

CHAMPAGNE LANSON PERE ET  
FILS,

Opposer,

INTER PARTES CASE NO. 1927

OPPOSITION TO:

- versus -

Application Serial No. 37825  
Filed : March 12, 1979  
Applicant : Jinro Limited  
Trademark : LANSEN  
Used on : Whiskey

JINRO LIMITED,  
Respondent-Applicant.

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DECISION NO. 88-40 (TM)  
July 1, 1988

### DECISION

This is an Opposition filed by Champagne Lanson Pere et Fils, a company duly organized under the laws of the Republic of France having its principal office at 12, Boulevard Lundy 51100, Reims, France, against the application for the registration of the trademark "LANSEN" used on whiskey, bearing Application Serial No. 37825 filed on March 12, 1979 by Jinro Limited, a corporation duly organized under the laws of the Republic of Korea, with registered office and place of business at 170-8 Shingil-Doug, Youngdeunpo-ku, Seoul, Korea.

Opposer stated as basis of its Opposition that the Philippine Patent Office has issued in its favor Certificate of Registration No. R-2401 (original Certificate of Registration No. 7477) issued on July 2, 1981 for trademark "LANSON" and device for wines; and trademark "LANSON" is an internationally well-known mark, having been registered by Opposer in France and 68 countries in the world. It alleged that Respondent-Applicant's mark "LANSEN" for whiskey is confusingly similar with its trademark "LANSON" for wines, and Respondent-Applicant's goods and those of the Opposer are so similar that the buying public will likewise be confused into believing that they are one and the same or originate from the same source; that Respondent-Applicant is an affiliate of the Opposer; and that the goods are under the sponsorship of the Opposer.

Respondent-Applicant in its Answer denied these allegations. However, at the scheduled pre-trial hearing, despite due notice, neither Respondent-Applicant nor its counsel appeared. On motion of the Opposer, this Bureau declared Respondent in default and the Opposer was authorized to present evidence ex-parte.

The issue to be resolved is whether or not the mark "LANSEN" used on whiskey, applied for by Respondent, is confusingly similar to the trademark "LANSON" and device for wines registered in favor of Opposer, Champagne Lanson Pere et Fils.

Our Trademark Law, particularly Section 4(d) thereof, provides as follows:

"SEC. Registration of trademark, trade-names and service marks on the principal register. - There is hereby established a register of trade-marks, trade-names and service-marks which shall be known as the principal register. 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:

x

x

x

(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 purchasers.”

From the drawing (Exh. “BBBBB”) of Respondent-Applicant's trademark “LANSEN” and the picture of the champagne bottle (Exh. “CCCCC”) bearing the trademark “LANSON” of Opposer, one can readily conclude that the trademarks in question are confusingly similar. “LANSEN” and “LANSON” consist of six (6) letters and the only difference between the two is the presence of the letter “E” in one, and “O” in the other; likewise, when pronounced, the sound of both marks are almost the same.

Witness Monsieur Bureau in his affidavit marked Exhibit “A” stressed the fact that Respondent-Applicant's trademark “LANSEN” allegedly adopted on May 12, 1978 is so similar visually and phonetically to trademark “LANSEN” of Opposer that confusion is bound to result. This fact was confirmed by witness Rosauro T. Lazaro, Executive Vice-President of the Manila Wine Merchants, Inc., the distributor of the Opposer in the Philippines, in his affidavit marked Exhibit “UUUU”.

Moreover, Respondent's mark “LANSEN” is used with whiskey, while Opposer's mark “LANSON” is used with champagne and wines. Doubtless, whiskey, champagne and wine are related goods.

In *American Wires and Cables Co. vs. Director of Patents*, February 18, 1970, 31 SCRA 544, the Supreme Court held that the determinative factor in a contest involving the registration of trademark is not whether the challenged mark would actually cause confusion or deception of the purchasers but whether the use of such mark would likely cause confusion or mistake on the part of the buying public. In short, to justify a denial of an application for registration, the law does not require that the competing trademarks be so identical as to produce actual error or mistake; it would be sufficient that the similarity be such that there is a possibility or likelihood that the purchasers mistake the older for the newer brand., Thus, the Court found trademark “DYNAFLEX” for electric wires to be confusingly similar to “DURAFLEX”, also for electric wires.

Likewise, the Court in *Co Tiong Sa vs. Director of Patents, et al.*, L-5378, May 24, 1954 found the trademark “FREEDOM” for undershirts and T-shirts to be confusingly similar with a prior-used trademark “FREEMAN” for polo shirts, undershirts, pajamas, skippers and T-shirts applying the dominancy test; and in *Operators, Inc. vs. Director of patents*, L-17901, October 29, 1965, it was held that considering the similarity in appearance and sound between the marks, “AMBISCO” for candy products was found to be confusingly similar with “NABISCO” for bakery products. Based on the foregoing, it is clear the Respondent-Applicant's mark “LANSEN” would likewise cause confusion or mistake, or deceive purchasers that its products are those of the Opposer.

WHEREFORE, the Opposition is given due course. Accordingly, Application Serial No. 37825 filed on March 12, 1979 by Jihro Limited for the registration of the trademark “LANSEN” used on whiskey is hereby REJECTED.

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

SO ORDERED.

IGNACIO S. SAPALO  
Director