

G.R. No. L-10612

[ G.R. No. L-10612. May 30, 1958 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLANT, VS. LIM HOA ALIAS  
LIM HOA TING DEFENDANT-APPELLEE.**

## **D E C I S I O N**

### **CONCEPCION, J.:**

This is an appeal, taken by the prosecution, from an order of the Court of First Instance of Manila granting defendant's motion to quash the information and dismissing the case, with costs de officio.

Defendant Lim Hoa alias Lim Hoa Ting is accused of unfair competition in violation of Article 189 of the Revised Penal Code. It is alleged in the information:

“That on or about the 12th day of May, 1954, and for sometime prior and subsequent thereto, in the City of Manila, Philippines, the said accused, being then the owner and manager of a business establishment named Ting Lian Hong located at 339-341 Ylang-ylang Street, in said City, did then and there willfully, unlawfully and feloniously engage in unfair competition for the purpose of deceiving or defrauding A Tung Chiongco Trading, an authorized representative of Barrelson Inc., of its legitimate trade and/or the public in general and sell his goods, the Lantern Brand Food Seasoning by then and there giving it the general appearance of a product named Oak Barrel Brand Food Seasoning being sold and distributed by said A. Tung Chiongco Trading, as follows: the same sizes of the bottle containers, the yellow background color of the labels, the grouping or letterings in English and Chinese characters, the identical wording and listing of ingredients and instructions for the use of the product, the use of a lantern symbol closely resembling an oak barrel, the red seal on the neck of the bottle, the white top cover, the same color scheme of

the letterings, all of which induced the public to believe that the said Lantern Brand Food Seasoning is that of an Oak Barrel Brand Food Seasoning, which fact would be likely to induce the public to believe that the said products made in the Philippines is that of an Oak Barrel Brand Food Seasoning made in the United States, and thereby giving other persons a chance to do the same with a like purpose, and likewise caused to be affixed or used in his labels a false designation of origin or any false description or representation, such as, "VESO LANTERN BRAND SEASONING AGENCY L. H. TING'S IMPORTER - PACKED BY CHAMS PRODUCTS CO., SAN FRANCISCO, CALIF., 'and offered such goods to the public, to the damage and prejudice of said Oak Barrel Brand Food Seasoning's distributor, A. Tung Chingco Trading, and the public interest as a whole."

Upon arraignment, defendant entered a plea of not guilty, but, subsequently, he secured permission to withdraw his plea and moved to quash the information upon the ground "that the facts charged" therein" do not constitute any offense upon which a valid judgment or conviction may be based." The prosecution opposed this motion, but, to no avail. Hence, this appeal.

The order appealed from appears to have been influenced by the following factors, namely:

1. The allegation, in the motion to quash, that on May 12, 1953, the accused Lim Hoa had secured the registration, in the Patent Office of his trade mark "Lantern";
2. The opinion of His Honor, the trial Judge, to the effect that "the accused Lim Hoa x x x had applied in good faith for the registration of his trade mark with the Patent Office"; that the registration of his trade mark with the Patent Office"; that

"x x x the accused had applied for a patent and such patent having been issued or granting to him, shows conclusively the lack of criminal

intent on his part to violate the law. The sanction obtained by him from the government which approved his patent gives his act the halo of legality and he cannot therefore be prosecuted in a criminal action for the acts committed by him under and by virtue of the authority and sanction given by the government;"

that as "the owner and patentee of the trade-mark 'Lantern' x x" he had, under the provisions of section 20, Republic Act No. 166, "the exclusive right to use the same in connection with goods, business or services specified in his certificate", and that the same "is prima facie evidence of the validity of the registration in his favor and of the legality of the acts he had committed by virtue of said authority"; and

3. The finding of His Honor, the trial Judge, to the effect that said trade-mark "to the naked eye appears to be very much distinct and different from the trade-mark of Kuster Laboratories Incorporated and/or Barelson Incorporated, represented in the Philippines by A. Tung Chingco Trading," the complaint or offended party in the case at bar.

We have examined the trade-marks or labels in question - complaint's "Oak Barrel" and defendant's "Lantern" (reproductions of which were attached to the motion to quash) - and the majority of the members of this Court can not agree with the view of His Honor, the trial Judge, that the two (2) appear to be "very much distinct and different" from each other. Although there are some points of difference between said labels, it cannot be, and it is not, denied that the points of analogy specified in the information exist.

After reproducing the competing labels, in *Brooks Bros. vs. Froelich & Kuttner* (8 Phil., 580), this Court said:

"From an examination of these respective labels it will be noted that they

really of the same color, the corresponding parts of each of the labels being practically the same, both in form and color, and are so nearly alike that unless they were compared together the common observer would fail to note any difference whatsoever. The similarity between the general appearance of the packages with the labels imported and offered for sale by the defendant and those sold by the plaintiff is so great as to require the closest scrutiny to detect the difference, even to one wholly familiar with the packages and wholly aware of the difference between them. The similarity is such as to influence the purchaser of the goods offered by the defendants, to believe that the same are the goods of the plaintiff's manufacture. So faithfully and closely has the appearance and arrangement of plaintiff's packages of thread been followed by the defendant, that the mind refuses to credit the possibility of attributing the many points of identity to mere accidental coincidence on the part of the defendant.

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"From an examination of the evidence adduced in this caused in the court below, we are satisfied beyond a reasonable doubt that the defendant and appellant, in selling the thread in the boxes labeled in the manner described, intended to give his goods the general appearance of the thread manufactured and sold by the plaintiff, in the devices, labels, and words used by them, in a way which would be likely to influence purchasers to believe that the goods offered by them were those of the plaintiff, and that the similarity in the appearance of the goods offered for sale by the defendant to those of the conclusion that the defendant actually intended to deceive the public and defraud the plaintiff. (U.S. v. Manuel, 7 Phil. Rep., 221; Nellee vs. Baer, Senior & Co., 5 Phil., Phil. Rep., 608.)"

To the same effect is the view adopted in Nelle vs. Baer, Senior & Co. (5 Phil., 608), U.S. vs. Manuel (7 Phil., 221). U.S. vs. Gow Chiong (23 Phil., 138) and Flaming & Co. vs. Ong Ten Co. (26 Phil., 579).

For obvious reasons, it is not proper for us to say, as yet, that the similarity in the general appearance of the two (2) labels involved in the case at bar is such as to warrant the conclusion that the defendant intended to engage in unfair competition. However, the similarity between both is sufficient to require that the determination of such question be deferred until after the trial and the submission of the case for decision on the merits.

Moreover, it is explicitly alleged, in the information, that the defendant has “willfully, unlawfully and feloniously” engaged in unfair competition “for the purpose of deceiving or defrauding” the complainant herein “of its legitimate trade and/or of the public, in general, and sell his goods x x x by then and there giving it the general appearance of a product named Oak Barrel Brand Food Seasoning being sold and distributed” by said complaint, and that the similarities specified in the information “would be likely to induce the public to believe” that defendant’s product “made in the Philippines is that of an Oak Barrel Brand Food Seasoning made in the United States, x x x.” Thus, pursuant to the information, the acts therein set forth were performed by the accused in bad faith and with a fraudulent intent, and tend to mislead the public into believing that his products and those distributed by the complainant are is predicated upon the opposite premise, namely, that the accused acted in good faith, and that the public could not be misled into confusing or mistaking one product for the other.

This was a clear error on the part of the lower court. A motion to quash assumes the facts alleged in the information to be true. In some cases, additional facts, not alleged in the information, but admitted, or not denied, by the prosecution may be invoked in support of the motion to quash. In passing upon the same, the court, however, may not consider a situation contrary to that set forth in the information. In any event, in the case at bar, the prosecution does not admit that the defendant had acted in good faith. On the contrary, it asserts and maintains that he acted with malice and fraudulent intent. Neither does it admit that the labels or trade-marks in question are “very much distinct and different” from one another. What is more, it alleges and maintains that the points of analogy between the two are likely to induce the public to believe that defendant’s products are the very products being distributed by the complainant.

Again, although the certificate of registration of defendant's trade-mark is - in the language of the order appealed from - "prima facie evidence of the validity" of such registration, such evidence is rebuttable, not conclusive. In the case at bar, there is a factor that weakens defendant's alleged "exclusive right" by virtue of said registration: the fact that the "Oak Barrel" trade-mark was registered - according to said order - on March 4, 1952, or more than a year before the "Lantern" trade-mark. It is well settled, that "one may be declared unfair competitor even if his competing trade-mark is registered" (Alexander & Co. vs. Ang, L-6707, May 31, 1955; Parke Davies & Co. v. Kin Foo, 60 Phil. 928; Ed. A. Keller & Co. vs. Kinwa Meriyasu Co., 57 Phil., 262; Yebana Co. vs. Hua Seco & Co., 14 Phil. 534).

Lastly, the information herein alleges that defendant, likewise, "caused to be affixed or used in his labels a false designation of origin or false description or representation," such as, that his products are "packed by Chams Products Co., San Francisco, California," - although in fact they are packed by defendant in the Philippines. Such false representation falls under the second paragraph of Article 189 of our Revised Penal Code, pursuant to which the penalty prescribed in Article 188 thereof shall be imposed upon:

"Any person who shall affix, apply, annex, or use in connection with any goods or service, or any container or containers for goods, a false designation of origin, or any false description or representation, and shall sell such goods or services."

Said allegation of false representation by the defendant has not been contested in the motion to quash. Neither does defendant deny that said false representation is a crime punishable under said paragraph 2 Article 189. In fact, he now maintains - though not in his motion to quash - that, by reason of said averment, the information charges two offenses. Obviously, this pretense is inconsistent with his motion to quash, insofar as it maintains that the first part of the information does not charge any offense - particularly the crime of unfair competition under the first paragraph of Article 189. Under such theory, only the last part of the information charges an offense, namely a violation of said paragraph (2) of Article 189. In other words, under the view taken in the

motion to quash and the order appealed from, the information alleges only one (1) offense - a violation of the second paragraph of said Article. At any rate, defendant has not objected to the information in the lower court, upon the ground that it charges more than one offense.

In short, considering that the crime of unfair competition under the first paragraph of said Article 189 depends, to a large measure, upon the intent of the accused and the effect of his acts upon the public in general, both of which are questions of fact, the determination of which depends upon the evidence thereon, it is our considered opinion that the prosecution is entitled, at least, to an opportunity to prove the pertinent allegations of the information, that, at this stage of the proceedings, it is not fair to assume or conclude that said allegations are false, and that the lower court erred, therefore, in sustaining defendant's motion to quash.

WHEREFORE, the order appealed from must be, as it is, hereby reversed, and the record of this case is, accordingly, remanded to the court of origin for further proceedings, not inconsistent with this decision, with the costs of this instance against the appellee.

IT IS SO ORDERED.

*Paras, C.J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Reyes, J.B.L., Endencia, and Felix, JJ.,*  
concur.