

MONSANTO COMPANY,  
Petitioner,

INTER PARTES CASE NO. 1108

PETITION FOR CANCELLATION

Cert. of Regn. No. 25215

Issued : November 2, 1977

Registrant : Mosanti & Co., Inc.

Trademark : MOSANTI & LOGO  
DEVICE

Used on : Marketing agro-  
industrial chemicals

- versus -

MOSANTI & CO., INC.,  
Respondent-Registrant.

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DECISION NO. 88-15 (TM)

March 1, 1988

DECISION

This is a petition filed by Monsanto Company asking for the cancellation of Certificate of Registration No. 25215 issued on November 2, 1977 in favor of Respondent-Registrant, Mosanti & Co., Inc., for the trademark "MOSANTI & LOGO DEVICE" for use in connection with the business of marketing agro-industrial chemicals and goods.

Petitioner is a foreign corporation organized and existing under the laws of the United States, with its principal office at 800 North Linderburgh Blvd., County of St. Louis, State of Missouri, U.S.A., while Respondent-Registrant is a domestic corporation organized and existing under the laws of the Philippines, with business address at Telegrafo, Cagayan de Oro City, Misamis Oriental, Philippines.

The grounds for the said Petition are as follows:

"1. Petitioner is the owner of the following trademarks in the Philippines:

<u>Trademark</u>	<u>Regn. No.</u>	<u>Class No.</u>
MONSANTO	1370	6 & 7
MONSANTO	15374	1 & 44
MONSANTO BLOCK M	8078	12
MONSANTO BLOCK M	9245	1
MONSANTO BLOCK M	1225	7

2. The Petitioner's trademark MONSANTO is well-known in the Philippines and has an excellent reputation there because of the high and superior quality of Petitioner's products.

3. While the Petitioner partially relies on the registrations referred to in paragraph 1 hereof is intended to show also that by extensive use of the word MONSANTO by itself or in conjunction with a stylized M that use and registration of registrant's trademark must necessarily result in confusion and deception of the public.

4. It is believed and claimed that registrant's act in adopting a trademark similar to that of petitioner and also adopting a corporate name similar to that of the petitioner was made with the illegal and immoral intention of cashing in on the goodwill and popularity of petitioner's reputation and will cause great and irreparable injury and damage to the

petitioner pursuant to Rules 191, 192(e) and 193(a) of the Revised Rules of Practice in Trademark Cases and Section 4(d) of Republic Act No. 166, as amended.”

The Answer was submitted to this Office signed by Marilou B. Reyes, their Assistant Branch Manager, denying specifically all the material allegations in the said Petition.

Petitioner's counsel, however, moved for the declaration of Respondent in default for its failure to submit the required Answer on time. A motion to admit Answer was then filed by Respondent's representative but this was opposed vehemently through a series of Pleadings by Petitioner's counsel on the ground that said Motion did not contain any notice of hearing contrary to existing jurisprudence and the provisions of the New Rules of Court, which are suppletorily applied in this proceedings.

Order No. 208 dated October 3, 1980 was issued by the then Director of Patents, Demetrio T. Wendam, requiring the Respondent to file the necessary Answer which was then submitted as directed. Respondent herein denied specifically all the material averments contained in the Petition.

The pre-trial conference was scheduled but reset several times.

On May 16, 1983, the then Director Cesar C. Sandiego in effect advised counsel for the Petitioner in writing to initiate the reconstitution of the records of this case due to the loss of several documents that formed part of the expedients, occasioned by the transfer of this Office from its previous site in Quezon City to Midland Building, Buendia Avenue, Makati, Metro Manila.

On June 6, 1983, Order No. 226 was issued regarding the compliance of Petitioner's counsel for the reconstitution of the records of this case reciting therein the records to be reconstituted, as well as the existing records thereof.

On December 6, 1983, another Order No. 83-503 was issued enumerating the reconstituted documents, including the exhibits of Petitioner consisting of Exhibits “A” to “P” together with their corresponding sub-markings which were presented during the ex-parte hearing on February 23, 1982 (T.S.N., pp. 22-23). These were formally admitted as Petitioner's evidence.

Occasioned by the transfer anew of this Office from Midland Building to its present location, this case was again unacted upon for some time. To expedite matters and, considering that Respondent-Registrant was notified several times of the series of orders issued by this Office but has never responded, as a final step this Office on March 11, 1985 sent a letter to both parties by registered mail inquiring about their interest to pursue the case. Per the registry return card, the copy to Respondent-Registrant was returned to sender for “address unknown” as noted by the Bureau of Posts.

A supervening event, however, renders the proceedings moot. Reference is made to Respondent-Registrant's failure to file the necessary affidavit of use within one year from November 2, 1982, the fifth anniversary of the issuance of the certificate of registration.

Under Section 12 of the Trademark Law, its failure to file makes the registered mark cancellable by operation of law.

“SEC. 12. Duration. - Each certificate of registration shall remain in force for twenty years: Provided, that registrations under the provisions of this Act shall be cancelled by the Director, unless within one year following the fifth, tenth and fifteenth anniversaries of the date of issue of the certificate of registration, the registrant shall file in the Patent Office an affidavit showing that the mark or trade-name is still in use or showing that its non-use is due to special circumstances which excuse such non-use and is not due to any intention to abandon the same, and pay the required fee.”

WHEREFORE, premises considered, Certificate of Registration No. 25215 issued on November 2, 1977 in favor of the herein Respondent-Registrant, Mosanti & Co., Inc., for the trademark "MOSANTI & LOGO DEVICE" for use on marketing agro-industrial chemicals and goods is hereby considered ABANDONED; thus, this petition for cancellation is DISMISSED for being moot.

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

SO ORDERED.

IGNACIO S. SAPALO  
Director