Republic of the Philippines
SUPREME COURT
Manila

EN BANC

G.R. No. L-19441 June 30, 1964

SHELL COMPANY OF THE PHILIPPINES, LTD., petitioner,

vs.

INSULAR PETROLEUM REFINING CO., LTD., and COURT OF APPEALS, respondents.

Lichauco, Picazo and Agcaoili for petitioner.
Paredes, Poblador, Cruz & Nazareno for respondents.

PAREDES, *J.:*

Petitioner, Shell Co. of the Phil., Ltd. (Shell for short), is a corporation engaged in the sale of petroleum products, including lubricating oil. The packages and containers of its goods bear its trademark, labeled or stenciled thereon. Defendant Insular Petroleum Refining Co., Ltd. (Insular for short), is a registered limited partnership, whose principal business is collecting used lubricating oil which, thru a scientific process, is refined and marketed to the public at a price much lower than that of new lubricating oil. From the used oil, respondent produces two types of lubricating oil one, a straight mineral oil classified as second grade or low-grade oil; and another, a first grade or high-grade oil. The essential difference between the two types lies in the fact that the high-grade oil contains an additive element which is not found in the other type. In marketing these two types of oil, respondent, as a practice, utilizes for the high grade oil containers, painted black on the sides and yellow on top and on the bottom with its tradename stenciled thereon, with a special sealing device at its opening which cannot be removed unless the oil is used. In selling its low-grade oil, respondent use miscellaneous containers, which its general manager Donald Mead describes, "generally, we used miscellaneous containers which we have on hand, several drums, may be all drums, with marks, on them, we have several used drums may be belonging to the U.S. Army or other drums may be belonging to the Caltex, or the Stanvac we have some that belonged to the Union, miscellaneous drums of other companies, but they are used drums. ... And some of those miscellaneous containers are the Shell containers. ... *but before filling the empty drums we obliterate the markings of the drums*, whether it is army type drums or whether it is a Union brand or whether it is a Valvoline or Caltex or Shell or Standard Vacuum drum". In one transaction, however, which was consummated with Conrado Uichangco a dealer of petitioner's gasoline and lubricating oil, the low-grade oil that was sold to said operator was contained in a drum with the petitioner's mark or brand "Shell" still stenciled without having been erased. The circumstances leading to the consummation of this isolated transaction, have been summed, up by the Court of Appeals as follows:

> This single transaction between plaintiff and defendant was effected, according to Conrado Uichangco an operator of a Shell service station at the corner of San Andres and Tuason Privado Streets, Manila, and who has been losing during the first eight and ten months of operation of his station, although he had money to back up his losses, when a certain F. Pecson Lozano, in agent of the defendant, repaired at his station and "*tried to convince me that Insoil is a good oil*". As a matter of fact, he tried to show me a chemical analysis of Insoil which he claimed was very close to the analysis of Shell oil; and he also told me that he could sell this kind of oil (Insoil) to me at a much cheaper price so that I could make a bigger margin of profits Q. What did you reply? A. I told Mr. F. Pecson Lozano that if his intention was to sell me Insoil for me to pass as any of the Shell oils, I was not agreeable because I did not want to cheat my customers. ... . Q. You ordered a Shell drum from Mr. Lozano on your own volition or on orders of the Shell

> management? A. Well, this is the story as to how I happened to order that one drum of Insoil oil that was inside that Shell drum. When Mr. Lozano was insistent that I buy Insoil package in a Shell drum I called up Mr. Crespo and I risked him in effect why we have to kill ourselves when there is a man here who came to my station and told me that he has oil that approximates the analysis of Shell oil which he could sell to me at a very much cheaper price, and Mr. Crespo told me "that is not true", and then he further added, "*can you order one drum of that oil for me*. Charge it against me." I told him "Yes I will." So I ordered that one drum of Insoil from Mr. F. Pecson Lozano. Q. Do you know whether that one drum of *oil was ever sold by you or by the Shell company to the public*? A. *It was never re-sold to the public. I re-sold it to the Shell Company of the Philippines*. Q. You mean you bought in your own name and you sold it to the Shell company at a profit? A. *I sold it to the Shell company because it was an order of Mr. Crespo*. I did not profit anything from it, I just charged them the invoice price. ... . Q. My question to you is: *He never made any misrepresentation to you that he was selling you any oil other than Insoil Motor oil, straight mineral SAE No. 30*? A. That is what he told me. ... . Q. And it is also a fact that you stated in the Fiscal's Office and in the Court of First Instance during the trial there that there was no seal whatsoever appearing in the opening of the drum; is that correct? A. There was no seal by the Insoil or by the Shell Company.

The evidence of the above transaction was an Invoice issued by the defendant's agent, describing the goods sold as "*Insoil Motor Oil* (straight mineral) SAE 30 — 1 drum — P76.00 — (seller's drum)."

The incident between petitioner's operator and respondent's agent, brought about the presentation with the Manila CFI, a case for damages on the allegation of unfair competition and a Criminal Case No. 42020 under the Revised Penal Code (Art. 189) against Donald Mead, Manager, Pedro Kayanan and F. Tecson Lozano. In the criminal case, the accused therein were acquitted, the Court having found that the element of deceit was absent.

In the civil case, petitioner herein invoked two causes of action: (1) that respondent in selling its low-grade oil in Shell containers, without erasing the marks or brands labeled or stenciled thereon, intended to mislead the buying public to the prejudice of petitioner and the general public; and (2) defendant had attempted to persuade Shell dealers to purchase its low-grade oil and to pass the same to the public as Shell oil, by reason of which petitioner bad suffered damages in the form of decrease in sales, estimated at least P10,000.00. A prayer for double the actual damages was made, pursuant to section 23 of Republic Act 166, P5,000.00 for attorneys fees, P1,000.00 for legal expenses and P25,000.00 for exemplary damages. A writ of preliminary injunction was requested to enjoin respondent herein to cease and desist from using for the sale of any of its products and more particularly for the sale of its low-grade lubricating oil. Shell containers with Shell markings still on them. The motion to dissolve the injunction granted, was denied by the court *a quo*.

Respondent Insular answering the complaint, after the usual admissions and denials, alleged that it "has never attempted to pass off its products as that of another nor to persuade anyone to do the same", and that the action is barred by the decision in the criminal case No. 42020. A counterclaim for P81,000.00 for actual, moral and exemplary damages, P4,000.00 for attorney's fees and P5,000.00 for legal expenses with interposed by respondent.

After trial, the CFI found for Shell and ordered respondent to pay P20,000.00 for actual damages, P5,000.00 for attorney's fees, P1,000.00 for legal expenses and P10,000.00 by way of exemplary damages and the costs.

In reversing the above judgment, the Court of Appeals, disquisitioned:

> On the question of whether or not, as a matter of fact, the defendant is guilty of unfair competition in the conduct of its trade or business in the marketing of its low-grade oil, particularly in the *single transaction between defendant's agent and plaintiff's dealer*, as

hereinabove narrated, we deem it wise to preface the discussion by citing certain passages in the decision of the Supreme Court in the case of *Alhambra Cigar, etc. v. Mojica*, 27 Phil. Rep. 266, thus:

> "No inflexible rule can be laid down as to what will constitute unfair competition. *Each case is, in a measure, a law unto itself. Unfair competition is dumps a question of fact*. The question to be determined in every case is whether or not, as a matter of fact, the name or mark used by the defendant has previously come to indicate and designate plaintiffs goods, or, to state it in another way, whether defendant, *as a matter of fact*, is, by his conduct, passing off defendant's goods as plaintiffs goods or his business as plaintiff's business. *The universal test question is whether the public is likely to be deceived*. ... . *Nothing less than conduct tending to pass off one man's goods or business as that of another will constitute unfair competition. Actual or probable deception and confusion on the part of the customers by reason of defendant's practices must always appear*."

Encompassing the facts of the case to the foregoing ruling in the Alhambra case, it clearly appears that defendant's practices in marketing its low-grade oil *did not cause actual or probable deception and confusion on the part of the general public*, because, as shown from the established facts, with the exception of that single transaction regarding the one drum of oil sold by the defendant's agent to the plaintiff's dealer, as aforesaid, before marketing to the public its low-grade oil in containers the brands or marks of the different companies stenciled *on the containers are totally obliterated and erased. The defendant did not pass off or attempt to pass off upon the public its goods as the goods of another. There is neither express nor implied representation to that effect*. The practices do not show a conduct to the end and probable effect to which is to deceive the public, or pass off its goods as those of another. Proof of this may be clearly deduced from the fact that, with the exception of the sale of one drum of low-grade oil by defendant's agent to Uichangco no other companies whose drums or containers have been used by the defendant in its business have filed any complaint to protect against the practices of the defendant. ... .

Now we shall dwell on the transaction between defendant's agent and plaintiff's dealer, Uichangco to determine whether or not, as a matter of fact, the defendant is guilty of unfair competition. *There is evidence showing that the use of the defendant of the drum or container with the Shell brand stenciled thereon was with the knowledge and consent of Uichangco. There is also the categorical testimony of Uichangco that defendant's agent did not make any representation that said agent was selling any oil other than Insoil motor oil. The sales invoice states that Insoil Oil was sold*. True, that a drum with the brand Shell remaining unerased was used by the defendant. But, Uichangco was apprised beforehand that a Shell drum would be used, and in fact the instruction of Crespo to Uichangco could mean — *to buy Insoil oil contained in a Shell drum. The buyer could not have been deceived or confused that he was not buying Insoil Oil. There is reason to believe that the transaction was consummated in pursuance of a plan of Mr. Crespo to obtain evidence for the filing of a case. The oil was never sold to the public because the plaintiff never intended or contemplated doing so*.

The other issue discussed by the Court of Appeals, that is, whether the acquittal of the officers and employees of the respondent in the criminal case (*supra*), constituted a bar to the filing of the civil case or amounted to res judicata, is, to our mind, not necessary to resolve in the instant appeal. However, we agree with the appellate court that there is no *res judicata*.

In the petition, Shell claims three (3) errors allegedly committed by the Court of Appeals, all of which pose the singular issue of whether respondent in the isolated transaction, stated elsewhere in this opinion, committed an act of unfair competition and should be held liable.

The complaint was predicated on section 29 of Rep. Act No. 166, defining unfair competition, to wit:

> Any person who shall employ deception or any other means contrary to good faith by which he shall pass off the goods manufactured by him or in which he deals, ... for those of the one having established such goodwill, or who shall commit any act calculated to produce said result, shall be guilty of unfair competition, and shall be subject to an action therefor.

From the above definition and authorities interpretative of the same, it is seen that to hold a defendant guilty of unfair competition, no less than satisfactory and convincing evidence is essential, showing that the defendant has passed off or attempted to pass off his own goods as those of another and that the customer was deceived with respect to the origin of the goods. In other words, the inherent element of unfair competition is fraud or deceit. (I Nim's The Law of Unfair Competition and Trademarks, 4th ed. pp. 52-53, and cases cited therein; U. S. v. Kyburz, 28 Phil. 475, citing Paul on Trademarks, sec. 209; I Callman's, The Law of Unfair Competition and Trademarks, 329; Roger's New Directions in the Law of Unfair Competition, (1940) N. Y. L. Rev. 317, 320; Alhambra Cigar, etc. v. Mojica, 29 Phil. 266, refer to passage quoted in the decision of C.A. *supra*).

As no inflexible rule can be laid down as to what will constitute unfair competition; as each case is, in a measure, a law unto itself and as unfair competition is always a question of fact, the determination of whether unfair competition was committed in the case at bar, must have to depend upon the fact as found by the Court of Appeals, to the definitiveness of which We are bound (I Moran's Rules of Court, 1957 Ed. p. 699 & cases cited therein). "... The Supreme Court cannot examine the question of whether or not the Court of Appeals was right when that tribunal concluded from the uncontroverted evidence that there had been no deceit." (De Luna, et al. v. Linatoc, 74 Phil. 15). And the facts of the case at bar, are, as found and exposed by the Court of Appeals in the portion of its decision above-quoted.

Not just because a manufacturer used a container still bearing a competitor's marking in the sale of one's products, irrespective of to whom and how the sale is made, can there be a conclusion that the buying public has been misled or will be misled, and, therefore, unfair competition is born. The single transaction at bar will not render defendant's act an unfair competition, much in the same way that the appearance of one swallow does not make a season, summer.

It was found by the Court of Appeals that in all transactions of the low-grade Insoil, except the present one, all the marks and brands on the containers used were erased or obliterated. The drum in question did not reach the buying public. It was merely a shell dealer or an operator of a Shell Station who purchased the drum not to be resold to the public, but to be sold to the petitioner company, with a view of obtaining evidence against someone who might have been committing unfair business practices, for the dealer had found that his income was dwindling in his gasoline station. Uichangco the Shell dealer, testified that Lozano (respondent's agent) did not all make any representation that he (Lozano) was selling any oil other than Insoil motor oil, a fact which finds corroboration in the receipt issued for the sale of the drum. Uichangco was apprised beforehand that Lozano would sell Insoil oil in a Shell drum. There was no evidence that defendant or its agent attempted to persuade Uichangco or any Shell dealer, for that matter, to purchase its low-grade oil and to pass the same to the public as Shell oil. It was shown that Shell and other oil companies, deliver oil to oil dealers or gasoline stations in drums, these dealers transfer the contents of the drums to retailing dispensers known as "tall boys", from which the oil is retailed to the public by liters.

This Court is not unaware of the decisions cited by petitioner to bolster its contention. We find those cases, however, not applicable to the one at bar. Those cases were predicated on facts and circumstances different from those of the present. In one case, the trade name of plaintiff was stamped on the goods of defendant and they were being passed as those of the plaintiff. This circumstance does not obtain here. From these cases, one feature common to all comes out

in bold relief and that is, the competing products involving the offending bottles, wrappers, packages or marks reached, the hands of the ultimate consumer, so bottled, wrapped, package or marked. In other words, it is the form in which the wares or products come to the ultimate consumer that was significant; for, as has been well said, the law of unfair competition does not protect purchasers against falsehood which the tradesman may tell; the falsehood must be told by the article itself in order to make the law of unfair competition applicable.

Petitioner contends that there had been a marked decrease in the volume of sales of low-grade oil of the company, for which reason it argues that the sale of respondent's low-grade oil in Shell containers was the cause. We are reluctant to share the logic of the argument. We are more inclined to believe that several factors contributed to the decrease of such sales. But let us assume, for purposes of argument, that the presence of respondent's low-grade oil in the market contributed to such decrease. May such eventuality make respondent liable for unfair competition? There is no prohibition for respondent to sell its goods, even in places where the goods of petitioner had long been sold or extensively advertised. Respondent should not be blamed if some petitioner's dealers by Insoil oil, as long as respondent does not deceive said dealers. If petitioner's dealers pass off Insoil oil as Shell oil, that is their responsibility. If there was any such effort to deceive the public, the dealers to whom the defendant (respondent) sold its products and not the latter, were. legally responsible for such deception. The passing of said oil, therefore, as product of Shell was not performed by the respondent or its agent, but petitioner's dealers, which act respondent had no control whatever. And this could easily be done, for, as respondents' counsel put it —

> The point we would like to drive home is that if a SHELL dealer wants to fool the public by passing off INSOIL as SHELL oil he could do this by the simple expedient of placing the INSOIL oil or any other oil for that matter in the "tall boys" and dispense it to the public as SHELL oil. *Whatever container INSOIL uses would be of no moment*. ... absence of a clear showing, that INSOIL and the SHELL dealer connived or conspired, we respectfully maintain that the responsibility of INSOIL ceases from the moment its oil, if ever it has ever been done, is transferred by a SHELL dealer to a SHELL "tall boy".

And the existence of connivance or conspiracy, between dealer Uichangco and Agent Lozano has not in the least been insinuated.

Petitioner submits the adoption in the case at bar of the "service station is package theory" — that the service stations of oil companies are packages in themselves, such that all products emanating therefrom are expected to be those of the company whose marks the station bear, that when a motorist drives to a Shell station, he does so with the intention of buying Shell products and that he is naturally guided *by the marking of the station itself.* Hence, it constitutes a deceit on the buying public, to sell to said motorist any other kind of products without apprising them beforehand that they are not Shell products. (Third assignment of error). In view, however, of the findings and conclusions reached, there seem to be no need of discussing the merits and demerits of the theory, or whether the same is applicable or not, to the present case.

CONFORMABLY WITH ALL THE FOREGOING, We find that the decision of the Court of Appeals appealed from, is in accordance with the fact, the law and jurisprudence on the matter. The same is affirmed, with costs against petitioner, in both instances.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Regala and Makalintal, JJ., concur.

Barrera and Dizon, JJ., took no part.