

Republic of the Philippines  
**COURT OF APPEALS**  
Manila

***SIXTH DIVISION***

**THE PEOPLE OF THE  
PHILIPPINES,**

Plaintiff-Appellee,

- versus -

**CA-G.R. CR No. 33047**

Members:

**REYES, J. C., JR.,**

*Chairperson,*

**ACOSTA, F. P., and**

**PERALTA, E. B., JR., JJ.:**

**ROBERTO L. BARBASA,**

Accused-Appellant.

Promulgated:

**26 FEBRUARY 2015**

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**DECISION**

***ACOSTA, J.:***

Before this Court is an Appeal<sup>1</sup> filed by accused-appellant Roberto Barbasa (hereinafter appellant) assailing the Decision<sup>2</sup> dated 26 August 2009 of the Regional Trial Court of Manila, Branch 24, in Criminal Case No. 03-214220, finding the appellant guilty beyond reasonable doubt of the crime of *Unfair Competition* penalized under Sections 168 and 170 of the Intellectual Property Code.

**THE ANTECEDENTS**

On 11 November 2002, an Information was filed charging the appellant and accused Jacqueline G. Barbasa with *violation of Section 168 in relation to Section 170 of Republic Act No. 8293* also known as the *Intellectual Property Code*, in this wise:

<sup>1</sup> Rollo, pp. 96-210.

<sup>2</sup> Rollo, pp. 213-220.

“That on or about the March 31, 2000, and on dates prior thereto in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, incorporators, majority stockholders and/[or] owners of PUSH THRU MARKETING, INC. with business address at DS-22 Prime Block Bldg., Tutuban Center, C.M. Recto Avenue, Tondo, Manila, with criminal intent to defraud G.A. Modefine S.A., did then and there willfully, unlawfully and feloniously, by employing deception and other means contrary to good faith, distribute, sell and offer for sale counterfeit garment products bearing the “Emporio Armani” and “Armani Exchange” without the consent, permit and authority of G.A. Modefine S.A., the registered trademark owner of “Emporio Armani” and applicant for registration of the trademark “Armani Exchange” and passing them off with such appearance as likely to influence purchasers to believe that the garment products offered, sold and distributed are those of the registered owner, deceiving the public, and defrauding the registered owner of its legitimate trade, to the damage and prejudice of G.A. Modefine S.A. And the general consuming public.

Contrary to law.”<sup>3</sup>

Upon arraignment on 16 September 2003, the appellant, duly assisted by counsel, entered a plea of not guilty to the crime charged. Thereafter, the pre-trial conference was held and terminated.

## THE FACTS

The People's version:<sup>4</sup>

“On January 21, 2000, Alvin Ambion, market researcher of Pinkerton Consulting Services Phils., Inc., conducted a market survey at the Tutuban Center, Tondo, Manila, to determine the presence of counterfeit products bearing his client's trademarks, in different retail outlets and department stores. During the survey, Ambion discovered that Push Thru Marketing, Inc., in which appellant Roberto L. Barbasa was its president and majority stockholder, was distributing and selling garment products with the brand names “Giorgio Armani”, “Emporio Armani”, “Armani Exchange” and “A/X”, trademarks, trade name and logos belonging to G.A. Modefine S.A. Ambion then purchased a sample of an “Armani Exchange” T-shirt worth Php220.00, for which he was issued a machine receipt. Thereafter, Ambion reported the matter to G.A. Modefine S.A., which, in

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<sup>3</sup> Rollo, pp. 213-214.

<sup>4</sup> Rollo, pp. 250-251.

turn, instructed him to coordinate with the Intellectual Property Rights Division of the National Bureau of Investigation (IPRD-NBI).

On January 25, 2000, Ambion returned to Push Marketing Inc.'s stall located at DS-22 Prime Block Building, together with IPRD-NBI Special Investigator Ferdie de la Cruz. Thereat, the two bought a pair of denim jeans bearing the trademark "Armani" for Php200.00. After the purchase, Ambion and SI de la Cruz were again issued a machine receipt. Believing that Push Marketing Inc. was infringing on G.A. Modeline S.A.'s rights as the registered owner of Armani products, SI de la Cruz immediately applied for a search warrant before the Regional Trial Court of Manila, Branch 1.

On March 31, 2000, at around 5:00 o'clock in the afternoon, SI de la Cruz and the other NBI operatives, who were armed with Search Warrant No. 00-1585, proceeded to Push Thru Marketing Inc.'s stall in Tutuban Center to implement said warrant. As a result of the search, the team recovered four hundred three (403) pieces of full button long sleeve shirts, forty-seven (47) pieces of short sleeve shirts, twenty-six (26) pieces of long sleeve shirts, fifteen (15) pieces of sport shirts, nine (9) pieces of tank tops and two (2) pieces of round neck T-shirts, all bearing the "Emporio Armani" and "Armani Exchange" trademarks. Thereafter, the seized items were inventoried and brought to the NBI office for proper custody and safekeeping.

In connection therewith, a Receipt/ Inventory of Property Seized was prepared by Seizing Officer Rogelio N. Lacsamana particularly describing all the items recovered from appellant. Said Inventory Receipt was signed by Ambion as well as Edwin R. Valdez and Percival S. Reyes, the security guards who were present during the implementation of the search warrant.

xxx."

On the other hand, the appellant averred the following:

"[Appellant] testified and claimed that he is the President of Push Thru Marketing, Inc; that the goods he distribute and sell, including the Armani products were purchased by them abroad; with respect to the Armani T-shirts, he bought these from a store in Grand Ville in Hongkong; that his job is limited to purchasing and the corporation has sales ladies who do the selling; that one Malou Baltazar is actually managing their stores in the Philippines; he denied that Push thru issued the receipts presented by the prosecution; he likewise denied having sold the Armani pants and disclaimed the pair of pants alleged by the prosecution to have been purchased from his establishment; he however identified the shirts purchased and said that maybe they were from his store as well as the

plastic bag of Push Thru Marketing; as to the items seized, he asserted that they were bought from Hongkong upon the representation of the seller that they were genuine, the very reason why he bought them and he presented a photo copy of the receipt, claiming that he can no longer find the original; with respect to the jeans alleged to have been purchased from his store, he denied knowledge of the same and stated that the same was purchased from another store since he does not offer jeans for sale in his establishment.

[Appellant] likewise maintained that his co-accused and wife, Jacqueline Barbasa, is not involved in the management of Push Thru Marketing, a circumstance corroborated by her co-accused when she testified.

Maria Luz G. Baltazar, Manager of Push Thru Marketing, confirmed the testimony of [appellant] Roberto Barbasa that the items sold and seized were purchased from abroad and that accused Jacqueline Barbasa is not involved in the operations of Push Thru Marketing.

Nena Arguelles, Lady Guard of Greenview Security Agency, testified that in the year 2000 [s]he was assigned at the ground floor of DS-22, the premises of Push Thru Marketing, and recalled that the on March 31, 2000 at around 6:30, men from the NBI went to the second and third floors and took the stocks contained thereat; that they did not get anything from the ground floor; that the second floor was occupied by BudyLuckers owned by a certain Roberto Chua and the third floor is a stock room utilized by his employer and other Chinese tenants.

xxx.”<sup>5</sup>

On 26 August 2009, the court *a quo* rendered the assailed Decision, the *fallo* thereof reads:

“Accordingly, this Court finds accused Roberto L. Barbasa GUILTY beyond reasonable doubt of the crime of Unfair Competition as defined and penalized under Sectons 168 and 170 of the Intellectual Property Code and hereby sentences him to suffer the penalty of imprisonment of two (2) years and to pay a fine of Fifty Thousand (P50,000.00) Pesos.

For failure of the prosecution to prove her guilt beyond reasonable doubt, accused Jacqueline G. Barbasa is hereby ordered ACQUITTED.

The garments(sic) products bearing the “Emporio Armani” and “Armani Exchange” trademarks are hereby ordered destroyed pursuant to existing rules.

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<sup>5</sup> Rollo, pp. 216-218.

With costs against accused Roberto L. Barbasa.

SO ORDERED.”<sup>6</sup>

Aggrieved thereby, appellant now comes before this Court arguing that the court *a quo* erred in convicting him considering that the evidence presented by the Prosecution were “*fruits of the poisonous tree*” as they were seized on the strength of a “general” search and seizure warrant, thus inadmissible.<sup>7</sup> Further, appellant contends that the court *a quo* erred in convicting him as the Prosecution failed to prove his guilt beyond reasonable doubt.<sup>8</sup>

## OUR RULING

In the main, appellant maintains that the subject search warrant, i.e., Search Warrant No. 00-1585, is a general warrant considering that there were no particular descriptions of the place to be searched as well as the things to be seized. Further, appellant posits that there was no probable cause for the issuance of the said warrant. Thus, according to appellant, the products seized should have been inadmissible in evidence.

We do not agree.

Indeed, basic is the constitutional and jurisprudential rule that *a search warrant issued must particularly describe the place to be searched and persons or things to be seized in order for it to be valid.*<sup>9</sup> According to the High Court, the purpose of this rule is to limit the things to be seized to those, and only those, particularly described in the search warrant, to the end that “unreasonable searches and seizures” may not be made and that abuses may not be committed.<sup>10</sup>

An examination of the subject warrant<sup>11</sup> in this case reveals that the same had complied with the above-discussed requirements. There is nothing “general” in the description of the items specified in the warrant

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<sup>6</sup> Rollo, page 220.

<sup>7</sup> Rollo, page 130.

<sup>8</sup> Rollo, page 158.

<sup>9</sup> *HPS Software and Communication, Corp. vs. PLDT*, G.R. Nos. 170217 & 170694, 10 December 2012.

<sup>10</sup> *Id.*

<sup>11</sup> Rollo, page 115, issued by then Executive Judge Rebecca De Guia-Salvador.

which the law enforcers were supposed to search and seize. To Our mind, the subject warrant displays reasonable certainty in the identification of the things to be seized considering that it described said things by stating the phrase - “bearing imitations of the 'Giorgio Armani' and/or 'Emporio Armani' and/or 'Armani Exchange' and/or 'A/X trademark’”. The pertinent portion of the warrant reads:

“xxx

(a) Garments products bearing imitations of the “GIORGIO ARMANI” and/or “EMPORIO ARMANI” and/or “ARMANI EXCHANGE” and/or “A/X” trademark;

(b) Garments products bearing marks confusingly similar to the “GIORGIO ARMANI” and/or “EMPORIO ARMANI” and/or “ARMANI EXCHANGE” and/or “A/X” trademark;

xxx.”<sup>12</sup>

Clearly, the afore-quoted specifications/descriptions were purposely indicated in the warrant to limit the search and seizure to said items.

With respect to the allegation that the subject warrant did not contain the particular description of the place to be searched, the same does not merit Our consideration. It bears stressing that the said warrant evidently indicated the address to which it was supposed to be enforced, to wit: “DS-22, Prime Block Bldg., Tutuban Center, C.M. Recto Avenue, Tondo, City of Manila”, the actual place where the witness was said to have bought a pair of jeans. In fact, the records disclose that the witness even made a sketch illustrating the location of the subject stall in Tutuban Center, which included the nearby establishments thereof.

In short, We find that the warrant had sufficiently identified the place to be searched and the properties sought to be seized. The articles to be seized were not only sufficiently identified but were also specifically identified by stating their relation to the offense charged.

Along this line, it must be stressed that in *Microsoft Corp. vs. Maxicorp, Inc.*,<sup>13</sup> the Supreme Court ruled that “*it is only required that a*

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<sup>12</sup> Rollo, page 114.

<sup>13</sup> G.R. No. 140946, 13 September 2004.

*search warrant be specific as far as the circumstances will ordinarily allow. The description of the property to be seized need not be technically accurate or precise.”*

With this, We rule that Search Warrant No. 00-1585 is not in the nature of a general warrant, thus *valid*. Consequently, the things seized by virtue thereof are thus admissible.

We likewise do not agree with the appellant's contention that the issuance of the search warrant was not founded on probable cause.

*Probable cause* is characterized as those facts which are sufficient to engender a well-founded belief that a crime has been committed and the respondent is *probably guilty* thereof.<sup>14</sup>

Section 4, Rule 126 of the Rules of Court requires that a search warrant be issued upon probable cause in connection with one specific offense to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce. In Section 5 of the same Rule, the judge is required, before issuing the warrant, to personally examine the complainant and the witnesses in the form of searching questions and answers relative to the facts which were personally known to them.

The records of the instant case disclose that then Executive Judge Rebecca D. Salvador, before the issuance of the subject warrant, indeed asked probing questions from the applicant and his witness, who were noted to have had personal knowledge of the offense committed considering that they had previously conducted surveillance on the appellant's store. As discussed above, these persons, on two separate occasions, bought a shirt and a pair of denim jeans from the appellant's stall in Tutuban Center for which receipts were correspondingly issued. The items bought were then presented to the court and were illustrated during the hearing as counterfeit. Also, sworn statements and certifications were attached and were correspondingly presented during the hearing on the application of the search warrant. In this view therefore, We hold that then Judge Salvador was justified in issuing the questioned search warrant.

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<sup>14</sup> *Torrez vs. Perez*, G.R. No. 188225 & 198728, 28 November 2012.

Appellant further contends that the court *a quo* erred in convicting him as the Prosecution has failed to sufficiently establish the elements of *Unfair Competition*.

This offense is sanctioned by Section 168 in relation to Section 170 of the Intellectual Property Code (R.A. No. 8293). Unfair competition is described by law as those acts characterized by "deception or any other means contrary to good faith" in the *passing off* of goods and services as those of another who has established goodwill in relation with these goods or services, or any other act calculated to produce the same result.<sup>15</sup> In other words, the key elements of unfair competition are *deception, passing off* and *fraud upon the public*.<sup>16</sup>

"*Passing off*" takes place when the accused, by imitative devices on the general appearance of the goods, *misleads* prospective purchasers into buying his merchandise under the impression that they are buying that of his competitors. Simply, the accused gives his goods the general appearance of the goods of his competitor with the intention of *deceiving* the public that the goods are those of his competitor.<sup>17</sup>

A thorough evaluation of the evidence on hand shows that the Prosecution has sufficiently established that appellant is guilty of Unfair Competition. The testimony of the Prosecution's witness Alvin Ambion was clear and categorical, thus: as a market researcher, whose duty was to detect counterfeit products of his clients, he bought an "Armani Exchange" t-shirt for P220.00 and a pair of jeans which had the mark "Armani Jeans" worth P200.00 from the appellant's store in Tutuban Center; he, who was said to have acquired the necessary expertise in examining the genuineness of his client's products, had successfully convinced the court that the items he bought from the appellant's stall were fake considering that, for one, the appellant is not an authorized reseller of the subject products in this country. It bears to note that *Store Specialist Inc.* and *Linea Italia Group* are the only authorized Philippine distributors of the products of G.A. Modefine S.A. Second, the price of the said items were proven to be much lower than the price of the products being manufactured and distributed by G.A. Modefine S.A. For instance, an "Armani" shirt would normally cost around P2,000.00 to P4,000.00, whereas the shirt Ambion bought from the appellant was just P220.00.

<sup>15</sup> *Coca-cola Bottlers, Phils., Inc. vs. Gomez*, G.R. No. 154491, 14 November 2008.

<sup>16</sup> *Torres vs. Perez*, supra.

<sup>17</sup> *McDonalds, Corp. vs. L.C. Big Mak Burger, et. al.*, G.R. No. 143993, 18 August 2004.



Undoubtedly, it is not difficult to conclude that appellant was selling products with the general appearance of the goods of G.A. Modefine S.A. Clearly, there is thus an intention to deceive and defraud the buying public in this case.

**WHEREFORE**, in view of the foregoing, instant Appeal is **DENIED**. Accordingly, challenged Decision dated 26 August 2009 of the court *a quo* is hereby **AFFIRMED** *in toto*.

**SO ORDERED.**

**FRANCISCO P. ACOSTA**  
Associate Justice

*WE CONCUR:*

**JOSE C. REYES, JR.**  
Associate Justice

**EDUARDO B. PERALTA, JR.**  
Associate Justice

**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.

**JOSE C. REYES, JR.**  
Associate Justice  
Chairperson, Sixth Division