

WARNER BROS., INC,	)	INTER PARTES CASE NO. 3125
Opposer,)	
	)	OPPOSITION TO:
)	
	)	Application Serial No. 54731
	)	Filed : Sept. 25, 1984
	)	Applicant : Sonny Yap
- versus -	)	Trademark : ROADRUNNER
	)	Used on : T-shirt, polo
	)	shirt, brief,
	)	sando, panties,
	)	jeans, pants and
	)	handkerchiefs
)	
	)	DECISION NO. 92-2 (TM)
SONNY YAP,)	
Respondent-Applicant.	)	February 21, 1992
x-----x)	

DECISION

This is a case of opposition instituted against the application for Registration Serial No. 54371 for the trademark "ROADRUNNER" used on t-shirt, polo shirt, brief, sando, panties, jeans, pants and handkerchiefs in Classes 24 and 25, filed on September 25, 1984 and published for opposition in the Official Gazette of the BPTTT, Vol. I, No. 3, page 83 which was officially released for circulation on May 23, 1988.

The Opposer, Warner Bros, Inc., is a corporation organized and existing under the laws of the State of Delaware, U.S.A. with principal address at 4000 Warner Blvd., Burnak, California, U.S.A. Respondent, on the other hand, is Sonny Yap with postal address at #823 Juan Luna St., Binondo, Manila.

Initially, Opposer filed on June 23, 1988 its "Verified Notice of Opposition". Thereafter, Opposer requested for an extension of thirty (30) days from August 22, 1988 within which to file its "Verified Opposition" and the same was granted as per Order No. 88-341 dated August 24, 1988.

On September 21, 1988, Opposer, for purposes of complying with the above Order, submitted its "Verified Notice Opposition" although the same has not been duly authenticated. Opposer manifested that it is encountering difficulties in securing such authentication, hence, the delay. Finally, on October 12, 1988 the duly authenticated "Verified Notice of Opposition" was filed.

A "Notice to Answer" was immediately sent to Respondent, but despite receipt thereof (as evidenced by Registry Return Receipt No. 471, dated January 18, 1989) he failed and continues to fail to file within the reglementary period his Answer or any responsive pleading to the above Opposition. Thus, upon motion of Opposer, Order No. 89-333, dated May 18, 1989, was issued declaring Respondent IN DEFAULT.

The case proceeded with the ex-parte presentation of Opposer's evidence. On August 28, 1989 Opposer, through Counsel, formally offered its evidence which was duly admitted as per Order No. 89-672 dated August 31, 1989. Subsequently, Opposer filed its "Memorandum" on February 05, 1990.

On October 22, 1990, Opposer filed a Motion praying “that a resolution on the merits as borne out by the evidence presented in the course of the trial be now made”.

The grounds for the Opposition are as follows:

1. The Opposer is the owner of the trademark “ROADRUNNER” (Device), having been the first to adopt and use the same in actual trade and commerce.
2. The trademark “ROADRUNNER DEVICE” is registered in the U.S.A. and in other foreign countries in the name of Opposer; and
3. The trademark “ROADRUNNER DEVICE” which the Opposer has created and adopted is well-known throughout the world.

In support of this claim Opposer offered in evidence the following legalized and authenticated documents:

- a) Certificate of trademark Renewal Reg. No. B1031961 issued by Great Britain and Northern Ireland in the name of Opposer for the “ROADRUNNER” trademark (Exh. “D”);
- b) Certificate of trademark Reg. No. B1031961 as originally registered by Opposer on 3 July, 1974 (Exh. “E”);
- c) Certificate of trademark Reg. No. 1,375,959 issued by the United States Patent & Trademark Office to Opposer for its “ROADRUNNER” trademark (Exh. “F”);
- d) Certificate of trademark Reg. No. 251747 issued in Canada in the name of Opposer of the mark “ROADRUNNER” (Exh. “G”);
- e) Certificate of Reg. No. 310954 issued in Canada in the name of Opposer (Exh. “H”);
- f) Certificate of trademark Reg. No. 78,618 – F issued to Opposer in Venezuela for the “ROADRUNNER” mark (Exh. “I”);
- g) Certificate of Reg. No. 79/0035 issued on favor of Opposer in South Africa (Exh. “J”);

Of the foregoing pieces of evidence, it is important to note that all foreign registrations were issued long before the filing of this application here being opposer, i.e. on 25 September, 1984, two of which were even issued in 1974 (Exhibits “D” and “E”). It is thus, clear that Respondent merely adopted its trademark “ROADRUNNER” from Opposer. The inescapable conclusion is that Respondent is merely riding on the reputation of the Opposer’s mark, for, in the unlimited field of choice, what could have been Opposer’s purpose in selecting ROADRUNNER if not for its fame?

The foregoing conclusion is all the more strengthened when Respondent allowed itself to be declared IN DEFAULT (Order No. 89-333), for it was recently held by the Supreme Court in Delbros Hotel Corporation vs. Intermediate Appellate Court, 159 SCRA 533, 543 (1988), that –

“Fundamentally, default orders are taken on the legal presumption that in failing to file an Answer, the Defendant does not oppose the allegations and relief demanded in the complaint”.

Indeed, this Office cannot but notice the lack of concern the Respondent had shown in protecting the mark it had applied for registration, contrary to the disputable presumption that "a person takes ordinary care of his concern" enunciated in Sec. 3(d) of Rule 131 of the Rules of Court.

WHEREFORE, Application Serial No. 54371 for the trademark ROADRUNNER should be, as it is hereby, REJECTED.

Let the records of this decision be forwarded to the Application, Issuance and Publication Division for proper action.

SO ORDERED.

IGNACIO S. SAPALO
Director