



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

SAN MIGUEL PURE FOODS
COMPANY, INC.,

G.R. No. 217781

Petitioner,

- versus -

FOODSPHERE, INC.,

Respondent.

X-----X

FOODSPHERE, INC.,

G.R. No. 217788

Petitioner,

Present:

- versus -

CARPIO, J., Chairperson,
PERALTA,
PERLAS-BERNABE,
CAGUIOA, and
REYES, JR., JJ.

SAN MIGUEL PURE FOODS
COMPANY, INC.,

Promulgated:

Respondent.

20 JUN 2018

X-----X

DECISION

PERALTA, J.:

Before the Court are the consolidated cases of G.R. No. 217781 and G.R. No. 217788. On the one hand, San Miguel Pure Foods Company, Inc. (SMPFCI), in G.R. No. 217781, filed a Petition for Review on *Certiorari*

under Rule 45 of the Rules of Court, questioning the Resolution¹ dated April 8, 2015 of the Court of Appeals (CA), Former Fourteenth Division, in CA-G.R. SP No. 131945, but only insofar as the same resolved to delete from the body of its Decision² dated September 24, 2014 the award of exemplary damages. On the other hand, in G.R. No. 217788, Foodsphere, Inc., via a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, seeks to reverse and set aside the same September 24, 2014 Decision and April 8, 2015 Resolution of the CA declaring it guilty of unfair competition and holding it liable for damages.

The antecedent facts are as follows:

The parties herein are both engaged in the business of the manufacture, sale, and distribution of food products, with SMPFCI owning the trademark "PUREFOODS FIESTA HAM" while Foodsphere, Inc. products (*Foodsphere*) bear the "CDO" brand. On November 4, 2010, SMPFCI filed a Complaint³ for trademark infringement and unfair competition with prayer for preliminary injunction and temporary restraining order against Foodsphere before the Bureau of Legal Affairs (BLA) of the Intellectual Property Office (IPO) pursuant to Sections 155 and 168 of Republic Act (R.A.) No. 8293, otherwise known as the *Intellectual Property Code (IP Code)*, for using, in commerce, a colorable imitation of its registered trademark in connection with the sale, offering for sale, and advertising of goods that are confusingly similar to that of its registered trademark.⁴

In its complaint, SMPFCI alleged that its "FIESTA" ham, first introduced in 1980, has been sold in countless supermarkets in the country with an average annual sales of ₱10,791,537.25 and is, therefore, a popular fixture in dining tables during the Christmas season. Its registered "FIESTA" mark has acquired goodwill to mean sumptuous ham of great taste, superior quality, and food safety, and its trade dress "FIESTA" combined with a figure of a partly sliced ham served on a plate with fruits on the side had likewise earned goodwill. Notwithstanding such tremendous goodwill already earned by its mark, SMPFCI continues to invest considerable resources to promote the FIESTA ham, amounting to no less than ₱3,678,407.95.⁵

¹ Penned by Associate Justice Amy C. Lazaro-Javier, with Associate Justices Mariflor P. Punzalan Castillo and Zenaida T. Galapate-Laguilles, concurring; *rollo* (G.R. No. 217781), pp. 48-50.

² Penned by Associate Justice Amy C. Lazaro-Javier, with Associate Justices Mariflor P. Punzalan Castillo and Zenaida T. Galapate-Laguilles, concurring; *id.* at 493-516.

³ *Rollo* (G.R. No. 217788), at 98-132.

⁴ *Id.* at 114.

⁵ *Id.* at 115-117.

Sometime in 2006, however, Foodsphere introduced its “PISTA” ham and aggressively promoted it in 2007, claiming the same to be the real premium ham. In 2008, SMPFCI launched its “Dapat ganito ka-espesyal” campaign, utilizing the promotional material showing a picture of a whole meat ham served on a plate with fresh fruits on the side. The ham is being sliced with a knife and the other portion, held in place by a serving fork. But in the same year, Foodsphere launched its “Christmas Ham with Taste” campaign featuring a similar picture. Moreover, in 2009, Foodsphere launched its “Make Christmas even more special” campaign, directly copying SMPFCI’s “Dapat ganito ka-espesyal” campaign. Also in 2009, Foodsphere introduced its paper ham bag which looked significantly similar to SMPFCI’s own paper ham bag and its trade dress and its use of the word “PISTA” in its packages were confusingly similar to SMPFCI’s “FIESTA” mark.⁶

Thus, according to SMPFCI, the striking similarities between the marks and products of Foodsphere with those of SMPFCI warrant its claim of trademark infringement on the ground of likelihood of confusion as to origin, and being the owner of “FIESTA,” it has the right to prevent Foodsphere from the unauthorized use of a deceptively similar mark. The word “PISTA” in Foodsphere’s mark means “fiesta,” “feast,” or “festival” and connotes the same meaning or commercial impression to the buying public of SMPFCI’s “FIESTA” trademark. Moreover, “FIESTA” and “PISTA” are similarly pronounced, have the same number of syllables, share common consonants and vowels, and have the same general appearance in their respective product packages. In addition, the “FIESTA” and “PISTA” marks are used in the same product which are distributed and marketed in the same channels of trade under similar conditions, and even placed in the same freezer and/or displayed in the same section of supermarkets. Foodsphere’s use, therefore, of the “PISTA” mark will mislead the public into believing that its goods originated from, or are licensed or sponsored by SMPFCI, or that Foodsphere is associated with SMPFCI, or its affiliate. The use of the “PISTA” trademark would not only result in likelihood of confusion, but in actual confusion.⁷

Apart from trademark infringement, SMPFCI further alleged that Foodsphere is likewise guilty of unfair competition. This is because there is confusing similarity in the general appearance of the goods of the parties and intent on the part of Foodsphere, to deceive the public and defraud SMPFCI. According to SMPFCI, there is confusing similarity because the display panel of both products have a picture of a partly sliced ham served on a plate of fruits, while the back panel features other ham varieties offered, both “FIESTA” and “PISTA” are printed in white bold stylized font, and the

⁶ *Rollo* (G.R. No. 217781), p. 495.

⁷ *Id.* at 496.

product packaging for both “FIESTA” and “PISTA” consists of box-typed paper bags made of cardboard materials with cut-out holes on the middle top portion for use as handles and predominantly red in color with a background design of Christmas balls, stars, snowflakes, and ornate scroll. Moreover, Foodsphere’s intent to deceive the public is seen from its continued use of the word “PISTA” for its ham products and its adoption of packaging with a strong resemblance of SMPFCI’s “FIESTA” ham packaging. For SMPFCI, this is deliberately carried out for the purpose of capitalizing on the valuable goodwill of its trademark and causing not only confusion of goods but also confusion as to the source of the ham product. Consequently, SMPFCI claimed to have failed to realize income of at least ₱27,668,538.38 and ₱899,294.77 per month in estimated actual damages representing foregone income in sales. Thus, it is entitled to actual damages and attorney’s fees.⁸

For its part, Foodsphere denied the charges of trademark infringement and countered that the marks “PISTA” and “PUREFOODS FIESTA HAM” are not confusingly similar and are, in fact, visually and aurally distinct from each other. This is because PISTA is always used in conjunction with its house mark “CDO” and that “PUREFOODS FIESTA HAM” bears the housemark “PUREFOODS,” rendering confusion impossible. Moreover, Foodsphere maintained that SMPFCI does not have a monopoly on the mark “FIESTA” for the IPO database shows that there are two (2) other registrations for “FIESTA,” namely “FIESTA TROPICALE” and “HAPPY FIESTA.” Also, there are other products in supermarkets that bear the mark “FIESTA” such as “ARO FIESTA HAM,” “ROYAL FIESTA,” and “PUREGOLD FIESTA HAM,” but SMPFCI has done nothing against those manufacturers, making it guilty of *estoppel in pais*, and is, therefore, estopped from claiming that the use of other manufacturers of the mark “FIESTA” will result in confusion and/or damage to itself. Even assuming that the marks are confusingly similar, Foodsphere asserted that it is SMPFCI who is guilty of infringement *vis-à-vis* its registered trademark “HOLIDAY,” a translation and word bearing the same meaning as “FIESTA.” Foodsphere has been using its “HOLIDAY” trademark since 1970 and had registered the same in 1986, while SMPFCI registered its “FIESTA” trademark only in 2007. In fact, Foodsphere noted that it has been using “PISTA” since 2006 which is earlier than SMPFCI’s filing for registration of “FIESTA” in 2007. In addition, Foodsphere asseverated that SMPFCI cannot appropriate for itself images of traditional utensils and garnishing of ham in its advertisements. Confusion between the marks, moreover, is rendered impossible because the products are sold in booths manned by different “promodisers.” Also, hams are expensive products and their purchasers are well-informed not only as to their features but also as to the manufacturers thereof.⁹

⁸ *Id.* at 496-497.

⁹ *Id.* at 498-499.



Furthermore, Foodsphere similarly denied the allegation that it is guilty of unfair competition or passing off its product as that of SMPFCI. As mentioned, the “PISTA” and “FIESTA” labels are substantially different in the manner of presentation, carrying their respective house marks. Moreover, its paper ham bags are labeled with their respective house marks and are given to consumers only after purchase, hence, they do not factor in when the choice of ham is being made. Also, Foodsphere claims to have been using the red color for its boxes and it was SMPFCI, by its own admission, that switched colors from green to red in 2009 for its own ham bags.¹⁰

On July 17, 2012, the BLA, through its Director, rendered its Decision¹¹ dismissing SMPFCI’s complaint for lack of merit. *First*, the BLA held that there could be no trademark infringement because Foodsphere began using the “PISTA” mark in 2006 and even filed a trademark application therefor in the same year, while SMPFCI’s application for trademark registration for “FIESTA” was filed and approved only in 2007. SMPFCI, thus, had no cause of action. *Second*, SMPFCI’s complaint was filed beyond the four (4)-year prescriptive period prescribed under the Rules and Regulation on Administrative Complaints for Violation of Law Involving Intellectual Property Rights. *Third*, the BLA found the testimonies and surveys adduced in evidence by SMPFCI to be self-serving. *Fourth*, comparing the competing marks would not lead to confusion, much less deception of the public. *Finally*, the BLA ruled that SMPFCI failed to convincingly prove the presence of the elements of unfair competition.¹²

On September 10, 2013, however, the Office of the Director General partially granted SMPFCI’s appeal, affirming the BLA’s ruling on the absence of trademark infringement but finding Foodsphere liable for unfair competition.¹³ The Director General held that one can see the obvious differences in the marks of the parties. SMPFCI’s mark is a composite mark where its house mark, namely “PUREFOODS,” is clearly indicated and is followed by the phrase “FIESTA HAM” written in stylized font whereas Foodsphere’s mark is the word “PISTA” written also in stylized font. Applying the ‘Dominancy Test’ and the ‘Holistic Test’ show that Foodsphere cannot be held liable for trademark infringement due to the fact that the marks are not visually or aurally similar and that the glaring differences in the presentation of these marks will prevent any likely confusion, mistake, or deception to the purchasing public. Moreover, “PISTA” was duly registered in the IPO, strengthening the position that “PISTA” is not an infringement of “PUREFOODS FIESTA HAM” for a

¹⁰ *Id.* at 500.

¹¹ *Id.* at 199-224.

¹² *Id.* at 501-502.

¹³ *Id.* at 379-397.

certificate of registration of a mark is *prima facie* evidence of the validity of the registration, the registrant's ownership of the mark, and of the registrant's exclusive right to use the same.¹⁴ On the other hand, the Director General found Foodsphere to be guilty of unfair competition for it gave its "PISTA" ham the general appearance that would likely influence purchasers to believe that it is similar with SMPFCI's "FIESTA" ham. Moreover, its intention to deceive is inferred from the similarity of the goods as packed and offered for sale. Thus, the Director General ordered Foodsphere to pay nominal damages in the amount of ₱100,000.00 and attorney's fees in the amount of ₱300,000.00 and to cease and desist from using the labels, signs, prints, packages, wrappers, receptacles, and materials used in committing unfair competition, as well as the seizure and disposal thereof.¹⁵

Both SMPFCI and Foodsphere filed their appeals before the CA via Petitions for Review dated October 8, 2013¹⁶ and October 29, 2013,¹⁷ respectively. SMPFCI sought a reconsideration of the Director General's finding that Foodsphere is not guilty of trademark infringement while Foodsphere faulted said Director General for declaring it guilty of unfair competition.

On March 6, 2014, the CA, Eleventh Division, denied SMPFCI's petition and affirmed the ruling of the Director General on the absence of trademark infringement. According to the appellate court, Foodsphere was merely exercising, in good faith, its right to use its duly registered trademark "PISTA" in the lawful pursuit of its business.¹⁸ Thereafter, in a Decision dated September 24, 2014, the CA Fourteenth Division likewise denied Foodsphere's petition, affirming the Director General's finding that Foodsphere was guilty of unfair competition. The CA held that the elements thereof are present herein. Consequently, it ordered Foodsphere to pay SMPFCI nominal and exemplary damages as well as attorney' fees.¹⁹ In a Resolution dated April 8, 2015, however, the CA clarified its September 24, 2014 Decision and resolved to delete the award of exemplary damages for SMPFCI never prayed for the same.²⁰

In a Resolution²¹ dated June 13, 2016, the Court, in G.R. No. 215475, denied SMPFCI's Petition for Review on *Certiorari* for failure to sufficiently show that the CA, in its Decision and Resolution, dated March 6, 2014 and November 13, 2014, respectively, finding that

¹⁴ Rollo (G.R. No. 217788), pp. 413-414.

¹⁵ Rollo (G.R. No. 217781), p. 503.

¹⁶ *Id.* at 398-426.

¹⁷ *Id.* at 427-456.

¹⁸ Rollo (G.R. No. 217788), p. 423.

¹⁹ Rollo (G.R. No. 217781), pp. 507-515.

²⁰ *Id.* at 49.

²¹ Rollo (G.R. No. 217788), p. 609.

Foodsphere is not liable for trademark infringement, and committed any reversible error in the challenged decision and resolution as to warrant the exercise of the Court's discretionary appellate jurisdiction. The Court also found that the issues raised by SMPFCI are factual in nature.

Meanwhile, on June 8, 2015, both SMPFCI and Foodsphere filed the instant Petitions for Review on *Certiorari* docketed as G.R. No. 217781 and 217788, respectively. In G.R. No. 217781, SMPFCI invoked the following argument:

I.

THE HONORABLE COURT OF APPEALS ERRED IN RESOLVING THAT THE AWARD OF EXEMPLARY DAMAGES BE DELETED FROM THE BODY OF ITS DECISION DATED 24 SEPTEMBER 2014 WHEN SMPFCI'S ENTITLEMENT THERETO IS CLEARLY SUPPORTED NOT ONLY BY PLEADINGS AND EVIDENCE ON RECORD, BUT ALSO BY THE HONORABLE COURT OF APPEALS' OWN RATIOCINATIONS FOUND IN THE BODY OF ITS DECISION.

Conversely, G.R. No. 217788, Foodsphere raised the following argument:

I.

THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN EXCESS OF OR AMOUNTING TO LACK OF JURISDICTION WHEN IT ISSUED THE ASSAILED DECISION AND RESOLUTION BEING NOT IN ACCORDANCE WITH LAW OR WITH APPLICABLE DECISIONS OF THE HONORABLE COURT WHEN IT DECLARED THAT FOODSPHERE WAS GUILTY OF UNFAIR COMPETITION.

In G.R. No. 217781, SMPFCI clarifies that it assails the April 8, 2015 Resolution of the CA, not on its finding that Foodsphere was guilty of unfair competition, but only insofar as it deleted its award of exemplary damages in its September 24, 2014 Decision. According to SMPFCI, it was a mere mistake that the said Decision failed to state the amount of exemplary damages and that its dispositive portion failed to award said exemplary damages, merely stating that "the petition is DENIED, and the Decision x x x of the Director General is AFFIRMED."²² SMPFCI asserts that where there is a conflict between the dispositive portion and the body of the decision, the dispositive portion controls. But where the inevitable conclusion from the body of the decision is so clear as to show that there was a mistake in the dispositive portion, the body of the decision will

²² *Rollo* (G.R. No. 217781) p. 21.

prevail.²³ Here, when the CA held that “as for exemplary damages, the award thereof was warranted,” it is beyond cavil that SMPFCI is entitled thereto.

Moreover, SMPFCI maintains that the CA ruling that it never prayed for exemplary damages in the proceedings, its prayer for damages being limited only to actual damages and attorney’s fees, is utterly false for it specifically prayed for the same in several pleadings it filed before the BLA and the Office of the Director General. Even assuming that it indeed failed to pray for exemplary damages, SMPFCI alleges that it was still erroneous for the CA to delete the award of the same. It is well settled that a court may grant relief to a party, even if said party did not pray for it in his pleadings for a prayer for “other remedies just and equitable under the premises” is broad enough to justify the extension of a remedy different from that requested. Thus, in view of the foregoing, coupled with the factual circumstances of the case leading to the conclusion that Foodsphere is guilty of unfair competition, SMPFCI essentially prays that the Court: (1) issue a permanent injunction against Foodsphere to prevent it from infringing the rights of SMPFCI by seizing all products violative of SMPFCI’s IP rights and by forfeiting all properties used in the infringing acts; (2) order Foodsphere to pay SMPFCI the amount of ₱27,668,538.38, representing lost income of SMPFCI, ₱899,294.77 per month in estimated actual damages, or moderate or temperate damages; (3) order Foodsphere to pay attorney’s fees in the amount of ₱300,000.00; and (4) order Foodsphere to pay exemplary damages in the amount of ₱300,000.00.²⁴

In G.R. No. 217788, Foodsphere denied the allegations of unfair competition, denying SMPFCI’s claim that the confusing similarity between the respective packaging of the parties’ products began in 2009 when Foodsphere changed its packaging from a paper box to a paper ham bag, significantly similar to SMPFCI’s paper ham bag. According to Foodsphere, while the packages were both in the form of bags, their respective trademarks were boldly printed thereon. Moreover, even prior to SMPFCI’s use of the questioned ham bags in 2009, Foodsphere had already been adopting the image of partly-sliced hams laced with fruits and red color on its packages.²⁵ In addition, Foodsphere alleged that any similarity in the general appearance of the packaging does not, by itself, constitute unfair competition. This is because *first*, packaging is not the exclusive ownership of SMPFCI which does not have a patent or trademark protection therefor. *Second*, the mere fact of being the first user does not bestow vested right to use the packaging to the exclusion of everyone else. *Third*, the circumstance that the manufacturer has printed its name all over the packaging negates

²³ *Id.* at 22.

²⁴ *Id.* at 23-32.

²⁵ *Rollo* (G.R. No. 217788), pp. 25-30.

fraudulent intent to palm off its goods as another's product. *Fourth*, SMPFCI cannot claim that it has exclusive right or monopoly to use the colors red and green in its packaging or the image of partly sliced hams. *Fifth*, similarity in the packaging does not necessarily constitute "confusing" similarity. *Sixth*, the circumstances under which the competing products are sold negates the likelihood of confusion for consumers are more discerning on the Christmas ham they will purchase, which is not any ordinary, low priced product. *Seventh*, SMPFCI failed to prove likelihood of confusion or intent to deceive on the part of Foodsphere. *Finally*, Foodsphere maintained that there was no basis for the CA to award nominal damages and attorney's fees in view of the absence of any violation of SMPFCI's right.²⁶

The petitions are devoid of merit.

With respect to G.R. No. 217781, the Court finds no reason to reverse the April 8, 2015 Resolution of the CA insofar as it resolved to delete from the body of its September 24, 2014 Decision the award of exemplary damages. SMPFCI said so itself, when there is a conflict between the dispositive portion or *fallo* of a decision and the opinion of the court contained in the text or body of the judgment, the former prevails over the latter. This rule rests on the theory that the *fallo* is the final order, while the opinion in the body is merely a statement ordering nothing. Thus, an order of execution is based on the disposition, not on the body, of the Decision.²⁷ Contrary to SMPFCI's assertion, moreover, the Court finds inapplicable the exception to the foregoing rule which states that the body of the decision will prevail in instances where the inevitable conclusion from the body of the decision is so clear as to show that there was a mistake in the dispositive portion.

A cursory perusal of the challenged September 24, 2014 Decision reveals that the mistake lies not in the *fallo* or dispositive portion but in the body thereof, the pertinent portions of which provide:

Having been found guilty of unfair competition, Foodsphere was correctly ordered to pay nominal damages of P100,000.00. Under Article 2221 of the Civil Code, nominal damages are recoverable in order to vindicate or recognize the rights of the plaintiff which have been violated or invaded by the defendant. x x x

As for SMPFCI's claim for lost profit or unrealized income of more than P27 Million, its failure to properly substantiate the same left the Office of the Director General without any basis to award it.

²⁶ *Id.* at 30-46.

²⁷ *The Law Firm of Raymundo A. Armovit v. CA, et al.*, 674 Phil. 344, 356 (2011).

As for exemplary damages, the award thereof was warranted on the strength of *In-N-Out Burger, Inc. v. Sehwan*, for correction or example for public good, such as the enhancement of the protection accorded to intellectual property and the prevention of similar acts of unfair competition. The award of attorney's fees must likewise be upheld as SMPFCI was compelled to engage the services of counsel to protect its rights.²⁸

As can be gleaned from above, the intention of the CA was merely to affirm the findings of the Director General insofar as the award of damages was concerned. This was shown in its statements such as "Foodsphere was correctly ordered to pay nominal damages," "its failure to properly substantiate the same left the Office of the Director General without any basis to award it," "as for exemplary damages, the award thereof was warranted," and "the award of attorney's fees must likewise be upheld." This was also shown when the CA clearly disposed as follows: "ACCORDINGLY, the petition is DENIED, and the Decision dated September 10, 2013 of the Office of the Director General, AFFIRMED."²⁹ It can, therefore, be derived, from the wording of the CA Decision, that it merely intended to adopt the resolution of the Director General on the award of damages. Consequently, since nowhere in the affirmed Decision did the Director General award exemplary damages to SMPFCI, for what was awarded was only nominal damages and attorney's fees, it follows then that the CA likewise did not intend on awarding the same to SMPFCI. Thus, what controls herein is the *fallo*.

Besides, it bears stressing that SMPFCI failed to prove its entitlement to exemplary damages. Article 2233 of the Civil Code provides that exemplary damages cannot be recovered as a matter of right; the court will decide whether or not they should be adjudicated while Article 2234 thereof provides that while the amount of the exemplary damages need not be proven, the plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded.

Thus, the Court has held, time and again, that exemplary damages may be awarded for as long as the following requisites are present: (1) they may be imposed, by way of example, only in addition, among others, to compensatory damages, only after the claimant's right to them has been established, and cannot be recovered as a matter of right, their determination depending upon the amount of compensatory damages that may be awarded to the claimant; (2) the claimant must first establish his right to moral, temperate, liquidated or compensatory damages; and (3) the act must be

²⁸ *Rollo* (G.R. No. 217781), p. 514.

²⁹ *Id.* at 513-515.



accompanied by bad faith or done in a wanton, fraudulent, oppressive or malevolent manner.³⁰

Here, SMPFCI particularly failed to prove its right to moral, temperate, liquidated or compensatory damages. In its complaint, SMPFCI prayed that Foodsphere be ordered to pay ₱27,668,538.38 representing income it would have made if not for the infringement and ₱899,294.77 per month in estimated actual damages, representing foregone income in sales for the continuous use of the "PISTA" mark in connection with the selling, offering for sale and distribution of its ham product during the pendency of the case.³¹ But as the Director General aptly found, SMPFCI neither adduced sufficient evidence to prove its claim of foregone income or sales nor presented evidence to show the profit or sales. Thus, in view of such failure to prove its right to compensatory damages, as well as to moral and temperate damages, the CA correctly resolved to delete from the body of its September 24, 2014 Decision the award of exemplary damages.

As regards G.R. No. 217788, the Court likewise affirms the ruling of the CA, which in turn, affirmed the findings of the Director General.

Section 168 of the IP Code provides that:

Section 168. Unfair Competition, Rights, Regulation and Remedies.

- 168.1. A person who has identified in the mind of the public the goods he manufactures or deals in, his business or services from those of others, whether or not a registered mark is employed, has a property right in the goodwill of the said goods, business or services so identified, which will be protected in the same manner as other property rights.

168.2. 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, or his business, or services for those of the one having established such goodwill, or who shall commit any acts calculated to produce said result, shall be guilty of unfair competition, and shall be subject to an action therefor.

168.3. In particular, and without in any way limiting the scope of protection against unfair competition, the following shall be deemed guilty of unfair competition:

(a) Any person, who is selling his goods and gives them the general appearance of goods of another manufacturer or dealer, either as to the goods themselves or in the wrapping of the packages in which they are

³⁰ *Arco Pulp and Paper Co., Inc. v. Lim*, 737 Phil. 133, 153 (2014); *Mendoza v. Spouses Gomez, et al.*, 736 Phil. 460, 482 (2014).

³¹ *Rollo* (G.R. No. 217781), p. 131.

contained, or the devices or words thereon, or in any other feature of their appearance, which would be likely to influence purchasers to believe that the goods offered are those of a manufacturer or dealer, other than the actual manufacturer or dealer, or who otherwise clothes the goods with such appearance as shall deceive the public and defraud another of his legitimate trade, or any subsequent vendor of such goods or any agent of any vendor engaged in selling such goods with a like purpose;

(b) Any person who by any artifice, or device, or who employs any other means calculated to induce the false belief that such person is offering the services of another who has identified such services in the mind of the public; or

(c) Any person who shall make any false statement in the course of trade or who shall commit any other act contrary to good faith of a nature calculated to discredit the goods, business or services of another.

168.4. The remedies provided by Sections 156, 157 and 161 shall apply mutatis mutandis. (Sec. 29, R.A. No. 166a)

Time and again, the Court has held that unfair competition consists of the passing off (or palming off) or attempting to pass off upon the public of the goods or business of one person as the goods or business of another with the end and probable effect of deceiving the public. Passing off (or palming off) takes place where the defendant, 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. In other words, the defendant 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.³² The "true test," therefore, of unfair competition has thus been "whether the acts of the defendant have the intent of deceiving or are calculated to deceive the ordinary buyer making his purchases under the ordinary conditions of the particular trade to which the controversy relates."³³

Thus, the essential elements of an action for unfair competition are: (1) confusing similarity in the general appearance of the goods; and (2) intent to deceive the public and defraud a competitor. The confusing similarity may or may not result from similarity in the marks, but may result from other external factors in the packaging or presentation of the goods. The intent to deceive and defraud may be inferred from the similarity of the

³² *Shang Properties Realty Corporation, et al. v. St. Francis Development Corporation*, 739 Phil. 244, 256 (2014).

³³ *Id.*

appearance of the goods as offered for sale to the public. Actual fraudulent intent need not be shown.³⁴

In the instant case, the Court finds no error with the findings of the CA and Director General insofar as the presence of the foregoing elements is concerned. First of all, there exists a substantial and confusing similarity in the packaging of Foodsphere's product with that of SMPFCI, which, as the records reveal, was changed by Foodsphere from a paper box to a paper ham bag that is significantly similar to SMPFCI's paper ham bag. As duly noted by the Director General and the CA, both packages use paper ham bags as the container for the hams, both paper ham bags use the red color as the main colors, and both have the layout design appearing on the bags consisting of a partly sliced ham and fruits on the front and other ham varieties offered at the back. Thus, Foodsphere's packaging in its entirety, and not merely its "PISTA" mark thereon, renders the general appearance thereof confusingly similar with the packaging of SMPFCI's ham, that would likely influence purchasers to believe that these products are similar, if not the same, as those of SMPFCI.

Second of all, Foodsphere's intent to deceive the public, to defraud its competitor, and to ride on the goodwill of SMPFCI's products is evidenced by the fact that not only did Foodsphere switch from its old box packaging to the same paper ham bag packaging as that used by SMPFCI, it also used the same layout design printed on the same. As the Director General observed, why, of the millions of terms and combinations of letters, designs, and packaging available, Foodsphere had to choose those so closely similar to SMPFCI's if there was no intent to pass off upon the public the ham of SMPFCI as its own with the end and probable effect of deceiving the public.

At this juncture, it is worthy to note that unfair competition is always a question of fact. There is no inflexible rule that can be laid down as to what will constitute the same, each case being, in the measure, a law unto itself. Thus, the question to be determined is whether or not, as a matter of fact, the name or mark used by the defendant has previously come to indicate and designate plaintiff's 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 plaintiff's goods or his business as plaintiff's business.³⁵ As such, the Court is of the opinion that the case records readily supports the findings of fact made by the Director General as to Foodsphere's commission of unfair competition. Settled is the rule that factual findings of administrative agencies are generally accorded respect and even finality by this Court, if such findings are supported by substantial

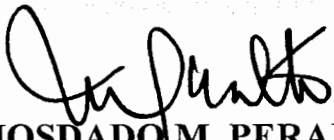
³⁴ *In-N-Out Burger, Inc. v. Sehwan, Incorporated and/or Benita's Frites, Inc.*, 595 Phil. 1119; 1149 (2008).

³⁵ *Levi Strauss (Phils.), Inc. v. Lim*, 593 Phil. 435, 457 (2008).

evidence, as it is presumed that these agencies have the knowledge and expertise over matters under their jurisdiction,³⁶ more so when these findings are affirmed by the Court of Appeals.³⁷

WHEREFORE, premises considered, the instant petitions in G.R. Nos. 217781 and 217788 are **DENIED**. The assailed Decision dated September 24, 2014 and Resolution dated April 8, 2015 of the Court of Appeals in CA-G.R. SP No. 131945 are hereby **AFFIRMED**.

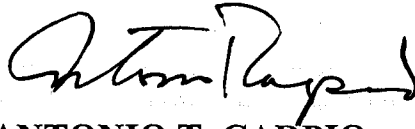
SO ORDERED.


DIOSDADO M. PERALTA
Associate Justice

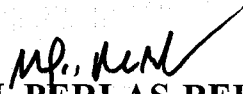
³⁶ *Espiritu, et al. v. Del Rosario*, 745 Phil. 566, 588 (2014).

³⁷ *Union Bank of the Philippines v. The Honorable Regional Agrarian Reform Officer, et al.*, G.R. No. 200369, March 1, 2017.

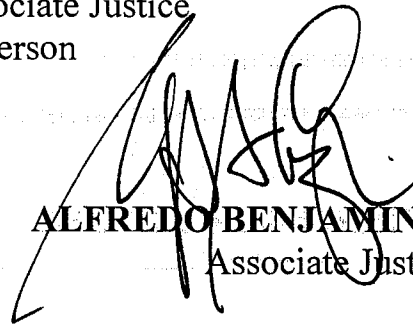
WE CONCUR:



ANTONIO T. CARPIO
Senior Associate Justice
Chairperson



ESTELA M. PERLAS-BERNABE
Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



ANDRES B. REYES, JR.
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, Republic Act
No. 296, The Judiciary Act of
1948, as amended)