

JANTZEN, INC.,  
Opposer,

INTER PARTES CASE NO. 3062

OPPOSITION TO:

Application Serial No. 56882  
Filed : July 16, 1985  
Applicant : Janton Garment  
Manufacturing Company  
Trademark : JANTON  
Used on : Babies' wear, such as T-  
shirts, polos, jeans,  
pants, etc.

- versus -

JANTON GARMENT MANU-  
FACTURING COMPANY,  
Respondent-Applicant.

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Decision No. 88-106 (TM)  
October 13, 1988

#### DECISION

Jantzen, Inc. filed on April 6, 1988 its opposition to the registration of the trademark "JANTON" for babies' wear, such as T-shirts, polos, jeans, pants, blouses, nighties, pajamas, sandos, panties, etc. applied for on July 16, 1985 by Janton Garment Manufacturing Company under Application Serial No. 56882, which was published on Page 57 of the maiden issue of the BPTTT Official Gazette dated February 25, 1988, but was released for circulation on March 8, 1988.

Opposer is a foreign corporation organized and existing under the laws of the State of Nevada, U.S.A., doing business at 411 N.E. 19<sup>th</sup> Avenue, Portland, Oregon, United States of America, while Respondent-Applicant is a partnership in the Philippines, with business address at 914 Juan Luna, Binondo, Manila, Philippines.

The grounds alleged in the Opposition are:

"1. The applicant's trademark JANTON is confusingly similar to the trademark JANTZEN owned by opposer which is registered worldwide and not abandoned, as to be likely, when applied to or used in connection with the goods of the applicant, to cause confusion or mistake, or deceive purchasers thereof and, therefore, violative of Section 4(d) of Republic Act 166, as amended; and

2. The registration of trademark JANTON in the name of the applicant will cause great and irreparable injury and damage to the opposer within the meaning of Section 8 of Republic Act 166, as amended."

Respondent-Applicant contends in its Answer that the marks of the Respondent and the Opposer are not confusingly similar; the Opposer will not be damaged by the mark "JANTON" because the Opposer's mark "JANTZEN" is not used in the Philippines; there is a previous registration of the mark "JANTON" in the name of Respondent-Applicant but was cancelled for the latter's failure to file the requisite Affidavit of Use; and the Respondent-Applicant has already been using the contested mark for a long time.

At the pre-trial conference set for August 17, 1988, neither the Respondent-Applicant nor its counsel appeared. The records show that the Notice of Pre-trial Conference was mailed, with return card, on July 15, 1988.

On motion of the Opposer made in open court, the Respondent-Applicant was declared in default and allowed the Opposer to present its evidence ex-parte. Being prepared for the hearing, Opposer submitted its Pre-trial Brief and proceeded with the presentation of its evidence, Exhibit "A". Opposer manifested that its Exhibit "A" is a text of the decision rendered by the Office in a prior case (Inter Partes Case No. 1312) between the same parties over the same mark "JANTON". Opposer further manifested that it is adopting the same evidence presented and admitted in the said earlier case, Inter Partes Case No. 1312. Hence, Opposer invoked res judicata in its favor.

The records show that herein case (Inter Partes Case No. 3062) is similar, if not identical, to a prior decided case, Inter Partes Case No. 1312. The same parties (Jantzen, Inc. as opposer, and Janton Garment Manufacturing Co. as Respondent-Applicant) are involved over the same subject matter (the trademark "JANTON" and on the same issue (confusing similarity between the marks "JANTZEN" and "JANTON"). The only minor difference between the two cases is the inclusion of additional goods on the latter case (Inter Partes Case No. 3062) to which the contested mark "JANTON" shall be used on.

In Exhibit "A" (Decision No. 88-64 TM dated August 3, 1988), it has been found by this Office that the marks "JANTON" and "JANTZEN" are confusingly similar, thus:

"There are strong indication showing that Respondent-Applicant in adopting the mark 'JANTON' attempted to get as close as he can to an already existing mark 'JANTZEN'. Hence, confusing similarity of the two contesting marks inevitably takes place.

WHEREFORE, the herein Notice of Opposition is SUSTAINED. Accordingly, Respondent's Application Serial No. 27380 for the registration of the mark 'JANTON' is REJECTED.

The above-cited decision is now final and executory.

WHEREFORE, the elements of res judicata obtaining in this case, herein Notice of Opposition is GRANTED. Accordingly, Respondent's Application Serial No. 56882 for the registration of the mark "JANTON" is REJECTED.

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

SO ORDERED.

IGNACIO S. SAPALO  
Director