

Republic of the Philippines
SUPREME COURT
Manila

SECOND DIVISION

G.R. No. L-26676 July 30, 1982

PHILIPPINE REFINING CO., INC., petitioner,

vs.

NG SAM and THE DIRECTOR OF PATENTS, respondents.

*Ponce Enrile, Siguion Reyna, Montecillo & Bello and Associates for petitioner.
Primitivo C. Bucasas for respondents.*

ESCOLIN, J.:

The sole issue raised in this petition for review of the decision of the Director of patents is whether or not the product of respondent, Ng Sam, which is ham, and those of petitioner consisting of lard, butter, cooking oil and soap are so related that the use of the same trademark "CAMIA" on said goods would likely result in confusion as to their source or origin.

The trademark "CAMIA" was first used in the Philippines by petitioner on its products in 1922. In 1949, petitioner caused the registration of said trademark with the Philippine Patent Office under certificates of registration Nos. 1352-S and 1353-S, both issued on May 3, 1949. Certificate of Registration No. 1352-S covers vegetable and animal fats, particularly lard, butter and cooking oil, all classified under Class 47 (Foods and Ingredients of Food) of the Rules of Practice of the Patent Office, while certificate of registration No. 1353-S applies to abrasive detergents, polishing materials and soap of all kinds (Class 4).

On November 25, 1960, respondent Ng Sam, a citizen residing in Iloilo City, filed an application with the Philippine Patent office for registration of the identical trademark "CAMIA" for his product, ham, which likewise falls under Class 47. Alleged date of first use of the trademark by respondent was on February 10, 1959.

After due publication of the application, petitioner filed an opposition, in accordance with Section 8 of Republic Act No. 166, otherwise known as the Trademark Law, as amended. Basis of petitioner's opposition was Section 4(d) of said law, which provides as unregistrable:

a mark which consists of or comprises a mark or tradename which so resembles a mark or tradename registered in the Philippines or a mark or tradename 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 services of the applicant, to cause confusion or mistake or to deceive purchasers.

The parties submitted the case for decision without presenting any evidence: thereafter the Director of patents rendered a decision allowing registration of the trademark "CAMIA" in favor of Ng Sam.

Petitioner moved for a reconsideration, but the same was denied.

Hence, this petition.

A rudimentary precept in trademark protection is that "the right to a trademark is a limited one, in the sense that others may use the same mark on unrelated goods."¹ Thus, as pronounced by the

United States Supreme Court in the case of *American Foundries vs. Robertson*,² "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 articles of a different description."

Such restricted right over a trademark is likewise reflected in our Trademark law. Under Section 4(d) of the law, registration of a trademark which so resembles another already registered or in use should be denied, where to allow such registration could likely result in confusion, mistake or deception to the consumers. Conversely, where no confusion is likely to arise, as in this case, registration of a similar or even Identical mark may be allowed.

The term "CAMIA" is descriptive of a whole genus of garden plants with fragrant white flowers. Some people call the "CAMIA" the "white ginger plant" because of its tuberous roots, while children refer to it as the butterfly flower because of its shape. Being a generic and common term, its appropriation as a trademark, albeit in a fanciful manner in that it bears no relation to the product it identifies, is valid. However, the degree of exclusiveness accorded to each user is closely restricted.³

The records of this case disclose that the term "CAMIA" has been registered as a trademark not only by petitioner but by two (2) other concerns, as follows:

1. CAMIA Application No. 280 Registration No. SR-320 Date Registered — May 26, 1960 Owner — Everbright Development Company Business Address — 310 M. H. del Pilar Grace Park, Caloocan City Class 4 — Thread and Yarn

2. CAMIA and Representation Application No. 538 Date Filed — August 10, 1945 Date Registered - April 20, 1946 Owner — F.E. Zuellig, Inc. Business Address — 55 Rosario St., Manila Class 43 — Particular Good on which mark is used: Textiles, Embroideries laces, etc.

A trademark is designed to identify the user. But it should be so distinctive and sufficiently original as to enable those who come into contact with it to recognize instantly the identity of the user. "It must be affirmative and definite, significant and distinctive, capable to indicate origin."⁴

It is evident that "CAMIA" as a trademark is far from being distinctive. By itself, it does not identify petitioner as the manufacturer or producer of the goods upon which said mark is used, as distinguished to trademarks derived from coined words such as "Rolex", "Kodak" or "Kotex". It has been held that if a mark is so commonplace that it cannot be readily distinguished from others, then it is apparent that it cannot identify a particular business; and he who first adopted it cannot be injured by any subsequent appropriation or imitation by others, and the public will not be deceived."⁵

The trademark "CAMIA" is used by petitioner on a wide range of products: lard, butter, cooking oil, abrasive detergents, polishing materials and soap of all kinds. Respondent desires to use the same on his product, ham. 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 products involved and not on the arbitrary classification or general description of their properties or characteristics.

In his decision, the Director of Patents enumerated the factors that set respondent's product apart from the goods of petitioner. He opined and we quote:

I have taken into account such factors as probable purchaser attitude and habits, marketing activities, retail outlets, and commercial impression likely to be conveyed by the trademarks if used in conjunction with the respective goods of the parties. I believe that ham on one hand, and lard, butter, oil, and soap on the other are products that would not move in the same manner through the same

channels of trade. They pertain to unrelated fields of manufacture, might be distributed and marketed under dissimilar conditions, and are displayed separately even though they frequently may be sold through the same retail food establishments. Opposer's products are ordinary day-to-day household items whereas ham is not necessarily so. Thus, the goods of the parties are not of a character which purchasers would be likely to attribute to a common origin. (p. 23, Rollo).

The observation and conclusion of the Director of Patents are correct. The particular goods of the parties are so unrelated that consumers would not in any probability mistake one as the source or origin of the product of the other. "Ham" is not a daily food fare for the average consumer. One purchasing ham would exercise a more cautious inspection of what he buys on account of its price. Seldom, if ever, is the purchase of said food product delegated to household helps, except perhaps to those who, like the cooks, are expected to know their business. Besides, there can be no likelihood for the consumer of respondent's ham to confuse its source as anyone but respondent. The facsimile of the label attached by him on his product, his business name "SAM'S HAM AND BACON FACTORY" written in bold white letters against a reddish orange background⁶, is certain to catch the eye of the class of consumers to which he caters.

In addition, the goods of petitioners are basically derived from vegetable oil and animal fats, while the product of respondent is processed from pig's legs. A consumer would not reasonably assume that, petitioner has so diversified its business as to include the product of respondent.

Mr. Runolf Callman, in Section 80.3, VOL. I, p. 1121 of his book, Unfair Competition and Trade Marks, declare:

While confusion of goods can only be evident, where the litigants are actually in competition, confusion of business may arise between non-competitive interests as well. This is true whether or not the trademarks are registered. Sec. 16 of the Trademark Act, in referring to 'merchandise of substantially the same descriptive properties, embraces competitive and non-competitive trademark infringement *but it is not so extensive as to be applicable to cases where the public would not reasonably expect the plaintiff to make or sell the same class of goods as those made or sold by the defendant.* (Emphasis supplied).

In fine, we hold that the business of the parties are non-competitive 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.

WHEREFORE, the instant petition is hereby dismissed and the decision of the Director of Patents in Inter Partes Case No. 231 affirmed *in toto*. Costs against petitioner.

SO ORDERED.

Barredo (Chairman), Aquino, Concepcion, Jr., Guerrero, Abad Santos and De Castro, JJ., concur.

Separate Opinions

DE CASTRO, J., dissenting:

I vote to grant the petition of the Philippine Refining Co. Inc. As the registered owner and prior user of the trademark, "CAMIA" on a wide variety of products such as lard, butter, cooking oil, abrasive detergents, polishing materials and soap of all kinds, the respondent's ham which comes under the same classification of "Food and Ingredients of Foods" under which petitioner has registered its trademark, if given the same trademark, "CAMIA" is likely to confuse the public that the source of the ham is the petitioner. if the respondent's ham is of poor quality, petitioner's

business may thus be affected adversely as a result, while from the standpoint of the purchasers, some measure of deception may take effect upon them. Thus, the use of the same trademark on the ham would likely result in confusion as to the source or origin thereof, to the damage or detriment of the petitioner. The purpose of the law will be served better by not allowing the registration of the trademark "CAMIA" for respondent's ham, with such a limitless number of other words respondent may choose from, as trademark for his product.

FOOTNOTES:

1 Sec. 221, Nims, Unfair Competition and Trade Mark, Vol. 1, p. 657.

2 269 US 372, 381, 70 L ed 317, 46 Sct. 160.

3 Sec. 203, Nims, Unfair Competition and Trademarks, Vol. 1, p. 555.

4 Sparklets Corp. v. Walter Kidde Sales Co., 104 F. 2d 396, 398, C.C.P.A.

5 Maniton Springs Mineral Water Co. vs. Schueler, 239 Fed. 593, 597, C. C. A. 8th, 1917.

p. 5, Original Record.

6 p. 5, Original Record.