

ESPRIT INTERNATIONAL  
Opposer,

INTER PARTES CASE NO. 3323

OPPOSITION TO:

- versus -

Application Serial No. 61093  
Filed : March 4, 1987  
Applicant : Bentley Lingerie, Inc.  
Trademark : ESLEEP  
Used on : Pajamas, night shirts,  
tank tops and underwear

BENTLEY LINGERIE, INC.,  
Respondent-Applicant.

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DECISION NO. 89-39 (TM)  
June 14, 1989

### DECISION

On January 18, 1989, Esprit International filed a Petition for Extension of Time within which to file its Verified Notice of Opposition against the registration of the trademark "ESLEEP" for pajamas, night shirts, tank tops and underwear, applied for by Bentley Lingerie, Inc. on March 4, 1987 under Application Serial No. 61093, published on Page 32, Volume I, No. 10 of the BPTTT Official Gazette dated and officially released on December 20, 1988.

Opposer is a limited partnership organized and existing under the laws of California, U.S.A., with business address at 900 Minnesota St., San Francisco, California, U.S.A., while Respondent-Applicant is a foreign corporation, with business address at 234 16<sup>th</sup> St., Jersey City, New Jersey 07032, U.S.A.

Opposer filed its unverified Notice of Opposition on February 17, 1989 and its Verified Notice of Opposition on April 17, 1989 based on the ground that:

"THE REGISTRATION OF THE MARK IN THE NAME OF RESPONDENT-APPLICANT IS PROSCRIBED BY SEC. 4 (d) OF REPUBLIC ACT NO. 166, AS AMENDED."

Respondent-Applicant was notified on February 22, 1989 and was required to file its Answer to the Notice of Opposition within fifteen (15) days from receipt thereof.

In its Answer, Respondent-Applicant denied the material allegations in the opposition and alleged as special and/or affirmative defenses the following:

"10. That the two trademarks ESPRIT and ESLEEP are entirely different in sound, spelling, appearance, meaning and even in their dominant features;

11. That there exist also substantial differences in the goods of the herein parties with respondent-applicants ESLEEP mark being limited to undergarments and sleepwear;

12. That respondent-applicant's trademark ESLEEP in itself and its presentation is a clearly distinctive trademark which prominently identifies and unequivocally distinguishes the origin and source of the goods on which it is used from all those manufactured, sold or dealt in by others x x x;"

Issues having been joined, the pre-trial conference was set to July 10, 1989.

On June 14, 1989, Opposer by Counsel filed a Manifestation informing the Bureau "that opposer is withdrawing the opposition x x x."

WHEREFORE, the herein opposition case is DISMISSED for having become moot. Hence, Application Serial No. 61093 for the registration of the trademark "ESLEEP" is hereby given due course.

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

SO ORDERED.

IGNACIO S. SAPALO  
Director