

**ALHAMBRA CIGAR AND CIGARETTE MANUFACTURING CO.,
PLAINTIFF AND APPELLEE, VS. PEDRO N. MOJICA, DEFENDANT AND
APPELLANT.**

G.R. No. 8937. March 21, 1914

Ponente: MORELAND, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-8937/>

MORELAND, J.:

This is an appeal from a judgment of the Court of First Instance of the city of Manila declaring that the cigar bands or rings attached to the complaint and those in evidence used by the defendant upon his cigars bear such a close resemblance to those used on the cigars of the plaintiff that, taken together with other circumstances, their use constituted unfair competition, and forever prohibiting the defendant from using said bands or rings.

It appears from the evidence that the plaintiff has been manufacturing cigars of a certain kind and form for a long period of years and during that time has used upon said cigars a paper ring or band of a chocolate-brown color, with letters and lines upon it in gold. This ring or band, having been used by the plaintiff for many years, had become well-known to the trade and was of great value in the sale of its cigars.

Within the last year or two the defendant commenced to use a band or ring very similar to that of the plaintiff, and it is upon this use that the present action is founded.

The band or ring of the plaintiff is of a dark brown color, about seven-sixteenths of an inch wide, and divided into three parts or divisions by gold lines. In the first division is the word "Manila" in capital letters of gold. In the second or middle division are two words, "Excelentes" and "Alhambra," the former being above the latter, and the word "Alhambra" being enclosed in quotation marks. In the third or last division or part are the capital letters "A. C. Cy.," of the same size as are used in the word "Manila."

The bands or rings of the defendant, so far as they appear in the evidence, are of two different colors but of the same shape and with substantially the same markings. They are about one-half of an inch wide and, like those of the plaintiff, are divided into three parts. In the first part is the word "Manila" in capital letters of the same form and of substantially the same size as used by plaintiff in the same word. In the second or middle division are the words "Excelentes" and "La Progresiva," the former being above the latter and the latter two words being enclosed in quotation marks. Here, again, the words "Excelentes" and "La Progresiva" are in capital letters of the same form and of substantially the same size as used by the plaintiff in the words "Excelentes" and "Alhambra." In the third or last division are the words "I. Luzon." In another band used by the defendant we have the same style with the exception of color, with the same kind of lines and divisions and the same markings, with the exception that the word "Excelentes" is substituted by the words "Best Quality." The color of defendant's bands, as shown by the exhibits, is either a brown exactly the shade of plaintiff's or green with gold lines and gold letter markings as already stated. The cigars sold by the defendant with the bands described, whether of brown or of green, are formed almost exactly like the cigars sold by the plaintiff, and with substantially the same color and style of wrapper.

In determining whether or not the defendant is guilty of unfair competition in using the bands, we have the right and it is our duty to take into consideration all of the other features of the articles offered for sale to ascertain whether, when taken together with the imitated band, there is likelihood that the public may be deceived as to the article it is purchasing. It is clear that, the cigars having substantially the same appearance and color, the same size, the same shape, and the same style and color of band, the deception is not only possible but is very probable. The cigar put out by the defendant, taken as a whole, disarms and deceives the purchaser who is desirous of purchasing cigars of plaintiff.

Section 7 of Act No. 666 reads :

"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 of words thereon, or in any other feature of their appearance, which would be likely to influence purchasers to believe that the goods offered are 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. The injured party may also have a remedy by injunction similar to that provided for in cases of violation of trade marks. 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 trademarks, 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 trademarks; 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."

The court found that: "An examination of the rings used upon the cigars by the defendant as appears from the evidence in connection with the ring which the plaintiff has adopted and has used for a long period of time before used by the defendant shows that there can be no doubt but that those used by the defendant are similar to the mark used by plaintiff and that they would tend to deceive any purchaser using ordinary care in making a purchase. They are so similar, packed as they are in a box, that one would have to examine closely the reading upon the rings in order to distinguish the difference."

Unfair competition consists in passing off or attempting to pass off upon the public the goods or business of one person as and for the goods or business of another. It consists essentially in the conduct of a trade or business in such a manner that there is either an express or implied representation to that effect. It may be stated broadly that any conduct the end and probable effect of which is to deceive the public or pass off the goods or business of one person as and for that of another, constitutes actionable unfair competition. Unfair competition, as thus defined, is a legal wrong for which the courts afford a remedy. It is a tort and a fraud. The basic principle is that no one has a right to dress up his goods or otherwise represent them in such a manner as to deceive an intending purchaser and induce him to believe he is buying the goods of another. Protection against unfair competition is not intended to create or foster a monopoly and the court should always be careful not to interfere with free and fair competition, but should confine itself, rather, to preventing fraud and imposition resulting from some real resemblance in name or dress of goods. Nothing less than conduct tending to pass off one man's goods or business as that of another will constitute unfair competition. Actual or probable deception and confusion on the part of customers by reason of defendant's practices must always appear.

Relief against unfair competition is properly afforded upon the ground that one who has built up a good will and reputation for his goods or business is entitled to all the benefits therefrom. Such good will is property and, like other property, is protected against invasion. Deception of the public injures the proprietor of the business by diverting his customers and depriving him of sales which he otherwise would have made. This, rather than the protection of the public against imposition, is the true basis for the private remedy, although it is often said that the remedy proceeds in part upon the theory of protection; to the public against fraud. No one has a right to avail himself of another's favorable reputation in order to sell his own goods.

A demand for goods created by advertising belongs to the advertiser and he will be protected therein against unfair competition by another who seeks in any way to take advantage of such advertisements to sell his own goods.

In order to make it a case of unfair competition it is not necessary to show that any person has been actually deceived by defendant's conduct and lead to purchase his goods in the belief that they are the goods of plaintiff, or to deal with defendant thinking that he was dealing with plaintiff. It is sufficient to show that such deception will be the natural and probable result of defendant's acts. Either actual or probable deception and confusion must be shown, for if there is no probability of deception there is no unfair competition. As in the case of infringement by imitation of another's trademark, the true test of unfair competition is whether the acts of defendant are such as are calculated to deceive the ordinary buyer making his purchases under the ordinary conditions which prevail in the particular trade to which the controversy relates. This has been said to include incautious, unwary or ignorant purchasers, but not careless purchasers who make no examination. The fact that careful buyers, who scrutinize closely, are not deceived, merely shows that the injury is less in degree. It does not show that there is no injury. The fact that careless purchasers are deceived simply by the use of ordinary and common forms of putting up goods does not show unfair competition. The class of purchasers who buy the particular kind of article manufactured, such as servants or children, upon the one hand, or persons skilled in the particular trade, upon the other, must be considered by determining the question of probable deception. Purchasers may be deceived and misled into purchasing the goods of one person under the belief that they are purchasing the goods of another person whose goods they intended to buy although they do not know who is the actual proprietor of the genuine goods. They are so deceived when they have in mind to purchase goods coming from a definite, although unknown, source, with which goods they are acquainted, although they neither know nor care who is the actual proprietor of such goods. The ultimate purchaser is the one in view and it is sufficient if he is liable to be deceived.

No inflexible rule can be laid down as to what will constitute unfair competition. Each case is, in a measure, a law unto itself. Unfair competition is always a question of fact. The question to be determined in every case is whether or not, as a matter of fact, the name or mark used by the defendant has previously come to indicate and designate plaintiff's goods, or, to state it in another way, whether defendant, as a matter of fact, is, by his conduct, passing off defendant's goods as plaintiff's goods or his business as plaintiff's business. The universal test question is whether the public is likely to be deceived.

It is often said that a fraudulent intent on the part of defendant to pass off his goods or business as or for that of plaintiff is necessary to constitute unfair competition. We think the better view is, however, that an actual fraudulent intent need not be shown where the necessary and probable tendency of defendant's conduct is to deceive the public and pass off his goods or business as and for that of another, especially where the only preventive relief against continuance of the wrong is, sought or granted. Even if the resemblance is accidental and not intentional, plaintiff is entitled to protection against its injurious results to his trade.

Under the evidence in this case there is no doubt whatever in our minds that the use of the chocolate-colored

bands by the defendant, taken together with the other circumstances under which the article in question is sold, constitutes unfair competition. We do not believe, however, that the complaint against the green band is well founded. That is clearly and easily distinguishable from the band used by the plaintiff; and the ordinary purchaser of plaintiff's goods would be able, at a glance, to distinguish defendant's cigars, when, surrounded by the green band, from those of plaintiff.

The judgment appealed from is affirmed in all particulars except that with reference to the green band, and in that regard is reversed; with costs against the appellant.

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

Trent, J., concurs in the result.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.