

ARCE SONS AND COMPANY, PETITIONER VS. SELECTA BISCUIT COMPANY, INC., ET AL., RESPONDENTS. ARCE SONS AND COMPANY, PLAINTIFF AND APPELLEE, VS. SELECTA BISCUIT COMPANY, INC., DEFEN...*G.R. Nos. 14761 and 17981. January 28, 1961*

Ponente: BAUTISTA ANGELO, J.

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On August 31, 1955, Selecta Biscuit Company, Inc., hereinafter referred to as respondent, filed with the Philippine Patent Office a petition for the registration of the word "SELECTA" as trade-mark to be used on its bakery products alleging that it is in actual use thereof for not less than two months before said date and that "no other person, partnership, corporation, or association * * * has the right to use said trade-mark in the Philippines, either in the identical form or in any such near resemblance thereto, as might be calculated to deceive." Its petition was referred to an examiner for study who found that the trade-mark sought to be registered resembles the word "SELECTA" used by Arce Sons and Company, hereinafter referred to as petitioner, in its milk and ice cream products so that its very use by respondent will cause confusion as to the origin of their respective goods. Consequently, he recommended that the application be refused. However, upon reconsideration, the Patent Office ordered the publication of the application for purposes of opposition.

In due time, petitioner filed its opposition thereto on several grounds, among which are: (1) that the mark "SELECTA" had been continuously used by petitioner in the manufacture and sale of its products, including cakes, bakery products, milk and ice cream, from the time of its organization and even prior thereto by its predecessor-in-interest, Ramon Arce; (2) that the mark "SELECTA" has already become identified with the name of petitioner and its business; (3) that petitioner had warned respondent not to use said mark because it was already being used by the former, but that the latter ignored said warning; (4) that respondent is using the word "SELECTA" as a trade-mark in bakery products in unfair competition with the products of petitioner thus resulting in confusion in trade; (5) that the mark to which the application of respondent refers has striking resemblance, both in appearance and meaning, to petitioner's mark as to be mistaken therefore by the public and cause respondent's goods to be sold as petitioner's; and (6) that actually a complaint has been filed by petitioner against respondent for unfair competition in the Court of First Instance of Manila asking for damages and for the issuance of a writ of injunction against respondent enjoining the latter from continuing with the use of said mark.

On September 28, 1958, the Court of First Instance of Manila rendered decision in the unfair competition case perpetually enjoining respondent from using the name "SELECTA" as a trade-mark on the goods manufactured and/or sold by it and ordering it to pay petitioner by way of damages all the profits it may have realized by the use of said name, plus the sum of P15,000.00 as attorney's fees and costs of suit. From this decision, respondent brought the matter on appeal to the Court of Appeals wherein the case was docketed as CA-G. R. No. 24017-R.

Inasmuch as the issues of facts in the case for unfair competition are substantially identical with those raised

before the Patent Office, the parties, at the hearing thereof, agreed to submit the evidence they have introduced before the Court of First Instance of Manila to said office, and on the strength thereof, the Director of Patents, on December 7, 1958, rendered decision dismissing petitioner's opposition and stating that the registration of the trademark "SELECTA" in favor of applicant Selecta Biscuit Company, Inc., will not cause confusion or mistake nor will deceive the purchasers as to cause damage to petitioner. Hence, petitioner interposed the present petition for review.

On September 7, 1960, this Court issued a resolution of the following tenor:

"In G. R. No. L-14761 (Arce Sons and Company vs. Selecta Biscuit Company, Inc., et al.), considering that the issues raised and evidence presented in this appeal are the same as those involved and presented in Civil Case No. 32907, entitled Arce Sons and Company vs. Selecta Biscuit Company, Inc. of the Court of First Instance of Manila, presently pending appeal in the Court of Appeals, docketed as CA-G. R. No. 24017-R, the Court resolved to require the parties, or their counsel; to inform this Court why the appeal pending before the Court of Appeals should not be forwarded to this Court in order that the two cases may be considered and jointly decided, to avoid any conflicting decision, pursuant to the provisions of sections 17, paragraph 5, of the Judiciary Act of 1948 (Republic Act No. 296)."

And having both petitioner and respondent manifested in writing that they do not register any objection that the case they submitted on appeal to the Court of Appeals be certified to this Court so that it may be consolidated with the present case, the two cases are now before us for consolidated decision.

The case for petitioner is narrated in the decision of the court a quo as follows:

"In 1933, Ramon Arce, predecessor in interest of the plaintiff, started a milk business in Novaliches, Rizal, using the name 'SELECTA' as a trade name as well as a trade-mark. He began selling and distributing his products to different residences, restaurants and offices, in bottles on the caps of which were inscribed the words 'SELECTA FRESH MILK'. As his business prospered, he thought of expanding and, in fact, he expanded his business by establishing a store at Nos. 711-713 Lepanto Street. While there, he began to cater, in addition to milk, ice cream, sandwiches and other food products. As his catering and ice cream business prospered in a big way, he placed a big signboard in his establishment with the name 'SELECTA' inscribed thereon. The signboard was placed right in front of the said store. For the sake of efficiency, the Novaliches place was made the pasteurizing plant and its products were distributed through the Lepanto store. Special containers made of tin cans with the word 'SELECTA' written on their covers and 'embossed or blown' on the bottles themselves were used. Similarly, exclusive bottles for milk products were ordered from Getz Brothers with the word 'SELECTA' blown on them. The sandwiches which were sold and distributed were wrapped in carton boxes with covers bearing the name 'SELECTA'. To the ordinary cars being used for the delivery of his products to serve outside orders were added to a fleet of five (5) delivery trucks with the word 'SELECTA' prominently painted on them. Sales were made directly at the Lepanto store or by means of deliveries to specified addresses, restaurants and offices inside Manila and its suburbs and sometimes to customers in the provinces. As time passed, new products were produced for sale, such as cheese (cottage cheese) with special containers especially ordered from the Philippine Education Company with the name 'Selecta' written on their covers.

"The war that broke out on December 8, 1941, did not stop Ramon Arce from continuing with his business. After a brief interruption of about a month, that is, during the end of January, 1942, and early February, 1942, he resumed his business using the same trade-name and trade-mark, but this time, on a larger scale. He entered the restaurant business. Dairy products, ice cream, milk, sandwiches continued to be sold and distributed by him. However, Ramon Arce was again forced to discontinue the business on October, 1944, because time was beginning to be precarious. American planes started to bomb Manila and one of his sons Eulalio Arce, who was/is managing the business, was seized and jailed by the Japanese. Liberation came and immediately

thereafter, Ramon Arce once more resumed his business, even more actively, by adding another store located at the corner of Lepanto and Azcarraga Streets. Continuing to use the name 'Selecta', he added bakery products to his line of business. With a firewood type of oven, about one-half the size of the courtroom, he made his own bread, cookies, pastries and assorted bakery products. Incidentally, Arce's bakery was transferred to Balintawak, Quezon City—another expansion of his business—where the bakery products are now being baked thru the use of firewood, electric and gas oven. These bakery products, like his other products, are being sold at the store itself and/or delivered to people ordering them in Manila and its suburbs, and even Baguio. Like the other products, special carton boxes in different sizes, according to the sizes of the bakery products, with the name 'Selecta' on top of the covers are provided for these bakery products. For the cakes, special boxes and labels reading 'Selecta Cakes for all occasions' are made. For the milk products, special bottle caps and bottles with the colored words 'Quality Always Selecta Fresh Milk, One Pint' inscribed and blown on the sides of the bottles—an innovation from the old bottles and caps used formerly. Similar, special boxes with the name 'Selecta' are provided for fried chicken sold to customers.

"Business being already well established, Ramon Arce decided to retire, so that his children can go on with the business. For this purpose, he transferred and leased to them all his rights, interests and participations in the business, including the use of the name 'Selecta' sometime in the year 1950, at a monthly rental of P10,000.00, later reduced to P6,500.00. He further wrote the Bureau of Commerce a letter dated February 10, 1950, requesting cancellation of the business name 'Selecta Restaurant' to give way to the registration of the name 'Selecta' and asked that the same be registered in the name of Arce Sons & Company, a co-partnership entered into by and among his children on February 10, 1950. Said co-partnership was organized, so its articles of co-partnership state, 'to conduct a first class restaurant business; to engage in the manufacture and sale of ice cream, milk, cakes and other dairy and bakery products; and to carry on such other legitimate business as may produce profit'; Arce Sons & Company has thus continued the lucrative business of their predecessor in interest. It is now, and has always been, engaged in the restaurant business, the sale of milk, and the production and sale of cakes, dairy products and bakery products. Arce Sons & Company are now making bakery products like bread rolls, pan de navarro, pan de sal, and other new types of cookies and biscuits of the round, hard and other types, providing therefor special boxes with the name 'Selecta'.

"Pursuing the policy of expansion adopted by their predecessor, Arce Sons & Company established another store—the now famous 'Selecta Dewey Boulevard', with seven (7) delivery trucks with "the name 'Selecta' conspicuously painted on them, to serve, deliver and cater to customers in and outside of Manila."

The case for respondent, on the other hand, is expressed as follows:

"Defendant was organized and registered as a corporation under the name and style of Selecta Biscuit Company, Inc. on March 2, 1955 (Exhibit 2; Exhibit 2-A; t.s.n., p. 3, April 17, 1958) but which started operation as a biscuit factory on June 20, 1955 (t.s.n., p. 3, id). The name 'Selecta' was chosen by the organizers of defendant who are Chinese citizens as a translation of the Chinese word 'Ching Suan' which means 'mapili' in Tagalog, and 'Selected' in English (t.s.n. p. 4, id.). Thereupon, the Articles of Incorporation of Selecta Biscuit Company, Inc. were registered with the Securities and Exchange Commission (t.s.n., p. 5, id), and at the same time registered as a business name with the Bureau of Commerce which issued certificate of registration No. 55594 (Exhibit 3; Exhibit 3-A). The same name Selecta Biscuit Company, Inc., was also subsequently registered with the Bureau of Internal Revenue which issued Registration Certificate No. 35764 (Exhibit 4, t.s.n., p. 6 Id.). Inquiries were also made with the Patent Office of the Philippines in connection with the registration of the name 'Selecta'; after an official of the Patent referred to index cards information was furnished to the effect that defendant could register the name 'Selecta' with the Bureau of Patents (t.s.n., p. 7 id.). Accordingly, the corresponding petition for registration of trade-mark was filed (Exh. 5. 5-A, Exhibit 5-B). Defendant actually operated its business factory on June 20, 1955, while the petition for registration of trade-mark 'Selecta' was filed with the Philippine Patent Office only on September 1, 1955, for the reason that the Patent Office informed the defendant that the name should first be used before registration (t.s.n., p. 8, id.).

The factory of defendant is located at Tuason Avenue, Northern Hills, Malabon, Rizal, showing plainly on its wall facing the streets the name 'SELECTA BISCUIT COMPANY, INC (Exh. 6, 6-A, 6-B, t.s.n., p. 9, id.). It is significant to note that Eulalio Arce, Managing Partner of the plaintiff resided and resides near the defendant's factory, only around 150 meters away; in fact, Eulalio Arce used to pass in front of the factory of defendant while still under construction and up to the present time (t.s.n., pp. 9, 10, id.). Neither Eulalio Arce nor any other, person in representation of the plaintiff complained to the defendant about the use: of the name 'Selecta Biscuit' until the filing of the present complaint.

"There are other factories using 'Selecta' as trade-mark for biscuits t.s.n., p. 12; Exh. 7, 7-A, 7-B; Exhibits 8, 8-A, 8-B; Exhibits 9, 9-A; 9-B); defendant in fact uses different kinds of trade-marks (Exhibits 10, 10-A, to 10-W, t.s.n., p. 17).

"The biscuits, cookies, and crackers manufactured and sold by defendant are wrapped in cellophane pouches and placed inside tin can (Exh. 11; t.s.n., p. 19); the products of defendant are sold through the length and breadth of the Philippines through agents with more than 600 stores as customers buying on credit (t.s.n., pp. 19, 20, Exh. 12; t.s.n., p. 10, June 20, 1958). Defendant employs more than one hundred (100) laborers and employees presently although it started with around seventy (70) employees and laborers (t.s.n., p. 24); its present capitalization fully paid for is Two Hundred Thirty Four Thousand Pesos (P234,000.00) additional capitalizations were duly authorized by the Securities and Exchange Commission (Exhs. 13, 13-A); there was no complaint whatsoever from plaintiff until plaintiff saw defendant's business growing bigger and bigger and flourishing (t.s.n., p. 21) when plaintiff filed its complaint.

"Defendant advertises its products through radio broadcasts and spot announcements (Exhs. 14, 14-A to 14-L; inclusive; Exhs. 15, 15-A, 15-B, 15-C; Exhs. 16, 16-A, 16-B to 16-E, inclusive; Exhs. 17, 17-A to 17-L, inclusive); the broadcasts scripts announced therein through the radio clearly show, among others, that Selecta Biscuits are manufactured by Selecta Company, Inc. at Tuason Avenue, Northern Hills, Malabon, Rizal, with Telephone No. 2-13-27 (Exhs. 23-A, 23-B, 23-C, 23-D, 23-E, 23-F).

"Besides the signboard, Selecta Biscuit Company, Inc.' on the building itself, defendant has installed signboards along the highways to indicate the location of the factory, of defendant (Exhs. 18, 18-A); delivery trucks of defendant are plainly carrying signboards Selecta Biscuit Company, Inc., Tuason Avenue, Northern Hills, Malabon, Rizal, Telephone No. 2-13-27 (Exhs. 19, 19-A, 19-B, 19-C, 19-D, 19-E, 19-F). Defendant is using modern machineries in its biscuits factory (Exhs. 20, 20-A, 20-B, 20-C, 20-D, 20-E). The defendant sells its products throughout the Philippines, including Luzon, Visayas, and Mindanao; its customers count, among others, 600 stores buying on credit; its stores buying on cash number around 50 (t.s.n., p. 10). Sales in Manila and suburbs are minimal (Exh. 12). Defendant is a wholesaler and not a retailer of biscuits, cookies, and crackers. This is the nature of the operation of the business of the defendant."

At the outset one cannot but note that in the two cases appealed before us which involves the same parties and the same issues of fact and law, the court a quo and the Director of Patents have rendered contradictory decisions. While the former is of the opinion that the word "SELECTA" has been used by petitioner, or its predecessor-in-interest, as a trade-mark in the sale and distribution of its dairy and bakery products as early as 1933 to the extent that it has acquired a proprietary connotation so that to allow respondent to use it now as a trade-mark in its business would be a usurpation of petitioner's goodwill and an infringement of its property right, the Director of Patents entertained a contrary opinion. He believes that the word as used by petitioner functions only to point to the place of business or location of its restaurant while the same word as used by respondent points to the origin of the products it manufactures and sells and he predicates the distinction upon the fact that while the goods of petitioner are only served within its restaurant or sold only on special orders in the City of Manila, respondent's goods are ready-made and are for sale throughout the length and breadth of the country. He is of the opinion that the use of said trade-mark by respondent has not resulted in confusion in trade contrary to

the finding of the court a quo. Which of these opinions is correct is the issue now for determination.

It appears that Ramon Arce, predecessor-in-interest of petitioner, started his milk business as early as 1933. He sold his milk products in bottles covered by caps on which the words "SELECTA FRESH MILK" were inscribed. Expanding his business, he established a store at Lepanto Street, City of Manila, where he sold, in addition to his milk products, ice cream, sandwiches and other food products, placing right in front of his establishment a signboard with the name "SELECTA" inscribed thereon. Special containers made of tin cans with the word "selecta" written on their covers were used for his products. Bottles with the same word embossed on their sides were used for his milk products. The sandwiches he sold and distributed were wrapped in carton boxes with covers bearing the same name. He used several cars and trucks for delivery purposes on the sides of which were written the same word. As new products were produced for sale, the same were placed in containers with the same name written on their covers. After the war, he added to his business such items as cakes, bread, cookies, pastries and assorted bakery products. Then his business was acquired by petitioner, a co-partnership organized by his sons, the purposes of which are "to conduct a first class restaurant business; to engage in the manufacture and sale of ice cream, milk, cakes and other dairy and bakery products; and to carry on such other legitimate business as may produce profit."

The foregoing unmistakably show that petitioner, through its predecessor-in-interest, had made use of the location of the restaurant where it manufactures and sells its products, but as a trade-mark to indicate the goods it offers for sale to the public. No other conclusion can be drawn. This is the very meaning or essence in which a trade-mark is used. This is not only in accordance with its general acceptance but with our law on the matter.

" 'Trade-mark' or 'trade-name', distinction being highly technical, is sign, device, or mark by which articles produced are dealt in by particular person or organization are distinguished or distinguishable from those produced or dealt in by others." (Church of God vs. Tomlinson Church of God, 247 SW 2d. 63, 64)

"A 'trade-mark' is a distinctive mark of authenticity through which the merchandise of a particular producer or manufacturer may be distinguished from that of others, and its sole function is to designate distinctively the origin of the products to which it is attached." Reynolds & Reynolds Co. vs. Norick, et al., 114 F 2d, 278)

"The term 'trade-mark' includes any word, name, symbol, emblem, sign or device or any combination thereof adopted and used by a manufacturer or merchant to identify his goods and distinguished them from those manufactured, sold or dealt in by others". (Section 38, Republic Act No. 166)

Verily, the word "SELECTA" has been chosen by petitioner and has been inscribed on all its products to serve not only as a sign or symbol that may indicate that they are manufactured and sold by it but as a mark of authenticity that may distinguish them from the products manufactured and sold by other merchants or businessmen. The Director of Patents, therefore, erred in holding that petitioner made use of that word merely as a trade-name and not as trade-mark within the meaning of the law.[1]

The word "SELECTA", it is true, may be an ordinary or common word in the sense that it may be used or employed by any one in promoting his business or enterprise, but once adopted or coined in connection with one's business as an emblem, sign or device to characterize its products, or as a badge of authenticity, it may acquire a secondary meaning as to be exclusively associated with its products and business.[2] In this sense, its use by another may lead to confusion in trade and cause damage to its business. And this is the situation of petitioner when it used the word "SELECTA" as a trade-mark. In this sense, the law gives it protection and guarantees its use to the exclusion of all others (G. & C. Merriam Co. vs. Saalfeld, 198 F. 369, 373). And it is also in this sense that the law postulates that "The ownership or possession of a trade-mark, * * * shall be recognized and protected in the same manner and to the same extent, as are other property rights known to the law," thereby giving to any person entitled to the exclusive use of such trade-mark the right to recover damages in a civil action from any

person who may have sold goods of similar kind bearing such trade-mark (Sections 2-A and 23, Republic Act No. 166, as amended).

The term "SELECTA" may be placed at par with the words "Ang Tibay" which this Court has considered not merely as a descriptive term within the meaning of the Trade-mark Law but as a fanciful or coined phrase, or a trade-mark. In that case, this Court found that respondent has consistently used the term "Ang Tibay", both as a trade-mark and a trade-name, in the manufacture and sale of slippers, shoes, and indoor baseballs for twenty-two years before petitioner registered it as a trade-name for pants and shirts so that it has performed during that period the function of a trade-mark to point distinctively, or by its own meaning or by association, to the origin or ownership of the wares to which it applies. And in holding that respondent was entitled to protection in the use of that trade-mark, this Court made the following comment:

"The function of a trade-mark is to point distinctively, either by its own meaning or by association, to the origin or ownership of the wares to which it is applied. 'Ang Tibay,' as used by the respondent to designate his wares, had exactly performed that function for twenty-two years before the petitioner adopted it as a trade-mark in her own business. 'Ang Tibay' shoes and slippers are, by association, known throughout the Philippines as products of the 'Ang Tibay' factory owned and operated by the respondent. Even if 'Ang Tibay,' therefore, were not capable of exclusive appropriation as a trade-mark, the application of the doctrine of secondary meaning could nevertheless be fully sustained because, in any event, by respondent's long and exclusive use of said phrase with reference to his products and business, it has acquired a proprietary connotation. This doctrine is to the effect that a word or phrase originally incapable of exclusive appropriation with reference to an article on the market, because geographically or otherwise descriptive, might nevertheless have been used so long and so exclusively by one producer with reference to his article that, in that trade and to that branch of the purchasing public, the word or phrase has come to mean that the article was his product." (Ang vs. Teodoro, supra.)

The rationale in the Ang Tibay case applies on all fours to the case of petitioner.

But respondent claims that it adopted the trade-mark "SELECTA" in good faith and not precisely to engage in unfair competition with petitioner. It tried to establish that respondent was organized as a corporation under the name of Selecta Biscuit Company, Inc. on March 2, 1955 and started operations as a biscuit factory on June 20, 1955; that the name "SELECTA" was chosen by the organizers of respondent who are Chinese citizens as a translation of the Chinese word "Ching Suan" which means "mapili" in Tagalog, and "Selected" in English; that, thereupon, it registered its articles of incorporation with the Securities and Exchange Commission and the name "SELECTA" as a business name with the Bureau of Commerce which issued to it Certificate of Registration No. 55594; and that it also registered the same trade-name with the Bureau of Internal Revenue and took steps to obtain a patent from the Patent Office by filing with it an application for the registration of said trade-name.

The suggestion that the name "SELECTA" was chosen by the organizers of respondent merely as a translation from a Chinese word "Ching Suan" meaning "mapili" in the dialect is betrayed by the very manner of its selection, for if the only purpose is to make an English translation of that word and not to compete with the business of petitioner, why choose the word "SELECTA", a Spanish word, and not "Selected", the English equivalent thereof, as was done by other well-known enterprises? In the words of petitioner's counsel, "Why with all the words in the English dictionary and all the words in the Spanish dictionary and all the phrases that could be coined, should defendant-appellant (respondent) chose 'SELECTA' if its purpose was not and is not to fool the people and to damage plaintiff-appellee?". In this respect, we find appropriate the following comment of the trial court:

"Eventually, like the plaintiff, one is tempted to ask as to why with the richness in words of the English language and with the affluence of the Spanish vocabulary or, for that matter, of our own dialects, should the

defendant choose the controverted word 'Selecta', which has already acquired a secondary meaning by virtue of plaintiff's prior and continued use of the same as a trademark or tradename for its products? The explanation given by Sy Hap, manager of the defendant, that the word 'Selecta' was chosen for its bakery products by the organizers of said company from the Chinese Word 'Ching Suan' meaning 'mapili', which in English means 'Selected', and that they chose 'selecta', being the English translation, is, to say the least, very weak and untenable. Sy Hap himself admitted that he had known Eulalio Arce, the person managing plaintiff's business since 1954; that since he begun to reside at 10th Avenue, Grace Park, he had known the Selecta Restaurant on Azcarraga street; that at the time he established the defendant company, he knew that the word 'Selecta' was being employed in connection with the business of Eulalio Arce; that he had seen signboards of 'Selecta on Azcarraga Street and Dewey Boulevard and that he even had occasion to eat in one of the restaurants of the plaintiff. All of these circumstances lend to conspire in inducing one to doubt defendant's motive for using the same word 'Selecta' for its bakery products. To allow the defendant here to use the word 'Selecta' in spite of the fact that this word has already been adopted and exploited by Ramon Arce and by his family thru the organization of Arce Sons and Company, for the maintenance of its goodwill, for which said plaintiff and its predecessor have spent time, effort, and fortune, is to permit business pirates and buccaneers to appropriate for themselves and to their profit and advantage the trade names and trade marks of well established merchants with all their attendant goodwill and commercial benefit. Certainly, this cannot be allowed, and it becomes the duty of the court to protect the legitimate owners of said trade-names and trade-marks, for under the law, the same constitute one kind of property right entitled to the necessary legal protection."

Other points raised by respondent to show that the trial court erred in holding that the adoption by it of the word "SELECTA" is tantamount to unfair competition are: (1) that its products are biscuits, crackers and cookies, wrapped in cellophane packages, placed in tin containers, and that its products may last a year without spoilage, while the ice cream, milk, cakes and other bakery products which petitioner manufactures last only for two or three days; (2) that the sale and distribution of petitioner's products are on retail basis, limited to the City of Manila and suburbs, and its place of business is localized at Azcarraga, corner Lepanto Street and at Dewey Boulevard, Manila, while that of respondent is on a wholesale basis, extending throughout the length and breadth of the Philippines; (3) that petitioner's signboard on its place of business reads, "SELECTA" and on its delivery trucks "Selecta, Quality Always, Restaurant and Caterer, Azcarraga, Dewey Boulevard, Balintawak and Telephone number" in contrast with respondent's signboard on its factory which reads "Selecta Biscuit Company, Inc., and on its delivery trucks "Selecta Biscuit Company, Inc., Tuason Avenue, Malabon, Rizal, Telephone No. 2-13-27; (4) that the business name of petitioner is different from the business name of respondent; (5) that petitioner has only a capital investment of P25,000.00 whereas respondent has a fully paid-up stock in the amount of P234,000.00 out of the P500,000.00 authorized capital, and (6) that the use of the name "SELECTA" by respondent cannot lead to confusion in the business operation of the parties.

We have read carefully the reasons advanced in support of the points raised by counsel in an effort to make inroads into the findings of the court a quo on unfair competition, but we believe them to be insubstantial and untenable. They appear to be well answered and refuted by counsel for petitioner in his brief, which refutation we do not need to repeat here. Suffice it to state that we agree with the authorities and reasons advanced therein which incidentally constitute the best support of the decision of the court a quo.

With regard to the claim that petitioner failed to present sufficient evidence on the contract of lease of the business from its predecessor-in-interest, we find that under the circumstances secondary evidence is admissible.

In view of the foregoing, we hold that the Director of Patents committed an error in dismissing the opposition of petitioner and in holding that the registration of the trade-mark "SELECTA" in favor of respondent will not cause damage to petitioner, and, consequently, we hereby reverse his decision.

Consistently with this finding, we hereby affirm the decision of the court rendered in G. R. No. L-17981.

No costs.

Paras, C. J., Bengzon, Labrador, Reyes, J. B. L., Barrera, Gutierrez David, Paredes, and Dizon, JJ., concur.

[1] A trade-mark is generally described as a sign, device or mark by which the articles produced or dealt in by a particular person or organization are distinguished or distinguishable from those produced or dealt in by others, and must be affixed to the goods or articles; while a trade-name is descriptive of the manufacturer or dealer himself as much as his own name is, and frequently includes the name of the place where the business is located; it involves the individuality of the maker or dealer for the protection in trade, and to avoid confusion in business, and to secure the advantages of a good reputation; it is more popularly applied to the good will of a business, and need not be affixed to the goods sold. In other words, it is not regarded as a trade-mark in the strict technical sense. 52 Am. Jur., p. 507, et seq.; 63 C.J., p. 322, et seq." (Katz Drug Co vs. Katz, 217 2d, 286, 289)

[2] "This doctrine is to the effect that a word or phrase originally incapable of exclusive appropriation with reference to an article on the market, because geographically or otherwise descriptive, might nevertheless have been used so long and so exclusively by one producer with reference to his article that, in that trade and to that branch of the purchasing public, the word or phrase has come to mean that the article was his product. (G. & C. Merriam Co. vs. Saalfeld, 198 F. 369, 373.)" (Ang vs. Teodoro, 74 Phil., 50, 53)

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