

CRANE COMPANY,	)	INTER PARTES CASE NO. 3446
Petitioner,	)	
	)	PETITION FOR CANCELLATION:
	)	
	)	Cert. of Regn. No. 33584
	)	Issued : August 29, 1984
- versus -	)	Registrant : George Lee
	)	Trademark : CRANE
	)	Used on : Valve
	)	
	)	<u>DECISION NO. 91-21 (TM)</u>
SOCIETE DES PRODUITS	)	
Respondent-Registrant.	)	November 29, 1991
x-----x	)	

DECISION

Crane Co., filed on August 22, 1989 a petition seeking for the Cancellation of Certificate of Registration No. 33584 for the trademark "CRANE" used on valve falling under class 13 issued on August 29, 1984 in the name of George Lee.

Petitioner is a foreign entity, a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, U.S.A., with principal office located at 757 Third Avenue, New York, New York 10017, while Respondent-Registrant, in the name of George Lee with residence at 358 G. Araneta Avenue, Quezon City in domestic individual or a Filipino.

The grounds alleged in the Petition are as follows:

- a) Registration No. 33584 for trademark "CRANE" by respondent was obtained fraudulently or contrary to the provisions of Sec. 4, R.A. No. 166;
- b) The trademark "CRANE" of respondent is identical to the trademark "CRANE" previously used in the Philippines by the Petitioner and not abandoned, as to be likely, when applied to or used in connection with the goods, business or services of the respondent, to cause confusion or mistake to deceive purchasers.

On August 24, 1989, this Office sent a Notice to Answer to respondent enclosing a copy of the Petition for Cancellation, requiring respondent-registrant to file his Answer within fifteen (15) days from receipt of Notice.

On January 22, 1990, Petitioner filed a Motion to Declare respondent-registrant in default for failure to file his Answer within the period prescribed by the Rules; actually more than six months from service of summons.

On March 12, 1990, this Office issued ORDER NO. 90-138 declaring respondent-registrant in default for failure to file his Answer despite receipt of Notice to Answer and allowed petitioner to present its evidence ex-parte. On July 2, 1990, petitioner presented its evidence and submitted its formal offer of evidence consisting of Exhibits "A" to "F" inclusive of their submarkings.

The issues to be resolved are the following:

- 1. Whether or not the trademark of Respondent-Registrant is confusingly similar with that of the Petitioner;

2. Whether or not Petitioner has acquired priority of registration and goodwill over the mark "CRANE" to the exclusion of use/registration of the same by all others; and

3. Whether or not Certificate of Registration No. 33584 for the mark "CRANE" in the name of GEORGE LEE should be cancelled.

On May 10, 1932, the mark "CRANE" was registered in favor of CRANE CO. at the United States Patent Office, U.S.A. under Registration No.293, 974 for heating materials – namely, check valves, stop valves, and gate valves; screwed and flanged pipe fittings, cocks, stop check valves, emergency valves, pressure regulators, temperature control valves, throttle valves, balance valves, pressure regulators, temperature control valves, relief valves, back pressure valves; boiler trimmings – namely, fushible plugs, union fittings, gauge cocks, rain cocks, and engine trimmings – namely cylinder cocks, cylinder relief valves, gauge glass valves, valves, steam and ammonia separators for removing condensation, oil separators for removing condensation, oil separators for removing oil from steam or air, strainers, steam traps, expansion pipe joints, pipe flanges, pipe unions, screwed and flanged; pipe supports and hangers, drip pockets, all made of brass, cast iron, malleable iron, ferosteel, cast, forged, or rolled steel or other alloy; faucets, bibs, plumbing waste fixtures, flush valves, mixing valves, ball cocks, and supply valves, all made of brass, cast iron, malleable iron or other alloys; lavatory and sink traps made of earthenware, iron or brass; bath tubs, showers, closets, urinals, lavatories and bath room trimmings – namely, clothes hooks, shelves, towel bars, holders for tumblers and soap, all made of iron, brass, glass, marble, wood, or earthenware, in Class 13, Hardware and plumbing and steam-fitting supplies and was renewed for the second time for 20 years from May 10, 1972 and which has not been abandoned and continues to be in effect (Exhibits "C" to "C-2").

The above mark was likewise registered in the Philippines by the Petitioner under Registration No. 2046-A (Exhibit "D" for check valves, stop valves, and gate valves, screwed and flanged pipe fittings, cocks, stop check valves, etc.

Aside from the United States and the Philippines, Petitioner has also registered the mark "CRANE" in thirty (30) other countries (Exhibit "E").

Based on the evidence submitted, the Respondent-Registrant trademark "CRANE" is confusingly similar with the Petitioner's mark as both marks are the same in SPELLING, SOUND, MEANING and PRONUNCIATION. In short, identical to each other or exactly the same and the goods covered by both marks are likewise the same/identical.

Respondent-Registrant's trademark "CRANE" was registered in the Philippines on August 29, 1984 under Certificate of Registration No. 33584 and alleged date of first use on January 2, 1978 for the goods "VALVE".

On the other hand, Petitioner's trademark "CRANE" was registered in the United States on May 10, 1932 and in the Philippines on December 13, 1949 and first used the mark on April 1, 1982 and in the Philippines way back 1949.

On the basis of the evidence presented, the herein Petitioner has established that it owns the mark "CRANE" through prior and continues use of the same and in many countries in the world.

Note that Sec. 4(d) of R.A. No. 166 as amended, does not require that the goods of the prior user and subsequent user of the mark should possess the same descriptive properties or fall under the same categories as to bar the registering of the later mark in the Principal Register. The likelihood of confusion, mistake or deception upon purchasers would suffice (See Sta. Ana vs. Maliwat, 24 SCRA 1018, citing Chua Che vs. Philippine Patent Office, 13 SCRA 67).

In Ang vs. Teodoro, 74 Phil. 50, the Supreme Court has ruled that:

“The Courts have come to realize that there can be unfair competition even if the goods are non-competing and that such unfair trading can cause injury or damage to the first user of a given trademark, first, by prevention of the natural expansion of his business; and second, by having his business reputation confused with and put at the mercy of the second user when non-competing products are sold under the same mark.

Experience has demonstrated that when a well known trademark is adopted, it is done to get the benefit of the reputation and advertisements of the originator of said mark, to convey the public a false impression of some supposed connection between original mark and the new articles being tendered to the public under the same or similar mark. x x x The owner of a trademark or tradename has a property right in which he is entitled to protection since there is damaged to him from confusion of reputation or goodwill in the mind of the public as well as from confusion of goods. The modern unfairness of the acts and to classify and treat the issue as fraud.

The non-filing of an Answer and Motion to Lift Order of Default despite notice is indicative of Respondent-Registrant's lack of interest in pursuing the case; thus, he is deemed to have abandoned his Trademark Registration. In addition thereto, Respondent-Registrant, George Lee, failed to file his affidavit of use as of September 03, 1990, thus Reg. No. 33584 subject of this cancellation proceeding is considered automatically cancelled pursuant to Rule 141 of the Revised Rules of Practice in Trademark Cases.

WHEREFORE, premises considered, herein Petition is, as it is hereby, GRANTED. Consequently, Certificate of Registration No. 33584 for the trademark “CRANE”, issued in the name of Respondent-Registrant, George Lee is hereby ordered CANCELLED from the Trademark Registry of the Office.

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

SO ORDERED.

IGNACIO S. SAPALO  
Director