

RUEDA HERMANOS & CO., PLAINTIFF AND APPELLANT, VS. FELIX PAGLINAWAN & CO., DEFENDANT AND APPELLANT.

G.R. No. 10738. January 14, 1916

Ponente: TRENT, J.

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TRENT, J.:

This is a civil action for damages for unfair competition. Both parties are manufacturing a chocolate candy. The plaintiff had been engaged in the business for many years and registered a trademark for its product in the year 1910. In March, 1914, the defendant commenced the manufacture of its confection. Both parties made their product in the shape of flat, circular pieces, each package containing five pieces. The packages were thus cylindrical in shape, were of practically the same diameter and length, and were wrapped in the same quality and color of paper. We insert below in parallel columns the writing on each of the packages.

The plaintiff's.

"Fabrica de Chocolates

" 'La Marina'

"de

"Rueda Hermanos y Cia

"San Marcelino N. Ëš 115

"5 Pastillas Finas N. Ëš 5

"Sweetened Chocolate with

"Peanuts.

"De venta en todos los almacenes de comestibles Deposito Central: en 'La Marina' Plaza del P. Moraga 25-29, Manila ."

The defendant's.

"La Patria

"Fabrica de Chocolates

"de

"Felix Paglinawan y Cia

"Castaños N. Ëš 120-122

"Sampaloc Manila, I.F

"5 Pastillas Finas N. Ëš 5

"Sweetened Chocolate with

"Peanuts.

"De venta en todos los almacenes de comestibles Deposito Central: en 'La Patria' Castaños, 120-122, Sampaloc, Manila ."

The printing on both packages extended longitudinally, and the corresponding lines on each were printed in the same size of type, although the shading was lighter and some of the lines were printed in italics on the defendant's package. Judgment in the court below went in favor of the plaintiff for a permanent injunction against the defendant and for damages in the sum of P1,200. Both parties have appealed, the defendant on the question of its

liability, and the plaintiff on the alleged insufficiency of the damages allowed.

After judgment had been rendered, motion for a new trial was made by the defendant on the ground of newly discovered evidence. This motion was denied by the court below. The newly discovered evidence, as set out in an affidavit, was that the registered trademark of the plaintiff was different from that described in the complaint and presented in evidence. A facsimile of the alleged authentic trademark of the plaintiff was included in the affidavit. The same wording and number of lines is used except that the word "Manila" is a little below the street address in the copy presented in the affidavit. A simple comparison of the two shows that there is no difference between the one declared upon and the one described in the affidavit. This was the opinion of the court below and it is also our opinion.

The first three assignments of error question the sufficiency of the evidence upon which the trial judge found that the defendant was liable in damages for unfair competition. The minor differences in the wording which will appear from an inspection of the two labels, and the slight difference in printing are pointed to as showing that there was no substantial similarity between the two. Also, it is urged that there was no evidence of actual intent on the part of the defendant to imitate the plaintiff's product.

In *United States vs. Manuel* (7 Phil. Rep., 221), we said:

"The true test of unfair competition is whether certain goods have been clothed with an appearance which is likely to deceive the ordinary purchaser exercising ordinary care, and not whether a certain limited class of purchasers with special knowledge not possessed by the ordinary purchaser could avoid mistake by the exercise of this special knowledge."

This has often received approval in subsequent cases. (*Brook Bros. vs. Froelich & Kuttner*, 8 Phil. Rep., 580; *Song Fo & Co. vs. Tiu Ca Siong*, 13 Phil. Rep., 143; *Inchausti & Co. vs. Song Fo & Co.*, 21 Phil. Rep., 278; *U. S. vs. Gow Chiong*, 23 Phil. Rep., 138.)

If the contents of two packages are the same commodity, it is no defense to an action for unfair competition to show minor differences in the size or shape of the packages, or in the wording or color of the labels or wrappers of the packages. If the exterior size, shape, color and description, in other words, those things which go to make up the general outside appearance of the article, are so substantially similar as to "likely deceive the ordinary purchaser, exercising ordinary care," the defendant is guilty of unfair competition. A review of former cases decided by us fails to show a single one wherein there were fewer differences in the general appearance of the packages put up for sale by the respective parties than there are in the several packages presented as exhibits in the case at bar. We refer to *United States vs. Manuel* (7 Phil. Rep., 221); *Brook Bros. vs. Froelich & Kuttner* (8 Phil. Rep., 580); *Song Fo & Co. vs. Tiu Ca Siong* (13 Phil. Rep., 143); *Yebana Company vs. Chua Seco & Co.* (14 Phil. Rep., 534); *Inchausti & Co. vs. Song Fo & Co.* (21 Phil. Rep., 278); *United States vs. Gow Chiong* (23 Phil. Rep., 138); *Finlay, Fleming & Co. vs. Ong Tan Chuan* (26 Phil. Rep., 579) ; *Alhambra Cigar, etc., Co. vs. Mojica* (27 Phil. Rep., 266).

In so far as the finding of actual intent to imitate the plaintiff's product is concerned, it must be remembered that this "may be inferred from similarity in the appearance of the goods as packed or offered for sale to those of the complaining party." (Sec. 7, Act No. 666.) In *Brook Bros. vs. Froelich & Kuttner* (8 Phil. Rep., 580), we said:

"In this case we hold that the unfair competition on the part of the defendant is fully proven 'from the similarity in the appearance of the goods as packed or offered for sale.' Indeed, in most cases of unfair competition the similarity of the goods must appear from the form or general appearance of the goods sold."

In *Inchausti & Co. vs. Song Fo & Co.* (21 Phil. Rep., 278), we said:

"The similarity in the appearance of the goods as packed and offered for sale is so striking that we are unable to attribute this fact to anything other than an intent on the part of defendants to deceive the public and defraud plaintiffs out of their legitimate trade and in this case we infer such intent from the likeness of the goods so packed and offered for sale."

In *United States vs. Gow Chiong* (23 Phil. Rep., 138), it was said:

"The intention to deceive may be inferred from the similarity of the goods as packed and offered for sale, and an action will lie to restrain such unfair competition, and for damages."

In *Alhambra Cigar, etc., Co. vs. Mojica* (27 Phil. Rep., 266), it was said:

"Even if the resemblance is accidental and not intentional, plaintiff is entitled to protection against its injurious results to his trade."

In the case at bar, it appears that Felix Paglinawan, a member of the defendant company, representing himself to be a retailer of plaintiff's product, induced plaintiff's officers to show him through the factory and explain to him their process of making chocolate candy mixed with peanuts. This was before the defendant company started to make their product, and ignorance of the style, size, color and shape of plaintiff's article, as it was offered to the retail trade, cannot, therefore, be maintained by the defendant company.

The plaintiff assigns as error that the evidence justifies greater damages than those allowed by the trial court. A tabulated statement of sales by months of *Pastillas Finas No. 5* from 1906, when it was first manufactured, until November, 1914, was submitted. That there was a material decrease in the sales of this confection from April to November, inclusive, 1914, compared with previous years, is quite apparent. But the plaintiff manufactured eleven other brands of chocolate candy and in the month of July, 1914, the entire output of the factory was less than in previous years. The factory output was governed by the sales made and these depended upon the demand of the public for the various brands. In the month of June, 1914, the biggest sales of the plaintiff company were of the brand *Ancla*. The different brands of chocolate candy manufactured by the plaintiff were put up in distinctive packages and it is conceded that the defendant's product did not imitate any except the *Pastillas Finas No. 5*. The plaintiff's salesbook was not brought up to this court and we are unable to say that the decrease in the company's output was only in the *Pastillas Finas No. 5* brand. If there was a general decrease in sales of all their brands during 1914, it would appear unjust to attribute the decrease in the sales of this particular brand entirely to the competition of the defendant. The *Pastillas* brand should at least bear its portion of the general decrease. The court below had the privilege of inspecting Exhibit E and perhaps found there indications of a general slump in plaintiff's chocolate business during the latter part of the year 1914. The court found an average decrease in monthly sales of the brand in question, due to the defendant's unlawful competition, to be fifty cases per month. It also found the net profit per case to be P3. While one of the managing partners of the plaintiff firm testified to greater profits, the books from which he secured this data were not forwarded to this court nor any explanation of how he formed his estimate. The trial court having had the privilege of inspecting the books and papers submitted by the plaintiff, fixed the net profit per case at P3. With nothing before us upon which to base a positive statement contrary to this finding, we would not be justified in disturbing it.

For the foregoing reasons, the judgment appealed from is affirmed, without any pronouncement as to the costs. So ordered.

Arellano, C. J., Torres, Johnson, Carson, Moreland, and Araullo, JJ., concur.

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