

**LA YEBANA COMPANY, INC., PLAINTIFF AND APPELLANT, VS.
ALHAMBRA CIGAR & CIGARETTE MANUFACTURING CO. ET AL.,
DEFENDANTS AND APPELLEES.**

G. R. No. 34497. September 12, 1931

Ponente: MALCOLM, J.

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MALCOLM, J.:

La Yebana Company, Inc., seeks to reverse a judgment of the Court of First Instance of Manila which sustained an order of the Director of the Bureau of Commerce and Industry, approving the application of the Alhambra Cigar and Cigarette Mfg. Company for the registration of a trade-mark and denying La Yebana Company's opposition to the application, and which further awarded the Alhambra Cigar and Cigarette Company, upon its cross-complaint, the sum of P1,176.10 by way of indemnity for damages sustained as a result of the preliminary injunction issued at the commencement of the action. The thesis of La Yebana Company, Inc., as appellant, and so the pivotal point in the case, is whether the appellant, by the registration of a trade-mark for cigarette wrappers, acquired the exclusive right to use the word "Chorritos" as a trade-mark as against all competitors.

The facts are practically undisputed, and may be stated briefly as follows: On October 6, 1904, a label forming the wrapper for cigarette packages and containing the words "Alhambra 25 Chorritos" was registered with the Government by the Alhambra Fabrica de Tabacos, Cigarrillos y Picadura of Manila, P. I. On February 23, 1922, another label forming the wrapper for cigarette packages and containing the words "20 Chorritos de Gamu" was registered by Enrique Ga. Caruana. On March 3, 1925, La Yebana Company, Inc., secured the registration of a trademark which, as more particularly described in the application, was: "La caracteristica esencial de esta etiqueta es la palabra 'La Yebana Chorritos' como nominacion o nombre de la clase especial de cigarrillos elaborados por la fabrica." On August 21, 1928, the Alhambra Cigar and Cigarette Mfg. Company, the successor of the Alhambra Fabrica de Tabacos, Cigarrillos y Picadura, presented to the Bureau of Commerce and Industry an application to register a trade-mark consisting of the words "Alhambra Chorritos" with a design for cigarettes. La Yebana Company filed an opposition to this application. Thereupon, the chief of the Bureau of Commerce and Industry decided to accept the application of the Alhambra Cigar and Cigarette Mfg. Company and to overrule the opposition thereto. The present action is the outcome.

We experience no difficulty in reaching the definite conclusion that the registration of the trade-mark of the appellee does not constitute an infringement of appellant's trade-mark. The word "Chorritos" as we understand it, has come to be a local name given to a special kind of cigarettes the tobacco of which is rolled in sweetened black paper. Like the words "Corona," "Especiales," "Perfectos," etc., which are used in common by local cigar manufacturers to designate the different shapes or forms of cigars manufactured by them, for cigarettes there could be "La Yebana Chorritos," "Alhambra Chorritos," "Chorritos de Gamu," etc. This is particularly true in so far as the appellant is concerned, since the appellant was one of the last to make use of the word "Chorritos" as a trade-mark, and since all that the appellee has been endeavoring to do has consisted in perfecting a trade-mark originally registered many years ago. On such facts, the appellee, rather than the appellant, could more logically

contend that it has acquired the exclusive right to use the word "Chorritos" as a trade-mark for cigarettes. In addition, it need only be remarked that a superficial examination is sufficient to show an entire lack of deceitful similarity between the trade-mark of the appellant and the trade-mark of the appellee. (See as corroborative authorities the cases of Baxter and G. Baxter & Co. vs. Zuazua [1905], 5 Phil., 160; and Alhambra Cigar and Cigarette Mfg. Co. vs. Compania Gral. de Tabacos [1916], 35 Phil., 62.)

The trial court awarded the appellee the sum of p1,176.10 as damages resulting from the issuance of the preliminary injunction, and the amount of damages is sufficiently established by the testimony. Counsel for the appellant has further elaborated on other points mostly of a minor character which merit no particular consideration. For instance, there is nothing to be found in Act No. 3202, relating to the obligatory registration of trade-marks and trade-names for cigars and cigarettes, which affects the disposition of this case one way or the other. Fundamentally the decisions of the Director of the Bureau of Commerce and Industry and of Judge Concepcion, sitting in First Instance, are sound and should be maintained.

Judgment will be affirmed, with the costs of this instance against the appellant.

Avanceña, C. J., Johnson, Street, Villamor, Ostrand, Romualdez, Villa-Real, and Imperial, JJ., concur.

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