

JONAS BROOK BROS., PLAINTIFF AND APPELLEE, VS. FROELICH & KUTTNER, DEFENDANT AND APPELLANT.*G.R. No. 3369. September 24, 1907*

Ponente: JOHNSON, J.

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This action was brought in the Court of First Instance of the city of Manila, by the plaintiff against the defendant, under section 7 of Act No. 666 of the Philippine Commission, to restrain the defendant from selling in the Philippine Islands cotton thread in boxes labeled in a way which was intended to deceive the public into believing that the said thread was that sold by the said plaintiff.

The said cotton thread imported and sold in the Philippine Islands was packed in small flat boxes of white paste-board, of the same size and shape as those of the plaintiff, and bearing within and without certain labels whose color, size, form, and appearance were so nearly like those used by the plaintiff that it is believed that it was the intention of the defendant to cause the public to believe that the thread so sold by the defendant was the same thread as that sold by the plaintiff. Facsimiles of the labels used upon the said boxes were as follows, marked "Exhibit A" and "Exhibit B," respectively, of the plaintiff and defendant:

(See Image Vol. 8 Phil. 581)

From an examination of these respective labels it will be noted that they are really of the same color, the corresponding parts of each of the labels being practically the same, both in form and color, and are so nearly alike that unless they were compared together the common observer would fail to note any difference whatsoever. The similarity between the general appearance of the packages with the labels imported and offered for sale by the defendant and those sold by the plaintiff is so great as to require the closest scrutiny to detect the difference, even to one wholly familiar with the packages and wholly aware of the difference between them. The similarity is such as to influence the purchaser of the goods offered by the defendant, to believe that the same are the goods of the plaintiff's manufacture. So faithfully and closely has the appearance and arrangement of plaintiff's packages of thread been followed by the defendant, that the defendant refuses to credit the possibility of attributing the many points of identity to mere accidental coincidence on the part of the defendant.

Section 7 of Act No. 666 provides in part as follows:

"Any person who in selling his goods shall give them the general appearance of goods of another manufacturer or dealer, either in the wrapping of the packages in which they are contained, or the devices or words thereon, or in any other feature of their appearance, which would be likely to influence purchasers to believe that the goods offered are those of a manufacturer or dealer other than the actual manufacturer or dealer, and who clothes the goods with such appearance for the purpose of deceiving the public and defrauding another of his legitimate trade, * * * shall be liable to an action for damages. * * * This section applies in cases where the deceitful appearance of the goods, misleading as to origin or ownership, is effected not by means of technical trade-marks, emblems, signs, or devices, but by the general appearance of the package containing the goods, or

by the devices or words thereon, even though such packages, devices, or words are not by law capable of appropriation as trade-marks; and in order that the action shall lie under this section, actual intent to deceive the public and defraud a competitor shall affirmatively appear on the part of the person sought to be made liable, but such intent may be inferred from similarity in the appearance of the goods as packed or offered for sale to those of the complaining party."

From an examination of the evidence adduced in this cause in the court below, we are satisfied beyond a reasonable doubt that the defendant and appellant, in selling the thread in the boxes labeled in the manner described, intended to give his goods the general appearance of the thread manufactured and sold by the plaintiff, in the devices, labels, and words used by them, in a way which would be likely to influence purchasers to believe that the goods offered by them were those of the plaintiff, and that the similarity in the appearance of the goods offered for sale by the defendant to those of the plaintiff was such as to justify the inference and conclusion that the defendant actually intended to deceive the public and defraud the plaintiff. (U. S. vs. Manuel, 7 Phil. Rep., 221; Nelle vs. Baer, Senior & Co., 5 Phil. Rep., 008.)

Said section 7 provides that "in order that the action shall lie under this section, actual intent to deceive the public and defraud a competitor shall affirmatively appear." But the same section provides that "such intent may be inferred from similarity in the appearance of the goods as packed or offered for sale." 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 of the cases of unfair competition the similarity of the goods must appear from the form or general appearance of the goods sold.

The defendant and appellant claims that the plaintiff, being a foreign corporation, was without judicial personality in the Philippine Islands, not being registered in compliance with the requirements of the Commercial Code. In reply to that assignment of error of the defendant, it is sufficient to say that this court has already decided in the case of Dampschieffs Rhederei Union vs. La Compañía Trasatlántica^[1] (5 Off. Gaz., 712) that a foreign corporation which had not established itself in the Philippine Islands could maintain an action in the Philippine Islands against another for damages without filing articles of incorporation in the mercantile register.

We, therefore, are of the opinion that the judgment of the lower court should be affirmed with costs.

After the expiration of twenty days let judgment be entered adjudging and decreeing that the defendant render into the Court of First Instance of the city of Manila, within a time to be fixed by the lower court, a full, true, and correct statement and account of the profits had and received by the said defendant from the sale of five cases of cotton thread sold and disposed of by the said defendant under the labels whose facsimiles are attached to the complaint, marked "Exhibit B," and that the plaintiff recover from the said defendant double the amount of said profits, with costs; and that defendant, his agents, attorneys, and representatives, be perpetually enjoined from selling in the Philippine Islands the thread put up in packages with the labels heretofore used. So ordered.

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

[1] Page 766, post.

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