

SAN MIGUEL CORPORATION,
Opposer,

INTER PARTES CASE NO. 3332

OPPOSITION TO:

Application Serial No. 47875
Filed : April 2, 1982
Applicant : Filipinas Hosiery
Mfg. Cop.
Trademark : GOLD EAGLE & DEVICE
Used on : Socks

- versus -

FILIPINAS HOSIERY
MFG. CORP.

Respondent-Applicant.

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DECISION NO. 89-49 (TM)
July 11, 1989

DECISION

On February 7, 1989, San Miguel Corporation filed a verified Notice of Opposition against the registration of the trademark "GOLD EAGLE & DEVICE" used on socks, applied for by Filipinas Hosiery Mfg. Corp. on April 2, 1982 under Application Serial No. 47875 and published for opposition on Page 27, Volume II, No. 1 of the BPTTT Official Gazette dated and released on January 30, 1989.

Opposer is a domestic corporation organized and existing under and by virtue of the laws of the Philippines, with principal business at No. 40 San Miguel Avenue, Mandaluyong Metro Manila, while Respondent-Applicant is likewise a domestic corporation duly registered and existing under the laws of the Philippines, with business address at No. 9 Victoria Hills, San Francisco del Monte, Quezon City.

The grounds alleged in the Notice of Opposition are:

"1. Opposer is the owner of the trademark 'GOLD EAGLE & DEVICE' for beer, lager, pale pilsen, pilsener pils, stout, bock and other malt beverages under Certificate of Registration No. 34039 issued on February 13, 1985.

xxx

3. The registration of the trademark 'GOLD EAGLE' on socks in the name of respondent-applicant is in violation of and runs counter to Section 4 (d) of Republic Act 166, as amended, because it is confusingly similar to the trademark 'GOLD EAGLE & DEVICE' of the opposer x x x.

4. Opposer believes and therefore alleges that the registration of the trademark 'GOLD EAGLE' on socks in the name of respondent-applicant will cause irreparable injury and damage to herein opposer x x x."

On February 16, 1989, Respondent 16, 1989, Respondent-Applicant was notified of the herein opposition and was required to file its Answer thereto within fifteen (15) days from receipt of said notice.

For failure to file its Answer seasonably, Respondent-Applicant was declared in default in Order NO. 89-275 dated April 21, 1989 and Opposer was allowed to present its evidence ex-parte.

On May 16, 1989, Opposer presented its evidence ex-parte, consisting of Exhibits "A", "A-1" to "N", inclusive, which were formally offered and admitted in evidence for the Opposer during the hearing.

Since Respondent-Applicant did not file its Answer, no issue was raised thereby but still Opposer has to prove the grounds alleged in its Notice of Opposition.

Opposer has adequately proven and established its ownership of the trademark "GOLD EAGLE & DEVICE" used on beer since 1980, filed an application for its registration with the Philippine Patent Office on June 24, 1981 (Tsn., May 16, 1989, pp. 2 and 3), in respect of which Certificate No. 34039 was issued on February 13, 1985 (Exhs. "A" and "A-1"). Opposer also registered its ownership over the subject mark with the Copyright Office (Exh. "B").

Opposer seeks protection by invoking Section 4(d) of Republic Act No. 166, as amended, which provides:

"SEC. 4. Registration of trademarks, trade-names and service marks on the principal register. – x x x The owner of a 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:

(d) Consists of or compromises a mark or tradename which so resembles a mark or trade-name previously used in the Philippines by another and not abandoned, as to be likely, when applied to or used in connection with the goods, business or services of the applicant, to cause confusion or mistake or to deceive purchaser."

Opposer has shown that the mark applied for by Respondent-Applicant which compromise of the words "GOLD EAGLE" and the device of an eagle with spread wings (facsimile on Respondent's file wrapper and Exh. "M" is very similar, if not identical, with the Opposer's registered mark "GOLD EAGLE & DEVICE" (Exh. "A-1", "C", "D" and "J").

Further, Opposer presented evidence showing that its mark "GOLD EAGLE & DEVICE" has been widely and extensively advertised (Exhs. "C", "D", "E", "F", "G", "H", "I" and "K") with substantial amounts spent for the promotion of the mark, and that it has filed applications for registration of the mark in twelve (12) countries.

WHEREFORE, the herein Opposition is SUSTAINED. Accordingly, Application Serial No. 47875 for the registration of the mark "GOLD EAGLE & DEVICE" in favor of Respondent-Applicant is REJECTED.

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

SO ORDERED.

IGNACIO S. SAPALO
Director