

BERT R. BAGANO, PETITIONER, VS. THE DIRECTOR OF PATENTS AND THE INTERNATIONAL PHARMACEUTICALS, INC., RESPONDENTS.*G.R. No. L-20170. August 10, 1965*

Ponente: PAREDES, J.

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This is an inter-partes proceedings, in connection with the registration of the Trademark "EFFICASCENT OIL," between petitioner herein and the respondent International Pharmaceuticals, Inc.

A brief on the facts shows that on June 23, 1959, Bert R. Bagano, filed with the Philippine Patent Office, a petition for registration of the trademark "Efficascent Oil" in his favor. On August 17, 1959, respondent International Pharmaceuticals, Inc., also presented with said office, a petition for registration of the same trademark. The petitions, referring to the same trademark, were heard, for the purpose of establishing the question of priority of adoption and use. The Director of Patents, on June 29, 1962, rendered judgment, the pertinent portions of which recite:

"* * * It is alleged and claimed in their respective applications that Bert R. Bagano, hereafter referred to as Senior Party, had adopted and has been using his trademark since February 1, 1959, which he tried to amend in the course of the hearing to December 18, 1958, while the International Pharmaceuticals, Inc., hereinafter referred to as Junior Party, has adopted and had been, through its predecessor in interest continuously using its trademark since June 8, 1949.

"The evidence of record shows that it was the Junior Party's predecessor in interest, Miguel K. Chiong, of Cebu City, who owned and who was given permit by the Board of Pharmaceutical Examiners and Inspectors to prepare through his pharmaceutical laboratory called Tropical Herb Service his pharmaceutical preparation bearing the mark "EFFICOL" which was duly analyzed and found to be not adulterated and misbranded under Laboratory No. D-48-1075, on October 4, 1948 (Exh. "H"). He later changed the mark of his product to "EFFICASCENT OIL" and the name of his laboratory to Tropical Pharmaceutical Laboratory. The changes were duly approved and noted in the record of the board of Pharmaceutical Examiners and Inspectors on June 8, 1949 (Exh. I). Another permit, numbered 49, was issued on February 15, 1954, to Miguel K. Chiong to operate a pharmaceutical and drug manufacturing laboratory called Tropical Pharmaceutical Laboratory under the management of pharmacist Cristeta Castillo Bagano (Exh. J & N).

"On January 16, 1959, Miguel K. Chiong, together with his daughter Rebecca Chiong Llaguno, sold the formula of his pharmaceutical product registered under No. D3-718 with the Board of Pharmaceutical Inspectors and Examiners, together with its goodwill, tradename and the right to manufacture the said "EFFICASCENT OIL" for P10,000.00 to be paid in installments, to the Wong Brothers namely, George, David, Sergio, Pio and Sixto, all of Cebu City (Exh. G). Upon payment of the remaining balance of the selling price, the final deed of sale was executed on June 9, 1960 (Exh. G-1). The Wong brothers thereafter formed a corporation, the International Pharmaceuticals, Inc., which is the Junior Party in this case, to operate a laboratory for the manufacture of said product, among its other pharmaceutical products and to distribute the same. (Exh. K).

"Again, said pharmaceutical product was submitted by the Junior Party to, and was duly analyzed by, the Public Health Research Laboratory under Laboratory No. D591010, and was found not adulterated nor misbranded and so was permitted, under permit No. 157, issued on June 5, 1959, by the Drug and Cosmetic Inspection to continue to manufacture and sell the same (Exh. L, M & O).

"On the side of the Junior Party, we do find in conclusion that, as the prior and continuous use by its predecessor in interest inures to its benefit, it has adopted and has been continuously using its trademark on its pharmaceutical preparation thru its predecessor in interest since 1949, as shown by sales invoices (Exhs. P to P-30).

"On the side of the Senior Party, we find no convincing and conclusive proof that he had adopted and used his alleged trademark earlier than the date of first use of the Junior Party. The "purchaser's contract" (Exhs. 7 to 7-E) submitted together with his uncorroborated testimony, when he testified in his behalf as his sole witness, failed to satisfactorily show that he is actually the manufacturer and owner of the products listed in the said contract. It tends to show that he has been dealing only on the product bearing the mark "EFFICASCENT OIL" since December 12, 1958, which; if, considered as his date of first use, is very much later than June 8, 1949, the date of first use asserted by the Junior Party.

"We consider it quite significantly important that while on the one hand the Junior Party has submitted evidence that it has been duly given permit by the proper government authority to manufacture and sell its product bearing the mark "EFFICASCENT OIL ", the Senior Party on the other hand, has not been issued such permit to show prior use and adoption.

"From the above facts and circumstances, the International Pharmaceuticals, Inc., has priority of adoption and use of its trade mark, and has a better right to its registration than the Senior Party.

"WHEREFORE, Application Serial No. 721S of International Pharmaceuticals, Inc., should be, as it is hereby given due course. Application Serial No. 7113 of Bert R. Bagano is hereby rejected."

The above judgment is now before Us for Review on four (4) counts, all of which pose the issue of whether the respondent Director of Patents was right in concluding that the appellee International Pharmaceuticals, Inc., had priority of adoption and use of the trademark "EFFICASCENT OIL."

It is almost trite to state here that in cases of the nature as the one at bar, only questions of law are to be raised in order that this Court could exercise its appellate jurisdiction and review the decision. Basically, the errors assigned call for an examination of the evidence, which is primarily a question of fact. When the director of Patents found that respondent International Pharmaceuticals, Inc., had priority of adoption and use, which is fully supported by the evidence, documentary and testimonial, such was a conclusion of fact to which this Court is bound.

The petitioner claims that the evidence adduced by the respondent company, was hearsay and self-serving. The respondent Director of Patents found otherwise, to which We agree. The evidence on record consisted of permits granted by the Board of Pharmaceutical Examiners and Inspectors to Miguel K. Chiong, predecessor-in-interest of respondent International Pharmaceuticals, Inc., to prepare, sell and distribute his product "EFFICOL" (Exh. H), which name was later changed to "EFFICASCENT OIL," with the approval of the same Board (Exh. I). Exhibits P to P-30, sales invoices, also showed that the product "EFFICASCENT OIL" had been sold to the public since 1949 to 1950. It was also shown that after Chiong sold his rights to the product, the purchasers thereof (the Wong Brothers) subsequently formed a corporation (respondent International Pharmaceuticals, Inc.) for the purpose of operating a laboratory and selling drugs, one of which is the preparation known as "EFFICASCENT OIL" (Exh. K) and that this product was submitted for analysis to the Drug and Cosmetics Inspection Division (Exh. M). Petitioner claims that the mere issuance of permits to prepare, did not necessarily connote the ownership and sale

to the public of the product. Granting this to be true, under the facts obtaining in the case, We are inclined to believe that respondent had priority of adoption and use of the trademark. This conclusion is augmented if we take into consideration the fact that petitioner's wife had been admittedly in the employ of Miguel K. Chiong, from 1948 to 1957, as a pharmacist, and therefore, had knowledge of the manufacture and sale of the product. The evidence on record, therefore, sufficiently supports the finding of priority of adoption and use by the respondent International Pharmaceuticals, Inc., of the trademark "EFFICASCENT OIL," thereby giving more right to its registration than petitioner.

Premises considered, the decision appealed from should be, as it is hereby affirmed in all respects, with costs against petitioner in both instances.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J. B. L., Dizon, Regala, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

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