

GEOFFREY, INC.	}	IPC NO. 14-2003-00033
Opposer	}	Opposition to:
	}	Application No. 121176
- versus -	}	Date Filed: June 3, 1997
	}	TM: "KIDS 'R' FUN"
RICHWELL TRADING CORP.	}	
Respondent-Applicant.	}	
x-----x		Decision No. 2006-05

DECISION

This is an Opposition filed by Geoffrey Inc., the registered owner of the marks "KIDS 'R' US" and "TOYS 'R' US", against the application for registration by Richwell Trading Corporation of the mark "KIDS "R" FUN" for the goods "toys" in Class 28 under application no. 121176.

A Notice to Answer Opposer's Verified Notice of Opposition was received by Respondent-Applicant on May 29, 2003. For failure to file an Answer despite due notice, Respondent-Applicant was declared in default allowing the Opposer to present its evidence ex-parte.

The sole issue in this case is whether or not respondent-applicant is entitled to register the mark "KIDS "R" FUN" in its favor.

The issue before this Office is not new. On several occasions, this Office in resolving this issue have declared the superior right of the Opposer, Geoffrey Inc., over the elements "R" and "US" being the dominant features of the well-known marks "TOYS 'R' US" and "KIDS 'R' US".

In GEOFFREY, INC. VS. CHRISTINE CHUA, (Decision No. 2001-39, dated December 21, 2001) we ruled that:

"To prove that the mark TOYS 'R' US is widely and popularly used, Opposer presented ninety (90) trademark registrations and sixty-three (63) pending applications in seventy-five countries throughout the world (Exhibits "C", "C-1" to "C-9") and for which use of the trademark, Opposer has enjoyed international reputation and goodwill for the quality of the products they sell bearing the trademark.

Given the established goodwill and international reputation for its high quality products bearing the mark TOYS 'R' US, KIDS 'R' US and the other 'R' US marks, the trademark owner is entitled to protection when the use of the junior user, a Philippine applicant "forestalls the normal expansion of their business. ---xxx---".

The Opposer having sufficiently corroborated its claim, there being evidence enough to convince this Office that Opposer is the first registrant user and first adopted the mark TOYS "R" US, KIDS "R" US and the "R" US element in countries throughout the world. ---xxx---" (*emphasis ours*)

Likewise, in TOYS "R" US, INC. VS. CLOTHES "R" US, INC., (Decision No. 2002-41 dated December 26, 2002) we stated:

"Using the sponsorship theory, ---xxx---. This principle becomes more relevant since the mark "'R' US" is an arbitrary mark that is applied to an unfamiliar and unrelated product. Being a strong mark, it is afforded more protection than weaker marks such as those that are suggestive, descriptive or generic, and is registrable even without proof of secondary meaning. The adoption of strong

marks by the junior user can only be taken to mean that he intends to capitalize on the goodwill and reputation earned by the prior user of such marks.

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“Having established that the mark is well-known and has gained international recognition even before 1988, it may be said the Respondent, by using the word “R” US in its application, is simply riding in the goodwill and reputation of the Opposer.—xxx—“ (*emphasis ours*)

Furthermore, in TOYS “R” US, INC VS. CLOTHES “R” US, INC. (Decision No. 2002-42 dated December 26, 2002) we added:

“From the evidence presented by Petitioner, we find that it was able to prove by substantial evidence that its marks bearing the dominant feature “R” US are entitled to protection under article 6bis of the Paris Convention as implemented in the Philippines by the Ongpin memorandum dated October 13, 1983. In relation to the criteria enumerated in said memorandum, particularly paragraphs (c) and (d) thereof, we find that the marks TOYS R’ US and KIDS R’ US were duly registered in the industrial property offices of many countries even prior to 1988, and that the marks have been long established and obtained goodwill and general international consumer recognition as belonging to one owner or source, as shown by advertising and promotional materials referred to in the affidavits of Opposer’s witnesses.” (*emphasis ours*)

Thus, in the case of *DELBROS HOTEL CORPORATION vs. INTERMEDIATE APPELLATE COUTR, G.R. NO. L-72566. APRIL 12, 1988*, the Supreme Court stated:

*“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.”*

WHEREFORE, premises considered, the Notice of Opposition is, as it is hereby, **SUSTAINED**. Consequently, Application Serial No. 121176 for the mark “KIDS “R” FUN” for the goods “toys” in Class 28 filed on June 3, 1997 by RICHWELL TRADING CORP. is hereby **REJECTED**.

Let the filewrapper of “KIDS ‘R’ FUN” subject matter of the above-entitled case be forwarded to the Administrative, Financial and Human Resource Development Services Bureau (AFHRDSB) for appropriate action in accordance with this Decision with a copy thereof to be furnished the Bureau of Trademarks (BOT) for information and to update its records.

SO ORDERED.

Makati City, January 26, 2006.

ESTRELLITA BELTRAN-ABELARDO  
Director, Bureau of Legal Affairs  
Intellectual Property Office