

THE GEORGE W. LOFT COMPANY, INC., PETITIONER, VS. NGO GUAN AND DIRECTOR OF PATENTS, RESPONDENTS.*G.R. No. L-21915. December 17, 1966*

Ponente: CONCEPCION, C.J.

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This is a petition for review of a decision and a resolution of the Director of Patents.

Petitioner, George W. Luft Co., Inc. — a foreign corporation organized under the laws of the State of New York — is the owner of the trademark "Tangee", which it has allegedly used since February 28, 1928, and is covered by Certificate of Registration No. 2178-S of the Philippine Patent Office, dated February 21, 1950. On January 22, 1959, Ngo Guan applied for the registration of the trademark "Tango", which he claims to have used since June, 1958. Petitioner objected thereto alleging that "Tango" is likely to be mistaken for "Tangee", upon the ground that the two trademarks are confusingly similar.

After appropriate proceedings the Director of Patents rendered a decision overruling said opposition and granting Ngo Guan's application. A reconsideration of this decision having been denied, petitioner brought the matter before this Court for a review of said decision and of the resolution denying a reconsideration thereof.

The only issue for our determination is whether or not the "Tango" trademark is confusingly similar with the "Tangee" trademark, as contended by petitioner herein, as to be likely to be mistaken for the latter by the unsuspecting public.[1] Petitioner, which has the burden of proving its contention, has not, however, done so.

To begin with, one of the factors essential therefor is whether or not there is a general similarity in the appearance of the trademarks in question, which can not be determined with reasonable certainty without a physical examination and comparison thereof. Petitioner has rendered such examination impossible, by not introducing any evidence whatsoever as to the appearance of the "Tangee" trademark. What is more, such omission suggests that its appearance is not analogous to that of respondent's "Tango", for, otherwise, petitioner would not have failed to present a sample of its trademark, for comparison with that of respondent Ngo Guan.

Moreover, the word "Tango" has a well established meaning, for it describes a particular dance that is well known in the Philippines. In fact, respondent's label includes the picture of a man and a woman dancing. Again, "Tango" is used by Ngo Guan for no other product than hair pomade, in which petitioner does not deal. Upon the other hand, petitioner's trademark is used for specified chemicals, medical and pharmaceutical preparations— namely: "lipstick, creme rouge, compact rouge, cleansing cream, day cream, night cream, massage cream, face lotion, astringent, face powder, powder compacts, cosmetics for lashes, brows, and hair, hair pencils, nail polish, perfumes, and toilet waters — and it is not claimed that Ngo Guan uses or intends to use its "Tango" trademark on articles of this kind.

WHEREFORE, the decision and the resolution appealed from are hereby affirmed, with costs against petitioner, George W. Luft Co., Inc.

IT IS SO ORDERED.

Reyes, J.B.L., Barrera, Dizon, Regala, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, and Ruiz Castro, JJ., concur.

[1] Co Tiong vs. Director of Patents, 95 Phil. 1.

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