

Republic of the Philippines
SUPREME COURT
Manila
THIRD DIVISION

G.R. No. 71189 November 4, 1992

FABERGE, INCORPORATED, petitioner,

vs.

THE INTERMEDIATE APPELLATE COURT and CO BENG KAY, respondents.

MELO, J.:

The Director of Patents authorized herein private respondent Co Beng Kay to register the trademark "BRUTE" for the briefs manufactured and sold by his Corporation in the domestic market *vis-a-vis* petitioner's opposition grounded on similarity of said trademark with petitioner's own symbol "BRUT" which it previously registered for after shave lotion, shaving cream, deodorant, talcum powder, and toilet soap. Thereafter, respondent court, through Justice Gopengco with Justices Patajo and Racela, Jr. concurring, was initially persuaded by petitioner's plea for reversal directed against the permission granted by the Director of Patents, but the decision of the Second Special Cases Division handed down on April 29, 1983 was later reconsidered in favor of herein private respondent (pp. 46-54; pp. 34-36, *Rollo*).

Hence, the petition at bar assailing the action of respondent court in affirming the ruling of the Director of Patents (Page 7, Petition; Page 16, *Rollo*).

In essence, it appears that in the course of marketing petitioner's "BRUT" products and during the pendency of its application for registration of the trademark "BRUT 33 and DEVICE" for antiperspirant, personal deodorant, cream shave, after shave/shower lotion, hair spray, and hair shampoo (page 236, *Rollo*), respondent Co Beng Kay of Webengton Garments Manufacturing applied for registration of the disputed emblem "BRUTE" for briefs. Opposition raised by petitioner anchored on similarity with its own symbol and irreparable injury to the business reputation of the first user was to no avail. When the legal tussle was elevated to respondent court, Justice Gopengco remarked that:

Indeed, a look at the marks "BRUT," "BRUT 33" and "BRUTE" shows that such marks are not only similar in appearance but they are even similar in sound and in the style of presentation. It is reasonable to believe that this similarity is sufficient to cause confusion and even mistake and deception in the buying public as to the origin for source of the goods bearing such trademarks. It should be considered that, although the mark "BRUTE" was applied for, only for briefs, yet such product has the same outlet — such as department stores and haberdashery stores in the Philippines — as the goods covered by the trademarks "BRUT" and "BRUTE 33" so that such confusion, mistake or deception is not unlikely to occur. The argument of appellee, that in modern marketing, goods of similar use are grouped in one section of the supermarket and thus it is unlikely that cosmetics be mixed with textile or wearing apparel, is hardly convincing enough, for a look at the modern department stores shows that merchandise intended for the use of men are now placed in a section which is then labeled "Men's Accessories." It is not unlikely, therefore, that in said section, appellant's products, which are cosmetics for men's use, be placed beside appellee's product, and cause such confusion or mistake as to the source of the goods displayed in the section. To avoid this, the Director of Patents held:

The marks KEYSTON (on shirts) and KEYSTONE (on shoes and slippers), the latter having been previously registered are clearly similar in sound and appearance that confusion or mistake, or deception among purchasers as to origin and source of goods is likely to occur. Shirts and shoes are both wearing apparel and there is no gainsaying the truth that these items are ordinarily displayed in the same manner and sold through the same retail outlets such as department and haberdashery stores in the Philippines. (*Ex-Parte* Keystone Garment Manufacturing Co., Decision No. 245 of the Director of Patents, January 25, 1963.)

It is also not disputed that on account of the considerable length of time that appellant has marketed its products bearing the trademarks "BRUT" and "BRUT 33," and its maintenance of high quality of its products through the years, appellant has earned and established immense goodwill among its customers. We agree with appellant that should appellee be allowed to use the trademark "BRUTE" on the briefs manufactured by him, appellee would be cashing in on the goodwill already established by appellant, because, as already stated above, appellant's cosmetics and appellee's briefs are not entirely unrelated since both are directed to the fashion trade and in the marketing process, they may find themselves side by side in the "Men's Accessories Section" of the market, thus easily leading the buying public to believe that such briefs come from the same source as appellant's cosmetics, and be induced to buy said briefs, to the undue advantage of appellee. Again, if after purchasing such briefs, the public finds them to be of non-competitive quality, or not of the high quality expected of appellant's products, then appellant's reputation and goodwill will be ruined, to its damage and prejudice. Thus, for the protection of the goodwill already established by a party, the Supreme Court held:

When one applies for the registration of a trademark or label which is almost the same or very closely resembles one already used and registered by another, the application should be rejected and dismissed outright, even without any opposition on the part of the owner and user of a previously registered label or trademark, this not only to avoid confusion on the part of the public, but also to protect an already used and registered trademark and an established goodwill. (*Chuanchow Soy & Canning Co. vs. Dir. of Patents and Villapanta*, 108 Phil. 833, 836.)

The test of confusing similarity which would preclude the registration of a trademark is not whether the challenged mark would actually cause confusion or deception of the purchasers but whether the use of such mark would likely cause confusion or mistake on the part of the buying public. In short, the law does not require that the competing marks must be so identical as to produce actual error or mistakes. It would be sufficient, for purposes of the law, that the similarity between the two labels be such that there is a possibility or likelihood of the purchaser of the older brand mistaking the newer brand for it. (*Gopengco, Mercantile Law Compendium*, 1983 ed., p. 684; *Acoje Mining Co., Inc. vs. Director of Patents*, 38 SCRA 480). (pp. 3-6, Decision; pp. 48-51, *Rollo*).

On June 5, 1984, respondent's Motion for Reconsideration merited the nod of approval of the appellate court brought about by private respondent's suggestion that the controlling ruling is that laid down in *Philippine Refining Co., Inc. vs. Ng Sam* (115 SCRA 472 [1982]), *ESSO Standard Eastern, Inc. vs. Court of Appeals* (116 SCRA 336 [1982]); *Hickok Manufacturing Co., Inc. vs. CA* (116 SCRA 378 [1982]), and *Acoje Mining Co., Inc. vs. Director of Patents* (38 SCRA

480 [1971], to the effect that the identical trademark can be used by different manufacturers for products that are non-competing and unrelated. (pp. 34-36, *Rollo*)

Petitioner is of the impression that respondent court could not have relied on the rulings of this Court in the *ESSO* and the *PRC* cases when the original decision was reconsidered since respondent court already expressed the opinion in the text of the previous discourse that the facts in said cases "are not found in the case at bar" (Page 12, Brief for the Petitioner, Page 202, *Rollo*). Petitioner likewise emphasis American jurisprudential doctrines to the effect that sale of cosmetics and wearing apparel under similar marks is likely to cause confusion. Instead of applying the *ESSO*, *PRC* and *Hickok* cases, petitioner continues to asseverate, the rule as announced in *Ang vs. Teodoro* (74 Phil. 50 [1942]) as reiterated in *Sta. Ana vs. Maliwat and Evalle* (24 SCRA (1968) 101) should be applied.

In additional, it seems that petitioner would want this Court to appreciate petitioner's alleged application for registration of the trademark "BRUT 33 DEVICE" for briefs as an explicit proof that petitioner intended to expand its mark "BRUT" to other goods, following the sentiment expressed by Justice J.B.L. Reyes in the *Sta. Ana* case (*supra*, at page 1025) that relief is available where the junior user's goods are not remote from any product that the senior user would be likely to make or sell (Pages 26-27, Brief for the Petitioner).

Besides, petitioner insists that in view of the repeal of Republic Act No. 166 (which advocated the related goods theory) by Republic Act No. 666 which deleted the phrase found in the old law that the merchandise must be substantially the same descriptive properties, respondent Court should have heeded the pronouncement in the *Ang* case that there can be unfair competition even if the goods are noncompeting (*supra*, at page 54).

On the other hand, private respondent echoes the glaring difference in physical appearance of its products with petitioner's own goods by stressing the observations of the Director of Patents on May 3, 1978:

Considered in their entireties as depicted in the parties' sample box and can containers, the involved trademarks are *grossly different in their overall appearance* that even at a distance a would-be purchaser could easily distinguish what is BRUTE brief and what is BRUT after shave lotion, lotion and the like. Opposer's mark BRUT or BRUT 33, as shown in Exhibit "6", is predominantly colored green with a blue and white band at the middle portion of the container. Also appearing therein in bold letters is opposer's name "FABERGE" and a notation "Creme Shave". On the other hand, respondent's mark as shown in Exh. "4-A" prominently displays the representation of a muscular man, underneath of which appears the trademark BRUTE with a notation "Bikini Brief" . . . Equally visible at the other portions of respondent's labels are the pictorial representation of "briefs" which unmistakably suggest that the product contained in the box container is that of a man's brief. The fact therefore is obvious that the goods upon which the conflicting trademarks are used are clearly different and the intended purpose of such goods is likewise not the same. Accordingly, a purchaser who is out in the market for the purpose of buying respondent's BRUTE brief would definitely be not mistaken or misled into buying instead opposer's BRUT after shave lotion or deodorant.

Additionally, the meaning or connotation of the bare word marks of opposer, BRUT, and BRUTE of respondent, is clearly different and not likely to be confused with each other. BRUT simply means "dry", and also, "to browse"; while BRUTE means "ferocious, sensual", and in Latin, it signifies "heavy". Gleaned from the respective meanings of the two marks in question, they both suggest the resultant *effects* of the application of the products, upon which the said trademarks are employed, which fact all the more renders confusion or deception of purchasers a remote possibility.

The products covered by petitioner's trademarks "BRUT" and "BRUT 33 & Device" enjoying its so-called "goodwill" are after-shave lotion, shaving cream, deodorant, talcum powder, toilet soap, anti-perspirant, personal deodorant, cream shave, after shave/shower lotion, hair spray and hair shampoo. Petitioner has never applied for, registered nor used its trademarks for briefs in commerce or trade in the Philippines. Private respondent seeks to register his trademark "BRUTE" only for briefs which is a product non-competitive to and entirely unrelated with petitioner's aforementioned products. (pp. 3-4, Brief for the Respondent)

in order to impress upon Us that the controlling norm is the comparison of the trademarks in their entirety as they appear in their labels to determine whether there is confusing similarity.

Moreover, private respondent asserts that briefs and cosmetics do not belong to the same class nor do they have the same descriptive properties such that the use of a trademark on one's goods does not prevent the adoption and use of the same trademark by others on unrelated articles of a different nature in line with the ruling of this Court in *Hickok Manufacturing Co., Inc. vs. Court of Appeals* (116 SCRA 387 [1982]). Furthermore, respondent belies petitioner's claim that the latter had applied for registration of the trademark "BRUT 33 DEVICE" for *briefs* since the documents on file with the Director of Patents attached to respondent's legal Brief does not include the so-called application by petitioner of the alleged trademark for briefs.

To the legal query of whether private respondent may appropriate the trademark "BRUTE" for the briefs it manufactures and sells to the public albeit petitioner had previously registered the symbol "BRUT" and "BRUT 33" for its own line of times, it is but *apropos* to shift Our attention to the pertinent provisions of the new Civil Code *vis-a-vis* Republic Act No. 166, as amended, the special law patterned after the United States Trademark Act of 1946 (Director of Patents, Circular Release No. 36, 45 O.G. 3704; *Martin*, Commentaries and Jurisprudence on the Philippine Commercial Laws, 1986 Revised Edition, Volume 2, page 489), thus:

Art. 520. A trade-mark or trade-name duly registered in the proper government bureau or office is owned by and pertains to the person, corporation, or firm registering the same, subject to the provisions of special laws.

Art. 521. The goodwill of a business is property, and may be transferred together with the right to use the name under which the business is conducted.

Art. 522. Trade-marks and trade-names are governed by special laws.

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Sec. 2. *What are registrable.* — Trade-marks, trade-names, and service-marks owned by persons, corporations, partnerships or associations domiciled in the Philippines and by persons, corporations, partnerships or associations domiciled in any foreign country may be registered in accordance with the provisions of this Act; Provided, That said trade-marks, trade-names, or service-marks, are actually in use in commerce and services not less than two months in the Philippines before the time the applications for registration are filed: And provided, further, That the country of which the applicant for registration is a citizen grants by law substantially similar privileges to citizens of the Philippines, and such fact is officially certified, with a certified true copy of the foreign law translated into the English language, by the government of the Republic of the Philippines. (As amended by Rep. Act No. 865).

Sec. 2-A. *Ownership of trade-marks, trade-names and service-marks; how acquired.* — Anyone who lawfully produces or deals in merchandise of any kind

or who engages in any lawful business or who renders any lawful service in commerce, by actual use thereof in manufacture or trade, in business, and in the service rendered, may appropriate to his exclusive use a trade-mark, a trade-name, or a service-mark not so appropriated by another, to distinguish his merchandise, business or service from the merchandise, business or services of others. The ownership or possession of a trade-mark, trade-name, service-mark, heretofore or hereafter appropriated, as in this section provided, shall be recognized and protected in the same manner and to the same extent as are other property rights known to the law. (As inserted by Sec. 1 of Rep. Act 638).

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Sec. 4. *Registration of trade-marks, trade-names and service-marks on the principal register.* —

. . . The owner of trademark, trade-name or service-mark used to distinguish his goods, business or services from the goods, business or services of others shall have right to register the same on the principal register, unless it:

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4(d) Consists of or comprises a mark or trade-name which so resembles a mark or trade-name registered in the Philippines or a mark or trade-name previously used in the Philippines by another and not abandoned, as to be likely, when applied to or used in connection with the goods, business or services of the applicant, to cause confusion or mistake or to deceive purchasers.

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Sec. 11. *Issuance and contents of the certificate.* — Certificates of registration shall be issued in the name of the Republic of the Philippines under the seal of the Patent Office, and shall be signed by the Director, and a record thereof together with a copy of the specimen or facsimile and the statement of the applicant, shall be kept in books for that purpose. The certificate shall reproduce the specimen or facsimile of the mark or trade-name, contain the statement of the applicant and state that the mark or trade-name is registered under this Act, the date of the first use in commerce or business, *the particular goods or services for which it is registered*, the number and date of the registration, the term thereof, the date on which the application for registration was received in the Patent Office, a statement of the requirement that in order to maintain the registration, periodical affidavits of use within the specified times hereinafter in section twelve provided, shall be filed, and such other data as the rules and regulations may from time to time prescribe.

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Sec. 20. *Certificate of registration prima facie evidence of validity.* — A certificate of registration of a mark or trade-name shall be *prima facie* evidence of the validity of the registration, the registrant's ownership of the mark or trade-name, *and of the registrant's exclusive right to use the same in connection with the goods, business or services specified in the certificate*, subject to any conditions and limitations stated therein.

Having thus reviewed the laws applicable to the case before Us, it is not difficult to discern from the foregoing statutory enactments that private respondent may be permitted to register the trademark "BRUTE" for briefs produced by it notwithstanding petitioner's vehement protestations of unfair dealings in marketing its own set of items which are limited to: after-shave lotion,

shaving cream, deodorant, talcum powder and toilet soap. In as much as petitioner has not ventured in the production of briefs, an item which is not listed in its certificate of registration, petitioner cannot and should not be allowed to feign that private respondent had invaded petitioner's exclusive domain. To be sure, it is significant that petitioner failed to annex in its Brief the so-called "eloquent proof that petitioner indeed intended to expand its mark "BRUT" to other goods" (Page 27, Brief for the Petitioner; Page 202, *Rollo*). Even then, a mere application by petitioner in this aspect does not suffice and may not vest an exclusive right in its favor that can ordinarily be protected by the Trademark Law. In short, paraphrasing Section 20 of the Trademark Law as applied to the documentary evidence adduced by petitioner, the certificate of registration issued by the Director of Patents can confer upon petitioner the exclusive right to use its own symbol only to those goods specified in the certificate, subject to any conditions and limitations stated therein. This basic point is perhaps the unwritten *rationale* of Justice Escolin in *Philippine Refining Co., Inc. vs. Ng Lam* (115 SCRA 472 [1982]), when he stressed the principle enunciated by the United States Supreme Court in *American Foundries vs. Robertson* (269 U.S. 372, 381, 70 L ed 317, 46 Sct. 160) that one who has adopted and used a trademark on his goods does not prevent the adoption and use of the same trademark by other for products which are of different description. Verily, this Court had the occasion to observe in the 1966 case of *George W. Luft Co., Inc. vs. Ngo Guan* (18 SCRA 944 [1966]) that no serious objection was posed by the petitioner therein since the applicant utilized the emblem "Tango" for no other product than hair pomade in which petitioner does not deal.

This brings Us back to the incidental issue raised by petitioner which private respondent sought to belie as regards petitioner's alleged expansion of its business. It may be recalled that petitioner claimed that it has a pending application for registration of the emblem "BRUT 33" for briefs (page 25, Brief for the Petitioner; page 202, *Rollo*) to impress upon Us the Solomonic wisdom imparted by Justice JBL Reyes in *Sta. Ana vs. Maliwat* (24 SCRA 1018 [1968]), to the effect that dissimilarity of goods will not preclude relief if the junior user's goods are not remote from any other product which the first user would be likely to make or sell (*vide*, at page 1025). Commenting on the former provision of the Trademark Law now embodied substantially under Section 4(d) of Republic Act No. 166, as amended, the erudite jurist opined that the law in point "does not require that the articles of manufacture of the previous user and late user of the mark should possess the same descriptive properties or should fall into the same categories as to bar the latter from registering his mark in the principal register." (*supra* at page 1026).

Yet, it is equally true that as aforesaid, the protective mantle of the Trademark Law extends only to the goods used by the first user as specified in the certificate of registration following the clear message conveyed by section 20.

How do We now reconcile the apparent conflict between Section 4(d) which was relied upon by Justice JBL Reyes in the *Sta. Ana* case and Section 20? It would seem that Section 4(d) does not require that the goods manufactured by the second user be related to the goods produced by the senior user while Section 20 limits the exclusive right of the senior user only to those goods specified in the certificate of registration. But the rule has been laid down that the clause which comes later shall be given paramount significance over an anterior proviso upon the presumption that it expresses the latest and dominant purpose. (*Graham Paper Co. vs. National Newspaper Asso.* (Mo. App.) 193 S.W. 1003; *Barnett vs. Merchant's L. Ins. Co.*, 87 Okl. 42; *State ex nel Atty. Gen. vs. Toledo*, 26 N.E., p. 1061; cited by *Martin*, Statutory Construction Sixth ed., 1980 Reprinted, p. 144). It ineluctably follows that Section 20 is controlling and, therefore, private respondent can appropriate its symbol for the briefs it manufactures because as aptly remarked by Justice Sanchez in *Sterling Products International Inc. vs. Farbenfabriken Bayer* (27 SCRA 1214 [1969]):

Really, if the certificate of registration were to be deemed as including goods not specified therein, then a situation may arise whereby an applicant may be tempted to register a trademark on any and all goods which his mind may conceive even if he had never intended to use the trademark for the said goods.

We believe that such omnibus registration is not contemplated by our Trademark Law. (1226)

Withal, judging from the physical attributes of petitioner's and private respondent's products, there can be no doubt that confusion or the likelihood of deception to the average purchaser is unlikely since the goods are non-competing and unrelated. In upholding registration of the brand "ESSO for cigarettes inspite previous appropriation of the same mark "ESSO" for petroleum products, then Justice, later Chief Justices Teehankee in *Esso Standard Eastern, Inc. vs. Court of Appeals* (116 SCRA 336 [1982] said:

The Court affirms on the basis of controlling doctrine the appealed decision of the Court of Appeals reversing that of the Court of First Instance of Manila and dismissing the complaint filed by herein petitioner against private respondent for trade infringement for using petitioner's trademark ESSO, since it clearly appears that the goods on which the trademark ESSO is used by respondent is non-competing and entirely unrelated to the products of petitioner so that there is no likelihood of confusion or deception on the part of the purchasing public as to the origin or source of the goods.

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The trial court, relying on the old cases of *Ang vs. Teodoro* and *Arce & Sons, Inc. vs. Selecta Biscuit Company*, referring to related products, decided in favor of petitioner and ruled that respondent was guilty of infringement of trademark.

On appeal, respondent Court of Appeals found that there was no trademark infringement and dismissed the complaint. Reconsideration of the decision having been denied, petitioner appealed to this court by way of *certiorari* to reverse the decision of the Court of Appeals and to reinstate the decision of the Court of First Instance of Manila. The Court finds no ground for granting the petition.

The law defines infringement as the use without consent of the trademark owner of any "reproduction, counterfeit, copy or colorable imitation of any registered mark or tradename in connection with the sale, offering for sale, or advertising of any goods, business or services on or in connection with which such use is likely to cause confusion or mistake or to deceive purchasers or others as to the source or origin of such goods or services, or identity of such business; or reproduce, counterfeit, copy or colorable imitate any director's decision on the question of "May petitioner Acoje Mining Company register for the purpose of advertising its product, soy sauce, the trademark LOTUS, there being already in existence one such registered in favor of the Philippine Refining Company for its product, edible oil, it being further shown that the trademark applied for is in smaller type, colored differently, set on a background which is dissimilar as to yield a distinct appearance?" and ordered the granting of petitioner's application for registration ruling that "there is quite a difference between soy sauce and edible oil. If one is in the market for the former, he is not likely to purchase the latter just because of the trademarks LOTUS" and "when regard is had for the principle that the two trademark in their entirety as they appear in their respective labels should be considered in relation to the goods advertised before registration could be denied, the conclusion is inescapable that respondent Director ought to have reached a different conclusion."

By the same token, in the recent case of *Philippine Refining Co., Inc. v. Ng Sam* and Director of Patents, the Court upheld the patent director's registration of the same trademark CAMIA for therein respondent's product of ham notwithstanding its already being used by therein petitioner for a wide range of products: lard;

butter, cooking oil, abrasive detergents, polishing material and soap of all kinds. The Court, after noting that the same CAMIA trademark had been registered by two other companies, Everbright Development Company and F.E. Zuellig, Inc. for their respective products of thread and yarn (for the former) and textiles, embroideries and laces (for the latter) ruled that "while ham and some of the products of petitioner are classified under Class 47 (Foods and Ingredients of Food), this alone cannot serve as the decisive factor in the resolution of whether or not they are related goods. Emphasis should be on the similarity of the arbitrary classification or general description of their properties or characteristics. The Court, therefore, concluded that "In fine, We hold that the businesses of the parties are noncompetitive and their products so unrelated that the use of identical trademarks is not likely to give rise to confusion, much less cause damage to petitioner.

In the situation before us, the goods are obviously different from each other — with "absolutely no iota of similitude" as stressed in respondent court's judgment. They are so foreign to each other as to make it unlikely that purchasers would think that petitioner is the manufacturer of respondent's goods. The mere fact that one person has adopted and used a trademark on his goods does not prevent the adoption and use of the same trademark by others on unrelated articles of a different kind.

Petitioner uses the trademark ESSO and holds certificate registration of the trademark for petroleum products, including aviation gasoline, grease, cigarette lighter fluid and other various products such as plastics, chemicals, synthetics, gasoline solvents, kerosene, automotive and industrial fuel, bunker fuel, lubricating oil, fertilizers, gas alcohol, insecticides and the "ESSO Gasul" burner, while respondent's business is solely for the manufacture and sale of the unrelated product of cigarettes. The public knows too well that petitioner deals solely with petroleum products that there is no possibility that cigarettes with ESSO brand will be associated with whatever good name petitioner's ESSO trademark may have generated. Although petitioner's products are numerous, they are of the same class or line of merchandise which are non-competing with respondent's product of cigarettes, which as pointed out in the appealed judgment is beyond petitioner's "zone of potential or natural and logical expansion." When a trademark is used by a party for a product in which the other party does not deal, the use of the same trademark on the latter's product cannot be validly objected to.

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Respondent court correctly ruled that considering the general appearances of each mark as a whole, the possibility of any confusion is unlikely. A comparison of the labels of the samples of the goods submitted by the parties shows a great many differences on the trademark used. As pointed out by respondent court in its appealed decision, "(A) witness for the plaintiff, Mr. Buhay, admitted that the color of the "ESSO" used by the plaintiff for the oval design where the blue word ESSO is contained is the distinct and unique kind of blue. In his answer to the trial court's question, Mr. Buhay informed the court that the plaintiff never used its trademark on any product where the combination of colors is similar to the label of the Esso cigarettes," and "Another witness for the plaintiff, Mr. Tengco, testified that generally, the plaintiff's trademark comes all in either red, white, blue or any combination of the three colors. It is to be pointed out that not even a shade of these colors appears on the trademark of the appellant's cigarette. The only color that the appellant uses in its trademark is green. (339; 341-346)

The glaring discrepancies between the two products had been amply portrayed to such an extent that indeed, "a purchaser who is out in the market for the purpose of buying respondent's BRUTE brief would definitely be not mistaken or misled into buying BRUT after shave lotion or deodorant" as categorically opined in the decision of the Director of Patents relative to the inter-partes case. (*supra*, at page 7).

Petitioner's bid to persuade Us into accepting the doctrines announced in the aforementioned cases of *Sta. Ana vs. Maliwat* and *Ang vs. Teodoro* hardly inspire belief. In *Sta Ana*, it was admitted that the marks were confusingly similar which is not so in the case at bar. In the 1942 case of *Ang vs. Teodoro*, Justice Ozaeta noted that pants and shirts are similar to shoes and slippers within the meaning of Sections 3, 7, 11, 13 and 20 of Act No. 666 which was the old Trademark Law enacted on March 6, 1903 prior to the present law. Obviously, the conclusion reached by the *ponente* in the *Ang* case may not now be utilized by analogy to the case at bar due to variance in the factual and legal milieu. Neither can we agree with petitioner that the ruling in *La Chemise Lacoste, S.A. vs. Fernandez* (129 SCRA 373 [1984]) is applicable to the controversy at hand. The case adverted to by petitioner involved the same mark for the same class of shirts manufactured by the parties therein.

It would appear that as a consequence of this discourse, there still remains hanging in mid-air the unanswered puzzle as to why an aspiring commercial enterprise, given the infinite choices available to it of names for the intend product, would select a trademark or tradename which somewhat resembles an existing emblem that had established goodwill. Our opinion hereinbefore expressed could even open the floodgates to similar incursions in the future when we interpreted Section 20 of the Trademark Law as an implicit permission to a manufacturer to venture into the production of goods and allow that producer to appropriate the brand name of the senior registrant on goods other than those stated in the certificate of registration.

But these nagging and disturbing points cannot win the day for petitioner, although We must hasten to add that in the final denouement, Our apprehensions in this regard are not entirely irreversible since Section 4(d) and 20 of the law in question may still be subjected to legislative modification in order to protect the original user of the symbol.

WHEREFORE, the petition is hereby DISMISSED without pronouncement as to costs.

SO ORDERED.

Gutierrez, Jr., Bidin, Davide, Jr., and Romero, JJ., concur.