

R. F. & J. ALEXANDER & CO., LTD., AND KER & CO., LTD., PETITIONERS, VS. JOSE ANG, DOING BUSINESS UNDER THE NAME AND STYLE OF “HUA HING TRADING”; RESPONDENT.

G.R. No. L-6707. May 31, 1955

Ponente: BENGZON, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/c559bd56a76b/>

BENGZON, J.:

We gave due course to this petition for review of the Court of Appeals' decision, because we were favorably impressed by petitioner's demonstration of alleged error in the three main propositions on which the said decision rested, to wit:

- "(a) That the test of unfair competition lies in the possibility of deception of the intelligent and not the ignorant buyer;
- (b) That an action for unfair competition should be directed against the manufacturer and not against the seller; and
- (c) That there is no unfair competition when a product is sold under a registered trademark."

The record shows that in two separate complaints, filed in Negros Occidental, the plaintiffs sued defendants for selling sewing thread named "Aurora," "Mayflower" and "Agatonica" with labels and in boxes, which in color design and general aspect closely resembled those of the thread "Alexander" manufactured in Scotland by R. F. & J. Alexander Co., Ltd., and distributed in the Philippines by Ker & Co. Ltd., for the last 50 years.

The defendants, denying the similarity, and disclaiming any intention to deceive the public or defraud the plaintiffs, set up two specific defenses: (1) they were sellers— not manufacturers; (2) the trade names "Aurora" et al. had been duly registered.

Both cases were tried jointly, and a partial stipulation of facts was made, from which the following are quoted:

"5. Defendant Jose Ang is the owner of "Hua Hing Trading", a store located in the City of Bacolod, where he is engaged in the sale of general merchandise, and that he is not the sole distributor of the thread "Agatonica" and "Mayflower" manufactured by Chua Kang and Agatonica Ballon, but is simply a wholesaler and retailer thereof * * *.

6. Defendant Sy Bok is at present the principal partner and Acting Manager of "China Rose", a store located in the City of Bacolod, where he is engaged in the sale of general merchandise, and that he is not the sole distributor of the thread "Aurora", "Mayflower", and "Agatonica", manufactured by Chua Kang, Agatonica Ballon, and Que Sit Siong, but is simply a wholesaler and retailer thereof * * *.

7. The trade-mark "Alexander", used in the label on top of the box, Exhibit "A" was registered with the Bureau of Commerce of May 15, 1934, under No. 11728; that pursuant to Republic Act No. 166, the said trade-mark

was registered with the Patent Office on July 2, 1949, under No. 1371-S; that the trade-mark "Alexander's Glassgow", used on the center ball ticket, Exhibit "B", pasted at one end of the box on top of each ball of thread was also registered with the Bureau of Commerce at the latest on August 10, 1937; that likewise pursuant to Republic Act No. 166, the said trade-mark was registered with the Patent Office on July 2, 1949, under No. 1875-S;

8. The said thread, which is approximately 75 yards long for No. 80 and is wound up into a ball, is packed in blue cardboard boxes, Exhibit "D", at the rate of 40 balls of thread each box; that as an identifying device, there is inserted on top of each ball of thread the center ball ticket, Exhibit "B", on which is printed, in black types on a red-colored background among other things, the trade-mark "Alexander's Glassgow"; that at one end of the box a similar center ball ticket is pasted; that on top of the lid of the box, Exhibit "D", is the label on white background with the decorative border and the description of the contents and the trademark "Alexander" in red color;

9. The thread "Aurora", Mayflower", "Agatonica" (Exhibits "E", "F" and "G") which are approximately 60 yards long for No. 80 and are wound up into balls, are packed in cardboard boxes lined with blue paper of a lighter shade at the rate of 40 balls of thread a box; that the said boxes are slightly smaller than plaintiff's box; that each ball of thread has a center ball ticket inserted at the top; that the center ball ticket is printed in black on a red-colored background, with the names "Aurora", "Mayflower", and "Agatonica", respectively, printed in black."

Additional documentary and testimonial evidence was presented. The trial court dismissed the complaints. The dismissal was affirmed by the Court of Appeals, upon the strength of the three legal propositions stated at the beginning hereof.

Petitioners assert in their printed brief that the Court of Appeals erred in holding that the deception or possibility of deception of intelligent buyers is the test of unfair competition.

Section 29 of Republic Act No. 166 makes guilty of unfair competition—among others—"any person, who in selling his goods shall give them the general appearance of goods of another manufacturer or dealer, either as to the goods themselves or in the wrapping of the packages in which they are contained, or the devices or words thereon, or in any other feature of their appearance, which would be likely to influence purchasers to believe that the goods offered are those of a manufacturer or dealer other than the actual manufacturer or dealer, or who otherwise clothes the goods with such appearance as shall deceive the public and defraud another of his legitimate trade."

This is substantially the same definition obtaining here by statute and judicial construction, since 1903 when Act No. 666 was approved.[1]

By "purchasers" and "public" likely to be deceived by the appearance of the goods, the statute means the "ordinary purchaser".[2] And although this Court apparently shifted its position a bit in *Dy Buncio vs. Tan Tiao Bok* 42 Phil. 190 by referring to simulations likely to mislead "the ordinarily intelligent buyer", it returned to the generally accepted doctrine in *E. Spinner & Co. vs. Neuss Hesslein*, 54 Phil. 224 where it spoke of "the casual purchasers" "who knows the goods only by name."

It stands to reason that when the law speaks of "purchasers" it generally refers to ordinary or average purchasers.

"* * * in cases of unfair competition, while the requisite degree of resemblance or similarity between the names, brands, or other indicia is not capable of exact definition, it may be stated generally that the similarity must be such, but need only be such, as is likely to mislead purchasers of ordinary caution and prudence, or in other words, the ordinary buyer, into the belief that the goods or wares are those, or that the name or business is that, of another producer or tradesman. It is not necessary in either case that the resemblance be sufficient to

deceive experts, dealers, or other persons specially familiar with the trademark or goods involved. Nor is it material that a critical inspection and comparison would disclose differences, or that persons seeing the trademarks or articles side by side would not be deceived." (52 American Jurisprudence pp. 600-601, citing many cases.)

We have before us, and compared, the labels and containers of "Alexander" on the one hand, with the labels and containers of "Aurora", "Agatonica" and "Mayflower" on the other. We are all agreed that except for the names, the defendants' labels and boxes have the general appearance of plaintiffs' and are likely to induce ordinary purchasers to buy them as "Alexander".

The size and color of the wrappers and labels are practically the same. The color, the type and the size of the names "Aurora", "Agatonica" and "Mayflower" are exactly the same as "Alexander". They ("Aurora" etc.) are printed exactly in the same position, between the same words, above and below "Alexander" namely "Hilo para coser", "Marca" and "La Mejor Calidad". And these descriptive words are printed in the same color, type and size as those in "Alexander". The inclosing decorative designs produce the same impression. The boxes contain the same number of white thread balls (40); each ball being topped with a round red ticket with blank letterings same size and arrangement.

So that one who has used "Alexander" and noted the label, upon seeing "Agatonica" in a store is apt to mistake the latter for the former; and when he is informed that the price is P1.35—his previous purchase of "Alexander" was at P1.95—he will surely buy "Agatonica" believing he got the same goods at lower price. The plaintiffs would thereby be deprived of a portion of their legitimate trade; and thru deceptive devices, because such buyer gets only 60 yards per ball, whereas "Alexander" contained 75 yards.

Bearing this result in mind, one refuses to believe that there was no purpose of deceiving the buying public. Unfair competition there was obviously.

It is immaterial that the words Aurora, Agatonica and Mayflower are different from Alexander. The features and their appearance are so similar as to cause that confusion which the rules of unfair competition seek to avoid. And unfair competition is not confined to the adoption of the same or similar names.

The use of a trade mark, printed in the same colors and in form and general appearance so resembling plaintiff's mark as to deceive purchasers of the goods, should be enjoined as unfair competition. (*La Yebana Co. vs. Chua Seco & Co.* 14 Phil. 534.) It is not necessary that the same words were used. (*Sapolin Co. vs. Balmaceda* 67 Phil. 705.)

In *Brook Bros. vs. Froelich* 8 Phil. 580, this Court found unfair competition in the labeling and selling of cotton thread. Facsimiles of the competing labels are therein reproduced. By comparison, petitioners' case here is very much better.[3]

But, the respondents contend, the action should be against the manufacturer, and not against them, because they merely sell different brands of thread, including the plaintiffs'. There is no merit to the contention, because section 29 hereinabove partly quoted makes liable for the imitation of goods not only the manufacturer but also the vendor. It reads in part:

"Any person, who in selling goods shall give them the general appearance of goods of another manufacturer or dealer, * * * or any subsequent vendor of such goods or any agent of any vendor engaged in selling such goods with a like purpose."

The third defense is that the objected labels have been registered as trade-marks. We have held in several decisions that one may be declared unfair competitor even if his competing trade-mark is registered.[4] The

registration might in some way minimize damages against the seller as showing good faith prima facie. But surely it does not preclude unfair competitive actions.

Wherefore, reversing the appealed decision, we declare that defendants' goods competed unfairly with plaintiffs. The former are hereby enjoined from hereafter selling said goods. They shall also pay the costs in all instances. So ordered.

Pablo, Acting C. J., Montemayor, Reyes, A. Bautista Angelo, Labrador, Concepcion, and Reyes, J. B. L., JJ., concur.

[1] *Finlly Fleming & Co. vs. Ong Tan Chuan*, 26 Phil., 579.

[2] *U. S. vs. Manuel*, 7 Phil., 221; *Alhambra Cigar vs. Compania General de Tabacos*, 35 Phil., 62; *Rueda Hermanos vs. Felix Paglinawan*, 33 Phil., 196.

[3] For purposes of record the clerk is instructed to attach to the rolls photostatic copies of Exhibits A and C.

[4] *Parke Davies & Co. vs. Kim Foo* 60 Phil., 928; *Ed. A. Keller & Co. vs. Kenkwa Meriyasu Co.*, 57 Phil., 262; *La Yebana Company vs. Chua Seco & Co.*, 14 Phil., 534.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.