

HICKOK MANUFACTURING CO., INC., PETITIONER, VS. COURT OF APPEALS AND SANTOS LIM BUN LIONG, RESPONDENTS.

G.R. No. L-44707. August 31, 1982

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

The Court affirms on the strength of controlling doctrine as reaffirmed in the companion case of Esso Standard Eastern, Inc. vs. Court of Appeals[1] promulgated also on this date and the re-cent case of Philippine Refining Co., Inc. vs. Ng Sam and Director of Patents[2] the appealed decision of the Court of Appeals reversing the patent director's decision and instead dismissing petitioner's petition to cancel private respondent's registration of the trademark of HICKOK for its Marikina shoes as against petitioner's earlier registration of the same trademark for its other non-competing products.

On the basis of the applicable reasons and considerations ex-tensively set forth in the above-cited controlling precedents and the leading case of Acoje Mining Co., Inc. vs. Director of Patents[3] on which the appellate court anchored its decision at bar, said decision must stand affirmed, as follows:

"An examination of the trademark of petitioner-appellee and that of registrant-appellant convinces us that there is a differ-ence in the design and the coloring of, as well as in the words on the ribbons, the two trademarks.

"In petitioner-appellee's trademark for handkerchiefs (Exhibit 'Q'), the word 'HICKOK' is in red with white background in the middle of two branches of laurel in light gold. At the lower part thereof is a ribbon on which are the words 'POSITIVELY FINER' in light gold. In the trademark for underwear (Exhibit 'R'), the word 'HICKOK' is also in red with white background in the middle of two branches of laurel in dark gold with similar ribbons and the words 'POSITIVELY FINER' in dark gold. And in the trademark for briefs (Exhibit 'S'), the word 'HICKOK' is in white but with red background in the middle of two branches of laurel, the leaves being in dark gold with white edges, and with similar ribbon and words 'POSITIVELY FINER' in dark gold. In contrast, in respondent-appellant's trademark (Exhibit 'J'), the word 'HICKOK' is in white with gold background between the two branches of laurel in red, with the word 'SHOES' also in red below the word 'HICKOK'. The ribbon is in red with the words 'QUALITY AT YOUR FEET,' likewise in red.

"While the law does not require that the competing trademarks be identical, the two marks must be considered in their entirety, as they appear in the respective labels, in relation to the goods to which they are attached.

"The case of H. E. Heacock Co. vs. American Trading Co., 56 Phil. 763, cited by petitioner-appellee, is hardly applicable here, because the defendant in that case imported and sold merchandise which are very similar to, and precisely of the same designs as, that imported and sold by the plaintiff. x x x

"In the recent case of Acoje Mining Co., Inc. vs. Director of Patents, 38 SCRA 480, 482-483, the Supreme Court stated -

'Can it be said then that petitioner's application would be likely to cause confusion or mistake on the part of the buying public? The answer should be in the negative. It does not defy com-mon sense to assert that a purchaser

would be cognizant of the product he is buying. There is quite a difference between soy sauce and edible oil. If one is in the market for the former, he is not likely to purchase the latter just because of the trademark LOTUS. Even on the rare occasion that a mistake does occur, it can easily be rectified. Moreover, there is no denying that the possibility of confusion is remote considering petitioner's trademark being in yellow and red while that of the Philippine Refining Company being in green and yellow, and the much smaller size of petitioner's trademark. When regard is had for the principle that the two trademarks in their entirety as they appear in their respective labels should be considered in relation to the goods advertised before registration could be denied, the conclusion is inescapable that respondent Director ought to have reached a different conclusion. Petitioner has successfully made out a case for registration.'

"From the statements of the Supreme Court in the two cases aforementioned, we gather that there must be not only resemblance between the trademark of the plaintiff and that of the defendant, but also similarity of the goods to which the two trademarks are respectively attached.

"Since in this case the trademark of petitioner-appellee is used in the sale of leather wallets, key cases, money folds made of leather, belts, men's briefs, neckties, handkerchiefs and men's socks, and the trademark of registrant-appellant is used in the sale of shoes, which have different channels of trade, the Director of Patents, as in the case of Acoje Mining Co., Inc. vs. Director of Patents, supra, 'ought to have reached a different conclusion.'"

It is established doctrine, as held in the above-cited cases, that "emphasis should be on the similarity of the products involved and not on the arbitrary classification or general description of their properties or characteristics"[4] and that "the mere fact that one person has adopted and used a trademark on his goods does not prevent the adoption and use of the same trademark by others on unrelated articles of a different kind." [5] Taking into account the facts of record that petitioner, a foreign corporation registered the trademark for its diverse articles of men's wear such as wallets, belts and men's briefs which are all manufactured here in the Philippines by a licensee Quality House, Inc. (which pays a royalty of 1-1/2% of the annual net sales) but are so labelled as to give the misimpression that the said goods are of foreign (stateside) manufacture and that respondent secured its trademark registration exclusively for shoes (which neither petitioner nor the licensee ever manufactured or traded in) and which are clearly labelled in block letters as "Made in Marikina, Rizal, Philippines," no error can be attributed to the appellate court in upholding respondent's registration of the same trademark for his unrelated and non-competing product of Marikina shoes.[6]

ACCORDINGLY, the petition is dismissed and the appealed judgment of the Court of Appeals is hereby affirmed.

Melencio-Herrera, Plana, Relova, and Gutierrez, Jr., JJ., concur. Makasiar, J., on official leave. Vasquez, J., no part

* Sixth Division, then composed of Reyes, L. B., ponente and Pacifico de Castro and Vicente G. Erica, JJ.

[1] G.R. No. L-29971.

[2] G.R. No. L-26676, July 30, 1982 (2nd Division).

[3] 38 SCRA 480 (1971).

[4] Phil. Refining Co. vs. Ng Sam, supra, fn. 2.

[5] ESSO Standard Eastern, Inc. v. Court of Appeals, supra, fn. 1.

[6] See *Leviton Industries vs. Salvador*, G.R. No. L-40163, June 19, 1982.

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