

MUÑOZ & CO., PLAINTIFF AND APPELLANT, VS. STRUCKMANN & CO. AND BIESOLT & LOCKE’, DEFENDANTS AND APPELLEES.

G.R. No. 3224. October 17, 1907

Ponente: JOHNSON, J.

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JOHNSON, J.:

On the 25th day of May, 1905, the said plaintiff filed in the Court of First Instance of the city of Manila a complaint against the defendants, in which it prayed for the following relief:

"First. That the said defendants and each of them may be compelled to render a full, true, and perfect account of all profits of every description which they and each of them have made by the use of the trade-mark hereinbefore referred to, and that they and each of them may be adjudged and decreed to pay over all such profits to the plaintiff.

"Second. That the loss and damage which the plaintiff has suffered by the unlawful use of said trade-marks and each of them may also be ascertained, and that defendants and each of them be adjudged and decreed to pay the same to the plaintiff.

"Third. That a writ of injunction be granted, perpetually restraining and enjoining the defendants and each of them, their agents and employees, from placing or causing to be placed upon sewing machines the trade-marks hereinbefore referred to or either of them, or the names of 'Corona' and 'Wettina,' or either of them in any form, or any name in imitation thereof, and from selling or offering for sale in the Philippine Islands any sewing machines on which the trade-marks above referred to, or either of them, or any mark or name that may simulate or resemble said trade-marks or the names 'Corona' and 'Wettina' or either of them, are printed or stamped, or in any way or manner attached thereto.

"Fourth. That plaintiff have and recover his costs in this case, and all further or other relief as the nature of the case may require and as may be in accordance with law and equity."

On the 31st day of May, 1905, the defendants filed in said court an answer and cross complaint, with the following prayer for relief:

"Wherefore, the defendants and cross complainants pray that the said trade-marks set out in plaintiff's complaint and in this cross complaint, obtained through the affidavits of Carlos Sackermann, may be declared by this honorable court and ordered to be canceled in the office of the Bureau of Patents, Copyrights, and Trade-marks of the Philippine Islands; that this honorable court will declare that cross complainant, Biesolt & Locke, has the sole and exclusive right to said trade-marks; and that the plaintiff pay the costs of this suit."

On the 21st day of November, 1905, the plaintiff and defendants entered, into the following stipulation of facts, agreeing that a judgment of the court might be given upon the questions of law arising from said agreed statement of facts:

"Now come the respective parties in the above-entitled action and mutually stipulate and agree that the

following is a full, true, and correct recital of the facts and mutually request that judgment of the court be given upon the questions of law arising from the said agreed statement of facts, without the introduction of testimony in the above-entitled action:

"First. That Muñoz & Co. is a partnership duly registered and authorized to do business in the city of Manila.

"Second. That the defendant Struckmann & Co. is a partnership duly registered and authorized to do business in the city of Manila.

"Third. That the defendant Biesolt & Locke is a corporation organized under and by virtue of the laws of the Empire of Germany and is not now and never has been registered in any commercial register of the Philippine Islands.

"Fourth. That heretofore—to wit, from the year 1880, or thereabouts, and until 1901—Tillson, Herman & Co. was a partnership duly registered and authorized to do business in the Philippine Islands.

"Fifth. That in 1901 the firm of Tillson, Herman & Co. was duly succeeded by the firm of Sackermann Senior, and that the latter succeeded to whatever rights in and to the subject-matter of this action that the former had theretofore acquired and obtained.

"Sixth. That in the latter part of the year 1904 the firm of Sackermann Senior, above mentioned, amalgamated with the firm of J. & C. Muñoz, forming the firm of Muñoz & Co., the plaintiff in this action, and to said plaintiff was conveyed all the right, title, and interest of the said firm of Sackermann Senior and Tillson, Herman & Co. in and to the subject-matter of this action, and said plaintiff has continued to hold and still continues to hold and own said right, title, and interest.

"Seventh. That in the year 1886, and for some time prior thereto, Biesolt & Locke were engaged in the manufacture of sewing machines of various kinds, in the city of Meissen, Empire of Germany, and that,, among other machines so manufactured and sold by Biesolt & Locke, the said Biesolt & Locke manufactured and sold a certain sewing machine known to the trade in Germany and Holland as the (B. & L. long shuttle sewing machine.'

"Eighth. That heretofore—to wit, during and about the year 1886—the firm of Tillson, Herman & Co., then engaged in business in the Philippine Islands, received a consignment of a certain number of 'B. & L. long shuttle' sewing machines from the firm of G. W. Koning, Jr. & Co., of Rotterdam, Holland, under an agreement then existing with the said G. W. Koning, Jr., & Co., whereby the said sewing machines were to be sold by the said consignees and the proceeds thereof to be remitted to the said consignors after deducting the seller's commission, charges, etc., which arrangement is more fully set forth in the correspondence between the parties attached hereto and marked 'Exhibits A and O.'

"Ninth. That said machines so consigned to the said Tillson, Herman & Co., as aforesaid, were imported by the last-named firm into the Philippine Islands and there exposed for sale and there sold by the firm of Tillson, Herman & Co., according to the terms of the arrangement above mentioned,

"Tenth. That the said machines so imported and sold as aforesaid bore upon the base thereof a certain ornamental design, circular in shape, more particularly described in the complaint and answer on file herein, by reason of which said design the said machines became known to the trade in the Philippine Islands by the name of 'Corona,' the Spanish word for crown.

"Eleventh. That thereafter—that is to say, subsequent to the importation and sale of said machines in the Philippine Islands by Tillson, Herman & Co., as aforesaid—the said firm of Tillson, Herman & Co., and its successors, have received consignments at various times and in various quantities of a large number of said sewing machines from the said firm of G. W. Koning, Jr., & Co., of Rotterdam, Holland, in pursuance of the arrangement above mentioned; that during this period, and about the beginning of the year 1900, a change was agreed upon in the then existing arrangement, whereby the said firm of Tillson, Herman & Co. were required

by the said G. W. Koning, Jr., & Co. to guarantee a certain fixed selling price for said sewing machines, as will more fully appear in the correspondence attached hereto and marked 'Exhibits B, D, E, F, and G;' that subsequently Emile Sackermann, of the firm of Sackermann Senior, successor to Tillson, Herman & Co, as aforesaid, while in Hamburg, Germany, in about the month of May, 1902, entered into an arrangement with Biesolt & Locke whereby the said firm of Sackermann Senior was, in the case of future orders, to remit 50 per cent of the invoice price of said sewing machines upon receipt by the said firm of Sackermann Senior, of the invoice and shipping documents, as will more fully appear by the correspondence attached hereto and marked 'Exhibits H, I, J, K, and L,' and that at various times, continuously, from the year 1886 to the year 1904, inclusive, the said firm of Tillson, Herman & Co., and its successors, imported said sewing machines, so consigned, as aforesaid, into the Philippine Islands, and have there sold the same unto the clients of said importers in accordance with the terms, respectively, of the successive arrangements above set forth.

"Twelfth. That in the year 1901, and for some time prior thereto, Biesolt & Locke was engaged in the manufacture and sale, in the city of Meissen, Germany, of sewing machines of various kinds, and that among other sewing machines so manufactured and sold by Biesolt & Locke the said Biesolt & Locke manufactured and sold a certain sewing machine known to the trade in Germany and Holland as the 'B. & L. vibrating shuttle sewing machine.

"Thirteenth. That heretofore—to wit, during and about the year 1901—the firm of Tillson, Herman & Co. and its successor the firm of Sackermann Senior, then engaged in business in the Philippine Islands, received consignments of a certain number of 'B. & L. vibrating shuttle' sewing machines from the firm of G. W. Koning, Jr., & Co., of Rotterdam, Holland.

"Fourteenth. That the machines so consigned to said firm of Tillson, Herman & Co. and its successor, the firm of Sackermann Senior, as aforesaid, were imported by said firms into the Philippine Islands and there exposed for sale and there sold by said firms of Tillson, Herman & Co. and its successor, Sackermann Senior, in accordance with the arrangements hereinabove set forth in paragraph eleventh.

"Fifteenth. That said sewing machines so imported and sold bore a design and the word 'Wettina/ as more particularly described in the complaint and answer filed herein, which machines became known to the trade in the Philippine Islands as the 'Wettina' sewing machines. "Sixteenth. That thereafter—that is to say, subsequent to the importation and sale of said sewing machines in the Philippines by Tillson, Herman & Co., as aforesaid—the said firm of Tillson, Herman & Co. and its successors have received consignments at various times and in various quantities of a large number of said sewing machines from the said firm of G. W. Koning, Jr., & Co., at Rotterdam, Holland, and that at various times, continuously, from the year 1901 to the year 1904, imported said machines so consigned as aforesaid into the Philippine Islands and have there sold the same unto the clients of said importers in accordance with the terms of the agreement herein-before set forth in paragraph eleventh.

"Seventeenth. That the said sewing machines known as 'Corona' and 'Wettina' have been exclusively designed by the said Biesolt & Locke and have been by them exclusively manufactured, and that the said designs placed upon said sewing machines were thereon placed by the said Biesolt & Locke.

"Eighteenth. That neither the said Till son, Herman & Co. nor the said Sackermann Senior, nor the plaintiff, Muñoz & Co., have at any time during said period manufactured any sewing machines nor designed any sewing machines, but have only sold the sewing machines manufactured by cross complainant, Biesolt & Locke.

"Nineteenth. That the design upon the 'B. & L. long shuttle sewing machine' (known in the Philippine Islands as the 'Corona') has not been registered by said Biesolt & Locke as a trade-mark in the Philippine Islands, nor has the same been registered as a trade-mark in any country other than Germany, where it was so registered in 1905;" that the name 'Wettina' has not been registered as a trade-mark in the Philippine Islands, but has been registered as a trade-mark by said Biesolt & Locke in the countries of Germany, France, Russia, and

Denmark, in the year 1880.

"Twentieth. That said serving machines so referred to are well-built and high-grade machines and enjoy an excellent reputation in the market of the Philippine Islands, find that the trade in said sewing machines in the Philippine Islands is profitable and lucrative and that prior to the importation of said machines in the Philippine Islands sewing machines of said description and sewing machines bearing said trade-marks had not theretofore been sold by any person in said Islands; that during the importation and sale of said machines between the years 1886 and 1904, the said sewing machines were not sold by any person in said Islands save and except by the said firm of Tillson, Herman & Co. and its successor above named; that by reason of such importation and sales in the Philippine Islands during the years intervening between 1886 and 1904, the machines known in the Philippine Islands as 'Corona' and 'Wettina' have come to be identified and recognized by said marks and names as the machines imported and sold by the plaintiff and its predecessors in interest, and manufactured by Biesolt & Locke.

"Twenty-first. That on the 16th and 17th days of December, 1904, the trade-mark described in the complaint of the plaintiff and in 'Exhibits A and B' thereto attached, were registered in the Bureau of [Archives,] Patents, Copyrights, and Trade-marks of the Philippine Islands, under and pursuant to Act No. 666 of the United States Philippine Commission, as per the copies of certificates of registration attached to said complaint as 'Exhibits A and B,' respectively.

"Twenty-second. That between the years 1886 and 1904 the plaintiff and its predecessors in interest had and enjoyed the exclusive right to import into the Philippine Islands the above-described sewing machines of the manufacture of the defendant, Biesolt & Locke.

"Twenty-third. That ever since the 1st day of October, 1904, the defendant, Biesolt & Locke, and the said firm of G. W. Koning, Jr., & Co. have failed and refused to sell to the plaintiff for importation to the Philippine Islands any of the said described sewing machines and has named and appointed the defendant, Struckmann & Co., as the agent of said defendant, Biesolt & Locke, to sell sewing machines of said description and bearing said trade-marks, above described, in the Philippine Islands.

"Twenty-fourth. That on or about the 12th day of December, 1904, the said firm of Biesolt & Locke applied to the Office of [Archives,] Patents, Copyrights, and Trademarks of the Philippine Islands for the purpose of having the designs of the said machines registered for the purpose of securing said designs as its trade-marks on said machines; that the chief of said office refused to receive for registry the descriptions or the designs of the said sewing machines manufactured by the said Biesolt & Locke, for the reason that prior to the application of said Biesolt & Locke, Carlos Sackermann, representing the firm of Sackermann Senior, had secured the aforementioned certificates of trade-marks, and that prior to the said 12th day of December, 1904, said firm of Biesolt & Locke had never applied for registry of said 'trade-marks in the Philippine Islands.

"Twenty-fifth. That the defendant, Struckmann & Co., as such agent of its codefendant, Biesolt & Locke, has sold and is now selling in the Philippine Islands large quantities of sewing machines of a similar kind, upon each of which have been placed, in a plain and conspicuous manner, the trade-marks above described; that all of the said machines were so marked and sold by the defendant in the Philippine Islands without the consent and against the will of this plaintiff; that by so doing, the defendants and each of them have entirely deprived the plaintiff of the trade in said sewing machines.

"Twenty-sixth. That unless restrained by an injunction, said defendants and each of them will continue to use said trade-marks upon sewing machines sold by them in the Philippine Islands, to the further injury and depreciation of the trade of plaintiff.

"Addendum.—That unless the registration of the trade-marks by plaintiff be canceled, the defendant will be deprived of the advantage of selling machines by means of said marks in the Philippine Islands." Upon this

agreed statement of facts, the lower court, in its decision, said:

"The court is satisfied from the proof that Biesolt & Locke are the originators and owners of said trade-marks, and that the conduct of the plaintiff, Muilo & Co., in having the same registered as plaintiff's, was a fraud upon the rights of defendant, Biesolt & Locke, and that the registration thereof should be set aside and annulled: It is, therefore,

"Ordered, adjudged, and decreed by the court that the said trade-marks herein described are the property of the defendant, Biesolt & Locke; and it is further

"Ordered, adjudged, and decreed by the court that the registration of the said trade-mark by plaintiff be set aside and that the same be canceled; it is further

"Ordered, adjudged, and decreed by the court that the defendants, Biesolt & Locke and Struckmann & Co., recover of the plaintiff, Muñoz & Co., the costs of this suit, for which execution may issue. That the injunction herein be dissolved and plaintiff's complaint dismissed."

From this decision of the lower court the plaintiff appealed and made the following assignment of errors:

"1. The court erred in holding that trade-marks are not designed for the benefit or protection of the manufacturer or dealer in the article, because the manufacturer or dealer knows the goods he manufactures, their quality, etc., by sight, without affixing a trade-mark, but the trade-mark is for the protection and benefit of the public, in order to protect it against fraud in purchasing, and while it is incidentally a protection to the manufacturer in his reputation, the public is more interested than is the manufacturer.

"2. The court erred in finding and holding that the plaintiff and its predecessors were agents of the manufacturer, Biesolt & Locke, for the handling of the machines in the Philippines.

"3. The court erred in finding and holding that the trade-marks were not used by plaintiff and its predecessors, but by the defendant, Biesolt & Locke, in the Philippine Islands, and that neither the plaintiff nor its predecessors were acting for themselves in presenting the machines to the Philippine market, but were acting therein for the defendant, Biesolt & Locke.

"4. The court erred in finding and holding that the defendant, Biesolt & Locke, was the owner and that plaintiff's predecessors were not the owners of the trade-marks in the Philippine Islands at the time of the registration in these Islands.

"5. The court erred in putting the question, 'What is the plaintiff going to do with these trade-marks?' and in drawing therefrom the inference that plaintiff intends to practice a fraud on the public by continuing the sale of machines bearing said marks.

"6. The court erred in adjudging the trade-marks to be the property of the defendant, Biesolt & Locke, and in decreeing:

"(1) That the registration of said trade-marks by plaintiff's predecessor be set aside and canceled.

"(2) That plaintiff's complaint be dismissed.

"(3) That the defendants recover of and from the plaintiff the costs of this suit."

With reference to the first assignment of error above noted, we are at a loss to know how that finding of the lower court in any way prejudiced the rights of the plaintiff, under the stipulated facts. The statement was a mere voluntary statement on the part of the lower court and the judge's view of the purposes of a trade-mark, and while the same may have influenced his conclusions, yet in this particular instance we are unable to see in what way this statement affected the real question at issue between the parties.

With reference to the second, third, and fourth assignments of error above noted, they all relate to the relations which existed between the plaintiff, its predecessors, and the defendant, Biesolt & Locke.

By reference to the agreed statement of facts, it will be seen that Biesolt & Locke, some time prior to the year 1886, in the city of Meissen, Empire of Germany, manufactured and sold a certain sewing machine known to the trade as the "B. & L. long shuttle sewing machine/" and that by reason of an arrangement between the..agent of the manufacturers at Rotterdam, Holland, the predecessor of the present plaintiff was appointed as agent or consignee to handle and sell said sewing machine in the Philippine Islands, under an arrangement by which the predecessor of the plaintiff was to receive a commission for selling said sewing machine; that in accordance with this arrangement, certain consignments of the said machines were made, from time to time, to the predecessor of the plaintiff. The said machine (the "B. & L. long shuttle sewing machine") bore upon the base thereof a certain ornamental design, circular in shape, by reason of which design the said machine became known to the trade in the Philippine Islands by the name of "Corona." (See pars. 7, 8, 9, and 10 of the stipulated facts.)

The said firm of Biesolt & Locke continued, through its agent in Holland, to make consignments of the said sewing machine to the plaintiff and its predecessors, up to and including part of the year 1904, under varying contracts or terms, each contract, however, recognizing the fact that the plaintiff and its predecessors were mere consignees or agents, with authority to handle and sell the said sewing machine.

Some time prior to the year 1901 the said Biesolt & Locke manufactured another sewing machine in the city of Meissen, Empire of Germany, known to the trade as the "B. & L. vibrating shuttle sewing machine." Biesolt & Locke, through its agent in Holland, made an arrangement or contract with the plaintiff and its predecessor to handle and sell, as consignees or agents, this machine, the B. & L. vibrating shuttle machine, also. The plaintiff, from time to time, received various consignments of this "B. & L. vibrating shuttle sewing machine" from the year 1900 up to and including a part of the year 1904, This sewing machine, to wit, the B. & L. vibrating sewing machine, so manufactured and consigned to the plaintiff and its predecessor, as above stated, bore a design and the word "Wettina," by which the machine became known to the trade in the Philippine Islands as the "Wettina" sewing machine.

By reference to paragraph 17 of the stipulated facts, it will be seen that the said sewing machines, known as the "Corona" and "Wettina," have been exclusively Resigned by Biesolt & Locke and have been by them exclusively manufactured, and that the said designs placed upon the said sewing machines were placed thereon by the said Biesolt & Locke.

It would seem clear from the foregoing that the plaintiff and its predecessors were mere agents or consignees in the Philippine Islands for the sale of the said sewing machines. From a letter written by Sackermann Senior, one of the admitted predecessors of the plaintiff, dated October 1,1901, the following appears:

"I beg to thank Biesolt & Locke particularly that they refused to execute an order received from other people for the 'Wettina' machine; with regard to their connection with me, my entire attention is devoted to the sale of the machine sent by you, and in my opinion it is the most proper course to leave the sale also for the future time solely in my hands.. If the machines of Biesolt & Locke would be sent also to competitors, irregularities very easily would arise and in due course would question the whole business. * * * With your favor of August 9 I received bill of lading. * * * With thanks, the sale of which, on arrival, will have my best attention."

This letter was addressed by the predecessor of the plaintiff to the agent of Biesolt & Locke, with whom the plaintiff always dealt.

Everything in the stipulated facts relating to the relations which the plaintiff and its predecessors had with the defendant seems to indicate, beyond question, that the plaintiff and its predecessors were mere agents for the firm

of Biesolt & Locke in the Philippine Islands, with authority to sell the sewing machines in question and to receive therefor a commission. (Par. 8 of stipulated facts and Exhibits A and O.) It is admitted that neither the plaintiff nor its predecessors at any time manufactured any sewing machines nor designed any sewing machines in the Philippine Islands and have only sold for the defendant, Biesolt & Locke, the machines mentioned in the stipulated facts, manufactured by the latter.

The plaintiff and its predecessors, acting as agents only of the defendant, Biesolt & Locke, in the sale of the machines, it is difficult to understand upon what theory they can base their claim to the sole and absolute right to the trade or reputation which through their acts as agents they have created in favor of the sewing machines, the "Corona" and "Wettina." It may be true that during the period while they were acting as agents of the defendants, in selling the sewing machines in question on the market in the Philippine Islands, that said machines by virtue of their peculiar qualities and designs acquired a reputation and market which were more or less valuable, but this market and reputation in favor of the particular machines could not, under any sense nor any view of the case, become the exclusive right of the plaintiff. An agent can not acquire the property of his principal in that way. It would be just as logical for the plaintiff to assert that it had become the exclusive and sole owner of any other property which it had been handling and using for its principal as to assert that it had become the sole and exclusive owner of the market and reputation which the machines had acquired through its efforts in selling the same in the Philippine Islands. Considering that the reputation of the machines in the markets of the Philippine Islands had some value, the only difference would be that in one case it would be the acquisition of tangible property, while in the other it would be the acquisition of a right, equally valuable, to the sole and exclusive use of the markets in which the machines were sold.

When the defendant, Biesolt & Locke, through its authorized agents, arranged with the plaintiff and its predecessors to sell the machines in question in the Philippine Islands, as agents, it certainly did not consent that the market which the plaintiff might create in favor of the said machines should be appropriated by the plaintiff.

There is nothing in the record that shows that the defendant might not have withdrawn the right of the plaintiff to sell the machines within the Philippine Islands, and have appointed another agent, at any time. This is fully substantiated by the letter above quoted, by the predecessor of the present plaintiff. Had the plaintiff gone into the open market and purchased the machines in question, manufactured by the defendants, bearing the peculiar design which the machines in question bear, and had sold the same in the markets of the Philippine Islands for a long period, on its own account, without accepting a special agency therefor from the defendant for the purpose of selling them, it might have acquired for itself, under the law, the sole right to the markets which it had itself created; but as agent, whatever right or reputation was created in favor of the particular machines in question belonged to its principal.

The exhibits presented during the trial present further evidence of the fact that the plaintiff was a mere agent of the defendant in handling the said machines, in that the defendant fixed the selling price of the said machines. (Exhibits A and B.)

It can not be contended, of course, from the mere fact that the defendant, Biesolt & Locke, had registered in Germany a trade-mark with reference to the machines in question, that such registration could be extended to the Philippine Islands for the purpose of protecting their rights here, but this question has no bearing upon the question presented here, for the reason that the plaintiff, as above stated, was an agent of the defendant. If the plaintiff had purchased the said sewing machines, as indicated, in the markets of the world, without any relation whatever with the defendant, and had sold the machines upon the markets in the Philippine Islands and had acquired for said machines a reputation, then the doctrine contended for in the argument of the appellant might have some weight. The plaintiff was paid a commission for its services and whatever advantage resulted from its

services belonged to its principal, the defendant, Biesolt & Locke.

We are of the opinion that the treaty relations relating to trade-marks, etc., between the United States Government and the Empire of Germany have no bearing upon the question presented in this case. The defendant made no claim to any rights arising under treaty relations. Had the plaintiff, as an independent dealer in sewing machines and in the particular machines in question, without any relation whatever with the defendant, as agent of the latter, secured a trade-mark entitling it to sell machines bearing-marks and designs of the machines in question, and if under these circumstances the defendant had intervened for the purpose of preventing the plaintiff from selling machines with such designs, then in the event of the failure of the defendant to have acquired a trade-mark protecting its machines, the treaty relations might have had some bearing upon the questions presented in this case, and then the case cited and relied upon by the plaintiffs of *Richter vs. Anchor Remedy Company* (52 Fed. Rep., 455) might have had some bearing. But the question presented here is a very different one from the one presented in that case. If the plaintiff had dealt independently and not as agent of the defendant in selling the machines in question upon the markets of the Philippine Islands, it might have some just claim to protection in the trade-mark acquired by it.

With reference to the fifth assignment of error above noted—to wit, that the lower court erred in putting the question "What is the plaintiff going to do with these trade-marks?"—we are unable to see in what way the answer of the judge to this question affected the real questions presented in this case.

For the foregoing reasons we are of the opinion, and so hold, that the conclusions of the lower court are fully justified both from the facts presented in the cause and by the law. Therefore the judgment of the lower court is hereby affirmed, with costs. So ordered.

Arellano C. J., Torres, Willard, and Tracey, JJ., concur.

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