UNILEVER PHILIPPINES (PRC), INC., PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND PROCTER AND GAMBLE PHILIPPINES, INC., RESPONDENTS.

G.R. NO. 119280. August 10, 2006

Ponente: CORONA, J.

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CORONA, J.:

In this petition for review under Rule 45 of the Rules of Court, petitioner assails the February 24, 1995 decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 35242 entitled "Unilever Philippines (PRC), Inc. v. Honorable Fernando V. Gorospe, Jr. and Procter and Gamble Philippines, Inc. (P&GP)" which affirmed the issuance by the court a quo of a writ of preliminary injunction against it. The writ enjoined petitioner from using and airing, until further orders of the court, certain television commercials for its laundry products claimed to be identical or similar to its "double tug" or "tac-tac" key visual.[2]

Petitioner alleges that the writ of preliminary injunction was issued by the trial court (and affirmed by the CA) without any evidence of private respondent's clear and unmistakable right to the writ. Petitioner further contends that the preliminary injunction issued against it already disposed of the main case without trial, thus denying petitioner of any opportunity to present evidence on its behalf.

The antecedents show that on August 24, 1994, private respondent Procter and Gamble Phils., Inc. filed a complaint for injunction with damages and a prayer for temporary restraining order and/or writ of preliminary injunction against petitioner Unilever, alleging that:

> 1.5. As early as 1982, a P&G subsidiary in Italy used a key visual in the advertisement of its laundry detergent and bleaching products. This key visual known as the "double-tug" or "tac-tac" demonstration shows the fabric being held by both hands and stretched sideways.
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> 1.6. The "tac-tac" was conceptualized for P&G by the advertising agency Milano and Gray of Italy in 1982. The "tac-tac" was used in the same year in an advertisement entitled "All aperto" to demonstrate the effect on fabrics of one of P&GP's products, a liquid bleach called "Ace."
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> 1.7. Since then, P&G has used the "tac-tac" key visual in the advertisement of its products. In fact, in 1986, in Italy, the "tac-tac" key visual was used in the television commercial for "Ace" entitled "Kite."
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> 1.8. P&G has used the same distinctive "tac-tac" key visual to local consumers in the Philippines.
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> 1.10. Substantially and materially imitating the aforesaid "tac-tac" key visual of P&GP and in blatant disregard of P&GP's intellectual property rights, Unilever on 24 July 1993 started airing a 60 second television commercial "TVC" of its "Breeze Powerwhite" laundry product called "Porky." The said TVC included a stretching visual presentation and sound effects almost [identical] or substantially similar to P&GP's "tac-tac"

> key visual.
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> 1.14. On July 15, 1994, P&GP aired in the Philippines, the same "Kite" television advertisement it used in Italy in 1986, merely dubbing the Italian language with Filipino for the same produce "Ace" bleaching liquid which P&GP now markets in the Philippines.
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> 1.15. On August 1, 1994, Unilever filed a Complaint with the Advertising Board of the Philippines to prevent P&GP from airing the "Kite" television advertisement.[3]

On August 26, 1994, Judge Gorospe issued an order granting a temporary restraining order and setting it for hearing on September 2, 1994 for Unilever to show cause why the writ of preliminary injunction should not issue. During the hearing on September 2, 1994, P&GP received Unilever's answer with opposition to preliminary injunction. P&GP filed its reply to Unilever's opposition to a preliminary injunction on September 6, 1994.

During the hearing on September 9, 1994, Judge Gorospe ordered petitioner to submit a sur-rejoinder. P&GP received Unilever's rejoinder to reply on September 13, 1994. The following day, on September 14, 1994, P&GP filed its sur-reply to Unilever's rejoinder.

On September 19, 1994, P&GP received a copy of the order dated September 16, 1994 ordering the issuance of a writ of preliminary injunction and fixing a bond of P100,000. On the same date, P&GP filed the required bond issued by Prudential Guarantee and Assurance, Inc.

On September 21, 1994, petitioner appealed to the CA assigning the following errors allegedly committed by the court a quo, to wit:

> PUBLIC RESPONDENT HAD ACTED WITHOUT OR IN EXCESS OF JURISDICTION AND WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN ISSUING THE WRIT OF PRELIMINARY INJUNCTION IN VIOLATION OF THE RULES ON EVIDENCE AND PROCEDURE, PARTICULARLY OF SEC. 3 (a), RULE 58 OF THE REVISED RULES OF COURT AND OF THE PREVAILING JURISPRUDENCE.
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> PUBLIC RESPONDENT IN ISSUING THE VOID ORDER DATED SEPTEMBER 16, 1994, HAD, IN EFFECT, ALREADY PREJUDGED THE MERITS OF THE MAIN CASE.
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> PUBLIC RESPONDENT HAD ISSUED THE VOID ORDER ACCORDING RELIEF TO A NON-PARTY IN CIVIL CASE NO. 94-2434 WITHOUT JURISDICTION.
>
> PUBLIC RESPONDENT IN ISSUING THE VOID ORDER HAD DEPRIVED PETITIONER OF SUBSTANTIVE AND PROCEDURAL DUE PROCESS; PUBLIC RESPONDENT HAD FORECLOSED PETITIONER'S RIGHT AND THE OPPORTUNITY TO CROSS-EXAMINE PROCTER'S WITNESSES ABAD AND HERBOSA.[4]

On February 24, 1995, the CA rendered its decision finding that Judge Gorospe did not act with grave abuse of discretion in issuing the disputed order. The petition for certiorari was thus dismissed for lack of merit.

After a careful perusal of the records, we agree with the CA and affirm its decision in toto:

> Petitioner does not deny that the questioned TV advertisements are substantially similar to P&GP's "double tug" or "tac-tac" key visual. However, it submits that P&GP is not entitled to the relief demanded, which is to enjoin petitioner from airing said TV advertisements, for the reason that petitioner has Certificates of Copyright Registration for which advertisements while P&GP has none with respect to its "double-tug" or "tac-tac" key visual. In other words, it is petitioner's contention that P&GP is not entitled to any protection

because it has not registered with the National Library the very TV commercials which it claims have been infringed by petitioner.

We disagree. Section 2 of PD 49 stipulates that the copyright for a work or intellectual creation subsists from the moment of its creation. Accordingly, the creator acquires copyright for his work right upon its creation.... Contrary to petitioner's contention, the intellectual creator's exercise and enjoyment of copyright for his work and the protection given by law to him is not contingent or dependent on any formality or registration. Therefore, taking the material allegations of paragraphs 1.3 to 1.5 of P&GP's verified Complaint in the context of PD 49, it cannot be seriously doubted that at least, for purposes of determining whether preliminary injunction should issue during the pendency of the case, P&GP is entitled to the injunctive relief prayed for in its Complaint.

The second ground is likewise not well-taken. As adverted to earlier, the provisional remedy of preliminary injunction will not issue unless it is shown in the verified complaint that plaintiff is probably entitled to the relief demanded, which consists in whole or in part in restraining the commission or continuance of the acts complained of. In view of such requirement, the court has to make a tentative determination if the right sought to be protected exists and whether the act against which the writ is to be directed is violative of such right. Certainly, the court's determination as to the propriety of issuing the writ cannot be taken as a prejudgment of the merits of the case because it is tentative in nature and the writ may be dissolved during or after the trial if the court finds that plaintiff was not entitled to it....

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Obviously, the determination made by the court a quo was only for purposes of preliminary injunction, without passing upon the merits of the case, which cannot be done until after a full-blown hearing is conducted.

The third ground is patently unmeritorious. As alleged in the Complaint P&GP is a subsidiary of Procter and Gamble Company (P&G) for which the "double tug" or "tac-tac" key visual was conceptualized or created. In that capacity, P&GP used the said TV advertisement in the Philippines to promote its products. As such subsidiary, P&GP is definitely within the protective mantle of the statute (Sec. 6, PD 49).

Finally, We find the procedure adopted by the court a quo to be in order....

The record clearly shows that respondent Judge followed the (procedure provided for in Section 5, Rule 58, as amended by BP 224, and Paragraph A(8) of the Interim Rules). In fact, the court a quo set the incident for hearing on September 2, 1994, at which date petitioner was ordered to show cause why the writ should not be issued. Petitioner filed an Opposition to the application for preliminary injunction. The same incident was again set for hearing on September 9, 1994, during which the parties made some manifestations in support of their respective positions. Subsequent to such hearing petitioner filed a Reply to P&GP's Rejoinder to its Opposition. Under the foregoing circumstances, it is absurd to even suggest that petitioner was not given its day in court in the matter of the issuance of the preliminary injunctive relief.

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There was of course extreme urgency for the court a quo to act on plaintiff's application for preliminary injunction. The airing of TV commercials is necessarily of limited duration only. Without such temporary relief, any permanent injunction against the infringing TV advertisements of which P&GP may possibly succeed in getting after the main case is finally adjudicated could be illusory if by then such advertisements are no longer used or aired by petitioner. It is therefore not difficult to perceive the possible irreparable damage which P&GP may suffer if respondent Judge did not act promptly on its application for preliminary injunction.[5]

Preliminary injunction is a provisional remedy intended to provide protection to parties for the preservation of their rights or interests during the pendency of the principal action.[6] Thus, Section1, Rule 58 of the Rules of

Court provides:

> Section 1. Preliminary injunction defined; classes. — A preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency or a person to refrain from a particular act or acts. It may also require the performance of a particular act or acts, in which case it shall be known as a preliminary mandatory injunction.

Injunction is resorted to only when there is a pressing necessity to avoid injurious consequences which cannot be remedied under any standard compensation.[7] As correctly ruled by the CA, there was an extreme urgency to grant the preliminary injunction prayed for by P&GP considering that TV commercials are aired for a limited period of time only. In fact, this Court takes note of the fact that the TV commercial in issue the Kite TV advertisement is no longer aired today, more than 10 years after the injunction was granted on September 16, 1994.

The sole objective of a writ of preliminary injunction is to preserve the status quo until the merits of the case can be heard fully.[8] A writ of preliminary injunction is generally based solely on initial and incomplete evidence.[9] Thus, it was impossible for the court a quo to fully dispose of the case, as claimed by petitioner, without all the evidence needed for the full resolution of the same. To date, the main case still has to be resolved by the trial court.

The issuance of a preliminary injunction rests entirely on the discretion of the court and is generally not interfered with except in cases of manifest abuse.[10] There was no such abuse in the case at bar, especially because petitioner was given all the opportunity to oppose the application for injunction. The fact was, it failed to convince the court why the injunction should not be issued. Thus, in Santos v. Court of Appeals,[11] we held that no grave abuse of discretion can be attributed to a judge or body issuing a writ of preliminary injunction where a party has not been deprived of its day in court as it was heard and it exhaustively presented all its arguments and defenses.

WHEREFORE, the petition is hereby DENIED.

Costs against petitioner.

SO ORDERED.

Puno, (Chairperson), Sandoval-Gutierrez and Azcuna, JJ., concur.Azcuna, J., No part.

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[1] Penned by Associate Justice Godardo A. Jacinto and concurred in by Associate Justice Artemon D. Luna (retired) and Associate Justice Cancio C. Garcia (now an Associate Justice of the Supreme Court) of the Special Fifth Division of the Court of Appeals; rollo, pp. 52-62.

[2] See description/explanation of advertisement in paragraphs 1.5 and 1.6 of respondent P&GP's complaint. See footnote 3 of this decision.

[3] Rollo, pp. 53-54.

[4] Id., pp. 56-57.

[5] CA decision, id., pp. 57-62.

[6] Republic v. Court of Appeals, 383 Phil. 398 (2000).

[7] Unionbank of the Philippines v. Court of Appeals, 370 Phil. 837 (1999).

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[8] Heirs of Joaquin Asuncion v. Gervacio, 363 Phil. 666 (1999).

[9] La Vista Association, Inc. v. Court of Appeals, 344 Phil. 30 (1997).

[10] Reyes v. Court of Appeals, 378 Phil. 984 (1999).

[11] G.R. No. 61218, 23 September 1992, 214 SCRA 162.

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