

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
FRANCISCO GENATO, DEFENDANT AND APPELLANT.***G.R. No. 45514. October 17, 1938*

Ponente: CONCEPCION, J.

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The accused, as vice-president and general manager of the Genato Commercial Corporation, having been found guilty of violation of Act No. 3202, as amended by Act No. 3594, for having sold and distributed in Manila cigarettes bearing the trade-mark "Domino" consigned to said corporation at Manila, without first registering said trade-mark in the Bureau of Commerce, he was sentenced to pay a fine of P200 or to suffer the corresponding subsidiary imprisonment in case of insolvency, plus the costs. The accused appealed from said judgment.

The facts are undisputed. In this appeal, the only question raised is the question of law consisting in whether or not the above-cited laws are applicable, with respect to the registration of trade-marks, to cigarettes manufactured in the United States and imported to Manila for distribution and sale.

The appellant raised the same question in the Court of First Instance by means of a demurrer which was overruled, and in his brief before this court, he reproduces the same question to a greater extent.

The appellant contends that Act No. 3202, as well as the amendatory Act No. 3954, making compulsory the registration of a trade-mark for cigars and cigarettes in the Bureau of Commerce, has for its purpose solely to protect local manufacturers, this being the reason for the absence in both of the above-cited laws of any provision referring to imported cigarettes.

While it is true that said laws have been promulgated to protect the local cigar and cigarette industry, it is not true, however, that the provisions thereof, making the registration of trade-marks compulsory, are not applicable to cigarettes manufactured in the United States and brought into the Philippines with a trade-mark, for distribution and sale. To carry out their purpose, said laws have to impose as they in fact impose, as obligatory, not only the registration of trade-marks used by local factories but also those to be used in the Philippines by manufacturers in the United States and in foreign countries. If it were not so, the purpose of the laws would be completely illusory, and the local cigar and cigarette manufacturers would have no adequate protection against usurpers of their trade-marks or trade-names. Suppose a particular trade-mark had been adopted and registered beforehand by some manufacturer in the Philippines, and some years later it was imitated and used on cigarettes manufactured in Virginia, United States, and imported into the Philippines for distribution and sale. If, according to the theory of the appellant, the trade-mark used on cigarettes manufactured in Virginia need not be registered in the Philippines, then the Virginia manufacturers and their agents or distributors in the Philippines would be able to wage with impunity a ruinous competition against the local manufacturer who is using and has registered the same trade-mark. To avoid the occurrence of such competition, section 1 of Act No. 3202, as amended by Act No. 3954, provides as follows:

"With the exception of trade-marks and trade-names already registered under the provisions of Act Numbered

Six hundred and sixty-six, as amended, no trade-mark or trade-name shall be used on cigars or cigarettes in the Philippine Islands without having first been registered in the Bureau of Commerce and Industry, * * *."

It should be noted that the foregoing provision does not say "on cigars or cigarettes manufactured in the Philippines," but that "no trade-mark or trade-name shall be used on cigars or cigarettes in the Philippine Islands", making no distinction of their origin or country of their manufacture.

By means of the compulsory registration of a trade-mark or trade-name, the local manufacturers are given the opportunity to oppose the application for registration if the trade-mark or trade-name sought to be registered is an imitation of the one they are already using and have registered for their cigars and cigarettes. To this effect, section 2 of Act No. 3202 provides for the publication of the application in the Official Gazette and the service of notice thereof upon the "Manila Tobacco Association" and other similar associations.

The very conduct of Larus & Brother Company, manufacturers in Virginia, United States, of the cigarettes bearing the trade-mark "Domino", in applying for the registration of said trade-mark, after the cigarettes in question had been received and sold in Manila by the corporation of which the accused is the general manager, shows that the legal necessity of registering said trade-mark was recognized by Larus & Brother Company which the accused represents. This estops the accused from raising the question of inapplicability of said laws to the present case.

The appellant contends that if there has been any violation, Larus & Brother Company was the involuntary violator, but that the accused is entirely innocent Larus & Brother Company, according to him, applied for the registration of the trade-mark long before any question on this case was ever raised, thereby proving the good faith of Larus & Brother Company. This court is of the opinion that the allegation of good faith and innocence does not constitute a valid defense, it having been admitted that cigarettes bearing the trade-mark "Domino" were distributed and sold in the Philippines, without first registering said trade-mark, which constitutes a violation of the above-cited laws (U. S. vs. Go Chico, 14 Phil., 128; People vs. Bayona, 61 Phil., 181).

The judgment appealed from is hereby affirmed, with the costs to the appellant. So ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Imperial, Diaz, and Laurel, JJ., concur.

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