

LIM HOA, PETITIONER, VS. DIRECTOR OF PATENTS, RESPONDENT.*G.R. No. L-8072. October 31, 1956*

Ponente: MONTEMAYOR, J.

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On April 26, 1949, the petitioner, Lim Hoa, filed with the Patent Office an application for the registration of a trademark, consisting of a representation of two midget roosters in an attitude of combat with the word "Bantam" printed above them, he claiming that he had used said trademark on a food seasoning product since April 25 of that year. The application was published in the Official Gazette in its issue of February, 1953, released for circulation on April 18, of the same year. On April 30, 1953, the Agricom Development Co., Inc., a domestic corporation, opposed the application on several grounds, among others, that the trademark sought to be registered was confusingly similar to its register mark, consisting of a pictorial representation of a hen with the words "Hen Brand" and "Marca Manok", which mark or brand was also used on a food seasoning product, before the use of the trademark by the applicant

It is a fact that the family of C. Javier Advincula, since the year 1946, had adopted and used as a trademark of said food seasoning product manufactured by it, the pictorial representation of a hen. In 1947, the members of the Advincula family organized the Agricom Development Co., Inc., the oppositor in this case, and said corporation took over the manufacture of the same food product of the Advincula family, including the use of the brand of the pictorial representation of a hen but adding to it the word "Hen". In the year 1948, an addition was made to the brand with the words "Ve-Tsin, Hen Brand" and "Marca Manok," and since then, on its food seasoning product at different times, labels were used, in different colors but bearing the representation of a hen and the words just mentioned." So that the application to register applicant's brand, consisting of two roosters in an attitude of combat, with the word "Bantam" printed above them, came along after the use and registration of the mark or brand of the oppositor corporation and its predecessor, the Advincula family.

After considering the application and the opposition thereto, and after comparing the two brands, the Director of Patents issued his order dated June 26, 1954, wherein he found and held that to allow the registration of the applicant's trademark would likely cause confusion or "mistake or deceive purchasers, and he refused registration of said trademark, under Rule 178 of the Revised Rules of Practice in Trademark Cases, 1953. The petitioner is now appealing said order.

After a careful examination of the facts above mentioned, and after comparing the two brands, we do not hesitate to say and to hold that there is such similarity between the two brands as to cause confusion in the mind of the public that buys the food seasoning product on the strength and on the indication of the trademark or brand identifying or distinguishing the same. In the case of *Go Tiong Sa vs. Director of Patents*, (95 Phil., 1), we had occasion to say the following:

"* * * It has been consistently held that the question of infringement of a trademark is to be determined by the test of dominancy. Similarity in size, form, and color, while relevant, is not conclusive. If the competing trademark contains the main or essential or dominant features of another, and confusion and deception is likely

to result, infringement takes place. Duplication or imitation is not necessary; nor it is necessary that the infringing-label should suggest an effort to imitate. (C. Neilman Brewing Co. vs. Independent Brewing Co., 191 F. 489, 495, citing Eagle White Lead Co. v. Pflugh (CC) 180 Fed. 579). The question at issue in cases of infringement of trademarks is whether the use of the marks involved would be likely to cause confusion or mistakes in the mind of the public or deceive purchasers. (Auburn Rubber Corporation vs. Honover Rubber Co., 107 F 2d 588, 590, citing Procter and Gamble Co. vs. J. L. Prescott Co., 49 F 2d 959, 18 CCPA, Patents, 1433; Pepsodent Co. vs. Comfort Manufacturing Co., 83 F 2d 906; 23 CCPA, Patents, 124)"

The danger of confusion in trademarks and brands which are similar may not be so great in the case of commodities or articles of relatively great value, such as, radio and television sets, air conditioning units, machinery, etc., for the prospective buyer, generally the head of the family or a businessman, before making the purchase, reads the pamphlets and all literature available, describing the article he is planning to buy, and perhaps even makes comparisons with similar articles in the market. He is not likely to be deceived by similarity in the trademarks because he makes a more or less thorough study of the same and may even consult his friends about the relative-merit and performance of the article or machinery, as compared to others also for sale. But in the sale of a food seasoning product, a kitchen article of everyday consumption, the circumstances are far different. Said product is generally purchased by cooks and household help, sometimes illiterate who are guided by pictorial representations and the sound of the word descriptive of said representation. The two roosters appearing in the trademark of the applicant and the hen appearing on the trademark of the oppositor, although of different sexes, belong to the same family of chicken, known as manok in all the principal dialects of the Philippines, and when a cook or a household help or even a housewife buys a food seasoning product for the kitchen the brand of "Manok" or "Marca Manok" would most likely be upper most in her mind and would influence her in selecting the product, regardless of whether the brand pictures a hen or a rooster or two roosters. To her, they are all manok. Therein lies the confusion, even deception.

We do not see why applicant could not have stretched his imagination even a little and' extended his choice to other members of the animal kingdom, as a brand to differentiate his product from similar products in the market. In a similar case decided by this Tribunal wherein, although one brand consisting of the representation of a rooster was already being used by one party, another party wanted to register a similar brand, consisting of two roosters on a similar product, namely, candy, this Court said:

"Counsel for defendant insists that there is no real resemblance between a picture of one rooster and a picture of two roosters; that no person could or would be deceived by the use by the defendant of a trade-mark wholly distinct from that of the plaintiff; that the fact that the defendant used two roosters as its trademark clearly discloses its innocence of any intent to deceive, since a comparison of the trade-mark of the plaintiff with that of the defendant makes apparent at once that was not intended to be an imitation of the other.

"We ask, however, why, with all the birds in the air, and all the fishes in the sea, and all the animals on the face of the earth to chose from, the defendant company selected two roosters as its trade-mark, although its directors, and managers must have been well aware of the long-continued use of a rooster by the plaintiff in connection with the sale and advertisement of his goods?

"There is nothing the picture of one or more roosters which in itself is discriptive of the goods sold by the plaintiff or by the defendant corporation, or suggestive of the quality of these goods. A cat, or dog, a carabao, a shark, or an eagle stamped upon the container in which candies are sold would serve as well as a rooster for purposes of identification as the product of defendant's factory. Why did defendant select two roosters as its trade-mark? We can not doubt that it was because the plaintiff's candies had acquired a certain reputation under the trade-mark of a rooster, and the defendant corporation hoped to profit unjustly by that reputation. Defendant knew that the use of a single rooster would be prohibited as a technical infringement of plaintiff's trade-mark, but it hoped that it could avoid that danger by the use of two roosters; and at the same time get

such advantage as it must have believed it could secure from the use of a design on the containers of its goods, not absolutely identical with that used by the plaintiff, but so similar in the dominant idea as to confuse or mislead the purchasers. * * *" (Clarke vs. Manila Candy Co., 100 Phil. 36).

In view of the foregoing, the order appealed from is hereby affirmed, with costs. We do not deem it necessary to discuss and rule upon the other questions raised in the appeal.

Paras, C. J., Padilla, Bautista Angela, Labrador, Concepcion, Reyes, J. B. L, and Felix, JJ., concur.

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