

COMPañIA GENERAL DE TABACOS DE FILIPINAS, PLAINTIFF AND APPELLEE, VS. ALHAMBRA CIGAR & CIGARETTE MANUFACTURING COMPANY, DEFENDANT AND APPELLANT.

G.R. No. 10619, February 10, 1916

Ponente: MORELAND, J.

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MORELAND, J.:

This is a proceeding to punish the defendant for contempt of court in violating a permanent injunction issued against it in the above entitled action.

The action was one, it is alleged by plaintiff, to recover damages for the violation of the trade-name "Isabela" and for unfair competition based on the same facts and to obtain a perpetual injunction against the defendant prohibiting it from using said trade-name or one confusingly similar thereto. The trial court found in the main action that the plaintiff had appropriated and was entitled to the exclusive use of the word "Isabela" as a trade-mark in connection with its cigarettes and that the word Isabelas as employed in the phrase "Alhambra Isabelas" used by the defendant on its cigarettes was a violation of the trade-mark "Isabela" the exclusive property rights in which belonged to the plaintiff. The court issued a permanent injunction prohibiting the defendant from the use of the word "Isabelas" or any word confusingly similar thereto, as follows:

"Wherefore, the defendant, the Alhambra Cigar & Cigarette Manufacturing Company, its officers, agents, attorneys, employees, or other representatives are hereby perpetually prohibited from employing or making use of the word 'Isabelas' or any equivalent thereof, or of any other word or name confusingly similar thereto as a distinguishing brand or name for cigarettes manufactured by said defendant."

The defendant appealed from the judgment of the trial court declaring plaintiff's rights in the word "Isabela" and prohibiting it from the use thereof and made a motion to suspend the operation of the injunction until the case could be resolved finally on appeal. That motion was denied and the defendant later made the same motion to the Supreme Court, which was also denied. In spite of the existence of the injunction the defendant continued to use the words "Alhambra Isabelas" on its cigarettes; and plaintiff began a proceeding in the trial court to punish the defendant for a violation of the injunction. A hearing was had and the defendant was found guilty of contempt of court for the violation of the injunction referred to. A fine of P500 was imposed with costs of the proceedings.

Thereafter the defendant placed on its cigarettes the words "Alhambra Isabela," simply changing the word "Isabelas" to "Isabela." It also placed on the back of the packages the words "Blue Ribbon Cigarrillos" as a distinctive name or brand for its cigarettes. Believing that defendant was still violating the injunction, plaintiff began another proceeding in the Court of First Instance to punish it for contempt. After hearing the court again found the defendant guilty of violating the injunction and sentenced it to pay a fine of P1,000. From that judgment defendant appealed to this court and that is the appeal we are now considering.

The appellant contends here: First, that the injunction is indefinite and uncertain to such an extent that a person of ordinary intelligence would be unable to comply with it and still protect his acknowledged rights; second, that the

injunction is void for the reason that the judgment of the court on which it is based is not responsive to the pleadings or to the evidence in the case and has nothing in the record to support it; third, that the court erred in assuming jurisdiction and fining defendant after an appeal had been taken from the judgment of the court and the perpetual injunction issued thereon. There are other objections that need no particular discussion.

Discussing these questions generally it may be admitted, as we stated in our decision in the main case (R. G., No. 10251, ante p. 485) that, while the complaint set forth an action on a trade-name and for unfair competition, accepting the plaintiff's interpretation of it, the trial court based its judgment on the violation of a trade-mark, although the complaint contained no allegation with respect to a trade-mark and no issue was joined on that subject by the pleadings and no evidence was introduced on the trial with respect thereto. There was, however, some evidence in the case with respect to the plaintiff's ownership of the trade-name "Isabela," for the violation of which the plaintiff was suing, and there was some evidence which might support an action of unfair competition, if such an action could be sustained under the statute. Therefore, although the judgment of the trial court was based on the violation of a trade-mark, there was some evidence to sustain the judgment if it had been founded on a violation of the trade-name or on unfair competition. The judgment, as we have already found in the main case, was erroneous and was reversed for that reason; but having some evidence to sustain it, it was not void and the injunction issued in that action was one which the court had power to issue. Although the judgment was clearly erroneous and without basis in law, it was, nevertheless, a judgment of a court of competent jurisdiction which had authority to render that particular judgment and to issue a permanent injunction thereon.

The appellant complains of that portion of the injunction which prohibits the defendant from using the word "Isabellas" as a distinguishing brand or name, alleging that it did not use the word as a distinguishing brand or name but simply as a word describing the quality of tobacco which composed the cigarettes to which the name was attached. While we agree with defendant that the word "Isabela" is primarily a geographical name and descriptive word, that fact does not signify that an injunction prohibiting the use of that word is void for that reason. That was a matter which went to the merits of the principal action and not to the validity or enforceability of the permanent injunction issued in that action. Much of appellant's argument is based on facts which, while quite material to the merits of the original controversy, have nothing to do with the violation of the injunction. The question is not was the judgment correct on the law and the facts, but was it a valid judgment? If so, and if the injunction issued thereon was definite and certain and was within the subject matter of the judgment, the defendant was bound to obey it, however erroneous it may have been.

That the injunction was sufficiently definite and certain with reference to the matter in controversy there can be no doubt. It clearly prohibits the defendant from the use of the word "Isabelas" or any word or name confusingly similar thereto as a distinguishing brand or name of its cigarettes. It would be difficult to make language clearer. That it is not so indefinite and vague that the defendant was misled with respect to the acts which it prohibited is demonstrated by defendant itself. It made no effort to change the word "Isabelas" which had been the whole subject matter of the litigation and which was the word expressly set out in the injunction; but, rather, it continued to use the same word, reducing it from the plural to the singular as the only change. It did not relocate the word on its cigarettes or change its form or size. It left it in precisely the form, shape and style and in precisely the place as before.

With such facts before us the defendant will not be permitted to say that it sought to use a different word or phrase and that by reason of the indefiniteness of the injunction it fell into error, although in good faith it attempted to obey its terms. It continued to use the prohibited word in precisely the manner prior to the injunction; and it cannot be said that it was misled by the vagueness of the injunction, for, however vague the injunction may have been, the defendant could not have been ignorant of the fact that it had been prohibited from using the word

"Isabelas" the word that had been the very center of the controversy in which the injunction was issued.

We do not believe that the imposition of a fine of P1,000 is violation of law on the part of the trial court. It was the second violation and the defendant should have been punished more severely than for the first violation.

The judgment appealed from is affirmed, with costs against the appellant. So ordered.

Arellano, C. J., Torres, Johnson, Carson, and Trent, JJ., concur.

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