

Republic of the Philippines
SUPREME COURT
Manila

EN BANC

G.R. No. L-17901 October 29, 1965

OPERATORS, INCORPORATED, petitioner,

vs.

THE DIRECTOR OF PATENTS, ET AL., respondents.

Rafael R. Lasam for petitioner.

Ponce Enrile, Siguion Reyna, Montecillo & Belo for respondent National Biscuit Company.

Office of the Solicitor General for respondent Director of Patents.

MAKALINTAL, J.:

Petitioner, a domestic corporation, applied to the Philippine Patent Office for registration of AMBISCO as a trademark for its locally manufactured candy products. It has been using said trademark since May 1956 by virtue of two contracts with the American Biscuit Company, also a domestic corporation.

The National Biscuit Company opposed the application, having previously registered NABISCO as trademark for its own bakery goods, such as biscuits, crackers, cakes and wafers. The oppositor, a corporation organized in the United States, has had the said trademark registered in the Philippines since 1930, and renewed the registration in 1948 under the latest trademark law.

In his decision of September 20, 1960 the Director of Patents defined the issues in this case to be: (1) whether or not the two trademarks aforesaid are so similar to each other as to cause confusion, mistake or deception of purchasers; and (2) whether or not the applicant had a right in the first place to apply for registration of AMBISCO as a trademark at all. And reaching an affirmative conclusion on the first issue, the Director denied the application without considering it necessary to resolve the second. Petitioner moved to reconsider, and upon denial of the motion brought up the case to this Court for review.

The second issue commands first consideration. Under section 2 of Republic Act No. 166, as amended by section 1 of Republic Act No. 865, trademarks, tradenames, and service marks, *owned* by persons, corporations, partnerships or associations domiciled in the Philippines or in any foreign country may be registered here provided certain conditions enumerated in the same section are complied with. The right to register, as may be noted, is based on ownership. In the case of the trademark AMBISCO, the evidence shows that it is owned by the American Biscuit Co., Inc., and not by petitioner Operators, Inc. Such evidence consists of the certification signed jointly by Jorge B. Vargas and by Eu Chua Leh, presidents of the said Corporations, respectively, as follows (Exh. 2):

On September 26, 1953, and on June 12, 1954, the American Biscuit Co., Inc., and the Operators Incorporated, both corporations organized under the laws of the Philippines, entered into contracts, and under such contracts, the Operators Incorporated is authorized by the American Biscuit Co., Inc. to operate the candy business of the latter and among the various terms and stipulations in said contracts, the Operators Incorporated agreed to distinctly label and display all products manufactured and sold by it as products of the American Biscuit Co., Inc. and that all the trademarks contained in such labels shall be considered as property of the American Biscuits Co., Inc.

Petitioner objects to the consideration of the question of ownership of the trademark as an issue on the ground that it was not raised by respondent either in its opposition or in its memorandum filed after the parties had adduced their evidence. In the first place respondent could not have known at the outset that petitioner was not the owner of the trademark it was seeking to register. That fact was brought out for the first time when the certification quoted above was presented. Secondly, it was incumbent upon petitioner, as applicant, to prove that it had a right to register the trademark applied for and consequently, to show compliance with all the legal requisites including ownership thereof. An application for registration under the Patent Law is not an ordinary litigious controversy between private parties. Public interest is involved and all questions as to whether or not the law is satisfied may be considered by the Patent Office or by the Court even though not specifically raised by either of the parties.

On the other issue, we find no cogent reason to disagree with the Director of Patents that "considering the similarities in appearance and sound between the marks AMBISCO and NABISCO, the nature and similarity of the products of the parties together with the fact that opposer's NABISCO has been used in commerce in the Philippines for more than fifty five (55) years before AMBISCO was adopted by applicant, confusion of purchasers is likely.

In the case of *Co Tiong vs. Director of Patents*, 95 Phil. 1, this Court said:

... If the competing trademark contains the main or essential or dominant features of another, and confusion and deception is likely to result, infringement takes place. Duplication or imitation is not necessary; nor is it necessary that the infringing label should suggest an effort to imitate. (*G. Heilman Brewing Co. vs. Independent Brewing Co.*, 191 F. 489, 495, citing *Eagle White Lead Co. vs. Pflugh* [CC] 180 Fed. 579). ...

... The ordinary customer does not Scrutinize the details of the label; he forgets or overlooks these, but retains a general impression, or a central figure, or a dominant characteristic. The reason for the above has been explained in the following manner:

"... This rule has a basis in experience. The average person usually will not, and often cannot, take in at a casual glance all, or even a large part of the details of what he looks at. What part or parts of two trademarks which are alleged to be similar does the average ordinary buyer see when he looks at them? What features of them are remembered by the average buyer? We do not really hear all that is spoken in our hearing. Far from all we see or hear casually is retained sufficiently clearly or in sufficient detail for us to get a lasting impression of it which we can remember when we encounter the mark again. The importance of this rule is emphasized by the increase of radio advertising in which we are deprived of the help of our eyes and must depend entirely on the ear.

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"The question of infringement is to be determined by the test of dominancy. The dissimilarity in size, form and color of the label and the place where applied are not conclusive. If the competing label contains the trademark of another, and confusion or deception is likely to result, infringement takes place, regardless of the fact that the accessories are dissimilar. Duplication or exact imitation is not necessary; nor is it necessary that the infringing label should suggest an effort to imitate. (*G. Heilman Brewing Co. vs. Independent Brewing Co.*, 191 F. 489., 495, citing *Eagle White Lead Co. vs. Pflugh* (C.C.), 180 P. 579."

Thus, "Celdura" and "Corduara" were held to be confusingly similar in sound when applied to merchandise of the same descriptive properties (*Celanese Corp. of America vs. Du Pont*, 154 F. 2nd 146, 148); and "Lusolin" was considered as an infringement of the trademark "Sapolin" for the same reason (*Sapolin Co. vs. Balmaceda, et al.*, 67 Phil. 705).

On the whole we find no reversible error in the decision appealed from and therefore affirm the same, with costs.

Bengzon, C.J., Bautista Angelo, Concepcion, Regale, Bengzon, J.P., and Zaldivar, JJ., concur. Reyes, J.B.L., is on leave.

Dizon, J., took no part.