

SECOND DIVISION

[G.R. No. 179367, January 29, 2014]

**UNILEVER PHILIPPINES, INC., PETITIONER, VS. MICHAEL TAN
A.K.A. PAUL D. TAN, RESPONDENT.**

DECISION

BRION, J.:

Before us is a petition for review on *certiorari*^[1] filed by Unilever Philippines, Inc. (*petitioner*), assailing the decision^[2] dated June 18, 2007 and the resolution^[3] dated August 16, 2007 of the Court of Appeals (CA) in CA G.R. SP No. 87000. These CA rulings dismissed the petitioner's petition for *certiorari* and mandamus for lack of merit.

The Factual Antecedents

The records show that on January 17, 2002, agents of the National Bureau of Investigation (NBI) applied for the issuance of search warrants for the search of a warehouse located on Camia Street, Marikina City, and of an office located on the 3rd floor of Probest International Trading Building, Katipunan Street, Concepcion, Marikina City, allegedly owned by Michael Tan a.k.a. Paul D. Tan (*respondent*). The application alleged that the respondent had in his possession counterfeit shampoo products which were being sold, retailed, distributed, dealt with or intended to be disposed of, in violation of Section 168, in relation with Section 170, of Republic Act (R.A.) No. 8293, otherwise known as the Intellectual Property Code of the Philippines.

On the same date, Judge Antonio M. Eugenio, Jr. of the Regional Trial Court of Manila, Branch 1, granted the application and issued Search Warrant Nos. 02-2606 and 02-2607. Armed with the search warrants, the NBI searched the premises and, in the course of the search, seized the following items:

(A) From [the respondent's] office:

- (a) 192 sachets of *Creamsilk* Hair Conditioner (White);
- (b) 156 sachets of *Creamsilk* Hair Conditioner (Blue);
- (c) 158 sachets of *Creamsilk* Hair Conditioner (Green);
- (d) 204 sachets of *Creamsilk* Hair Conditioner (Black);
- (e) 192 sachets of *Vaseline* Amino Collagen Shampoo;
- (f) 192 sachets of *Sunsilk* Nutrient Shampoo (Pink);
- (g) 144 sachets of *Sunsilk* Nutrient Shampoo (Blue);
- (h) 136 sachets of *Sunsilk* Nutrient Shampoo (Orange);
- (i) 144 sachets of *Sunsilk* Nutrient Shampoo (Green); and
- (j) 1 box of assorted commercial documents.

(B) From [the respondent's] warehouse[:]

(a) 372 boxes each containing six (6) cases of Sunsilk Nutrient Shampoo; and

(b) 481 boxes each containing six (6) cases Creamsilk Hair Conditioner.

[4]

The NBI thereafter filed with the Department of Justice (DOJ) a complaint against the respondent for violation of R.A. No. 8293, specifically Section 168 (unfair competition), in relation with Section 170, docketed as I.S. No. 2002-667.

In his counter-affidavit, the respondent claimed that he is "Paul D. Tan," and not "Michael Tan" as alluded in the complaint; he is engaged in the business of selling leather goods and raw materials for making leather products, and he conducts his business under the name "Probest International Trading," registered with the Department of Trade and Industry; he is not engaged in the sale of counterfeit Unilever shampoo products; the sachets of Unilever shampoos seized from his office in Probest International Trading Building are genuine shampoo products which they use for personal consumption; he does not own and does not operate the warehouse located on Camia Street, Marikina City, where a substantial number of alleged counterfeit Unilever shampoo products were found; and he did not violate R.A. No. 8293 because there is no *prima facie* evidence that he committed the offense charged.

Rulings of the DOJ

On December 18, 2002, State Prosecutor Melvin J. Abad issued a resolution^[5] dismissing the criminal complaint on the ground of insufficiency of evidence. To quote:

After a thorough evaluation of the evidence, we find no sufficient evidence so as to warrant a finding of probable cause to indict respondent Paul D. Tan (not Michael Tan) for violation of Section 168 (unfair competition) in relation to Section 170 of R.A. No. 8293.

xxxx

WHEREFORE, it is respectfully recommended that the instant complaint for Violation of Section 168 (unfair competition) in relation to Section 170 of R.A. No. 8293 be DISMISSED for insufficiency of evidence.^[6]

The State Prosecutor found that the petitioner failed to show the respondent's actual and direct participation in the offense charged. While the Certificate of Registration of Probest International Trading shows that a certain "Paul D. Tan" is the registered owner and proprietor of the office, there is no showing that he is also the registered owner of the warehouse where the alleged counterfeit Unilever shampoo products were found. There is also no evidence to support the claim that the respondent was engaged in the sale of counterfeit products other than the self-serving claim of the

petitioner's representatives. Lastly, the State Prosecutor found that the pieces of evidence adduced against the respondent, e.g. alleged counterfeit Unilever shampoo products, by themselves, are not sufficient to support a finding of probable cause that he is engaged in unfair competition.

The motion for reconsideration that followed was denied in a resolution^[7] dated June 5, 2003.

On September 9, 2003, the petitioner filed a petition for review with the DOJ,^[8] which the Acting Secretary of Justice, Merceditas N. Gutierrez, dismissed in her March 16, 2004 resolution. In the resolution, the Acting Secretary of Justice affirmed the State Prosecutor's finding of lack of probable cause.

The petitioner thereafter sought, but failed, to secure a reconsideration.

On October 19, 2004, the petitioner filed with the CA a petition for certiorari under Rule 65 of the Rules of Court, imputing grave abuse of discretion on the Acting Secretary of Justice, et al., in deciding the case in the respondent's favor.

The Rulings of the CA

The CA, in a decision dated June 18, 2007, dismissed the petition on the ground that the petitioner failed to establish facts and circumstances that would constitute acts of unfair competition under R.A. No. 8293. The CA took into account the insufficiency of evidence that would link the respondent to the offense charged. It also ruled that the Acting Secretary of Justice did not gravely abuse her discretion when she affirmed the State Prosecutor's resolution dismissing the petitioner's complaint for insufficiency of evidence to establish probable cause.

The petitioner sought reconsideration of the aforementioned decision rendered by the CA but its motion was denied in a resolution dated August 16, 2007.

The present Rule 45 petition questions the CA's June 18, 2007 decision and August 16, 2007 resolution.

The Petition

The petitioner contends that the CA erred in dismissing its petition for *certiorari* and in affirming the DOJ's rulings. It argues that while it may be possible that the respondent is not the owner of the warehouse, the overwhelming pieces of evidence nonetheless prove that he is the owner of the counterfeit shampoo products found therein. The petitioner also maintains that the voluminous counterfeit shampoo products seized from the respondent are more than sufficient evidence to indict him for unfair competition.

The Issue

The case presents to us the issue of whether the CA committed a reversible error in upholding the Acting Secretary of Justice's decision dismissing the information against the respondent. The resolution of this issue requires a determination of the

existence of probable cause in order to indict the respondent of unfair competition.

The Court's Ruling

We find merit in the petition.

Determination of Probable Cause Lies Within the Competence of the Public Prosecutor

The determination of probable cause for purposes of filing of information in court is essentially an executive function that is lodged, at the first instance, with the public prosecutor and, ultimately, to the Secretary of Justice.^[9] The prosecutor and the Secretary of Justice have wide latitude of discretion in the conduct of preliminary investigation;^[10] and their findings with respect to the existence or non-existence of probable cause are generally not subject to review by the Court.

Consistent with this rule, the settled policy of non-interference in the prosecutor's exercise of discretion requires the courts to leave to the prosecutor and to the DOJ the determination of what constitutes sufficient evidence to establish probable cause.^[11] Courts can neither override their determination nor substitute their own judgment for that of the latter. They cannot likewise order the prosecution of the accused when the prosecutor has not found a *prima facie* case.^[12]

Nevertheless, this policy of non-interference is not without exception.

The Constitution itself allows (and even directs) court action where executive discretion has been gravely abused.^[13] In other words, the court may intervene in the executive determination of probable cause, review the findings and conclusions, and ultimately resolve the existence or non-existence of probable cause by examining the records of the preliminary investigation when necessary for the orderly administration of justice.^[14]

Courts Cannot Reverse the Secretary of Justice's Findings Except in Clear Cases of Grave Abuse of Discretion

The term "grave abuse of discretion" means such capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction. To justify judicial intervention, the abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.^[15] In *Elma v. Jacobi*,^[16] we said that:

This error or abuse alone, however, does not render his act amenable to correction and annulment by the extraordinary remedy of certiorari. To justify judicial intrusion into what is fundamentally the domain of the Executive, the petitioner must clearly show that the prosecutor gravely abused his discretion