

FIRST DIVISION

[G.R. No. 164321. November 30, 2006.]

SKECHERS, U.S.A.,INC., *petitioner*,vs.INTER PACIFIC INDUSTRIAL TRADING CORP. and/or INTER PACIFIC TRADING CORP. and/or STRONG SPORTS GEAR CO.,LTD.,and/or STRONGSHOES WAREHOUSE and/or STRONG FASHION SHOES TRADING and/or TAN TUAN HONG and/or VIOLETA T. MAGAYAGA and/or JEFFREY R. MORALES and/or any of its other proprietor/s, directors, officers, employees and/or occupants of its premises located at S-7, Ed & Joe's Commercial Arcade, No. 153 Quirino Avenue, Parañaque City, respondents.

TRENDWORKS INTERNATIONAL CORPORATION, *petitioner-intervenor*,vs.INTER PACIFIC INDUSTRIAL TRADING CORP. and/or INTER PACIFIC TRADING CORP. and/or STRONG SPORTS GEAR CO.,LTD.,and/or STRONGSHOES WAREHOUSE and/or STRONG FASHION SHOES TRADING and/or TAN TUAN HONG and/or VIOLETA T. MAGAYAGA and/or JEFFREY R. MORALES and/or any of its other proprietor/s, directors, officers, employees and/or occupants of its premises located at S-7, Ed & Joe's Commercial Arcade, No. 153 Quirino Avenue, Parañaque City, respondents.

DECISION

CHICO-NAZARIO, J :

Before Us is a Petition for Review on *Certiorari* [under Rule 45](#) of the [Rules](#) of Civil Procedure, assailing the Decision **1** of the Court of Appeals in CA-G.R. SP No. 77269, dated 17 November 2003, which denied

petitioner's Petition for *Certiorari* seeking to annul the Order ² of the Regional Trial Court (RTC) of Manila, Branch 24 dated 7 November 2002, quashing Search Warrant No. 02-2827 and directing National Bureau of Investigation (NBI) Special Investigator Carlos N. Borromeo III to return the seized items to respondents and the Order dated 6 March 2003 denying petitioner's Motion for Reconsideration.

Petitioner is a foreign corporation existing under the laws of the State of California, United States of America and engaged in the manufacture of footwear. Petitioner is not doing business in the Philippines and is suing before the trial court only to protect its intellectual property rights. In the course of business, petitioner registered the trademark "SKECHERS" with the Intellectual Property Office (IPO) under Registration No. 63364, Class 25 on 30 August 1996, and the trademark "S" (within an oval design) under Registration No. 4-1996-110182, Class 25 on 12 July 2000, both to be used in men's, women's, and children's footwear, namely, shoes, boots and slippers of all kinds, and men's, women's and children's clothing, namely, t-shirts, sweat shirts, sweat pants, socks, shorts, and hats. Petitioner also has a pending application for the trademark "S" and design to be used for the same kinds of goods.

Sometime in March 2002, petitioner engaged the services of Zetetic Far East, Inc. (Zetetic), a private investigative firm, to conduct an investigation on Inter Pacific Industrial Trading Corporation (Inter Pacific) in coordination with the NBI to confirm if Inter Pacific is indeed engaged in the importation, distribution and sale of unauthorized products bearing counterfeit or unauthorized trademarks owned by petitioner.

On 11 April 2002, Mr. Alvin Ambion, a Market Researcher for Zetetic, visited the business address of Inter Pacific/Strongshoes Warehouse and/or Strong Fashion Shoes Trading at S-7 No. 153 Quirino Avenue, Parañaque City. Located at said business address was Warehouse No. 7 of Ed & Joe's Commercial Arcade. Upon entering said warehouse, Mr. Ambion saw different kinds and models of rubber shoes including shoes bearing the "S" logo. During the visit, Mr. Ambion allegedly talked with the caretakers of said warehouse who informed him that Inter Pacific directly imports the goods from China and that their company distributes them to wholesalers and retailers in the Baclaran area. One of the caretakers

allegedly claimed that the shoes bearing the "Strong" name with the "S" logo have the same style as Skechers shoes. Another caretaker purportedly informed Mr. Ambion that they have an outlet located at Stall C-11, Baclaran Terminal, Plaza 2 Shopping Center, Taft Avenue Ext., Pasay City, managed by Violeta T. Magayaga, which sells the same footwear products.

Together with his colleague, Ms. Amelita Angeles, Mr. Ambion again visited respondent's warehouse on 12 April 2002 and purchased four pairs of rubber shoes bearing the "Strong" mark containing the "S" logo for P730.00, for which he was issued Sales Invoice No. 0715. On the same day, Mr. Ambion and Ms. Angeles visited respondent's outlet store in Baclaran.

On 17 May 2002, counsel for petitioner filed a letter complaint with the Office of the NBI Director requesting their assistance in stopping the illegal importation, manufacture and sale of counterfeit products bearing the trademarks owned by petitioner, and in prosecuting the owners of the establishments engaged therein. Thus, on 21 May 2002 Mr. Ambion and Ms. Angeles, together with NBI Special Investigator Carlos N. Borrromeo III of the Intellectual Property Rights Division of the NBI, visited respondent's warehouse located at Ed & Joe's Commercial Arcade and purchased 24 pairs of rubber shoes bearing the "Strong" name and the "S" logo. Afterwards, they went to respondent's outlet store in Baclaran and therein purchased a pair of rubber shoes also bearing the "Strong" name and the "S" logo.

On 11 June 2002, Special Investigator Borrromeo of the NBI, with Mr. Ambion as witness, proceeded to Branch 24, RTC, Manila, to apply for search warrants against the warehouse and outlet store being operated and managed by respondent for infringement of trademark under Section 155 ³ in relation to Section 170 ⁴ of [Republic Act No. 8293](#), otherwise known as The [Intellectual Property Code of the Philippines](#).

After personally examining the search warrant applicant and his witness, the court *a quo* found probable cause to issue the search warrants applied for and thus issued on the same day Search Warrant Nos. 02-2827 and 02-2828 to be served on the warehouse and retail outlet of respondent. That same afternoon, the search warrants were simultaneously served by the operatives of the Intellectual Property Rights Division of the NBI and seized from the warehouse 71 boxes containing 36 pairs of rubber shoes

each or 2,556 pairs of rubber shoes bearing the "S" logo, 147 boxes containing 24 pairs per box or 3,528 pairs of rubber shoes bearing the "S" logo and six pages of various documents evidencing the sale and distribution of similar merchandise; and from the outlet store, 295 pairs of rubber shoes bearing the "S" logo and five pieces of rubber shoes bearing the "S" logo.

In compliance with the Order dated 9 July 2002 of the RTC directing respondents to file their Comment on the issuance of the search warrant, respondents filed their Compliance and Comment with Prayer to Quash the search warrants. On 28 August 2002, respondents filed their Amended Comment with Motion to Quash Search Warrants on the ground that there is no confusing similarity between the petitioner's Skechers' rubber shoes and respondent's Strong rubber shoes.

On 7 November 2002, the lower court issued the assailed Order quashing Search Warrant No. 02-2827 and directing the NBI to return to respondents the items seized by virtue of said search warrant. According to the court *a quo*:

The question to be posed in this case is this: Will the purchaser be deceived or likely to be deceived into purchasing respondent's Strong Rubber Shoes because of the belief that they are Skechers shoes in the ordinary course of purchase? We answer in the negative.

A careful perusal of the Strong Rubber Shoes and Skechers shoes presented by both respondents and private complainants reveals glaring differences that an ordinary prudent purchaser would not likely be misled or confused in purchasing the wrong article. Some of these are;

1. The mark "S" found in Strong Shoes is not enclosed in an "oval design";
2. The word "Strong" is conspicuously placed at the backside and insoles;
3. The hang tags and labels attached to the shoes bears the word "Strong" for respondent and "Sketchers U.S.A." for private complainant;

4. Strong Shoes are modestly priced compared to the costs of Sketchers Shoes.

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Similarly as in this case, although the mark "S" is prominent on both products, the same should be considered as a whole and not piecemeal. Factoring the variables already cited make the dissimilarities between the two marks conspicuous, noticeable and substantial.

Further, the products involved in the case at bar are not your ordinary household items. These are shoes which vary in price. The casual buyer is predisposed to be more cautious and discriminating and would prefer to mull over his purchase. Confusion and deception is less likely.

Finally, like beer and maong pants and jeans, the average consumer generally buys his rubber shoes by brand. He does not ask the sales clerk for rubber shoes but for, say Adidas, Reebok, or Nike. He is, more or less, knowledgeable and familiar with his preference and will not easily be distracted. (*Emerald Garment Manufacturing Corp.,v. Court of Appeals*,251 SCRA 600, *supra*)

ACCORDINGLY, respondent's Inter Pacific Industrial Trading Corporation, Motion to Quash Search [Warrant] is hereby granted. Search Warrant No. 02-2827 is quashed. The applicant, Carlos N. Borromeo of the National Bureau of Investigation is hereby directed to return to respondents the seized items. **5**

Petitioner's Motion for Reconsideration was subsequently denied in an Order dated 6 March 2003. Aggrieved, petitioner filed a Petition for *Certiorari* under [Rule 65](#) of the [Rules of Court](#) before the Court of Appeals assailing the Orders of the court *a quo* on the ground that public respondent court committed grave abuse of discretion amounting to lack and/or excess of jurisdiction in ruling that the act of private respondents in selling and distributing rubber shoes which contain the trademarks and designs owned by petitioner does not constitute trademark infringement.

On 17 November 2003, the appellate court denied the petition in this wise:

In the instant case, after examining and evaluating the foregoing factual milieu and the respective arguments of the parties, We are inclined to agree with the ruling of the public respondent that the holistic test is better suited to the present case and consequently, hold that the private respondents' appropriation and use of the letter "S" on their rubber shoes did not constitute an infringement of the trademark of the petitioner. Hence, the instant petition must necessarily fail.

A careful appreciation of the products in question readily reveals that these products are not the ordinary household items like catsup, coffee or candy which are commonly inexpensive. As such, the ordinary purchaser would be naturally inclined to closely examine specific details and would prefer to mull over his purchase. The case of *Del Monte Corp. vs. Court of Appeals (181 SCRA 410)*, is clear on this point:

Among these, what essentially determines the attitudes of the purchaser, specifically his inclination to be cautious, is the cost of the goods. To be sure, a person who buys a box of candies will not exercise as much care as one who buys an expensive watch. As a general [rule](#), an ordinary buyer does not exercise as much prudence in buying an article for which he pays a few centavos as he does in purchasing a more valuable thing. Expensive and valuable items are normally bought only after deliberate, comparative and analytical investigation. But mass products, low priced articles in wide use, and matters of everyday purchase requiring frequent replacement are bought by the casual consumer without care

In his context, although one of the essential features of the private respondents' shoes is the letter "S", suffice it to state that this alone would not likely cause confusion, deception or mistake on the part of the ordinary buying public. For it must be stressed that an ordinary purchaser of a product like a pair of rubber shoes is an intelligent buyer, who "is accustomed to buy, and therefore to some extent familiar with the goods" (*Dy Buncio vs. Tan Tiao Bok, 42 Phil. 190*).....

Going further, contrary to the contention of the petitioner, the case of *Converse Rubber Corp. vs. Universal Rubber Products, Inc.* (147 SCRA 154) is in no way controlling in the instant case considering that it involved a different factual milieu in contrast with that of the instant case. In said case, the respondent sought for the registration of the trademark "UNIVERSAL CONVERSE AND DEVICE" used on rubber shoes. Petitioner opposed on the ground that respondent's trademark is confusingly similar to petitioner's corporate name which is CONVERSE RUBBER CORPORATION and that it would likely deceive purchasers of products on which it is to be used to an extent that said products may be mistaken by the unwary public to be manufactured by the petitioner, i.e. "CONVERSE CHUCK TAYLOR," "CONVERSE ALL STAR," "ALL STAR CONVERSE CHUCK TAYLOR," OR "ALL STAR DEVICE." The High Court denied the application for registration of respondent's trademark ratiocinating as follows:

The similarity in the general appearance of respondent's trademark and that of petitioner would evidently create a likelihood of confusion among the purchasing public. But even assuming arguendo, that the trademark sought to be registered by respondent is distinctively dissimilar from those of the petitioner, the likelihood of confusion would still subsists, not on the purchaser's perception of the goods but on the origins thereof. By appropriating the word "CONVERSE," respondent's products are likely to be mistaken as having been produced by petitioner. The risk of damage is not limited to a possible confusion of goods but also includes confusion of reputation if the public could reasonably assume that the goods of the parties originated from the same source.

Verily, the foregoing ruling does not apply on all fours in the instant case. The word "CONVERSE" is highly identified not only to the products of Converse Rubber Corporation but to the corporate entity most importantly such that the mere appropriation of the word "CONVERSE" on products like rubber shoes, regardless of whether or not it was compounded with other letters, symbols or words; would not only likely but actually cause one to be mistaken that such rubber shoes had been produced by Converse Rubber Corporation.

On the other hand, the letter "S" used on private respondents' rubber shoes in the instant case could hardly be considered as highly identifiable to the products of petitioner alone. For it is not amiss to state that the letter "S" has been used in many existing trademarks, the most popular of which is the trademark "S" enclosed by an inverted triangle, which is extremely and profoundly identifiable to the well-known comics action hero, Superman. And perhaps it is due to the existence of these trademarks containing letter "S" that the petitioner was prompted to accessorize that letter "S" in its trademark with an outer oval design and accompany it with the word "SKECHERS" in order to make it distinct from the rest and identifiable only to its products. As such, the dominancy test as applied in the Converse case could not be applied in the instant case inasmuch as the letter "S," although a dominant feature in petitioner's trademark; is neither extremely and profoundly identifiable to the products of petitioner alone nor has it acquired a certain connotation to mean the rubber shoes produced by the petitioner. What is extremely and profoundly identifiable to the products of the petitioner is the whole trademark consisting of the letter "S" enclosed by a uniquely designed oval. Further, confusion and deception are less likely in the instant case considering that the private respondents' rubber shoes were distinctly and conspicuously marked "STRONG" at their front side, back side and insoles. Furthermore their hang tags and labels attached to the shoes bear the word "STRONG." In view of these, the dissimilarities between the private respondents' and petitioner's shoes became more striking and noticeable to the ordinary purchaser who could not in any way be deceived or misled that the shoes he buys is produced by the petitioner. With this, the holistic test is squarely applicable.

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As set out in the decision, the foregoing case involves a peculiar factual milieu in stark contrast with the instant case. As such, it finds no application in the controversy in the instant case.

Taking off from the foregoing premises, the public respondent judge did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in ruling that the act of the private respondent in selling and distributing rubber shoes which contain the trademarks and designs owned by the petitioners **does**

not constitute trademark infringement. After all, the public respondent judge was merely exercising his judgmental call conformably with the factual and legal issues proffered and presented before him. Suffice it to state, it is a hornbook doctrine in our jurisdiction that *certiorari* will not be issued to cure errors in proceedings or to correct erroneous conclusions of law and fact. The special civil action for *certiorari* is not a remedy for errors of judgment, which are correctible by appeal (**Montecillo vs. Civil Service Commission, 360 SCRA 99**).

WHEREFORE, in consideration of the foregoing premises, the instant petition is perforce **denied**. **6**

Petitioner's Motion for Reconsideration having been denied in an Order dated 18 June 2004, petitioner filed the instant case contending that the Court of Appeals committed grave abuse of discretion in considering matters of defense in a criminal trial for trademark infringement in passing upon the validity of the search warrant and in concluding that respondents are not guilty of trademark infringement in the case where the sole triable issue is the existence of probable cause to issue a search warrant.

For its part, respondent maintains that it is logical for the Court of Appeals to touch on the issue of whether or not there was trademark infringement since it was the very issue raised in the Petition for *Certiorari*. According to respondent, petitioner failed to qualify whether or not the determination of the Court of Appeals should be limited to whether or not there was probable cause to issue the search warrants. Furthermore, respondent claims that the trial court may not be faulted for quashing the search warrants it had issued after finding that there was no basis for its issuance in the first place. According to respondent, after full appreciation of the trademarks and logos depicted in the rubber shoes presented before the court *a quo* for close comparison, it was only prudent for the lower court to correct itself and quash the search warrant following a finding that probable cause does not exist for the offense of trademark infringement.

At this juncture, it is paramount to stress that the power to issue search warrants is exclusively vested with the trial judges in the exercise of their judicial function. **7** And inherent in the courts' power to issue search warrants is the power to quash warrants already issued. **8** After the judge

has issued a warrant, he is not precluded to subsequently quash the same, if he finds upon re-evaluation of the evidence that no probable cause exists. ⁹ Though there is no fixed rule for the determination of the existence of probable cause since the existence depends to a large degree upon the finding or opinion of the judge conducting the examination, ¹⁰ however, the findings of the judge should not disregard the facts before him nor run counter to the clear dictates of reason. ¹¹

In the determination of probable cause, the court must necessarily resolve whether or not an offense exists to justify the issuance or quashal of the search warrant. ¹² In the case at bar, the subject search warrant was issued allegedly in connection with trademark infringement, particularly the unauthorized use of the "S" logo by respondent in their Strong rubber shoes. After conducting the hearing on the application for a search warrant, the court *a quo* was initially convinced that there was sufficient reason to justify the issuance of the search warrant. However, upon motion of respondent to quash the search warrant, the lower court changed its position and declared that there was no probable cause to issue the search warrant as there was no colorable imitation between respondent's trademark and that of petitioner.

Based on its appreciation of the respective parties' arguments and the pieces of evidence, particularly the samples of the original Skechers rubber shoes *vis-à-vis* respondent's Strong rubber shoes, the trial court concluded that respondent's appropriation of the symbol "S" on their rubber shoes does not constitute an infringement on the trademark of petitioner. This exercise of judgment was further strengthened by the affirmation of the Court of Appeals that public respondent judge did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in ruling that the acts of respondent do not constitute trademark infringement in light of the factual and legal issues presented before it for consideration.

In ruling that there was no colorable imitation of petitioner's trademark in light of the factual milieu prevalent in the instant case, the trial court may not be faulted for reversing its initial finding that there was probable cause. Based on the courts' inherent power to issue search warrants and to quash the same, the courts must be provided with the

opportunity to correct itself of an error inadvertently committed. After reevaluating the evidence presented before it, the trial court may reverse its initial finding of probable cause in order that its conclusion may be made to conform to the facts prevailing in the instant case.

Furthermore, the court was acting reasonably when it went into a discussion of whether or not there was trademark infringement, this is so because in the determination of the existence of probable cause for the issuance or quashal of a warrant, it is inevitable that the court may touch on issues properly threshed out in a regular proceeding. ¹³ This finding that there was no colorable imitation of petitioner's trademark is merely preliminary and did not finally determine the merits of the possible criminal proceedings that may be instituted by petitioner. As held in the case of [*Solid Triangle Sales Corp. v. Sheriff, RTC, Q.C., Br. 93*](#): ¹⁴

When the court, in determining probable cause for issuing or quashing a search warrant, finds that no offense has been committed, it does not interfere with or encroach upon the proceedings in the preliminary investigation. The court does not oblige the investigating officer not to file an information for the court's ruling that no crime exists is only for the purposes of issuing or quashing the warrant.

WHEREFORE, premises considered, the instant petition is hereby DENIED. The Decision of the Court of Appeals in CA-G.R. SP No. 77269, dated 17 November 2003 is hereby AFFIRMED. Costs against petitioner.

SO ORDERED.

Panganiban, C.J., Ynares-Santiago, Austria-Martinez and Callejo, Sr., JJ., concur.

Footnotes

- ¹. Penned by Associate Justice Bienvenido L. Reyes with Associate Justices Conrado M. Vasquez, Jr. and Arsenio J. Maopale concurring. *Rollo*, pp. 72-83.
- ². Penned by Judge Antonio M. Eugenio, Jr., in search warrant case entitled "*People of the Philippines v. Inter Pacific Industrial, Inc.* *Rollo*, pp. 173-176.

3.Sec. 155. Remedies; Infringement. — any person who shall, without the consent of the owner of the registered mark:

155.1. Use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark or the same container or a dominant feature thereof in connection with the sale, offering for sale, distribution, advertising of any goods or services including other preparatory steps necessary to carry out the sale of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; or

155.2. Reproduce, counterfeit, copy or colorably imitate a registered mark or a dominant feature thereof and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive, shall be liable in a civil action for infringement by the registrant for the remedies hereinafter set forth: Provided, That the infringement takes place at the moment any of the acts stated in Subsection 155.1 or this subsection are committed regardless of whether there is actual sale of goods or services using the infringing material.

4.Sec. 170. Penalties. — Independent of the civil and administrative sanctions by law, a criminal penalty of imprisonment from two (2) years to five (5) years and a fine ranging from Fifty thousand pesos (P50,000) to Two hundred thousand pesos (P200,000), shall be imposed on any person who is found guilty of committing any of the acts mentioned in Section 155, Section 168 and Subsection 169.1. (Arts. 188 and 189, [Revised Penal Code](#)).

5.RTC Order, pp. 2-4; *rollo*, pp. 174-176.

6.CA Decision, pp. 6-9 and 11; *rollo*, pp. 77-80 and 82.

7.[Manly Sportswear Manufacturing, Inc. v. Dadodette Enterprises](#), G.R. No. 165306, 20 September 2005, 470 SCRA 384, 389, citing Section 2, Article III, [1987 Constitution](#).

8.[Solid Triangle Sales Corp. v. Sheriff, RTC, Q.C. Br. 93](#), 422 Phil. 72, 83 (2001).

9.*Supra* note 7.

10.[Luna v. Hon. Plaza](#), 135 Phil. 329, 341 (1968).

11.[La Chemise Lacoste, S.A. v. Fernandez](#), 214 Phil. 332, 349 (1984).

12. *Supra* note 8.

13. *Supra* note 7.

14. *Supra* note 8.