

JOSE L. UY, PLAINTIFF AND APPELLANT, VS. ANASTASIO SANTOS, DEFENDANT AND APPELLEE.

G. R. No. 39483. April 18, 1934

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the plaintiff Jose L. Uy from the judgment of the Court of First Instance of Manila, the dispositive part of which reads as follows:

"Wherefore, judgment is hereby rendered perpetually enjoining the defendant, his attorneys, and agents from the use of the trade-mark in question on the products manufactured by his distillery 'La Suerte', with the costs against the said defendant.

"The plaintiff is absolved from the counterclaim."

In support of his appeal the appellant assigns three alleged errors as committed by the trial court, which will be discussed in the course of this decision.

There is no question that the defendant Anastasio Santos violated section 3 of Act No. 666 which protects the exclusive use of trade-marks and provides for an indemnity for damages against the violators thereof.

The only question to decide in this appeal is whether or not the plaintiff-appellant is entitled to an indemnity for damages by reason of such violation.

The said plaintiff, testifying in his own behalf, stated that he discovered that the defendant had been illegally using his trade-mark Exhibit B since the year 1929, but that he did not institute any judicial proceeding against the said defendant by reason of the latter's request to be permitted to use the labels bearing said trade-mark, which said defendant then had in stock and which were very few, until they were exhausted, promising that henceforth their use would be discontinued. Therefore it is clear that the plaintiff consented to the continued use by the defendant of the remaining labels bearing the said plaintiff's trade-marks. If this is true, then the plaintiff cannot seek indemnity for damages from an alleged illegal use of his trade-mark, to which he himself had consented, unless after having given his consent thereto he enjoined the defendant from the use thereof. The record does not show the existence of any such prohibition by the plaintiff until the filing of this complaint.

Wherefore, not finding any error in the judgment appealed from, it is hereby affirmed in toto with the costs against the appellant. So ordered.

Malcolm, Hull, Imperial, and Goddard, JJ., concur.

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