

CHUANCHOW SOY & CANNING CO., PETITIONER, VS. THE DIRECTOR OF PATENTS AND ROSARIO VILLAPANIA, RESPONDENTS.

G.R. No. 13947. June 30, 1960

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

This is a petition to review the decision of the Director of Patents, dated May 16, 1953, dismissing the opposition of petitioner Chuanchow Soy & Canning Co. to the application of respondent Rosario Villapania to register the trademark "Bangos Brand", on the ground "that the trademark BANGOS and the trademark CARP and the representation of a Carp fish do not resemble each other as to be likely to cause confusion, mistake or to deceive the purchaser."

The facts in the case are simple and not disputed. Both petitioner Chuanchow Soy & Canning Co. and respondent Rosario Villapania are engaged in the manufacture and sale of soy sauce. Since 1950, petitioner had been using as trademark the words "Carp Brand Soy", printed in a distinctive style of lettering above the drawing of a fish to distinguish its product, on labels affixed directly to the bottles containing soy sauce, and on tissue paper in which these bottles were wrapped (Exhibits B and C). In 1953, the Patent Office issued Trademark Registration Certificate 4384 to it for its aforesaid trademark.

Respondent Villapania since 1956 had been using as trademark of her soy sauce the name of "Bangos Brand" written in the same distinctive style of lettering as that of the petitioner's "Carp Brand", above the drawing of a fish similar to the fish drawing on the trademark of petitioner, on labels also attached to the bottles containing her soy sauce, and the bottles were wrapped also in tissue paper bearing a similar design (Exhibits D and E).

On October 12, 1956, Villapania applied for registration of her trademark as above-described. Upon examination of the trademark, the examiner of the Office of the Director of Patents made the following ruling:

"1. Examiner has taken into consideration a previously registered mark: CARP BRAND & fish representation for soy sauce of the Chuanchow Soy & Canning Co., Reg. No. 4384 dated October 27, 1953, and found that the fish representation closely resembles to applicant's mark as presented in the drawing. In view thereof, the applicant must submit new drawings and facsimiles for the words: "BANGOS BRAND" only as shown in the labels submitted, excluding SOY and fish representation."

Complying with said ruling, respondent Villapania submitted a drawing of the words "Bangos Brand" only, and the same was published in the Official Gazette. However, she continued and is supposedly still continuing to use the labels and wrappers Exhibits D and E on the bottles containing her product, which as already stated, included not only "Bangos Brand" but also the word "Soy" above the drawing of the fish. So, on October 9, 1957, petitioner company filed its opposition to respondent's application. The case was submitted on a stipulation of facts made verbally by them during the hearing. On May 16, 1958, respondent Director of Patents rendered a decision dismissing petitioner's opposition to the application above-stated, which decision is now on appeal.

The similarity and resemblance or lack of the same between the two trademarks can be best appreciated by

examining the same as they appear in the record, particularly, the first page of the petition for review. We have carefully and painstakingly examined the trademark or label of petitioner, Exhibit B, and the trademark or label, Exhibit D, which respondent Villapania sought to register, placed them side by side, and compared them, and we note and observe a very close resemblance between the two not only in the style of lettering of the words "Carp" and "Brand" on Exhibit B and the words "Bangos Brand" on Exhibit D, not only in the style of lettering, but also in the size of the letters, as well as the word "Soy" and the Chinese characters underneath the said three words, including the letters beneath the two fishes, all of which words are correspondingly in the same color, to say nothing of the similarity of the two fishes not only in their size but even in the length and position of their respective tails and fins; so that we are fully convinced of the intention and design of the respondent to imitate as much as possible in her label, Exhibit D, that of petitioner's, Exhibit B, evidently to confuse, even to deceive prospective purchasers of soy sauce and thereby take advantage of and appropriate to herself the goodwill previously acquired by petitioner in the sale of its product. When two competing labels are placed together for inspection and still they may confuse an ordinary person, specially cooks and maids, who as a rule are the ones in charge of buying such household article as soy sauce, there would be more confusion and doubt when the two labels are not placed together for comparison and the prospective purchaser is guided only by his memory or recollection that the soy sauce he or she is planning to buy has as its label the drawing of a fish with letters and Chinese characters, written in a certain style of lettering and color. When, as in the present case, one applies for the registration of a trademark or label which is almost the same or very closely resembles one already used and registered by another, the application should be rejected and dismissed outright, even without any opposition on the part of the owner and user of a previously registered label or trademark, this not only to avoid confusion on the part of the public, but also to protect an already used and registered trademark and an established goodwill. There should be no halfway measures, as was done in this case by the ruling of the examiner who directed the respondent to amend or modify the label or trademark she sought to register by eliminating some portions thereof. As a result, although the word "Soy" and the drawing of a fish were eliminated, still, the word "Bangos" and the word "Brand" which are similar to the style of lettering of the corresponding words in the label, Exhibit B, of petitioner, could still create confusion or doubt in the mind of prospective purchasers, to say nothing of the fact that the words "Carp" and "Bangos" both indicate fish, and the additional fact that both trademarks and labels refer to or advertise the same product, namely, soy sauce.

In the case of *Lim Hoa vs. Director of Patents*, 101 Phil., 214; 52 Off. Gaz. (17) 7259, we had occasion to say the following:

"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 the 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 uppermost 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. * * *

Why the respondent in the present case could not have selected as the principal figure in her label some animal living on the surface of the earth, like a dog, cat, monkey, etc., or an article or furniture, like a table, chair, or if she was determined to select a creature living in the sea, that of a crab, lobster, or octopus, is hard to understand. She had to select fish, which as already stated, she pictured in her label similar in size, shape and form as that appearing in the already used and registered label of petitioner. The Director of Patents should as much as possible discourage all attempts at imitation of labels already used and registered, as already stated, to avoid confusion, to protect the public from purchasing the wrong article or brand and also to give protection to those who have established goodwill, reputation and name in the manufacture and sale of their products by means of a label of long standing and use and duly registered.

Another circumstance against the registration of the trademark or label of respondent is that she would appear not to have used the amended or modified label she presented for registration, but continued to use the original label or trademark which was refused registration by the Director of Patents. This indicates not only her desire to continue taking advantage of the goodwill acquired and established by the petitioner, but it equally shows that she had not used the label or trademark now being applied for by her, despite the fact that the law requires at least two months previous use prior to application for registration.[1]

In view of the foregoing, the appealed decision is hereby reversed; the opposition of petitioner to respondent's application is hereby sustained and respondent's application for registration is denied, with costs against respondent.

Paras, C. J., Bengzon, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, and Gutierrez David, JJ., concur.

Padilla, J., took no part.

[1] Sec. 2, Rep. Act No. 166, as amended by Rep. Act No. 865.

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