

DORMAN INTERNATIONAL LIMITED,
Opposer,

INTER PARTES CASE NO. 1781

OPPOSITION TO:

- versus -

Application Serial No. 35864
Filed : July 26, 1978
Applicant : D.A.C. Philippine
Manufacturing, Inc.
Trademark : DORMAN
Used on : Jeans, polos, T-shirts,
shirts, underwear, such
as panties bras, and
briefs

D.A.C. PHILIPPINE
MANUFACTURING, INC.,
Respondent-Applicant.

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DECISION NO. 88-43 (TM)
July 7, 1988

DECISION

This is an Opposition to trademark "DORMAN & DEVICE" under Application Serial No. 35864 for Jeans, polos, T-shirts, underwear, such as panties, briefs, bras filed on December 12, 1983 by Opposer, Dorman International Limited.

Opposer is a company with limited liabilities registered under the laws of Hong Kong with principal place of business at Shun Wai Industrial Building, Flats B, C, and D, 15 Yuk Yat St., Tokwanan, Kowloon, Hong Kong; whereas Respondent-Applicant, D.A.C. Manufacturing Incorporated, is a corporation organized and existing under the laws of the Philippines located and doing business at 150 F. Roxas Street, 7th Avenue, Calocan City, Philippines.

The record showed that the Opposer's trademarks "DORS" and "DORMAN" were registered in the following countries:

1. Hong Kong (Exh. "H")
2. Philippines (Exh. "M")
3. China (Exh. "I")

claiming April 1974 as its prior date of use for articles of clothing, particularly ironed-on T-shirts, jeans, jackets and casual wear. Opposer had likewise made an application to register the trademark "DORMAN" in Hong Kong.

Opposer alleged that the trademark "DORMAN" of Respondent-Applicant is identical and/or confusingly similar to its own trademark "DORMAN" and since Respondent-Applicant's goods and those of the Opposer's are similar and belong to the same class, mistake, confusion or deception is likely to be caused to the buying public. Consumers would likely be confused into believing that the competing goods originated from the same source or that Respondent-Applicant is an affiliate or its goods are under the sponsorship of the Opposer. The latter also invoked Article 6bis and Article 8 of the Convention of Paris for the Protection of Industrial Property.

After being duly served with Notice to Answer, Respondent-Applicant failed to tender an answer and was subsequently declared in default on March 21, 1984 upon motion of Opposer.

The evidence presented disclosed that Opposer had sold a substantial quantity of its products bearing its trademark "DORS" in the Philippines (Exhs. "K", "K-1", "K-2") and advertized in magazines and circulars, which included the tradename "DORMAN" (Exhs. "F", "F-1", "F-2", "F-3", "F-3a", "F-4" and "F-4a"). The testimony of Opposer's Company Director was introduced to prove that confusion of origin of the goods would be caused to the buying public (Exh. "A").

The only issue to be resolved in this case is whether or not Respondent-Applicant's trademark "DORMAN" is confusingly similar with Opposer's "DORS" and/or "DORMAN" trademark. A side-by-side comparison of the labels of the contending marks would reveal that the trademarks are confusingly similar with each other since both use the word "DORMAN". There are differences but they are neither significant nor sufficient to call the attention of the average buyer to the fact that the products of one have a source different from that of the other. Whether or not a product causes confusion and is likely to deceive the public is a question of fact which is to be resolved by applying the "test of dominancy" which puts to essence the dominant features of the competing trademarks. Similarity in those dominant features is not enough, an exact duplication is not necessary. Neither must the public be actually confused (Phil. Nut Industry vs. Standards Brands, Inc., 65 SCRA 575; H. D. Lee Co., Inc. vs. Tee Liong Chai, Inter Partes Case No. 1818, Dec. 13, 1985). Since the goods of the parties are being sold or distributed through the same channel of trade, likelihood of confusion of the public would be real, (Philips Export B.V. vs. Standard Philips Corp., Inter Partes Case No. 2010, June 1, 1988).

WHEREFORE, Opposer having duly proven ownership and priority in use of the trademark "DORMAN", the herein Opposition is hereby GRANTED.

Let the records of this case be remanded to the Trademark Examining Division for appropriate action in accordance with this Decision.

SO ORDERED.

IGNACIO S. SAPALO
Director