

**ANG SI HENG AND SALUSTIANA DEE, PLAINTIFFS AND APPELLANTS,
VS. WELLINGTON DEPARTMENT STORE, INC., BENJAMIN CHUA, S.R.
MENDINUETO, AND FILEMON COSIO,. DEFENDANTS AND
APPELLEES.**

G. R. No. L-4531. January 10, 1953

Ponente: LABRADOR, J.

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LABRADOR, J.:

The plaintiffs-appellants herein are engaged in the business of manufacturing shirts, pants, drawers, and other articles of wear for men, women, and children. They have been in that business since the year 1938, having obtained the registration for the said articles; the trademark of "Wellington.¹¹ In the year 1940 they registered the business name "Wellington Company," and this registration of the name was renewed on June 11, 1946. Their invoices, stationery, and sign board bear the tradename "Wellington Company," and in newspaper advertisements they described their business as "Wellington Shirt Factory." It does not appear, however, that their trademark for their articles of wear was again registered; after August 27, 1938, nor their tradename registered after 1946.

Defendant Benjamin Chua applied for the registration of the business name "Wellington Department Store" on May 7, 1946. His application therefor was approved by the Bureau of Commerce, and a certificate issued in his favor. On June 8, 1946, this business name was transferred to Wellington Department Store, Inc., of which he is the president. It does not appear, however, that his; application with the Bureau of Commerce for the registration of the business name "Wellington Department Store" has been renewed,, and neither does it appear that the business name "Wellington Company" applied for by plaintiffs-appellants has also been renewed.

The plaintiffs-appellants allege that the use of the words "Wellington Department Store" as a business name and as a corporate name by the, defendant-appellee deceives the public into buying defendant corporation's goods under the mistaken belief that; the same are the plaintiffs¹ or have the same source as plaintiffs' goods, thereby resulting in damage to them. They, therefore, pray that the defendant corporation be enjoined from using the business name "Wellington Department Store" and the corporate name "Wellington Department Store, Inc."; that the Director of Commerce be ordered to cancel the registration of said business name, and the Securities and Exchange Commissioner be also ordered to cancel the corporation name "Wellington Department Store, Inc." In their answer the defendants Wellington Department Store, Inc., and Benjamin Chua allege, by way of special defense, that the plaintiffs are engaged in the manufacture or production of shirts, pants, drawers, and other articles of wear for men, women, and children, and keep a dry goods store for the sale of the same, whereas they (the defendants) are not engaged in the same business or in the manufacture or sale of articles with the trademark "Wellington," and that they are keeping,a store for articles such as shoes, hats, toys, perfumes, bags, apparels, and the like, most of which are different from those manufactured and sold by plaintiffs-appellants.

Upon the above issues the parties went to trial, and thereafter the court a quo dismissed the complaint and absolved the defendants therefrom, holding that the corporate name "Wellington Department Store, Inc.," has not

been previously acquired and appropriated by any person or corporation, citing the cases of *Compañia General de Tabacos vs. Alhambra Cigar & etc. Co.*, 33 Phil. 485, and; *Walter E. Olsen & Co. vs. Lambert*, 42 Phil. 633. Against this decision the plaintiffs have prosecuted this appeal, contending that the appellees' business is similar and identical, to that of the appellants; that the use of the business name "Wellington Department Store, Inc.," misleads and confuses the public; that plaintiffs-appellants have acquired a property right in the name "Wellington"; and that if the defendants-appellees are not liable for any infringement of trade-name, at least they are liable for unfair competition.

The term "Wellington" is either a geographical name (see: Webster's International Dictionary, where it is said to be the capital of New Zealand; urban district of Shropshire, England and of Somersetshire, England; co. seat, of Summer co., Kans., etc.), or the surname of a person. But mere geographical names are ordinarily regarded as common property, and it is a general rule that the same can not be appropriated as the subject of an exclusive trademark or tradename. (52 Am. Jur. 548.) Even if Wellington were a surname, which is not even that of the plaintiffs-appellants, it can not also be validly registered as a tradename. (Section 4, Paragraph (e), Republic Act No. 166.) As the term can not be appropriated as a trademark or a tradename, no action for violation thereof can be maintained, as none is granted by the statute in such cases. The right to damages and for an injunction for infringement of a trademark or a tradename is granted only to those entitled to the exclusive use of a registered trademark or tradename. (Section 23, Republic Act No. 166.) It is evident, therefore, that no action may lie in favor of the plaintiffs-appellants herein for damages or injunctive relief for the use by the defendants-appellees of the name "Wellington."

The complaint, however, alleges that the defendants-appellees have the actual intent to mislead the public and to defraud the plaintiffs, as by the use of the name "Wellington Department Store," they have deceived the public into buying its goods, under the mistaken belief that the same are the plaintiffs' or have the same source as the plaintiffs' goods. The action is evidently one for unfair competition, which is defined in Chapter VI, Section 29, of Republic Act No. 166, not one for violation of a trademark or a tradename. In order to determine whether defendants are liable in this respect and have deceived the public into believing that the goods they sell are of plaintiffs' manufacture or proceed from the same source as plaintiffs' goods, all the surrounding circumstances must be taken into account, especially the identity or similarity of names, the identity or similarity of their business, how far the names are a true description of the kind, and quality of the articles manufactured or the business carried on, the extent of the confusion which may be created or produced, the distance between the place of business of one and the other party, etc. (*Chas. S. Higgins Co. vs. Higgins Soap Co.*, 144 N. Y. 462, 39 N. E. 490, 27 L.R.A. 42, 43 Am.St. Rep. 769.)

While there is similarity between the trademark or tradename "Wellington Company" and that of "Wellington Department Store," no confusion or deception can possibly result or arise from such similarity because the latter is a "department store," while the former does not purport to be so. The name "Wellington" is admittedly the name of the trademark on the shirts, pants, drawers, and other articles of wear for men, women and children, whereas the name used by the defendant indicates not these manufactured articles or any similar merchandise, but a department store. Neither can the public be said to be deceived into the belief that the goods being sold in defendants's store originate from the plaintiffs, because the evidence shows that defendant's store sells no shirts or wear bearing the trademark "Wellington," but other trademarks. Neither could such deception be by any possibility produced because defendant's store is situated on the Escolta, while plaintiffs' store or place of business is located in another business district far away from Escolta. The mere fact that two or more customers of the plaintiffs thought of the probable identity of the products sold by one and the other is not sufficient proof of the supposed confusion that the public has been led into by the use of the name adopted by the defendants. No evidence has been submitted that customers of the plaintiffs-appellants had actually been misled into purchasing

defendant's articles and merchandise, for the very witnesses who have supposedly noted the use of plaintiffs' tradename do not claim to have actually purchased any articles from defendant's store.

The concept of unfair competition has received the attention of this Court in two previous cases, that of *Ang vs. Teodoro*[1] (2 Off. Gaz., No. 7, 673) and *Teodoro Kalaw Ng Khe vs. Lever Brothers Co.* [2](R.G. No. 46817, promulgated on April 13, 1941.) In the first case this Court stated that even a name or phrase not capable of appropriation as trademark or tradename may, by long and exclusive use by a business with reference thereto or to its products, acquire a proprietary connotation, such that the name or phrase to the purchasing public becomes associated with the business or the products and entitled to protection against unfair competition. But in the case at bar, the principle therein enunciated can not be made to apply because the evidence submitted by the appellants did not prove that their business has continued for so long a time that it has become of consequence and acquired a goodwill of considerable value, such that its articles and products have acquired a well-known reputation, and confusion will result by the use of the disputed name by the defendants' department store. It is true that appellants' business appears to have been established a few years before the war and appellees' after liberation yet it seems appellees' business and goodwill are the products of their own individual initiative, not wrested by unfair competition from appellants business and goodwill.

In the case of *Kalaw Ng Khe vs. Lever Brothers Co.*, this Court, citing a well-considered opinion of the Court of Appeals published in 39 O.G. 1479-1436, No. 62, May 24, 1941, declared that it is not necessary that articles of the petitioner be exactly similar to those handled by respondents in order that unfair competition may be said to arise, and that it is sufficient for the articles to fall under the general category of toilet articles. It might be true that, inasmuch as appellees' department store deals on shirts and other articles of wear while appellants produce the same articles, some competition would arise between them. It is not, however, competition that the law seeks to prevent, but unfair competition, wherein a newcomer in business tries to grab or steal away the reputation or goodwill of the business of another. As the court stated in said case, "the tendency of the courts has been to widen the scope of protection in the field of unfair competition. They have held that there is no fetish in the word 'competition,' and that the invocation of equity rests more vitally on the element of unfairness." As we have stated, appellants have not shown any well-established reputation or goodwill previous to the establishment of appellees' business, such that it can be said that something was unfairly taken away from them by the use of such reputation by the appellees' department store.

We agree, therefore, with the trial court that plaintiffs~appellants have not been able to show the existence of a cause of action for unfair competition against the defendants-appellees.

The judgment appealed from is, therefore, affirmed, with costs against the plaintiffs-appellants.

Paras, C.J., Pablo, Bengzon, Tuason, Montemayor, Jugo and Bautista Angelo, JJ., concur.

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