

TIEN HUNG AGRO-INDUSTRIAL
CORPORATION,

Opposer,

INTER PARTES CASE NO. 3053

OPPOSITION TO:

Application Serial No. 33700
Filed : November 8, 1977
Applicant : Henry King
Trademark : TUNG HO
Used On : Agricultural sprayers

- versus -

HENRY KING

Respondent-Applicant.

x-----x

Decision No. 88-91 (TM)
August 22, 1988

DECISION

Tien Hung Agra-Industrial Corporation filed on March 15, 1988 its opposition to the registration of the trademark "TUNG HO" used on agricultural sprayers applied for on November 8, 1977 by Henry King in Application Serial No. 33700 published on Page 32 of the BPTTT Official Gazette, Volume I, No. I dated February 25, 1988 but was released for circulation on March 8, 1988.

Opposer is a domestic corporation with business address at 14-B J. Aquino Cruz Street, Quezon City, while Respondent-Applicant is a Filipino citizen doing business under the style "Henley Trading" at R-407 Alliance Lance Building, Rosario Street, Manila.

The grounds alleged in the Notice of Opposition are:

1. Respondent-Applicant is not the owner of the subject mark and, therefore, not qualified to apply for its registration; and
2. Subject mark is a well-known foreign trademark owned and used by a Taiwan manufacturer of agricultural sprayers.

Respondent-Applicant was furnished by registered mail a copy of the Notice of Opposition on March 22, 1988 requiring him to file his Answer thereto within fifteen (15) days from receipt thereof. Respondent received the Notice on April 6, 1988 and a copy of the Notice of Hearing on the Opposer's Motion for Final Rejection of Respondent's application set for June 22, 1988.

Respondent-Applicant did not file any Answer and did not also appear on the scheduled hearing.

Opposer presented its evidence on the hearing of June 22, 1988 consisting of Exhibits "A", "A-1", "B" and "C". The most relevant of them is the Decision of the Court of Appeals (Exh. "B") upholding the findings of this Bureau that the trademark "TUNG HO" used on agricultural sprayers is owned by Tien Hung Agricultural Company, Limited of Taiwan and should not be registered here by any other applicant claiming ownership of said mark. The Court of Appeals quoted our findings, thus:

"As indeed borne out by the evidences submitted by both parties in this case, the contending parties are mere importers of agricultural sprayer parts bearing the trademark 'TUNG HO' and that the real owner of the said mark is Tien Hung Agricultural Company, Limited of Taiwan. This Office, therefore, believes and must now hold that neither party is

entitled to register the same in this Office considering that they are both importers of the same goods bearing the same foreign mark.” (Tien Hung, Agro-Industrial Corporation vs. Anvil Manufacturing Corporation, CA-G.R. SP No. 08390, p. 6, Oct. 23, 1986, citing this Bureau’s Resolution dated Nov. 13, 1985, pp- 59-60).

The same Court said, in resolving the main issue (ownership of the mark) raised in the appeal:

“We are not at liberty to overturn the finding of facts of the Director of Patents, absent any showing of grave abuse of discretion. In *Sy Ching vs. Gaw Lies*, 44 SCRA 143, it was held:

‘Patents; Findings of Fact of Director of Patents supported by substantial evidence conclusive. – The finding of fact by the Director of Patents are conclusive on the Supreme Court provided they are supported by substantial evidence. In the absence of arbitrariness, the conclusion reached by the Director of Patents is to be accorded respect and must be upheld.’

In the case at bar, substantiality of the evidence in support of the findings and conclusion of the Director of Patents is present.

WHEREFORE, finding the appeal lacking in merit the same is DISMISSED. No costs.” (Tien Hung Agro-Industrial Corporation vs. Anvil Manufacturing Corporation, supra, P. 7)

The foregoing decision was appealed and was affirmed by the Supreme Court in a Resolution dated August 24, 1987 (Exh. “C”).

WHEREFORE, the herein Notice of Opposition is GRANTED. Accordingly, Respondent’s Application Serial No. 33700 for the registration of the trademark “TUNG HOA” in its favor is REJECTED.

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

SO ORDERED.

IGNACIO S. SAPALO
Director