

VERRERIE CRISTALLERIE
D'ARQUES-J.G. DURAND & CIE.,
Petitioner,

INTER PARTES CASE NO. 3123

CANCELLATION OF:

- versus -

Cert. of Regn. No.: SR-7727
Issued: April 14, 1987
Registrant: Atlantic Glassware Co., Inc.
Trademark: ARCOROC
Used On: Glassware, dinnerware,
serving trays, plates, cups, etc.

ATLANTIC GLASSWARE CO., INC.,
Respondent-Registrant.

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DECISION NO. 90-19 (TM)
March 30, 1990

DECISION

On January 4, 1989, Verrerie Cristallerie D'Arques J.G. Durand & Cie. filed a Petition for Cancellation of registration of the trademark "ARCOROC" under Certificate No. SR-7727 in the Supplemental Register issued on April 14, 1987 in favor of Atlantic Glassware Co., Inc. and used on glasswares, dinnerwares, serving trays, plates, cups and saucers, drinking glasses, vacuum bottles, cake plates, casseroles and pans.

Petitioner is a foreign corporation duly organized under the laws of France and doing business at 41 Avenue du General de Caulle, 62510 Arques France, while Respondent-Registrant is a domestic corporation of the Philippines doing business at 563 M. de Santos Street, Binondo, Manila, Philippines.

The grounds for cancellation are as follows:

"1. The petitioner is the owner of the trademark ARCOROC for its household and table glassware product under international Class 21 and has a French Certificate of Reg. No. 272 588 as evidenced of its ownership. Petitioner first used the mark on its products in May 1963 in France and in March 1982 in the Philippines.

2. The trademark ARCOROC registered by the respondent-registrant so resembles and is in fact identical to the aforementioned pending and unabandoned mark of the Petitioner that the continued use of the respondent-registrant's aforementioned mark on its goods will very likely cause confusion or mistake, or will deceive the purchasers thereof, such that the public may be led to believe that the mark of the respondent-registrant and the goods on which respondent-registrant's mark are used are those of VERRERIE CRISTALLERIE D'ARQUES J.G. DURAND & CIE.,. Petitioner herein.

3. The trademark ARCOROC is, and ever since its adoption, has been continuously applied to products of Petitioner, to the package and containers of said products and to tile labels affixed to said packages and containers. x x x

4. The Petitioner herein believes that the registration of the mark ARCOROC in the name of respondent-registrant has caused and will continue to cause great and irreparable injury and damage to herein Petitioner."

On January 11, 1989, Respondent-Registrant was notified of this Petition and was required to file its answer thereto within fifteen (15) days from receipt of the notice.

For failure to file its Answer, Respondent-Registrant was declared in default on Order No. 89-636 dated August 15, 1989 and Petitioner was allowed to present its evidence ex parte.

On September 6, 1989, Petitioner presented its evidence ex parte, consisting of Exhibits "A" to "D-1" which were formally offered and admitted in evidence for the Petitioner, in open court, on that same hearing date.

The issue to be resolved is whether or not Respondent Registrant registered the contested mark "ARCOROC" in violation of Section 4(d) of Republic Act No. 166, as amended, which provides:

"SEC. 4. Registration of trade-marks x x x on the principal register. x x x The owner of a trade-mark 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."

Petitioner presented proofs showing that the marks of Petitioner ("ARCOROC") and that of Respondent-Registrant ("ARCOROC") are identical (Exhs. "B" and "B-1"), that Petitioner has registered the mark "ARCOROC" in its home country (France) on May 10, 1963 in Saint Omer under Registration No. 205,836 (Exh. "A", p. 6); that Petitioner has made 69 registrations in 40 countries of the world from 1963 to 1988 (Exh. "C"); and that Petitioner has filed its application for the registration of the mark "ARCOROC" with the Philippine Patent Office on September 1, 1987 indicating therein "March 1982" as the date of its first use of the subject mark in the Philippines (Exh. "D-1").

From the foregoing; exhibits, Petitioner has shown concrete and convincing proofs that it is the owner, prior and continuous user of the mark "ARCOROC" in its home country since 1967 and expanded to other countries, including the Philippines thereafter and, therefore, clearly established that Respondent-Registrant has registered the mark "ARCOROC" in its name in violation of Section 4(d) of Republic Act No.166, as amended.

Respondent-Registrant, despite receipt of the Notice to Answer herein Petition for the cancellation of its registration did not exert any effort to protect its interests thereon.

WHEREFORE, this Petition is GRANTED. Accordingly, Certificate of Registration No. SR-7727 for the trademark "ARCOROC" in the name of Respondent-Registrant is CANCELLED from the Supplemental Register of this Bureau.

Let the records of the case be forwarded of the case be forwarded to the Patent/ Trademark Registry & EDP Division for appropriate action in accordance with this Decision.

SO ORDERED.

IGNACIO S. SAPALO
Director