

EDUARDO V. ROMUALDEZ, JR.,
Opposer,

INTER PARTES CASE NO. 3255

OPPOSITION TO:

- versus -

Application Serial No.: 58886
Filed: May 7, 1986
Applicant: Isabelita Sombrado
Trademark: SAMPAGUITA
Used On: Chewing tobacco and
cigarettes

ISABELITA SOMBRADO,
Respondent-Applicant.

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DECISION NO. 90-24 (TM)
July 2, 1990

DECISION

This is an opposition filed by Eduardo V. Romualdez, Jr., a Filipino citizen doing business at 2646 Dimasalang Street, Pasay City, Metro Manila, against the application for registration of the trademark "SAMPAGUITA" used on chewing tobacco and cigarettes bearing Application Serial No. 58886 filed on May 7, 1986 by Isabelita Sombrado, Filipina, doing business under the business style "Mindanao Chewing Tobacco Factory" at 40 P. Villanueva Street, Davao City.

Opposer stated as basis of his opposition the following:

"1. The trademark 'SAMPAGUITA', which has been previously registered in opposer's name under Certificate of Registration Number 41311 dated October 17, 1988 and used in commerce in the Philippines and not abandoned, is likely, when applied to or used in connection with the goods of the Applicant, to cause confusion, mistake or deception on the part of the purchasing public, who will be misled into believing that the goods of the Applicant come from or are under the sponsorship of Opposer.

2. The registration of the trademark 'SAMPAGUITA' will contravene Section 37 of Republic Act No. 166, as amended, and Section 6 and other provisions of the Paris Convention for the Protection of Industrial Property to which the Philippines is a party.

3. The registration of and use by Applicant of 'SAMPAGUITA' will diminish the distinctiveness and dilute the goodwill of Opposer's trademark 'SAMPAGUITA' on similar goods for promotional of expansion purposes.

4. The registration of 'SAMPAGUITA' in the name of the applicant is contrary to other provisions of the trademark law.

On November 15, 1988, a Notice to Answer was sent to the Respondent-Applicant informing her to file her Answer within fifteen (15) days after receipt of the Notice. However, a motion for extension of time was filed instead by the Respondent-Applicant for several times until finally this case was ordered, DISMISSED MOTU PROPIO dated March 19, 1990 under Order No. 90-147 for failure to prosecute for an unreasonable length of time.

The dismissal of the case, however, was reconsidered upon the filing by Opposer of the Motion for Reconsideration with Prayer to Declare Respondent-Applicant in Default.

On April 30, 1990, Order No. 90-251 was issued, and Order No. 90-147 dismissing this case for failure to prosecute is set aside, and Respondent-Applicant is declared in default. Accordingly, Opposer was allowed to present his evidence ex parte consisting of Exhibits "A" to "1-2" which were formally offered and admitted in evidence for the Opposer.

The issue to be resolved is: Who between the parties is entitled to own and register the mark "SAMPAGUITA" to the exclusion of others?

It must be pointed out that the marks claimed by both the Opposer and the Respondent-Applicant are confusingly similar with each other. A side-by-side comparison of the two contending marks readily show that they are identical in appearance, style of presentation as shown in their respective labels, sound, color and the goods on which the marks are being used.

The use and registration by Respondent-Applicant of an identical or confusingly similar mark for the same goods is contrary to Section 4(d) of Republic Act No. 166, as amended, which provides:

"SEC. 4. Registration of trademarks x x x on the Principal Register.- x x x The owner of the trademark x x x used to distinguish his goods x x x from, the goods x x x of others shall have the right to register the same on the Principal Register, unless it:

xxx

(d) Consists of or comprises a mark x x x which so resembles a mark x x x registered in the Philippines or a mark x x x previously used in the Philippines by another and not abandoned, as to be likely, when applied to or used in connection with the goods x x x of the applicant, to cause confusion or mistake or to deceive purchasers".

Opposer presented proofs showing that the mark of the Respondent-Applicant and that of the Opposer are identical (Exhs. "D" and "1-2").

Opposer has applied for the registration of the mark "SAMPAGUITA" with the Bureau of Patents, Trademarks and Technology Transfer on July 24, 1984 (Exh. "B-5") and was issued a certificate of trademark registration on October 17, 1988 (Exhs. "B" and "B-1").

From the foregoing exhibits, Opposer has shown concrete and convincing proofs that he is the owner, prior and continuous user of the mark "SAMPAGUITA" in the Philippines since July 15, 1983 and, therefore, clearly established that Respondent-Applicant's application on the registration of the mark "SAMPAGUITA" in her name is in violation of Section 4(d) of Republic Act No. 166, as amended. Respondent-Applicant, despite several extensions granted to file her Answer to the notice of opposition, failed to file the requisite Answer; hence, did not exert any effort to protect her interests thereon.

WHEREFORE, the herein Notice of Opposition is hereby GRANTED and Respondent-Applicant's Application Serial No. 58886 for the registration of the mark "SAMPAGUITA" is hereby REJECTED.

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