

FINLAY, FLEMING & CO., PLAINTIFF AND APPELLEE, VS. ONG TAN CHUAN, DEFENDANT AND APPELLANT*G.R. No. 8032. January 22, 1914*

Ponente: MORELAND, J.

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This is an action to recover damages caused to the plaintiff by the unfair competition of the defendant. The plaintiff, through its agent Behn, Meyer & Co., Limited, was the sole vendor of a certain kind of wax candles. They were put up in packages of two sizes, wrapped in blue paper, to which was affixed a price of paper, in the form of a label, upon which were printed and impressed the trade name and style of that class of candles, consisting of certain peculiar and special pictures, signs, forms, designs, and colors which, taken together, distinguished a package containing that class of candles from all others then on the market.

The allegations of the complaint are that the defendant knowing that the plaintiff, by industry and expense and by long lapse of time, had established a large trade in these candles, obtained the manufacture in Japan of a trade name, mark or label approximating very closely both in scheme, form, pictures, design, color, and style that of the plaintiff in this case. While different in many of the minuter details, the trade label on defendant's candles was so similar in general appearance to that of the plaintiff that one would very readily be taken for the other. Taking this in connection with the fact that the packages were put up in substantially the same size and form and wrapped in exactly the same kind and color of paper, and we have a situation presented which demonstrates that the ordinary purchaser of that article would very probably be deceived into purchasing defendant's candles instead of plaintiff's although he had theretofore been a regular customer of the latter and at the moment desired to purchase its candles.

The trial court found that the similarity between the trade label of the two classes of candles was such as to produce unfair competition and upon an accounting by the defendant found the damages to be P661.56. This appeal is from that judgment.

Section 7 of Act No. 666 provides that "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, or any subsequent vendor of such goods or any agent of any vendor engaged in selling such goods with a like purpose, shall be guilty of unfair competition, and shall be liable to an action for damages, in which the measure shall be the same as that provided for a violation of trademark rights, together with discretionary power in the court to impose double damages, if the circumstances call for the same. *

* *."

We believe that the evidence fully sustains the trial court in the conclusion that this section was violated by the

defendant in this case. A glance at the packages as they come before us shows a striking similarity, both in form, color and general appearance, in the trade label attached to the packages. Moreover, we find the boxes in which the candles are shipped to be substantially the same in both cases. Those of the defendant approximate very closely those of the plaintiff in size, appearance and method of fastening, as well as the words printed thereon. Taken all in all, the attempt to imitate is so clear that we do not go into a discussion of the particular details which constitute the similarity.

The judgment appealed from is affirmed, with costs
against the appellant.

Arellano, C. J., Carson, Trent, and Araullo, JJ., concur.

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