

Republic of the Philippines  
SUPREME COURT  
Manila

FIRST DIVISION

G.R. No. L-23954 April 29, 1977

AMERICAN CYANAMID COMPANY, petitioner,

vs.

THE DIRECTOR OF PATENTS and TIU CHIAN, respondents.

*Picazo & Agcaoili and Roque Recio for petitioner.*

*Solicitor General Arturo A. Alafriz, Assistant Solicitor General Antonio A. Torres and Solicitor Alicia V. Sempio-Diy for respondent The Director of Patents.*

*Rafael R. Lasam for respondent.*

MUÑOZ PALMA, J.:

This is an appeal from a decision of the Director of Patents in *Inter Partes* Case No. 140 entitled "*American Cyanamid Company, petitioner, versus Tiu Chian,*" respondent which denied the petition of American Cyanamid Company to cancel the registration of the trademark SULMETINE issued in favor of Tiu Chian.

The factual background of this case follows:

Petitioner to which We shall refer at times as Cyanamid filed on April 3, 1959, a petition to cancel certificate of registration No. 5348 issued on July 6, 1956, in favor of respondent Tiu Chian of the latter's trademark SULMETINE used on medicine for the control of infectious coryza and for the prevention of cold rhinitis, roup, cecal coccidiosis and intestinal coccidiosis of chicken and other domesticated birds. *Cyanamid* claims that it is the owner of a trademark SULMET which it had used for many years in the United States since 1946 and which was duly Registration No. 431929 and which was first used in the Philippines on May 25, 1950, for which it filed an application for registration of the same in this country on May 3, 1956. SULMET is the trademark of a veterinary product used, among other purposes, "for the control of outbreaks of ceal and intestinal coccidiosis in turkeys' and for reducing mortality in pullorum disease in baby chicks, acute fowl cholera in chickens, turkeys and ducks and anatipistifer disease in ducks." Through long use in the country, SULMET has become popular and well-known and enjoys widespread reputation brought about by extensive advertisement and promotion through the media. Notwithstanding the above, respondent filed an application for registration of SULMETINE as his trademark on a veterinary product used for the same purposes thereby making respondent's product confusingly with that of petitioner which is unfair and unjust to the label.

In support of its Petition for cancellation, *Cyanamid* presented as its Exhibit B a sample of the label used on its product and as Exhibit C a sample of the label of respondent Tiu Chian used on the latter's product. (pp. 264-265, original record) It likewise submitted among its exhibits several indent orders issued by F.E. ZUELLIG, INC. to various business companies,; covering petitioner's Sulmet Solution (Exhibits H, H-1, J, J-1, I, I-1, K, and L).

Respondent Tiu Chian opposed this Petition for cancellation of his trademark SULMETINE.

On June 9, 1964, the Director of Patents rendered his decision denying the Petition for cancellation of respondent's certificate of registration of the trademark SULMETINE, based on the following findings:

(1) Petitioner's trademark SULMET (Exhibit B) is used on a preparation for practically all domesticated animals such as fowl, cattle, pigs, horses and sheep, whereas, SULMENTINE is limited only to chicken and other domesticated birds. This distinction is evident from the printed matter appearing on the respective labels of the parties. Thus, on respondent's label (Exhibit C) it is indicated thereon that the preparation is for treatment of birds and chicken (p. 265 volume of exhibits), whereas, the label (Exhibit B) of petitioner indicates that the product is for chicken, turkey, duck, and may be employed in the treatment of certain conditions in horses, cattle, calves, sheep, and swine (p. 264, Idem).

(2) On top of petitioner's label, Exhibit B, the word "CYANAMID" is printed in prominent letters and at the bottom of the label there appears in bold letters the words "AMERICAN CYANAMID COMPANY, NEW YORK 20, N.Y." indicating the manufacturer of the product. On the other hand, at the top of respondent's label, Exhibit C, there appears the pictures of two roosters with the word "HENRY'S" in-between, and at the bottom "HENRY'S LABORATORIES PHILIPPINES" are clearly printed indicating the source of the product.

(3) Petitioner's preparation consists of a *drinking water solution* and this is clearly indicated in bold letters on the label, whereas, those of respondent consists of *tablets* for veterinary use prominently indicated in red letters on the label, Exhibit C.

The above differences in the physical aspect or appearance of the respective labels were found by the Director of Patents substantial and striking enough so as to prevent any confusing similarity between the two which may lead a buyer to confuse one with the other.

With respect to Petitioner's contention that respondent's trademark bears the two syllables of petitioner's SULMET and that respondent merely added the syllable "INE", the Director of Patents reasoned out that the syllables "SUL" and "MET" are coined from a common source suggestive of chemical compounds which are attributes of the products of the parties herein, that is, "SUL" being derived from "SULFA" and "MET" from methyl, so that neither party may claim exclusive use to them, and that with the addition of the syllable "INE" by respondent, a marked distinction is affected to distinguished the two trademarks.

The Director of Patents likewise found that no material damage was sustained by petitioner during the time that respondent was using SULMETINE on its products. Thus, it is shown from Exhibit S that the total of the sales of SULMET product was P72,824.35 in 1959, which increased to P123,641.85 in 1960, and that although in 1961 the sales decreased slightly to P118,621.25, that was offset considerably by the sudden increase to P161,238.65 in 1962.

From the foregoing decision, American Cyanamid Company appeals to this Court and submits five assigned errors, to wit:

#### First Assignment of Error

Respondent Director of Patents erred in finding that petitioner did not have priority in the use of its trademark SULMET over respondent Tiu Chian's use of his trademark SULMETINE.

#### Second Assignment of Error

Respondent Director of Patents erred in holding that the trademark SULMETINE is not confusingly similar to the trademark SULMET.

### Third Assignment of Error

Respondent Director of Patents erred in holding that respondent Tiu Chian's certificate of registration No. 5348 for the trademark SULMETINE was not obtained by fraud.

### Fourth Assignment of Error

Respondent Director of Patents erred in holding that petitioner is legally obliged to prove damages by reason of the issuance of certificate of registration No. 5348 as a condition precedent for obtaining its cancellation.

### Fifth Assignment of Error

Respondent Director of Patents erred in delegating the authority to hear and receive the evidence in this case to a so-called hearing officer and therefore he has no jurisdiction to render the decision appealed from because he did not hear the case nor receive the evidence thereof.

We view the second assignment of error as the issue which goes to the very heart of the litigation, the disposition of which renders the treatment of the, other assigned errors unnecessary.

The problem therefore to be resolved is whether or not petitioner correctly claims that respondent's trademark SULMETINE was copied from its trademark SULMETINE giving rise to a confusing similarity between the two in violation of Republic Act 166 otherwise known as the Trade-Mark Law.

We find petitioner's submittal devoid of merit and hold that there is no infringement of trademark which justify a cancellation of respondent's registered trademark SULMETINE.

1. An examination of the documentary evidence submitted by the parties confirms the findings of the Director of Patents that there are striking differences between the two labels, Exhibits B and C, which preclude the possibility of the purchasing public confusing one product with the other. Said labels are entirely different in size, background, colors, contents, and pictorial arrangement: in short, the general appearances of the labels bearing the respective trademarks are so distinct from each other that petitioner cannot assert that the dominant features, if any, of its trademark were used or appropriated in respondent's own.

Thus —

(a) *The coloring scheme:* Petitioner's SULMETINE label, Exhibit B, has a white background with the word SULMETINE printed in dark green, while respondent's SULMETINE label, Exhibit C, is dark yellow in color, and the word SULMETINE is printed in dark blue. In fact, Exhibit B carries mainly two colors — white and green, while Exhibit C uses yellow, blue, and red

(b) *The pictorial representation:* Respondent's label, Exhibit C, presents at its top the pictures of two roosters and in between is the word "HENRY'S" printed in an egg-shaped enclosure, while petitioner's label carries no such pictorial representation nor even one similar to it, for what appears on the top of its label is the word "CYANAMID" printed in bold and widely-spaced green letters.

(c) *The printed matter on the label:* A very important point of difference between the labels of the parties is found in the contents of the printed matter. In the label Exhibit B, the product is described in bold green letters as "Drinking Water Solution" and the printed directions indicate that it is for use of chicken flocks, turkeys, ducks, as well as in certain conditions for horses, cattle, calves, sheep, and swine. On the other hand, in respondent's label Exhibit C what are printed in bold red letters are "Tablets Veterinary". Except for the use of the words "Adult birds"

and "Small chicks", there is nothing in Exhibit C which indicates that the preparation may be used for turkeys, ducks, or for any other domesticated animals mentioned in the SULMET label. On this point, it is significant to note that the product represented by the trademarks of the parties is a medicinal preparation for veterinary use, consequently, a prospective buyer will be cautious and prudent enough to examine the contents of the printed matter on the label, unlike in a situation where the product is for ordinary personal or household use, such as soap and other toilet articles, biscuits, candies, and the like where the consumer is not expected to exercise more than ordinary diligence in the choice or selection a purchase not to ascertain that what he is purchasing is a animals, and in the process mistake a water solution for a tablet over *vice versa*.

(d) *The clear indication of the source*: Petitioner's label clearly indicates that the product SULMET is of foreign origin.

Not only is the word "CYANAMID" printed in big widely-spaced letters at the top of the label but at the bottom thereof the words "AMERICAN CYANAMID COMPANY, NEW YORK 20, N.Y." are printed in white capital letters against a dark green background. In respondent's SULMENTINE label, Exhibit C, the name "HENRY'S" in turn is printed clearly above the word SULMETINE and at the bottom of the label the phrase "HENRY'S LABORATORIES PHILIPPINES" is printed in white letters against a dark blue background making it distinctly visible.

Thus, looking at the two labels Exhibits B and C it is quite apparent that the *source of the product* is predominantly indicated thereby discounting petitioner's assertion that the SULMETINE trademark is a plain copy of its own with intent to pass respondent's article as coming from the same source as that of petitioner's medicinal preparation.

What have been stated above sufficiently throws out petitioner's second assignment of error.

2. In page 56 of petitioner's brief the case of *Lim Hoa vs. Director of Patents*, L-8072, October 31, 1956, is invoked in support of this appeal. However, that case is not controlling because the article in question in Lim Hoa was a food seasoning product which according to this Court is "generally purchased by cooks and household help, sometimes illiterate, who are guided by pictorial representations"; that the two roosters appearing in the trademark of applicant and the hen appearing in the trademark of the oppositor although of different sexes belong to the same family of chicken known as "manok" so that when a cook or a housewife buys a food seasoning product for the kitchen the brand of "manok" or "marka manok" will be uppermost in her mind and regardless of whether the picture is a hen or a rooster, to her, they are all "manok", and consequently there lies the confusion, even deception.

In this case of SULMET and SULMETINE, the product is for medicinal veterinary use and consequently, the purchaser will be more wary of the nature of the product he is buying. Contrary to the allegation of petitioner herein, the source or manufacturer of the article will be a most important factor in the mind of the purchaser in selecting the article he will buy, and a preparation manufactured by a well-known foreign company such as the "American Cyanamid Company, New York", enjoys a decided advantage over one which is locally produced and manufactured by an unknown entity such as "Henry's Laboratories".

What is relevant to and decisive of the case at bar is *Mead Johnson & Co. vs. N.V.J. Van Dorp. Ltd., et al.*, L-17501, decided on April 27, 1963, barely a year before the appealed decision in the instant case. *Van Dorp, Ltd.*, a Netherlands corporation, filed an application for the registration of its trademark "ALASKA and pictorial presentation of a Boy's Head with a rectangular design." Mead Johnson, a corporation organized under the laws of Indiana, U.S.A., being the owner of a trademark "ALACTA" used for powdered half-skim milk, which was registered with the Patent Office on June 12, 1951, opposed the registration on the ground that it will be damaged by the use of the trademark "ALASKA" on milk products, etc., the same being confusedly similar to its trademark "ALACTA". The Director of Patents dismissed the opposition and approved for registration the trademark "ALASKA" on the ground that the applicant's trademark does not sufficiently resemble oppositor's mark as to cause confusion or mistake or deceive purchasers.

This Court through Justice Bautista Angelo upheld the findings of the Director of Patents. The Court held that while there are similarities in spelling, appearance and sound between "ALACTA" and "ALASKA" the trademarks in their entirety as they appear in their respective labels show glaring and striking differences or dissimilarities such as in size of the containers, the colors of the labels, inasmuch as one uses light blue, pink, and white, while Van Dorp contains uses two colors "ALACTA" has only the first letter capitalized and is written in black while the mark "ALASKA" has all the letters capitalized written in white except that of the condensed full cream milk which is in red.<sup>1</sup>

*Ethepe vs. the Director of Patents, Westmont Pharamaceutical, Inc.* is another case in point. In *Ethepe*, the question was whether the trademark "ATUSSIN" of Westmont may be registered in the Philippines notwithstanding the objection of *Ethepe* which claimed that it would be damaged because "ATUSSIN" is so confusingly similar with "PERTUSSIN" registered in this country on September 25, 1957. The Director of Patents approved the application for the registration of the trademark "ATUSIN" and his decision was appealed to this Court. In disposing of the appeal, the Court affirmed the decision of the Director of Patents holding, *inter alia*, that a practical approach to the problem of similarity or dissimilarity is to go into the whole of the two trademarks pictured in their manner of display; that taking a casual look at the two labels it is shown that they are entirely different in color, contents, arrangement of words thereon, sizes, shape, and general appearance so that the label of one cannot be mistaken for that the other; that the use of the word "*tussin*" as an component of both trademarks cannot be considered as a factor for declaring the two confusingly similar for "*tussin*" is descriptive and generic and is open for appropriation by anyone, and that while the word by itself cannot be used exclusively to identify one goods it may properly become a subject of a trademark by combination with another word or phrase; hence, *Ethepe's* "Pertussin" and *Westmonth's* Atussin"<sup>2</sup>

Similarly, in the case before Us, as correctly stated by the Director of Patents, the word SULMET is derived from a combination of the syllables "SUL" which is derived from *Sulfa* and "MET" from *methyl* both of which are chemical compounds present in the article manufactured by the contending parties, and the addition of the syllable "INE" in respondent's label is sufficient to distinguish respondent's product or trademark from that of petitioner.

3. Petitioner also asserts that the trademarks of the parties are used on identical goods and for identical purposes and that this is an important factor in determining whether or not there is infringement of a trademark. (p. 49, petitioner's brief). We cannot agree with petitioner that the trademarks are used on identical goods because as already indicated earlier, petitioner's SULMET label, Exhibit B, is used on a *drinking water solution* while that of respondent labels tablets. That both products are for identical use may be admitted to the extent that respondent's *tablets* are indicated for the treatment, control and prevention in chicken of infectious coryza also known as colds, rhinitis and roup) and for the prevention of cecal and intestinal coccidiosis which is also indicated in petitioner's SULMET label. However, no one including petitioner can claim a monopoly in the preparation of a medicinal product for the use indicated above. The field is open for the manufacture of medicinal preparations for the same veterinary purposes. What the law prohibits is that one manufacturer labels his product in a manner strikingly identical with or similar to that of another manufacturer as to deceive or confuse the buying public into believing that the two preparations are one and come from the same source. In the case however of SULMETINE and SULMETINE it is satisfactorily shown from the evidence of the parties that while their products may be for a similar use, their presentation to the purchasing public come in totally different forms.

*Bistol Myers Company vs. The Director of Patents and United American Pharmaceuticals, Inc.*, presents a similar problem or situation. In this case, United American Pharmaceuticals filed on October 21, 1957 a petition for registration with the patent office of its trademark "BIOFERIN" intended for the treatment of common colds, influenza, etc. This application was opposed by Bristol Myers Company which is the owner in the Philippines of the trademark "BUFFERIN" and which is also intended for relief in cases of "simple headaches, neuralgia, colds, menstrual pain and minor muscular aches." The Director of Patents approved the registration of "BIOFERIN"

and his decision was appealed to this Court, the appellant contending principally that both products are used for the relief of pains such as headaches and colds and that the words 'BIOFERIN' and 'BUFFERIN' are practically the same in spelling and pronunciation. Affirming the decision of the Director of Patents, the Court through Justice J.P. Bengzon held that although the two words "BIOFERIN" and 'BUFFERIN' have the same suffix and similar sounding prefixes, they appear in their respective labels with striking different backgrounds and surroundings, as to color, size and design, and consequently there is no confusing similarity between the trademarks.

Similarly, the trademarks "ALACTA" and "ALASKA" were used for milk products and the like (Mead Johnson vs N.V.J. Van Dorp, Ltd., *supra*) while "ATUSSIN" and "PERTUSSIN" as trademarks were used for cough and other bronchial ailments Etheпа vs Director of Patents, *supra*), and all were duly recognized as registrable trademarks.

4. In view of our conclusion that there is no confusing of deceptive similarity between SULMET and SULMETINE, it is unnecessary to pass upon the merits of the first, third and fourth assigned errors.

Absent a finding of confusing similarity between two trademarks, the priority in the use of the marks SULMET by the petitioner will have no decesive effect in the granting of his petition for cancellation of the registration of respondent trademark (First Assignment of Error).

With respect to the allegation of petitioner that the trademark SULMETINE was obtained by fraud, as held in *La Estrella Distillery, Inc. vs. the Director of Patents, et al.*, 105 Phil. 1213, the question whether or not the registration of the trademark had been obtained with the fraud and false representation becomes necessary and important only when there is a finding of similarity between the contesting trademarks, and in order that proof of fraud might produce cancellation it is necessary that it be coupled with a showing that the label trademarks of the parties are similar and that the maintenance of one trademark would work to the damage of the other. (Third Assignment of Error).

On the contention of petitioner herein that there it was error for the Director of Patents to rule that the burden rests on petitioner to show probable damage which it has not discharged, suffice it to the state that any error or mistake committed by respondent Director of Patents on this point will not affect one way or the other Decision in this case which is principally based on the finding that there is no similarity between the two trademarks SULMET and SULMETINE likely to cause confusion in the buying public so as constitute a violation of the Trademark Statute. (Fourth Assignment of Error).

In its fifth assignment of error, petitioner questions the delegation by the Director of Patents of his authority to hear and receive the evidence in this case to a Hearing Officer and alleges that respondent Director had no jurisdiction to render the decision appealed from. Third matter has now been put to rest in *American Tobacco Company, et al. vs. Director of Patents, et al.*, L-26803, decided on October 15, 1975 which involved the authority of the Director of Patents Office to hear *Inter Partes* Proceedings in the registration of trademarks and tradenames under Republic Act 166. This Court through Justice Felix Antonio held *inter alia*:

The nature of the power and authority entrusted to the Director of Patents suggests that the aforesaid laws (Republic Act No. 166, in relation to Republic Act No. 165) should be construed so as to give the aforesaid official the administrative flexibility necessary for the prompt and expeditious discharge of his duties in the administration of said laws. As such officer, he is required, among others, to determine the question of priority in patent interference proceedings, decide applications for reinstatement of a lapsed patent, cancellation of patents under Republic Act No. 165, *inter partes* proceedings such as Oppositions, claims of interference, cancellation cases under the Trade-

mark Law and other matters in connection with the enforcement of the aforesaid laws. ...

Thus, it is well-settled that while the power to decide resides solely in the administrative agency vested by law, this does not preclude a delegation of the power to hold a hearing on the basis of which the decision of the administrative agency will be made.

The rule that requires an administrative officer to exercise his own judgment and discretion does not preclude him from utilizing, as a matter of practical administrative procedure, the aid of subordinates to investigate and report to him the facts, on the basis of which the officer makes his decisions. It is sufficient that the judgment and discretion finally exercised are those of the officer authorized by law.<sup>4</sup>

As correctly observed in the foregoing case, the point involved is procedural and not jurisdictional. Being so, the jurisdiction of respondent Director to render the decision assailed is not affected by lapses in the observance of the procedural rules, if no objection thereto is seasonably raised. Non-conformity with rules on procedure is deemed waived in the absence of any objection thereto. The entire record of the case at bar fails to disclose any objection on the part of petitioner to the hearing of the case and the reception of evidence by a Hearing Officer. It surprises us why the petitioner participated throughout the proceedings before the Hearing Officer from 1959 to 1964, actively prosecuting its case therein, and now asks this Court to nullify the whole proceedings together with the decision rendered which happened to be adverse to him.

WHEREFORE, We affirm the decision of respondent Director of Patents, with costs against petitioner. So ordered.

*Teehankee (Chairman), Makasiar and Martin, JJ., concur.*

#### Separate Opinions

ANTONIO, J., concurring:

I concur. The rule is that an infringement exists if, but only if, the resemblance is so close between the two trademarks, that it deceives, or is likely to deceive, a customer exercising ordinary caution in his dealing and induces him to purchase the goods of one manufacturer in the belief that they are those of another. In other words, the similarity must be such as is likely to mislead Purchasers of ordinary caution and prudence into the belief that the articles are those of another producer or manufacturer. Whether the mark or label of one competitor resembles another is to be determined by an inspection of the points of difference and resemblance, as a whole, and not merely the points of resemblance. Here the two articles and trademarks are so different and distinct as to preclude any probability or likelihood of confusion or deception on the part of the public to the injury of the trade or business of petitioner.

#### Footnotes:

1 7 SCRA 768

2 per Conrado Sanchez, J., L-20635, March 31, 1966, 16 SCRA 495

3 L-21587, May 19, 1966, 17 SCRA 128

4 67 SCRA 287, 292-295, citing among others, Sections 10 and 16, Republic Act No. 165; Section 23 *Ibid*; Sections 32 and 33, *Ibid*; Sections 8 and 9, Republic Act No. 166; Section 10-A, *Ibid*; Sections 17 to 19, *Ibid*; Sec. 9, C.A. 103; Ang Tibay v. C.I.R., 69 Phil. 635; National Union v. Asian Printing, 99 Phil. 589; Ruperto v. Torres, Feb. 25, 1957; Orlanes, et al. v. Public Service Commission, 57 Phil. 634; Northern Luzon Transportation, Inc., v. Sambrano, 58 Phil. 35; Cebu Transit, Inc. v. Jereza 58 Phil. 760. ...; Morgan v. United States, 298, US 468, 481-482 (1935), 80 L. ed. 1288, 1295-1296.

\* Designated to sit in the First Division.