohio, with principal office address at 1446 W. Tuscarawas Street, Canton, Ohio 44702, U.S.A., while Respondent-Registrant/Applicant in this consolidated cases is a domestic corporation, with business address at 340-C Don Carlos Revilla Street, Pasay City, Philippines.

The grounds alleged in the Petition for Cancellation are:

"1. Respondent-Registrant`s registration was obtained fraudulently contrary to the provisions of Sec. 4, Chapter 11 of R.A. 166 as amended.

2. The Petitioner is the assignor of Certificate of Registration No. SR-5385 issued on March 19, 1981 for the trademark "KWIK MAGIC".

3. Respondent-Registrant's registration is use of "KWIK MAGIC" will cause confusion or mistake in view of the fact that it is identical to the "KWIK MAGIC" mark of herein Petitioner."

The grounds alleged in the Notice of Opposition are:

"1. The Opposer, not the Respondent-Applicant, is the originator, adaptor and registered owner of the trademark "KWIK MAGIC".

2. The Opposer is the assignor of Certificate of Registration No. SR-5385 issued on March 19, 1981 for the trademark "KWIK MAGIC".

3. The registration of the captioned trademark is contrary to Sec. 4, Chapter 11 of R.A. 166 as amended x x x:

x

x

x

4. The application for registration of the mark "KWIK MAGIC" will indeed cause confusion or mistake as to the source of origin of the goods in view of the confusing similarity between the trademark applied for and that belonging to Opposer."

In both cases, Respondent was sent Notice to file its Answer to the said Petition for Cancellation and Notice of Opposition, respectively, within fifteen (15) days from receipt of said notices.

Respondent by counsel filed several notices for extension of time within which to file Answers in both cases.

On December 20, 1988, the parties submitted a Compromise Agreement dated October 18, 1988 for the amicable settlement of Inter Partes Case No. 3070 (Cancellation) and Inter Partes Case No. 3070 (Opposition) of the following terms and conditions:

"1. Respondent shall execute as it hereby execute in favor of petitioner/oppositor, deeds of assignment for Certificate of Registration No. SR 7243 and Application Serial No. 51763. [Note: Copies of duly executed deeds of assignment attached to compromise Agreement as Annexes "A" and "B", respectively].

2. Respondent hereby undertakes to immediately cease and desist from using opposer/petitioner's mark "KWIK MAGIC" or any other mark similar thereto or a colorable imitation thereof."

The foregoing terms and conditions are lawful, fair, equitable and not against sound public policy.

WHEREFORE, subject to provisions of the attached Compromise Agreement, Inter Partes Case Nos. 3070 and 3071 are DISMISSED.

Let the records of these cases be forwarded to the Application, Issuance & Publication Division (Inter Partes Case No. 3071) and the Patent/Trademark Registry & EDP Division (Inter Partes Case No. 3070) for appropriate action in accordance with this Decision.

SO ORDERED.

IGNACIO S. SAPALO
Director