

SECOND DIVISION

[G.R. NO. 138900, September 20, 2005]

**LEVI STRAUSS & CO., & LEVI STRAUSS (PHILS.), INC.,
PETITIONERS, VS. CLINTON APPARELLE, INC., RESPONDENT.**

DECISION

TINGA, J.

Before us is a petition for review on certiorari^[1] under Rule 45 of the 1997 Rules of Civil Procedure filed by Levi Strauss & Co. (LS & Co.) and Levi Strauss (Philippines), Inc. (LSPI) assailing the Court of Appeals' *Decision*^[2] and *Resolution*^[3] respectively dated 21 December 1998 and 10 May 1999. The questioned *Decision* granted respondent's prayer for a writ of preliminary injunction in its *Petition*^[4] and set aside the trial court's orders dated 15 May 1998^[5] and 4 June 1998^[6] which respectively granted petitioners' prayer for the issuance of a temporary restraining order (TRO) and application for the issuance of a writ of preliminary injunction.

This case stemmed from the *Complaint*^[7] for Trademark Infringement, Injunction and Damages filed by petitioners LS & Co. and LSPI against respondent Clinton Apparelle, Inc.* (Clinton Aparente) together with an alternative defendant, Olympian Garments, Inc. (Olympian Garments), before the Regional Trial Court of Quezon City, Branch 90.^[8] The *Complaint* was docketed as Civil Case No. Q-98-34252, entitled "Levi Strauss & Co. and Levi Strauss (Phils.), Inc. v. Clinton Apparelle, Inc. and/or Olympian Garments, Inc."

The *Complaint* alleged that LS & Co., a foreign corporation duly organized and existing under the laws of the State of Delaware, U.S.A., and engaged in the apparel business, is the owner by prior adoption and use since 1986 of the internationally famous "Dockers and Design" trademark. This ownership is evidenced by its valid and existing registrations in various member countries of the Paris Convention. In the Philippines, it has a Certificate of Registration No. 46619 in the Principal Register for use of said trademark on pants, shirts, blouses, skirts, shorts, sweatshirts and jackets under Class 25.^[9]

The "Dockers and Design" trademark was first used in the Philippines in or about May 1988, by LSPI, a domestic corporation engaged in the manufacture, sale and distribution of various products bearing trademarks owned by LS & Co. To date, LSPI continues to manufacture and sell Dockers Pants with the "Dockers and Design" trademark.^[10]

LS & Co. and LSPI further alleged that they discovered the presence in the local market of jeans under the brand name "Paddocks" using a device which is substantially, if not exactly, similar to the "Dockers and Design" trademark owned by and registered in the name of LS & Co., without its consent. Based on their

information and belief, they added, Clinton Apparelle manufactured and continues to manufacture such "Paddocks" jeans and other apparel.

However, since LS & Co. and LSPI are unsure if both, or just one of impleaded defendants are behind the manufacture and sale of the "Paddocks" jeans complained of, they brought this suit under Section 13, Rule 3^[11] of the 1997 Rules of Civil Procedure.^[12]

The *Complaint* contained a prayer that reads as follows:

1. That upon the filing of this complaint, a temporary restraining order be immediately issued restraining defendants, their officers, employees, agents, representatives, dealers, retailers or assigns from committing the acts herein complained of, and, specifically, for the defendants, their officers, employees, agents, representatives, dealers and retailers or assigns, to cease and desist from manufacturing, distributing, selling, offering for sale, advertising, or otherwise using denims, jeans or pants with the design herein complained of as substantially, if not exactly similar, to plaintiffs' "Dockers and Design" trademark.
2. That after notice and hearing, and pending trial on the merits, a writ of preliminary injunction be issued enjoining defendants, their officers, employees, agents, dealers, retailers, or assigns from manufacturing, distributing, selling, offering for sale, advertising, jeans the design herein complained of as substantially, if not exactly similar, to plaintiffs' "Dockers and Design" trademark.
3. That after trial on the merits, judgment be rendered as follows:
 - a. Affirming and making permanent the writ of preliminary injunction;
 - b. Ordering that all infringing jeans in the possession of either or both defendants as the evidence may warrant, their officers, employees, agents, retailers, dealers or assigns, be delivered to the Honorable Court of plaintiffs, and be accordingly destroyed;^[13]

Acting on the prayer for the issuance of a TRO, the trial court issued an *Order*^[14] setting it for hearing on 5 May 1998. On said date, as respondent failed to appear despite notice and the other defendant, Olympian Garments, had yet to be notified, the hearing was re-scheduled on 14 May 1998.^[15]

On 14 May 1998, neither Clinton Apparelle nor Olympian Garments appeared. Clinton Apparelle claimed that it was not notified of such hearing. Only Olympian Garments allegedly had been issued with summons. Despite the absence of the defendants, the hearing on the application for the issuance of a TRO continued.^[16]

The following day, the trial court issued an *Order*^[17] granting the TRO applied for, the pertinent portions of which state:

... Considering the absence of counsel/s for the defendant/s during the summary hearing scheduled on May 5, 1998 and also during the re-scheduled summary hearing held on May 14, 1998 set for the purpose of determining whether or not a Temporary Restraining Order shall be issued, this Court allowed the counsel for the plaintiffs to present on May 14, 1998 their arguments/evidences in support of their application. After hearing the arguments presented by the counsel for the plaintiffs during the summary hearing, this Court is of the considered and humble view that grave injustice and irreparable injury to the plaintiffs would arise before the matter of whether or not the application for the issuance of a Writ of Preliminary Injunction can be heard, and that, in the interest of justice, and in the meantime, a Temporary Restraining Order be issued.

WHEREFORE, let this Temporary Restraining Order be issued restraining the defendants, their officers, employees, agents, representatives, dealers, retailers or assigns from committing the acts complained of in the verified Complaint, and specifically, for the defendants, their officers, employees, agents, representatives, dealers and retailers or assigns, to cease and desist from manufacturing, distributing, selling, offering for sale, advertising or otherwise using denims, jeans or pants with the design complained of in the verified Complaint as substantially, if not exactly similar, to plaintiffs' "Dockers and Design" trademark; until after the application/prayer for the issuance of a Writ of Preliminary Injunction is heard/resolved, or until further orders from this Court.

The hearing on the application for the issuance of a Writ of Preliminary Injunction as embodied in the verified Complaint is set on May 26, 1998 (Tuesday) at 2:00 P.M. which setting is intransferable in character considering that the lifetime of this Temporary Restraining Order is twenty (20) days from date hereof.^[18]

On 4 June 1998, the trial court issued another *Order*^[19] granting the writ of preliminary injunction, to wit:

ORDER

This resolves the plaintiffs' application or prayer for the issuance of a writ of preliminary injunction as embodied in the verified complaint in this case. Parenthetically, this Court earlier issued a temporary restraining order. (see Order dated May 15, 1998; see also Order dated May 26, 1998)

After a careful perusal of the contents of the pleadings and documents on record insofar as they are pertinent to the issue under consideration, this Court finds that at this point in time, the plaintiffs appear to be entitled to the relief prayed for and this Court is of the considered belief and humble view that, without necessarily delving on the merits, the paramount interest of justice will be better served if the status quo shall be maintained and that an injunction bond of P2,500,000.00 appears to be in order. (see Sections 3 and 4, Rule 58, 1997 Rules of Civil Procedure)

IN VIEW OF THE FOREGOING, the plaintiffs' prayer for the issuance of a writ of preliminary injunction is GRANTED. Accordingly, upon the plaintiffs' filing, within ten (10) days from their receipt hereof, an injunction bond of P2,500,000.00 executed to the defendants to the effect that the plaintiffs will pay all damages the defendants may sustain by reason of this injunction in case the Court should finally decide that the plaintiffs are not entitled thereto, let a writ of preliminary injunction issue enjoining or restraining the commission of the acts complained of in the verified Complaint in this case, and specifically, for the defendants, their officers, employees, agents, representatives, dealers and retailers or assigns or persons acting in their behalf to cease and desist from manufacturing, distributing, selling, offering for sale, advertising, or otherwise using, denims, jeans or pants with the design complained of in the verified Complaint in this case, which is substantially, if not exactly, similar to plaintiffs' "DOCKERS and DESIGN" trademark or logo as covered by the Bureau of Patents, Trademarks and Technology Transfer Certificate of Registration No. 46619, until after this case shall have been decided on the merits and/or until further orders from this Court.^[20]

The evidence considered by the trial court in granting injunctive relief were as follows: (1) a certified true copy of the certificate of trademark registration for "Dockers and Design"; (2) a pair of DOCKERS pants bearing the "Dockers and Design" trademark; (3) a pair of "Paddocks" pants bearing respondent's assailed logo; (4) the Trends MBL Survey Report purportedly proving that there was confusing similarity between two marks; (5) the affidavit of one Bernabe Alajar which recounted petitioners' prior adoption, use and registration of the "Dockers and Design" trademark; and (6) the affidavit of one Mercedes Abad of Trends MBL, Inc. which detailed the methodology and procedure used in their survey and the results thereof.^[21]

Clinton Apparelle thereafter filed a *Motion to Dismiss*^[22] and a *Motion for Reconsideration*^[23] of the *Order* granting the writ of preliminary injunction.

Meantime, the trial court issued an *Order*^[24] approving the bond filed by petitioners.

On 22 June 1998, the trial court required^[25] the parties to file their "respective citation of authorities/ jurisprudence/Supreme Court decisions" on whether or not the trial court may issue the writ of preliminary injunction pending the resolution of the *Motion for Reconsideration* and the *Motion to Dismiss* filed by respondent.

On 2 October 1998, the trial court denied Clinton Apparelle's *Motion to Dismiss* and *Motion for Reconsideration* in an *Omnibus Order*,^[26] the pertinent portions of which provide:

After carefully going over the contents of the pleadings in relation to pertinent portions of the records, this Court is of the considered and humble view that:

On the first motion, the arguments raised in the plaintiffs' aforecited Consolidated Opposition appears to be meritorious. Be that as it may, this Court would like to emphasize, among other things, that the

complaint states a cause of action as provided under paragraphs 1 to 18 thereof.

On the second motion, the arguments raised in the plaintiffs' aforecited Consolidated Opposition likewise appear to be impressed with merit. Besides, there appears to be no strong and cogent reason to reconsider and set aside this Court's Order dated June 4, 1998 as it has been shown so far that the trademark or logo of defendants is substantially, if not exactly, similar to plaintiffs' "DOCKERS and DESIGN" trademark or logo as covered by BPTTT Certificate of Registration No. 46619 even as the BPTTT Certificate of Registration No. 49579 of Clinton Apparelle, Inc. is only for the mark or word "PADDOCKS" (see Records, p. 377) In any event, this Court had issued an Order dated June 18, 1998 for the issuance of the writ of preliminary injunction after the plaintiffs filed the required bond of P2,500,000.00.

IN VIEW OF THE FOREGOING, the aforecited Motion To Dismiss and Motion For Reconsideration are both DENIED for lack of merit, and accordingly, this Court's Order dated June 18, 1998 for the issuance of the writ of preliminary injunction is REITERATED so the writ of preliminary injunction could be implemented unless the implementation thereof is restrained by the Honorable Court of Appeals or Supreme Court.

The writ of preliminary injunction was thereafter issued on 8 October 1998.^[27]

Thus, Clinton Apparelle filed with the Court of Appeals a *Petition*^[28] for certiorari, prohibition and mandamus with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction, assailing the orders of the trial court dated 15 May 1998, 4 June 1998 and 2 October 1998.

On 20 October 1998, the Court of Appeals issued a *Resolution*^[29] requiring herein petitioners to file their comment on the *Petition* and at the same time issued the prayed-for temporary restraining order.

The appellate court rendered on 21 December 1998 its now assailed *Decision* granting Clinton Apparelle's petition. The Court of Appeals held that the trial court did not follow the procedure required by law for the issuance of a temporary restraining order as Clinton Apparelle was not duly notified of the date of the summary hearing for its issuance. Thus, the Court of Appeals ruled that the TRO had been improperly issued.^[30]

The Court of Appeals also held that the issuance of the writ of preliminary injunction is questionable. In its opinion, herein petitioners failed to sufficiently establish its material and substantial right to have the writ issued. Secondly, the Court of Appeals observed that the survey presented by petitioners to support their contentions was commissioned by petitioners. The Court of Appeals remarked that affidavits taken *ex-parte* are generally considered to be inferior to testimony given in open court. The appellate court also considered that the injury petitioners have suffered or are currently suffering may be compensated in terms of monetary consideration, if after trial, a final judgment shall be rendered in their favor.^[31]