

FRUIT OF THE LOOM, INC., PETITIONER, VS. COURT OF APPEALS AND GENERAL GARMENTS CORPORATION, RESPONDENTS.

G.R. No. L-32747. November 29, 1984

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

This is a petition for review on certiorari of the decision dated October 8, 1970 of the former Court of Appeals reversing the decision of the defunct Court of First Instance of Manila, Branch XIV, ordering the cancellation of private respondent's registration of the trademark FRUIT FOR EVE, enjoining it permanently from using said trademark and ordering it to pay herein petitioner P10,000.00 as attorney's fees.

Petitioner, a corporation duly organized and existing under the laws of the State of Rhode Island, United States of America, is the registrant of a trademark, FRUIT OF THE LOOM, in the Philippines Patent Office and was issued two Certificates of Registration Nos. 6227 and 6680, on November 29, 1957 and July 26, 1958, respectively. The classes of merchandise covered by Registration Certificate No. 6227 are, among others, men's, women's and children's underwear, which includes women's panties and which fall under class 40 in the Philippine Patent Office's classification of goods. Registration Certificate No. 6680 covers knitted, netted and textile fabrics.

Private respondent, a domestic corporation, is the registrant of a trademark FRUIT FOR EVE in the Philippine Patent Office and was issued a Certificate of Registration No. 10160, on January 10, 1963 covering garments similar to petitioner's products like women's panties and pajamas.

On March 31, 1965 petitioner filed before the lower court, a complaint for infringement of trademark and unfair competition against the here-in private respondent. Petitioner principally alleged in the complaint that private respondent's trademark FRUIT FOR EVE is confusingly similar to its trademark FRUIT OF THE LOOM used also on women's panties and other textile products. Furthermore, it was also alleged therein that the color get-up and general appearance of private respondent's hang tag consisting of a big red apple is a colorable imitation to the hang tag of petitioner.

On April 19, 1965, private respondent filed an answer invoking the special defense that its registered trademark is not confusingly similar to that of petitioner as the latter alleged. Like-wise, private respondent stated that the trademark FRUIT FOR EVE is being used on ladies' panties and pajamas only whereas petitioner's trademark is used even on men's underwear and pajamas.

At the pre-trial on May 5, 1965, the following admissions were made: (1) That the trademark FRUIT OF THE LOOM has been registered with the Bureau of Patents and it does not bear the notice 'Reg. Phil. Patent Off.'; and (2) That the trademark FRUIT FOR EVE has been registered with the Bureau of Patents and it bears the notice 'Reg. Phil. Patent Off.'; and (3) That at the time of its registration, plain-tiff filed no opposition thereto.

After trial, judgment was rendered by the lower court in favor of herein petitioner, the dispositive portion of which reads as follows:

"Judgment is, therefore, rendered ordering the Bureau of Patents to cancel the registration of the Trademark 'Fruit for Eve'; permanently enjoining Defendant from using the trademark 'Fruit for Eve'; ordering Defendant to pay plaintiff the sum of P10,000.00 as attorney's fees and to pay the costs."

Both parties appealed to the former Court of Appeals, herein petitioner's appeal being centered on the failure of the trial court to award damages in its favor. Private respondent, on the other hand, sought the reversal of the lower court's decision.

On October 8, 1970, the former Court of Appeals, as already stated, rendered its questioned decision reversing the judgment of the lower court and dismissing herein petitioner's complaint.

Petitioner's motion for reconsideration having been denied, the present petition was filed before this Court.

The first and second arguments advanced by petitioner are that the respondent court committed an error in holding that the word FRUIT, being a generic word, is not capable of exclusive appropriation by petitioner and that the registrant of a trademark is not entitled to the exclusive use of every word of his mark. Otherwise stated, petitioner argues that the respondent court committed an error in ruling that petitioner cannot appropriate exclusively the word FRUIT in its trademark FRUIT OF THE LOOM.

The third and fourth arguments submitted by petitioner which we believe is the core of the present controversy, are that the respondent court erred in holding that there is no confusing similarity in sound and appearance between the two trademarks in question. According to petitioner, the prominent and dominant features in both of petitioner's and private respondent's trademark are the word FRUIT and the big red apple design; that ordinary or average purchasers upon seeing the word FRUIT and the big red apple in private respondent's label or hang tag would be led to believe that the latter's products are those of the petitioner. The resolution of these two assigned errors in the negative will lay to rest the matter in litigation and there is no need to touch on the other issues raised by petitioner. Should the said questions be resolved in favor of petitioner, then the other matters may be considered.

Petitioner, on its fifth assigned error, blames the former Court of Appeals for not touching the question of the fraudulent registration of private respondent's trademark FRUIT FOR EVE. As may be gleaned from the questioned decision, respondent court did not pass upon the argument of petitioner that private respondent obtained the registration of its trademark thru fraud or misrepresentation because of the said court's findings that there is no confusing similarity between the two trademarks in question. Hence, said court has allegedly nothing to determine as to who has the right to registration because both parties have the right to have their respective trademarks registered.

Lastly, petitioner asserts that respondent court should have awarded damages in its favor because private respondent had clearly profited from the infringement of the former's trademark.

The main issue involved in this case is whether or not private respondent's trademark FRUIT FOR EVE and its hang tag are confusingly similar to petitioner's trademark FRUIT OF THE LOOM and its hang tag so as to constitute an infringement of the latter's trademark rights and justify the cancellation of the former.

In cases involving infringement of trademark brought before this Court it has been consistently held that there is infringement of trademark when the use of the mark involved would be likely to cause confusion or mistake in the mind of the public or to deceive purchasers as to the origin or source of the commodity (*Co Tiong Sa vs. Director of Patents*, 95 Phil. 1; *Alhambra Cigar & Cigarette Co. vs. Mojica*, 27 Phil. 266; *Sapolin Co. vs. Balmaceda*, 67 Phil. 705; *La Insular vs. Jao Oge*, 47 Phil. 75).

In cases of this nature, there can be no better evidence as to whether there is a confusing similarity in the

contesting trademarks than the labels or hang tags themselves. A visual presentation of the labels or hang tags is the best argument for one or the other, hence, We are reproducing hereunder pictures of the hang tags of the products of the parties to the case. The pictures below are part of the documentary evidence appearing on page 124 of the original records.

Petitioner asseverates in the third and fourth assignment of errors, which, as We have said, constitute the main argument, that the dominant features of both trademarks is the word FRUIT. In determining whether the trademarks are confusingly similar, a comparison of the words is not the only determinant factor. The trademarks in their entirety as they appear in their respective labels or hang tags must also be considered in relation to the goods to which they are attached. The discerning eye of the observer must focus not only on the predominant words but also on the other features appearing in both labels in order that he may draw his conclusion whether one is confusingly similar to the other (*Bristol Myers Co. vs. Director of Patents*, 17 SCRA 131).

In the trademarks FRUIT OF THE LOOM and FRUIT FOR EVE, the lone similar word is FRUIT. WE agree with the respondent court that by mere pronouncing the two marks, it could hardly be said that it will provoke a confusion, as to mistake one for the other. Standing by itself, FRUIT OF THE LOOM is wholly different from FRUIT FOR EVE. WE do not agree with petitioner that the dominant feature of both trademarks is the word FRUIT for even in the printing of the trademark in both hang tags, the word FRUIT is not at all made dominant over the other words.

As to the design and coloring scheme of the hang tags, We believe that while there are similarities in the two marks like the red apple at the center of each mark, We also find differences or dissimilarities which are glaring and striking to the eye, such as:

1. The shape of petitioner's hang tag is round with a base that looks like a paper rolled a few inches in both ends; while that of private respondent is plain rectangle without any base.
2. The designs differ. Petitioner's trademark is written in almost semi-circle while that of private respondent is written in straight line in bigger letters than petitioner's. Private respondent's tag has only an apple in its center but that of petitioner has also clusters of grapes that surround the apple in the center.
3. The colors of the hang tag are also very distinct from each other. Petitioner's hang tag is light brown while that of respondent is pink with a white colored centerpiece. The apples which are the only similarities in the hang tag are differently colored. Petitioner's apple is colored dark red, while that of private respondent is light red.

The similarities of the competing trademarks in this case are completely lost in the substantial differences in the design and general appearance of their respective hang tags. WE have examined the two trademarks as they appear in the hang tags submitted by the parties and We are impressed more by the dissimilarities than by the similarities appearing therein. WE hold that the trademarks FRUIT OF THE LOOM and FRUIT FOR EVE do not resemble each other as to confuse or deceive an ordinary purchaser. The ordinary purchaser must be thought of as having, and credited with, at least a modicum of intelligence (*Carnation Co. vs. California Growers Wineries*, 97 F. 2d 80; *Hiram Walke and Sons vs. Penn-Maryland Corp.*, 79 F. 2d 836) to be able to see the obvious differences between the two trademarks in question. Furthermore, We believe that a person who buys petitioner's products and starts to have a liking for it, will not get confused and reach out for private respondent's products when she goes to a garment store.

These findings in effect render immaterial the other errors assigned by petitioner which are premised on the assumption that private respondent's trademark FRUIT FOR EVE had infringed petitioner's trademark FRUIT OF THE LOOM.

WHEREFORE, THE DECISION APPEALED FROM IS AFFIRMED. COSTS AGAINST PETITIONER.

SO ORDERED.

Aquino, Concepcion, Jr., Abad Santos, Escolin, and Cuevas, JJ., concur.

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