

SECOND DIVISION

[G.R. No. 132604, March 06, 2002]

VENANCIO SAMBAR, DOING BUSINESS UNDER THE NAME AND STYLE OF CVS GARMENT ENTERPRISES, PETITIONER, VS. LEVI STRAUSS & CO., AND LEVI STRAUSS (PHIL.), INC., RESPONDENTS.

DECISION

QUISUMBING, J.:

This petition for review on certiorari prays for the reversal of the decision dated January 30, 1998, of the Court of Appeals in CA-G.R. CV No. 51553. That decision affirmed the decision in Civil Case No. 88-2220 of the Regional Trial Court, Branch 66, Makati City, making permanent the writ of preliminary injunction, ordering CVS Garment and Industrial Company (CVSGIC) and petitioner Venancio Sambar to pay private respondents jointly and solidarily the sum of P50,000 as temperate and nominal damages, P10,000 as exemplary damages, and P25,000 as attorney's fees and litigation costs, and ordering the Director of the National Library to cancel Copyright Registration No. 1-1998 in the name of Venancio Sambar.

The facts are as follows:

On September 28, 1987, private respondents, through a letter from their legal officer, demanded that CVS Garment Enterprises (CVSGE) desist from using their stitched arcuate design on the Europress jeans which CVSGE advertised in the *Manila Bulletin*.

Atty. Benjamin Gruba, counsel of CVSGE, replied that the arcuate design on the back pockets of Europress jeans was different from the design on the back pockets of Levi's jeans. He further asserted that his client had a copyright on the design it was using.

Thereafter, private respondents filed a complaint against Sambar, doing business under the name and style of CVSGE. Private respondents also impleaded the Director of the National Library. Summons was sent to Sambar in his business address at 161-B Iriga corner Retiro, La Loma, Quezon City.

Atty. Gruba claimed that he erroneously received the original summons as he mistook it as addressed to his client, CVSGIC. He returned the summons and the pleadings and manifested in court that CVSGE, which was formerly doing business in the premises, already stopped operation and CVSGIC took over CVSGE's occupation of the premises. He also claimed he did not know the whereabouts of Sambar, the alleged owner of CVSGE.

Thereafter, private respondents amended their complaint to include CVSGIC. When

private respondents learned the whereabouts of Sambar and CVSGE, the case was revived.

Private respondents alleged in their complaint that Levi Strauss and Co. (LS&Co.), an internationally known clothing manufacturer, owns the arcuate design trademark which was registered under U.S. Trademark Registration No. 404, 248 on November 16, 1943, and in the Principal Register of trademarks with the Philippine Patent Office under Certificate of Registration No. 20240 issued on October 8, 1973; that through a Trademark Technical Data and Technical Assistance Agreement with Levi Strauss (Phil.) Inc. (LSPI) in 1972, LS&Co. granted LSPI a non-exclusive license to use the arcuate trademark in its manufacture and sale of Levi's pants, jackets and shirts in the Philippines; that in 1983, LS&Co. also appointed LSPI as its agent and attorney-in-fact to protect its trademark in the Philippines; and that sometime in 1987, CVSGIC and Venancio Sambar, without the consent and authority of private respondents and in infringement and unfair competition, sold and advertised, and despite demands to cease and desist, continued to manufacture, sell and advertise denim pants under the brand name "Europress" with back pockets bearing a design similar to the arcuate trademark of private respondents, thereby causing confusion on the buying public, prejudicial to private respondents' goodwill and property right.

In its answer, CVSGIC admitted it manufactured, sold and advertised and was still manufacturing and selling denim pants under the brand name of "Europress", bearing a back pocket design of two double arcs meeting in the middle. However, it denied that there was infringement or unfair competition because the display rooms of department stores where Levi's and Europress jeans were sold, were distinctively segregated by billboards and other modes of advertisement. CVSGIC avers that the public would not be confused on the ownership of such known trademark as Levi's, Jag, Europress, etc.. Also, CVSGIC claimed that it had its own original arcuate design, as evidenced by Copyright Registration No. 1-1998, which was very different and distinct from Levi's design. CVSGIC prayed for actual, moral and exemplary damages by way of counterclaim.

Petitioner Venancio Sambar filed a separate answer. He denied he was connected with CVSGIC. He admitted that Copyright Registration No. 1-1998 was issued to him, but he denied using it. He also said he did not authorize anyone to use the copyrighted design. He counterclaimed for moral and exemplary damages and payment of attorney's fees.

After hearing, the trial court issued a writ of preliminary injunction enjoining CVSGIC and petitioner from manufacturing, advertising and selling pants with the arcuate design on their back pockets. CVSGIC and petitioner did not appear during the October 13 and 27, 1993 hearings, when they were to present evidence. Consequently, the trial court ruled that they waived their right to present evidence.

On May 3, 1995, the trial court rendered its decision. The dispositive portion reads:

IN VIEW OF THE FOREGOING, judgment is hereby rendered:

- a) making the writ of preliminary injunction permanent;
- b) ordering the defendants CVS Garment and Industrial Company and

Venancio Sambar to pay the plaintiffs jointly and solidarily the sum of P50,000.00 as temperate and nominal damages, the sum of P10,000.00 as exemplary damages, and the sum of P25,000.00 as attorney's fees and litigation expenses and to pay the costs.

SO ORDERED.^[1]

Private respondents moved for a reconsideration praying for the cancellation of petitioner's copyright registration. The trial court granted reconsideration in its July 14, 1995 order, thus:

IN VIEW OF THE FOREGOING, judgment is hereby rendered:

- a) making the writ of preliminary injunction permanent;
- b) ordering the defendants CVS Garment and Industrial Company and Venancio Sambar to pay the plaintiffs jointly and solidarily the sum of P50,000.00 as temperate and nominal damages, the sum of P10,000.00 as exemplary damages, and the sum of P25,000.00 as attorney's fees and litigation expenses and to pay the costs;
- c) ordering the Director of the National Library to cancel the Copyright Registration No. 1-1998 issued in the name of Venancio Sambar.^[2]

Petitioner appealed to the Court of Appeals which on January 30, 1998 decided in favor of private respondents as follows:

WHEREFORE, the judgment appealed from is AFFIRMED in toto.

SO ORDERED.^[3]

In this instant petition, petitioner avers that the Court of Appeals erred in:

- I. I. ...RULING THAT THERE WAS AN INFRINGEMENT OF RESPONDENT'S ARCUATE MARK.
- II. II. ...RULING THAT PETITIONER IS JOINTLY AND SOLIDARILY LIABLE WITH CVS GARMENTS INDUSTRIAL CORPORATION FOR INFRINGEMENT OF RESPONDENT'S ARCUATE MARK.
- III. III. ...IN ORDERING, THERE BEING NO INFRINGEMENT OR UNFAIR COMPETITION, THE AWARD OF DAMAGES AND CANCELLATION OF COPYRIGHT REGISTRATION NO. 1-1998 ISSUED IN THE NAME OF PETITIONER.^[4]

Briefly, we are asked to resolve the following issues:

1. Did petitioner infringe on private respondents' arcuate design?
2. Must we hold petitioner solidarily liable with CVS Garments Industrial Corporation?
3. Are private respondents entitled to nominal, temperate and exemplary damages and cancellation of petitioner's copyright?

On the first issue, petitioner claims that he did not infringe on private respondents' arcuate design because there was no colorable imitation which deceived or confused the public. He cites *Emerald Garment Manufacturing Corporation vs. Court of Appeals*, G.R. No. 100098, 251 SCRA 600 (1995), as authority. He disagreed with the Court of Appeals that there were confusing similarities between Levi's and Europress' arcuate designs, despite the trial court's observation of differences in them. Petitioner maintains that although the backpocket designs had similarities, the public was not confused because Levi's jeans had other marks not found in Europress jeans. Further, he says Levi's long history and popularity made its trademark easily identifiable by the public.

In its comment, private respondents aver that the Court of Appeals did not err in ruling that there was infringement in this case. The backpocket design of Europress jeans, a double arc intersecting in the middle was the same as Levi's' mark, also a double arc intersecting at the center. Although the trial court found differences in the two designs, these differences were not noticeable. Further, private respondents said, infringement of trademark did not require exact similarity. Colorable imitation enough to cause confusion among the public, was sufficient for a trademark to be infringed. Private respondents explained that in a market research they conducted with 600 respondents, the result showed that the public was confused by Europress trademark *vis* the Levi's trademark.

We find that the first issue raised by petitioner is factual. The basic rule is that factual questions are beyond the province of this Court in a petition for review. Although there are exceptions to this rule, this case is not one of them.^[5] Hence, we find no reason to disturb the findings of the Court of Appeals that Europress' use of the arcuate design was an infringement of the Levi's design.

On the second issue, petitioner claims that private respondents did not show that he was connected with CVSGIC, nor did they prove his specific acts of infringement to make him liable for damages. Again, this is a factual matter and factual findings of the trial court, concurred in by the Court of Appeals, are final and binding on this Court.^[6] Both the courts below found that petitioner had a copyright over Europress' arcuate design and that he consented to the use of said design by CVSGIC. We are bound by this finding, especially in the absence of a showing that it was tainted with arbitrariness or palpable error.^[7] It must be stressed that it was immaterial whether or not petitioner was connected with CVSGIC. What is relevant is that petitioner had a copyright over the design and that he allowed the use of the same by CVSGIC.