530 Phil. 91

SECOND DIVISION

[G.R. NO. 119280, August 10, 2006]

UNILEVER PHILIPPINES (PRC), INC., PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND PROCTER AND GAMBLE PHILIPPINES, INC., RESPONDENTS.

D E C I S I O N

CORONA, J.:

In this petition for review under Rule 45 of the Rules of Court, petitioner assails the February 24, 1995 decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 35242 entitled *"Unilever Philippines (PRC), Inc. v. Honorable Fernando V. Gorospe, Jr. and Procter and Gamble Philippines, Inc. (P&GP)"* which affirmed the issuance by the court a quo of a writ of preliminary injunction against it. The writ enjoined petitioner from using and airing, until further orders of the court, certain television commercials for its laundry products claimed to be identical or similar to its "double tug" or "tac-tac" key visual.[2]

Petitioner alleges that the writ of preliminary injunction was issued by the trial court (and affirmed by the CA) without any evidence of private respondent's clear and unmistakable right to the writ. Petitioner further contends that the preliminary injunction issued against it already disposed of the main case without trial, thus denying petitioner of any opportunity to present evidence on its behalf.

The antecedents show that on August 24, 1994, private respondent Procter and Gamble Phils., Inc. filed a complaint for injunction with damages and a prayer for temporary restraining order and/or writ of preliminary injunction against petitioner Unilever, alleging that:

> 1.5. As early as 1982, a P&G subsidiary in Italy used a key visual in the advertisement of its laundry detergent and bleaching products. This key visual known as the "double-tug" or "tac-tac" demonstration shows the fabric being held by both hands and stretched sideways.
>
> 1.6. The "tac-tac" was conceptualized for P&G by the advertising agency Milano and Gray of Italy in 1982. The "tac-tac" was used in the same year in an advertisement entitled "All aperto" to demonstrate the effect on fabrics of one of P&GP's products, a liquid bleach called "Ace."
>
> x x x x x x x x x
>
> 1.7. Since then, P&G has used the "tac-tac" key visual in the advertisement of its products. In fact, in 1986, in Italy, the "tac-tac" key visual was used in the television commercial for "Ace" entitled "Kite."

1.8. P&G has used the same distinctive "tac-tac" key visual to local consumers in the Philippines.

x x x x x x x x x

1.10. Substantially and materially imitating the aforesaid "tac-tac" key visual of P&GP and in blatant disregard of P&GP's intellectual property rights, Unilever on 24 July 1993 started airing a 60 second television commercial "TVC" of its "Breeze Powerwhite" laundry product called "Porky." The said TVC included a stretching visual presentation and sound effects almost [identical] or substantially similar to P&GP's "tac-tac" key visual.

x x x x x x x x x

1.14. On July 15, 1994, P&GP aired in the Philippines, the same "Kite" television advertisement it used in Italy in 1986, merely dubbing the Italian language with Filipino for the same produce "Ace" bleaching liquid which P&GP now markets in the Philippines.

1.15. On August 1, 1994, Unilever filed a Complaint with the Advertising Board of the Philippines to prevent P&GP from airing the "Kite" television advertisement.[3]

On August 26, 1994, Judge Gorospe issued an order granting a temporary restraining order and setting it for hearing on September 2, 1994 for Unilever to show cause why the writ of preliminary injunction should not issue. During the hearing on September 2, 1994, P&GP received Unilever's answer with opposition to preliminary injunction. P&GP filed its reply to Unilever's opposition to a preliminary injunction on September 6, 1994.

During the hearing on September 9, 1994, Judge Gorospe ordered petitioner to submit a sur-rejoinder. P&GP received Unilever's rejoinder to reply on September 13, 1994. The following day, on September 14, 1994, P&GP filed its sur-reply to Unilever's rejoinder.

On September 19, 1994, P&GP received a copy of the order dated September 16, 1994 ordering the issuance of a writ of preliminary injunction and fixing a bond of P100,000. On the same date, P&GP filed the required bond issued by Prudential Guarantee and Assurance, Inc.

On September 21, 1994, petitioner appealed to the CA assigning the following errors allegedly committed by the court *a quo*, to wit:

PUBLIC RESPONDENT HAD ACTED WITHOUT OR IN EXCESS OF JURISDICTION AND WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN ISSUING THE WRIT OF PRELIMINARY INJUNCTION IN VIOLATION OF THE RULES ON EVIDENCE AND PROCEDURE, PARTICULARLY OF SEC. 3 (a), RULE 58 OF THE REVISED RULES OF COURT AND OF THE PREVAILING JURISPRUDENCE.

PUBLIC RESPONDENT IN ISSUING THE VOID ORDER DATED SEPTEMBER

16, 1994, HAD, IN EFFECT, ALREADY PREJUDGED THE MERITS OF THE MAIN CASE.

PUBLIC RESPONDENT HAD ISSUED THE VOID ORDER ACCORDING RELIEF TO A NON-PARTY IN CIVIL CASE NO. 94-2434 WITHOUT JURISDICTION.

PUBLIC RESPONDENT IN ISSUING THE VOID ORDER HAD DEPRIVED PETITIONER OF SUBSTANTIVE AND PROCEDURAL DUE PROCESS; PUBLIC RESPONDENT HAD FORECLOSED PETITIONER'S RIGHT AND THE OPPORTUNITY TO CROSS-EXAMINE PROCTER'S WITNESSES ABAD AND HERBOSA.[4]

On February 24, 1995, the CA rendered its decision finding that Judge Gorospe did not act with grave abuse of discretion in issuing the disputed order. The petition for certiorari was thus dismissed for lack of merit.

After a careful perusal of the records, we agree with the CA and affirm its decision *in toto:*

Petitioner does not deny that the questioned TV advertisements are substantially similar to P&GP's "double tug" or "tac-tac" key visual. However, it submits that P&GP is not entitled to the relief demanded, which is to enjoin petitioner from airing said TV advertisements, for the reason that petitioner has Certificates of Copyright Registration for which advertisements while P&GP has none with respect to its "double-tug" or "tac-tac" key visual. In other words, it is petitioner's contention that P&GP is not entitled to any protection because it has not registered with the National Library the very TV commercials which it claims have been infringed by petitioner.

We disagree. Section 2 of PD 49 stipulates that the copyright for a work or intellectual creation subsists from the moment of its creation. Accordingly, the creator acquires copyright for his work right upon its creation.... Contrary to petitioner's contention, the intellectual creator's exercise and enjoyment of copyright for his work and the protection given by law to him is not contingent or dependent on any formality or registration. Therefore, taking the material allegations of paragraphs 1.3 to 1.5 of P&GP's verified Complaint in the context of PD 49, it cannot be seriously doubted that at least, for purposes of determining whether preliminary injunction should issue during the pendency of the case, P&GP is entitled to the injunctive relief prayed for in its Complaint.

The second ground is likewise not well-taken. As adverted to earlier, the provisional remedy of preliminary injunction will not issue unless it is shown in the verified complaint that plaintiff is probably entitled to the relief demanded, which consists in whole or in part in restraining the commission or continuance of the acts complained of. In view of such requirement, the court has to make a tentative determination if the right sought to be protected exists and whether the act against which the writ is to be directed is violative of such right. Certainly, the court's determination as to the propriety of issuing the writ cannot be taken as a