CERBERUS AG,	Opposer,)) INTER PARTES CASE NO. 3429	
)	OPPOSITION	N TO:
- versus -)))))	Application S Filed Applicant Trademark Used on	
)	DECISION NO. 92-4 (TM)	
ANTONIO V. URBANO, Respondent-Applicant.))	March 9, 1992	
X		-X		

DECISION

This Inter Partes case refers to an Opposition to the Application for Registration of the trademark CERBERUS for fire and gas protection systems, filed by herein Respondent-Applicant, Antonio V. Urbano, under Serial No. 43528 dated 24 December 1980 which was published for opposition on 30 June 1989 (Official Gazette of Bureau of Patents, Trademarks and Technology Transfer, p. 11, Vol. 11, No. 6 officially released on 03 July 1989)

The records show that an Unverified Notice of Opposition was filed by CERBERUS (AG) hereinafter referred to as the Opposer a joint-stock company duly organized under the laws of Switzerland, on 31 July 1989. Subsequently, the Verified Notice of Opposition was filed on 26 September 1989 which was within the reglementary period required under existing laws. The Notice to Answer was sent to the Respondent by Registered Mail on 03 August 1989 (with Registry Return Card No. 935). On 15 January 1990, Opposer filed a Motion to Declare Respondent-Applicant in default in view of the latter's failure to file his answer within the period provided for by the Rules of Practice in Trademark Cases. Acting on the said Motion, this Office issued Order No. 90-185 declaring the Respondent-Applicant in default and allowed the Opposer to present it evidence ex-parte. Pursuant thereto, Opposer, presented its evidence consisting a documents marked as Exhibits A, B up to B-12.

In its Opposition, Opposer alleged the following grounds:

- "1. The trademark CERBERUS is identical to Opposer's registered trademark and design, previously used in commerce in the Philippines and all over the world, and not abandoned, as to be likely, when applied to or used in connection with the goods of the Applicant, to cause confusion, mistake and deception on the part of purchasers.
- 2. The registration of the trademark CERBERUS in the name of Applicant is in violation of par. D, Section 4 of Republic Act 166."

From the evidence on record, this Office finds merit in this Opposition.

The Opposer's tradename and trademark "CERBERUS" is identical to the trademark "CERBERUS"; both marks are the same in spelling, pronunciation and sound. The goods of parties are also the same namely gas and fire protection system. Therefore, the use of the mark by the two contending parties involved herein would likely to cause confusion or mistake in the mind of the public or to deceive purchasers as to the origin or source of the commodity.

In the presentation of evidence, Opposer submitted their trademark registration for CERBERUS issued by this Office (Exhibit B-7) under Registration No. 19158 dated 18 June 1973. Hence, Registration of the mark CERBERUS in the name of the Respondent-Applicant is proscribes by par. D. Section 4 of Republic Act 166 which provides:

"Section 4. Registration of trademarks, tradenames and service-marks on the principal register. x x x The owner of a trade-mark, trade-name or service-mark used to distinguish his goods, business or services from the goods, business or services of others shall have the right to register the same on the principal register, unless it:

XXX

"(d) Consists of or comprises a mark or trade-name which so resembles a mark or trade-name registered in the Philippines or a mark or trade-name previously used in the Philippines by another and not abandoned, as to be likely, when applied to or used in connection with the goods, business or services of the applicant, to cause confusion or mistake or to deceive purchaser".

Furthermore, Opposer presented in evidence its registration for the mark "CERBERUS" in the following grounds:

- a. SWITZERLAND (Exh. "B-1")
- b. FINLAND (Exh. "B-2")
- c. DENMARK (Exh. "B-3")
- d. COLUMBIA (Exh. "B-4")
- e. AUSTRALIA (Exh. "B-5")
- f. U.S.A. (Exh. "B-6")
- g. GREECE (Exh. "B-8")
- h. Other countries which are members of the Madrid Convention (Exh. 9)

In as much as the Philippines and the countries above-enumerated are members by the Treaty of Paris for the Protection of Intellectual Properties, this Office is bound by the provisions of the said Treaty particularly Section 6bis which states that —

"The countries of the Union undertake, either administratively of their registration so permits, or at the request of an interested party, to refuse or to cancel the registration and to prohibit the use of a trademark, which constitutes a reproduction, imitation or translation, liable to create confusion, of a mark considered by the competent authority of the country a being already the mark or a person entitled to the benefits of the present Convention and used for identical or similar goods. These provisions shall apply when the essential part of the mark constitutes a reproduction of any such well-known mark or an imitation liable to create confusion with."

WHEREFORE, premises considered the herein Notice of Opposition is, as it is hereby SUSTAINED. Accordingly, Serial No. 43528 for the mark "CERBERUS" filed by Respondent-Applicant, Antonio V. Urbano, is hereby REJECTED.

Let the records of this case be demanded to the Application, Issuance and Publication Division for appropriate action with this Decision. Likewise, let a copy of this Decision be furnished Trademark Examining Division for information and to update its record.

IGNACIO S. SAPALO Director