

5 Phil. 160

[G.R. No. 1750. October 25, 1905]

**GUILLEUMO BAXTER AND G. BAXTER & CO., PLAINTIFFS AND APPELLEES, VS.
ZOSIMO ZUAZUA ET AL., DEFENDANTS AND APPELLANTS.**

D E C I S I O N

MAPA, J.:

Guillermo Baxter, the plaintiff in this case, after complying with the necessary formalities, secured from the Government of the Philippine Islands, on the 30th day of August, 1894, the right to use the trade-mark described as "*Agua de Kananga*," as well as the labels annexed thereto, a facsimile of which was attached to the complaint filed in this case.

On the 23d day of July, 1901, the said Guillermo Baxter associated himself with certain merchants of the city of Manila for the purpose of organizing a limited partnership for a period of five years, under the firm name and style of "Baxter & Company," the object of which said partnership was the manufacture of toilet water and perfumery. Guillermo Baxter contributed to the partnership, of which he was elected manager and administrator, the business which is now the basis of that carried on by the said partnership; also his title to certain trade-marks, among them the one described as "*Agua de Kananga*." For this reason the proprietor of the said trade-mark was joined as a party plaintiff with the partnership of Baxter & Co., the firm directly interested in the use and exploitation of the said trade-mark. This trade-mark is actually used by the plaintiffs to designate the ownership and origin of a certain toilet water manufactured and sold by them under the said name of "*Agua de Kananga*"

The plaintiffs brought this action for unfair competition under

section 7 of Act No. 666 of the Philippine Commission. It is alleged that the defendant Zosimo Zuazua, for the purpose of imitating and fraudulently simulating the "*Agua de Kananga*" manufactured by plaintiffs, placed on the market for sale a certain toilet water under the name and denomination of "*Kananga Superior*" and "*Kanangue*" and disposed of the same in bottles with labels similar to those used by the plaintiffs for their own goods. It was further alleged that the other defendants were engaged in retailing to the public the product manufactured by the defendant Zuazua. Certain facsimiles of the labels used by the said Zuazua were also attached to the complaint.

Zuazua admitted that he had manufactured certain toilet water under the denomination of "*Kananga Superior*" and "*Kanangue*," and that he had also sold the same in bottles labeled as alleged in the complaint. As to the bottles, it was stipulated, page 19 of the bill of exceptions, that "those used by the defendant Zuazua, as well as those used by the plaintiffs, were universally used by all persons engaged in the manufacture of toilet water, and that the fact that they were used by the defendant did not, of itself, constitute a violation of the rights of the plaintiffs nor a fraud or deceit upon the public."

The trial court entered judgment enjoining the defendants from the further manufacture of toilet water under the trade-mark of "*Kananga Superior*" and "*Kanangue*" and the selling of the same in bottles of the size and form of those introduced in evidence at the trial, labeled as aforesaid, and for costs. The said judgment was based upon the ground that the labels, words, and bottles in question, taken together, were an imitation of those used by the plaintiffs, and tended to deceive the public by making it appear that the toilet water manufactured and sold by the defendants was the same toilet water manufactured by the plaintiffs, and that the use of the said labels, words, and bottles was therefore illegal, and constituted a violation of plaintiff's rights.

The trial court found also, as a conclusion of law, that the grant by the Government of the Philippine Islands did not give the plaintiffs an exclusive right to the use of the word "*Kananga*," but to the phrase "*Agua de Kananga*" that "*Kananga*"

was the name of a well-known tree of the Philippine Islands, and held that, although the plaintiffs had a right to the exclusive use of the phrase "*Agua de Kanang*" it did not follow that they had an exclusive right to the use of any of the words contained in the said phrase.

The plaintiffs, as well as the defendant Zosimo Zuazua, excepted to the judgment of the trial court, upon different grounds. The defendant moved for a new trial in the Court of First Instance, upon the ground that the judgment was contrary to the weight of evidence.

The main reliance of the defendant is that the labels used on his goods differed from those used by the plaintiffs as to the drawing, color, and general appearance of the design, and he denies emphatically that he had any intention to deceive the public thereby, alleging that the people clearly distinguished the goods of the plaintiffs from those of the defendants, the former being known from the picture on the bottle as the "Payo Brand" and the latter as the "Senorita Brand."

The alleged similarity or resemblance between the labels is a question of fact which can be decided by a mere inspection of the same. After a careful comparison of the labels used by the defendant with those used by the plaintiffs, we have unanimously arrived at the conclusion that there is no identity nor even any similarity whatsoever between them, either in detail or as a whole. The difference between the two is so apparent that it can be readily noticed. We do not believe that the public could have been deceived by the appearance of the labels to the extent of taking the goods of the plaintiffs for those manufactured and sold by the defendant. We make no finding as to the bottles because they were not forwarded to this court for inspection, and, moreover, because it was stipulated by the parties that the said bottles were universally used by all manufacturers of toilet water, and that their particular use by defendant was not, therefore, an act of fraud or deceit practiced by him upon the plaintiffs or the public generally.

Section 7 of Act No. 666 provides in part as follows:

“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 plaintiffs have not proved, or attempted to prove, the fraudulent intent attributed to the defendant Zuazua by any means other than the alleged similarity between the labels used by him and those used by the defendant to designate his own goods. There being no such similarity between the labels, we find no reason for even inferring that the defendant had any such intention, and therefore the action brought by the plaintiffs in this case can not be maintained under the law. The judgment appealed from should be reversed in so far as it holds that such an action lies in this case.

We agree, however, with the trial court, that the ownership of the trade-mark “*Agua de Kananga*” did not give the plaintiffs a right to the exclusive use of the word “*Kananga*.”

The defendant alleged in his answer that the word “*Kananga*” could not be used as a trade-mark because it was the name of a flower. It is stated in the judgment of the court below that the word “*Kananga*” represents the name of a well-known tree in the Philippines. This finding has not been disputed by the plaintiffs, who simply allege that the spelling of the said word indicates that it is foreign to the Spanish language. This, by the way, would not prove, even though it were true, that the said word was not in fact the name of a flower of the Philippine Islands, as set out in the judgment. It is apparent, therefore, that the said word could not be used exclusively as a trade-mark, any more than could the words “sugar,” “tobacco,” or “coffee.” The law is clear and conclusive upon the subject. “A designation or part of a designation,” says section 2 of Act No. 666, “which relates only to the name, quality, or description of the merchandise * * * can not be the subject of a trade-mark.” This provision is in conformity with the provisions of paragraph 3 of

article 5 of the royal decree of the 26th of October, 1888, under which Guillermo Baxter secured the registration of his trade-mark. The said royal decree provided that *the denominations generally used in commerce for the purpose of designating a class of goods could not be the subject of labels or trade-marks.*

The plaintiffs allege that the defendants did not prove, or even attempt to prove, that the goods manufactured by them had anything to do with the “*Kananga*” flower. If the goods in question had really nothing to do with the said flower, then it was not lawful for the plaintiffs to sell them to the public under the name of “*Agua de Kananga*,” because the people might be deceived as to the nature of the goods, taking for “*Kananga*” an article which, as a matter of fact, had nothing to do with the said flower. Both plaintiffs and defendant would be exactly in the same position as one who should sell goods as “coffee” or “tobacco” which were neither one nor the other. Such being the case the plaintiffs could not have maintained this action for unfair competition, because under section 9 of said Act No. 666 such action would not lie “when the trade-mark or designation of its origin, ownership, or manufacture has been used by the claimant for the purpose of deceiving the public as to the nature of the goods in which he deals, his business, profession, or occupation.” The law can not and does not permit that trade-marks shall contain indications capable of deceiving the public as to the nature of the goods. This would be exactly the case if under the trade-mark of “*Agua de Kananga*” the plaintiffs should sell goods that had in fact nothing to do, as they say, with the “*Kananga*” flower. However the contention of the plaintiffs may be considered, the proof is nevertheless insufficient to show that the word “*Kananga*” the name of a flower, can be appropriated, as the subject of a trade-mark, under the law.

The defendant prays that judgment be entered against the plaintiffs for damages incurred by reason of the preliminary injunction, still in force, issued by the trial court on the 18th day of June, 1903. In his answer the defendant estimates these damages at 800 pesos per month. He did not, however, introduce evidence in support of his allegation, and no order can be made by the court upon this matter. The foregoing

disposes of the other questions raised by the parties in their briefs in this court.

The judgment appealed from is hereby reversed, and another judgment entered in favor of the defendant and appellant Zosimo Zuazua, dissolving the preliminary injunction heretofore issued by the court below on the 18th of June, 1903. The finding of the court that the plaintiffs have no right to the exclusive use of the word "Kananga," is sustained. Each party shall pay its own costs. After the expiration of ten days from the date hereof let judgment be entered accordingly and the case remanded to the trial court. So ordered.

Arellano, C. J., Torres, Johnson, and Carson, JJ., concur.
Willard, J., did not sit in this case.