



Republic of the Philippines
COURT OF APPEALS
Manila

NINTH DIVISION

LEVI STRAUSS & CO.,

Petitioner,

- versus -

**ANTONIO SEVILLA and
ANTONIO L. GUEVARRA,**

Respondents.

CA-G.R. SP NO. 126316

Members:

DE LEON, M. M.,

Chairperson,

CRUZ, S. C., and

PERALTA, JR., E. B., JJ.

Promulgated:

September 26, 2014

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D E C I S I O N

PERALTA, JR., E. B., J.:

Impugned by petitioner *via* the Petition for Review¹ under Rule 43 of the 1997 Rules of Civil Procedure was the Decision of August 13, 2012 from the Director General of the Intellectual Property Office² which expressed the perception that "LIVE'S", as registered mark for private respondent Antonio L. Guevarra, was not confusingly similar with petitioner's "LEVI'S" brand of apparel.

Petitioner Levi Strauss & Co. (hereinafter referred to as LS & Co.) is a foreign corporation and is the owner of the mark "LEVI'S" which has extensively and continuously used the mark since 1946 on goods covered by Class 25, namely, men's, women's, and children's overalls, jackets, outer skirts, coats, slacks, and pants; women's and children's blouses, outer shorts, pedal pushers, vests, skirts and culottes; and women's bras.

¹ Dated September 17, 2012, raffled to Justice Dicdican on September 3, 2012, re-raffled as Initial Caseload of the *ponente* on July 24, 2013.

² Decision dated August 13, 2012, *Rollo*, pp. 82-92.

In 1972, LS & Co. granted Levi Strauss Phils., Inc. (hereinafter referred to as LSPI) a non-exclusive license to use its registered trademarks for the manufacture and sale of pants, jackets, and shirts, in the Philippines.³

Respondent Antonio L. Guevarra is a Filipino and doing business under the name and style Vogue Traders Clothing Company. On the other hand, co-respondent Antonio Sevilla appeared to be the original recipient of Certificate of Registration No. 53918 on November 16, 1992 of trademark "LIVE'S".⁴

The legal dispute between the parties started in 1995 when LSPI engaged Trends-MBL, Inc. to conduct a series of consumer surveys to determine if the general public had mistook marks used by other entities for that of LS & Co.'s trademarks (such as the "LEVI'S" mark). The survey was codenamed "Project Cherokee."

The findings of Project Cherokee 5 were embodied in the Final Report,⁵ which showed that the public has strongly identified the "LEVI'S" mark with the "LIVE'S" mark of Guevarra.

On December 13, 1995, LS & Co. filed a Petition for Cancellation⁶ of Certificate of Registration No. 53918 for the trademark "LIVE'S" before the Bureau of Patents, Trademarks and Technology Transfer, which redress was anchored on breach of *Section 4(d)*⁷ in relation to *Section 17 of R.A. No. 166*.⁸

³ *Rollo*, page 117.

⁴ Paragraph 6, Petition for Cancellation, *Rollo*, page 96.

⁵ *Rollo*, pp. 619-652.

⁶ Petition for Cancellation dated October 18, 1995, *Rollo*, pp. 93-101.

⁷ "SEC. 4(d) Consists of 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 purchases;"

⁸ "SEC. 17. *Grounds for cancellation*. - Any person, who believes that he is or will be damaged by the registration of a mark or trade-name, may, upon the

To counter LS & Co.'s Complaint, Guevarra filed his Answer⁹ on June 20, 1996 and rejected the idea that the mark "LIVE'S" was confusingly similar with "LEVI'S".

Respondent Sevilla was declared in default on November 28, 2000 but it was later lifted through a subsequent Motion of Sevilla. In his Answer, Sevilla prayed that the Petition be dismissed for lack of legal basis.

During trial, LS & Co. presented three witnesses, namely: Mrs. Mercedes R. Abad, President of Trends; Ms. Flordeliza B. Pinlac, the Brand Protection Coordinator of LSPI; and Mr. Bernabe C. Alajar, former Regional Security Manager of LSPI. Guevarra, on the other hand, presented two witnesses: his counsel, Atty. Danilo Soriano and a certain Mr. Richard Go.

On January 29, 2009, the Director of the Bureau of Legal Affairs (BLA) rendered a Decision¹⁰ which denied LS & Co.'s Petition for Cancellation. It was perceived that respondents' "LIVE'S" mark was not confusingly similar with LS & Co.'s "LEVI'S" mark because: (i) they are pronounced and spelled differently, and have different meanings; and (ii) LIVE'S jeans are priced much lower than LEVI'S jeans and are sold in different places:

"WHEREFORE, the instant Petition for Cancellation is, as it is hereby, **DENIED**. Consequently, **Certificate**

payment of the prescribed fee, apply to cancel said registration upon any of the following grounds:

(a) That the registered mark or trade-name becomes the common descriptive name of an article or substance on which the patent has expired; (b) That it has been abandoned;

(c) That the registration was obtained fraudulently or contrary to the provisions of section four, Chapter II hereof;

(d) That the registered mark or trade-name has been assigned, and is being used by, or with the permission of, the assignee so as to misrepresent the source of the goods, business or services in connection with which the mark or trade-name is used; or

(e) That cancellation is authorized by other provisions of this Act."

⁹ *Rollo*, pp. 533-537.

¹⁰ *Rollo*, pp. 153-170.

of Registration No. 53918 issued on November 16, 1992 in the name of Antonio L. Guevarra remains VALID AND SUBSISTING.

Let the file wrapper of this case together with this Decision be forwarded to the Bureau of Trademarks for appropriate action.

SO ORDERED.”¹¹

Dismayed with the outcome of the Petition before the Director of the Bureau of Legal Affairs, LS & Co. appealed the matter before the Director General of the IPOPHL on March 12, 2009.

On January 31, 2011, the case was referred to mediation pursuant to Office Order No. 197, Series of 2010,¹² However, the parties failed to reach a settlement during the mediation proceedings, as evidenced by the Mediators Report dated May 8, 2012.

On August 13, 2012, the Director General denied the appeal.

Hence, petitioner filed the present Petition for Review which interposed the issue of:¹³

“WHETHER OR NOT CERTIFICATE OF REGISTRATION NO. 53918 FOR “LIVE'S” MUST BE CANCELLED UNDER SECTION 4(D) IN RELATION TO THE THEN PREVAILING SECTION 17 OF R.A. NO. 166, AS AMENDED.”¹⁴

Before a discourse on whether LS & Co. was entitled to effect cancellation of the subject mark “LIVE'S”, it appeared that the present Petition, lodged by registered mail on September 19, 2012,¹⁵ became moot given the

¹¹ *Ibid.*

¹² Mechanics for IPO-Mediation and Settlement Period.

¹³ Verified Petition for Review dated September 17, 2012, *Rollo*, pp. 19-74.

¹⁴ *Supra* at Note 13, page 17, *Rollo*, page 35.

¹⁵ *Rollo*, dorsal portion of page 19.

expiration of the subject Certificate of Registration on November 16, 2012.¹⁶

In *Republic of the Philippines vs. Rafael Manalo*, a case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use. In such instance, there is no actual substantial relief which a petitioner would be entitled to, and which would be negated by the dismissal of the petition. Courts generally decline jurisdiction over such case or dismiss it on the ground of mootness, as a judgment in a case which presents a moot question can no longer be enforced.¹⁷

Necessarily, an extensive disquisition on the substance of the Verified Petition for Review will be a pointless exercise in exegesis inasmuch as the certificate of registration, sought to be cancelled by petitioner, became *functus officio* through the inevitable ticking of the clock, so to speak.

Withal, the issue aired by LS & Co. was already tackled by the Supreme Court in *Levi Strauss (Phils.), Inc. vs. Lim*, G.R. No. 162311¹⁸ which affirmed the Secretary of Justice's evaluation against the existence of probable cause for unfair competition:

"In finding that respondent's goods were not clothed with an appearance which is likely to deceive the ordinary purchaser exercising ordinary care, the investigating prosecutor exercised the discretion lodged in him by law. He found that:

¹⁶ Paragraph 1.a, Comment dated October 11, 2012 for Respondent Guevarra, *Rollo*, page 747; *cf.* Section 12, R.A. 166, as amended.

¹⁷ G.R. No. 192302, June 04, 2014; *cf.* IP Case Index 2013, page 96, citing *Samson vs. Caterpillar, Inc.*, G.R. No. 169882, September 12, 2007 and *Mattel, Inc. vs. Emma Francisco*, G.R. No. 166886, July 30, 2008.

¹⁸ December 4, 2008, 573 SCRA 25; 41-43, 47.

First, the LIVE'S mark of the respondent's goods is spelled and pronounced differently from the LEVI'S mark of the complainant.

Second, the backpocket design allegedly copied by the respondent from the registered arcuate design of the complainant, appears to be different in view of the longer curved arms that stretch deep downward to a point of convergence where the stitches form a rectangle. The arcuate design for complainant LEVI'S jeans form a diamond instead. And assuming arguendo that there is similarity in the design of backpockets between the respondent's goods and that of the complainant, this alone does not establish that respondent's jeans were intended to copy the complainant's goods and pass them off as the latter's products as this design is simple and may not be said to be strikingly distinct absent the other LEVI'S trademark such as the prints on the button, rivets, tags and the like. x x x Further, the presence of accessories bearing Levi's trademark was not established as there were no such accessories seized from the respondent and instead genuine LIVE'S hangtags, button and patches were confiscated during the search of latter's premises.

Second, the design of the patches attached to the backpockets of the respondent's goods depicts three men on either side of a pair of jeans attempting to pull apart said jeans, while the goods manufactured by complainant with patches also attached at the right backpockets depicts two horses being whipped by two men in an attempt to tear apart a pair of jeans. It is very clear therefore that the design of the backpocket patches by the respondent is different from that of the complainant, in the former the men were trying to pull apart the pants while in the latter horses are the ones doing the job. Obviously, there is a great difference between a man and a horse and this will naturally not escape the eyes of an ordinary purchaser.

Third, the manner by which Levi's jeans are packed and sold with carton tickets attached to the products cannot be appropriated solely by complainant to the exclusion of all other manufacturers of same class. It

frequently happens that goods of a particular class are labeled by all manufacturer[s] in a common manner. In cases of that sort, no manufacturer may appropriate for himself the method of labeling or packaging [of] his merchandise and then enjoin other merchants from using it. x x x.

Fourth, evidence shows that there is a copyright registration issued by the National Library over the backpocket design of the respondent. And this copyright registration gives the respondent the right to use the same in his goods x x x.

The determination of probable cause is part of the discretion granted to the investigating prosecutor and ultimately, the Secretary of Justice. Courts are not empowered to substitute their own judgment for that of the executive branch.

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In the case at bar, no grave abuse of discretion on the part of the DOJ was shown. Petitioner merely harps on the error committed by the DOJ and the CA in arriving at their factual finding that there is no confusing similarity between petitioner's and respondent's products. While it is possible that the investigating prosecutor and Secretaries Guingona and Cuevas erroneously exercised their discretion when they found that unfair competition was not committed, this by itself does not render their acts amenable to correction and annulment by the extraordinary remedy of *certiorari*. There must be a showing of grave abuse of discretion amounting to lack or excess of jurisdiction.

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The consumer survey alone does not equate to actual confusion. We note that the survey was made by showing the interviewees actual samples of petitioner's and respondent's respective products, approximately five feet away from them. From that distance, they were asked to identify the jeans' brand and state the reasons for thinking so. This method discounted the possibility that the ordinary intelligent buyer would be

able to closely scrutinize, and even fit, the jeans to determine if they were "LEVI'S" or not. It also ignored that a consumer would consider the price of the competing goods when choosing a brand of jeans. It is undisputed that "LIVE'S" jeans are priced much lower than "LEVI'S."

By way of *en passant*, consistent with the Supreme Court's pronouncements, *res judicata* can likewise assume pertinence.

As a concept in adjective law, absolute identity of parties is not required for *res judicata*. A substantial identity of parties is sufficient. And there is substantial identity of parties when there is a *community of interest* between a party in the first case and that in the second one, even if the latter party was not impleaded in the first.¹⁹ Here, both cases have somewhat identical parties and issue. The petitioner in GR No. 162311 was LSPI, a wholly-owned subsidiary of herein petitioner LS&C while respondent Tony Lim in GR No. 162311 was also known as respondent Antonio L. Guevarra.²⁰

Although the action in G.R. No. 162311 was a criminal case for unfair competition and the present case before Us involved an administrative cancellation of a registered trademark, the rule on identity of causes of action does not mean absolute identity. Otherwise, a party could easily escape the operation of *res judicata* by changing the form of the action or the relief sought.²¹

In *Quito vs. Stop & Save Corporation*, the Supreme Court expounded anew that the test to determine whether the causes of action are identical is to ascertain whether the same evidence will sustain both actions, or whether there is an identity in the facts essential to the maintenance of the two actions. If the same facts or

¹⁹ *Aromin vs. Floresca*, G.R. No. 160994, July 27, 2006.

²⁰ *Cf. 1 Regalado*, Remedial Law Compendium, 10th Edition, 2010, page 530.

²¹ *Pilar Development Corporation vs. CA*, G.R. No. 155943, August 19, 2013.

evidence would sustain both, the two actions are considered the same, and a judgment in the first case is a bar to the subsequent action.²²

Additionally, it appeared that Guevarra had already assigned all his rights and interests over the subject trademark to a certain Dale Sy on July 31, 2012, as evidenced by the Deed of Assignment of Registered Trademark.²³

One final note. In putting an end to litigation between the same parties over a subject that has already been adjudicated, the principle of *res judicata* is dictated by public interest. Re-litigation of issues already settled merely burdens the courts and the taxpayers, creates uneasiness and confusion, and wastes valuable time and energy that could be devoted to worthier cases. Even at the risk of occasional errors, judgments of courts should become final at some definite time fixed by law and parties should not be permitted to litigate the same issues over again.²⁴

WHEREFORE, based on the foregoing premises, the Verified Petition for Review dated September 17, 2012 is hereby **DISMISSED** for being **MOOT** and **ACADEMIC**.

SO ORDERED.

EDUARDO B. PERALTA, JR.
Associate Justice

WE CONCUR:

MAGDANGAL M. DE LEON
Associate Justice

STEPHEN C. CRUZ
Associate Justice

²² G.R. No. 186657, June 11, 2014.

²³ Paragraph 1.b, Comment dated October 11, 2012 for Respondent Guevarra Deed of Assignment dated July 31, 2012, Annex A of Comment, *Rollo*, pp. 749, 751-752.

²⁴ *Luzon Development Bank vs. Conquilla*, G.R. No. 163338, September 21, 2005.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

MAGDANGAL M. DE LEON
Chairperson, Ninth Division