

Republic of the Philippines  
SUPREME COURT  
Manila

EN BANC

G.R. No. L-17049            May 31, 1961

PAULA RECARO, doing business under the name and style, "BIG FIVE PRODUCTS", and  
THING ONG, plaintiffs-appellees,

vs.

NESTOR EMBISAN, doing business under the name and style "NEL'S COFF  
PRODUCTS", defendant-appellant.

*Mariano V. Ampil, Jr. for plaintiffs-appellees.*  
*Filemon Q. Almazan for defendant-appellant.*

CONCEPCION, J.:

Appeal from a summary judgment of the Court of First Instance of Rizal.

In her complaint, filed on April 4, 1958, Paula Recaro, hereafter referred to as plaintiff, alleged that she is doing business under the registered name and style of "BIG FIVE PRODUCTS"; that she is the assignee and owner of the trademark "BIG FIVE 5", which is duly registered with the Philippines Patent Office as per Registry No. 3281 dated April 29, 1952; that since May 22, 1952, she had been using and affixing said trade-mark on the printed labels (a facsimile of which is appended to the complaint) of her products, namely in vegetable lard repacked for sale on retail, with which she is identified in the mind of the public; that defendant Nestor Embisan, doing business under the name and style "Nel-Coff Products", is, likewise, engaged in the repacking of vegetable lard on which he uses printed labels bearing the trademark "Big Three" (a facsimile of which is, likewise, appended to the complaint) which is not registered with said Patent Office and is but a reproduction, a counterfeit copy or colorable imitation of plaintiff's aforementioned registered trade-mark, to such an extent as is likely to cause confusion or mistake or to deceive purchasers or others as to the source or origin of such repacked products, in gross and unauthorized infringement of plaintiff's certificate of registration; that, by giving the wrapping of his products the general appearance of the goods sold by plaintiff, the defendant has influenced purchasers to believe that his goods are those of the plaintiff and has deceived the public and defrauded the plaintiff of her legitimate trade and is, therefore, engaged in unfair competition; that, despite notice given to him, the defendant has refused and continued to refuse to cease and desist from his aforementioned infringement of patent and unfair competition; that, as a consequence, plaintiff had been "compelled to engage the services of counsel in the amount of P1,500"; that there is no other plain, speedy and adequate remedy in the ordinary course of law; and that the commission and continuance of the acts complained of would work irreparable prejudice and injury to the plaintiff. She, accordingly, prayed that defendant be permanently and perpetually enjoined from using on his products wrappings containing the printed label "Big Three", and such devices and words as to constitute infringement of patent and unfair competition, as well as sentenced to pay her P1, 500 as attorney's fees. Thing Ong has joined her as plaintiff, he being her husband.

Upon being summoned, defendant filed an answer stating that he has no knowledge or information sufficient to form a belief as to the truth of plaintiff's allegations concerning her personal circumstances, her alleged ownership of the "Big Five Products", and of the trade-mark "BIG FIVE 5", as well as of the registration and use thereof by plaintiff. Moreover, defendant alleged that he had been doing business under the name and style "Nel-Coff Products" which had been duly registered with the Bureau of Commerce; that he "has been using for sometime

already on his products printed labels bearing the trade-mark "Nel's Big 3 Lard" which cannot be considered a reproduction or counterfeit copy much less a colorable imitation of plaintiff's alleged trade-mark; that, in adopting said trademark (Nel's Big 3 Lard), he had never intended to cause any confusion or mistake or to deceive purchasers and the public in general, as to the source or origin, of the products concerned; and that, upon receipt of plaintiff's notice and to show his good faith, as well as to avoid any future misunderstanding, he "took immediate steps to substitute, as he has actually substituted, his trade-mark 'Nel's Big 3 Lard' with that of 'MARCA 3 LARD', of which fact" the plaintiff was notified. Defendant, likewise, set up a counterclaim for P5,000, as moral damages, and P3,000, as exemplary or punitive damages for the mental shock and moral anxiety he has allegedly suffered on account of this "false and unfounded suit" apart from P2,000 as attorney's fees and expenses for litigation, to "vindicate his good name and reputation".

Soon thereafter, plaintiff filed a "petition for summary judgment and dismissal of the complaint", upon the ground that defendant's answer was such as to raise no genuine issue as to any of the material allegations of the complaint; that, as to its allegation which were denied by defendant for lack of knowledge or information sufficient to form a belief, plaintiff annexed to the petition her affidavit of merit, as well as a copy of the deed of assignment in her favor of the right, title and interest in and to the trade-mark "BIG FIVE 5" and of the certificate of registration thereof with the Philippines Patent Office; that defendant's allegation to the effect that he had taken steps to substitute his present trade-mark 'Nel's Big 3 Lard' with another reading "MARCA 3 LARD" to obviate any misunderstanding, implied an admission of the infringement of plaintiff's rights; that the only issue thus left for determination is whether plaintiff's registered trade-mark "Big Five 5", has been infringed by defendant's unregistered trade-mark "Nel's Big 3 Lard"; that this issue may be resolved by examining the labels annexed to the complaint, that a comparison of such labels will show that this suit is not false and unfounded; and that defendant's counterclaim states, therefore, no cause of action.

After due hearing, the lower court held that said petition was well founded and rendered judgment "enjoining the defendant permanently and perpetually from using wrappings on his products containing the printed labels 'Big Three' and such devices and words as to constitute infringement of patent and unfair competition; ordering the defendant to pay the plaintiff the sum of P100 for attorney's fees; and ordering the dismissal of the counterclaim, without pronouncement as to costs".

A reconsideration of said decision having been denied, defendant interposed the present appeal, which was certified to us by the Court of Appeals, only issues of law being raised in defendant's brief, namely, that the trial court erred: (1) "in rendering summary judgment considering that there are material issues of fact clearly presented for trial and in issuing a permanent injunction"; (2) "in denying defendant-appellant's motion for reconsideration"; and (3) "in awarding appellee P100 for attorneys fees and in denying appellant's counterclaim for damages."

We find no merit in the appeal. The affidavit and other documents, attached to plaintiff's petition for summary judgment show that the trade-mark "BIG FIVE 5" was duly registered with the Philippines Patent Office since April 29, 1952, for use in packing or wrapping of Class 47, vegetable lard; that by virtue of an instrument, dated June 1, 1954, Sy Lin, the original owner of said trade-mark, had sold, assigned and transferred his right, title and interest thereto and to the registration thereof, together with the goodwill of the business in connection therewith, to plaintiff herein; and that said deed of sale, assignment and transfer in favor of plaintiff had been duly annotated and registered with the Philippines Patent Office, and acknowledged by the same. Upon the other hand, defendant has admitted that he is engaged in the repacking of vegetable lard and that he has been using thereon "for sometime" printed labels bearing the trade-mark "Nel's Big 3 Lard". What is more, defendant does not claim that the latter is registered. Lastly, a comparison thereof with plaintiff's label readily shows such of a resemblance in the general features of both as is likely to deceive the ordinary purchaser, exercising ordinary care, and induce him to believe that the goods bearing such labels are products of one and the same enterprise, particularly plaintiff herein, she having been, evidently, in the business of repacking vegetable lard before defendant herein.

Hence, there is no genuine issue about the fact that the use of the trade-mark "Nel's Big 3" on vegetable lard repacked by the defendant constitutes an infringement upon plaintiff's registered trade-mark "Big Five 5", which is similarly used on repacked vegetable lard, and the lower court did not err in granting, by summary judgment, the injunction prayed for by the plaintiff, in dismissing defendant's counterclaim, and in refusing to reconsider said judgment.

Defendant insists, however, that, he having alleged, in his answer, that he has taken steps to substitute and has actually substituted his trade-mark "Nel's Big 3 Lard" with that of "MARCA 3 LARD", the question raised in plaintiff's complaint has become moot, and, consequently, the lower court should not have granted the relief in prayed for. This contention is untenable. Firstly, it is based upon an allegation, which has not been established, not even supported by affidavit. Secondly, the affidavit, annexed to plaintiff's petition for summary judgment shows that said "MARCA 3 LARD" label is still a colorable imitation of plaintiff's trade-mark. Thirdly plaintiff seeks and is entitled to a permanent injunction, in the absence of which defendant might resume the use of his former trade-mark "Nel's Big 3".

The attorney's fees awarded to the plaintiff is nominal in nature the amount thereof (P100.00) being small and insignificant. Defendant's objection thereto is, therefore, unsubstantial. Besides, the services of counsel for the plaintiff, as set forth in the record, more than, justify said award, apart from the fact that a hearing for the reception of evidence thereon would have only entitled the plaintiff to a bigger award.

WHEREFORE, the decision appealed from is hereby affirmed, with the costs of both instances against defendant-appellant, Nestor Embisan. It is so ordered.

*Bengzon, C.J., Bautista Angelo, Labrador, Barrera, Paredes, Dizon, De Leon and Natividad, JJ., concur.*

*Padilla and Reyes, J.B.L., JJ., took no part.*