

B.V. "LIJEMPF" LEEUWARDER
IJS EN MELKPROCTEN-FABRIEKEN
Opposer,

INTER PARTES CASE NO. 3362

OPPOSITION TO:

-versus

Application Serial No.: 63081
Filed: October 26, 1987
Trademark: BIFILAC
Applicant: Cooperative Agricole
France Lait, Union de
Cooperatives Agricoles
Used On: Powdered, milk,
Namely, maternized milk

COOPERATIVE AGRICOLE
FRANCE LAIT, UNION DE
COOPERATIVES AGRICOLES,
Respondent-Applicant.

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DECISION NO. 90-5 (TM)
February 14, 1990

DECISION

This case pertains to a Notice of Opposition filed by Opposer, B.V. Lijemph Leeuwarder Ijs en Melkproducten-fabrieken, a judicial entity organized under the laws of Netherlands, with business address at 3-5 Potmarge, The Netherlands, against the trademark "BIFILAC" for powdered milk, namely, maternized milk, bearing Application Serial No. 63081 filed on October 26, 1987 by Respondent-Applicant, Cooperative Agricole France Lait, Union de Cooperative Agricoles, a French company with business address at 71118 Saint Martin, Belle Roche, France, and published on Page 17 of the BPTTT Official Gazette, Volume II, No. 2 which was officially released for circulation on February 28, 1989.

The grounds for opposition are as follows:

"1. The mark BIFILAC under Serial No. 63081 of respondent-applicant is not only confusingly similar but identical to the trademark BEBELAC of Opposer, which Opposer owns under various worldwide trademark registrations and Philippine Trademark Registration No. 31531 issued on January 24, 1983, all of which are still active and not abandoned;

2. The Opposer will be damaged and prejudiced by the registration of the mark BIFILAC in the name of respondent-applicant, and its business reputation and goodwill will suffer great and irreparable injury;

3. Respondent-applicant's use of the mark BIFILAC for powdered milk, namely, maternized milk in Classes 5 and 29, which mark so resembles or is so identical with the trademark owned and used by Opposer's constitutes an lawful appropriation of a trademark owned and currently used by Opposer."

In its Answer, Respondent-Applicant denied all the material averments in the Notice of Opposition.

Issues having been joined, a pre-trial conference was scheduled on July 31, 1989 but was reset to a later date upon agreement of the parties.

No amicable settlement having been reached, this case was set for trial on the merits.

During the January 16, 1990 hearing, Opposer through counsel manifested that it will withdraw its opposition to the subject trademark application.

On January 25, 1990, this Bureau received a manifestation filed by Opposer's counsel, the pertinent portion of which is quoted hereunder:

"OPPOSER, by undersigned counsel, and to the Honorable Director respectfully manifests that it is withdrawing its Opposition to the subject application."

WHEREFORE, the instant opposition having been withdrawn, this case is DISMISSED. Accordingly, Application Serial No. 63081 for the registration of the mark "BIFILAC" is hereby given due course.

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

SO ORDERED.

IGNACIO S. SAPALO
Director