

45 Phil. 398

[G.R. No. 20964. November 09, 1923]

LA INSULAR, FABRICA DE TABACOS Y CIGARRILLOS, INC., PLAINTIFF AND APPELLANT, VS. YU SO, OWNER OF LA GRANDEZA CIGARETTE FACTORY, DEFENDANT AND APPELLEE.

D E C I S I O N

MALCOLM, J.:

The trial judge found no unlawful similarity between Exhibit B-1, the package for cigarettes used by the defendant, under the name *La Simpatica*, and Exhibit A-1, the package for cigarettes used by the plaintiff, under the name *La Insular*, and accordingly dismissed the complaint without costs.

On the combined question of fact and law, we agree with the trial judge. Counsel for the appellee points out sixteen differences between the trade-marks and labels of the appellee and the appellant, and while we have not gone to the trouble to note all of these differences, we yet conclude that the goods of the defendant have not been given such an appearance as would deceive the public in their purchase of cigarettes. Moreover, it appears of record that *La Simpatica* has been using this label and selling these cigarettes since 1908, and that it was only in 1920 that this complaint was filed.

It is rudimentary that the simulation of the plaintiff's mark must be such as would appear likely to mislead the ordinarily intelligent buyer into accepting the article with the simulated wrapper as and for the genuine. Seasonable measures must be taken to protect the interests of the person who claims that his trade-mark has been fraudulently imitated, or who complains of unfair competition. (U. S. vs. Manuel [1906], 7 Phil., 221; La Yebana Co. vs. Francisco Chua Seco & Co. [1909], 14 Phil., 534, which discloses facts constituting unfair competition; Rueda Hermanos & Co. vs. Felix Paglinawan & Co. [1916], 33 Phil., 196, also finding unfair competition;

Forbes, Munn & Co. vs. Ang San To [1919], 40 Phil., 272, also finding unfair competition; Dy Buncio vs. Tan Tiao Bok [1921], 42 Phil., 190, finding no unfair competition to exist; La Insular vs. Jao Oge [1921], 42 Phil., 366, a somewhat similar case, but relating merely to the question of whether or not the complaint stated a good cause of action.)

Finding no reversible error and further discussion being unnecessary, it results that judgment must be affirmed, with costs against the appellant. So ordered.

Johnson, Avanceña, Villamor, and Romualdez, JJ.,
concur.

Street, and Johns, JJ., concur in the result.
