

FIRST DIVISION

[G.R. No. 112012. April 4, 2001]

**SOCIETE DES PRODUITS NESTLE, S.A. and NESTLE PHILIPPINES, INC.
*petitioners, vs. COURT OF APPEALS and CFC CORPORATION. respondents.***

DECISION

YNARES-SANTIAGO, J.:

This is a petition for review assailing the Decision of the Court of Appeals in CA-G.R. SP No. 24101,^[1] reversing and setting aside the decision of the Bureau of Patents, Trademarks and Technology Transfer (BPTTT),^[2] which denied private respondents application for registration of the trade-mark, FLAVOR MASTER.

On January 18, 1984, private respondent CFC Corporation filed with the BPTTT an application for the registration of the trademark FLAVOR MASTER for instant coffee, under Serial No. 52994. The application, as a matter of due course, was published in the July 18, 1988 issue of the BPTTTs Official Gazette.

Petitioner Societe Des Produits Nestle, S.A., a Swiss company registered under Swiss laws and domiciled in Switzerland, filed an unverified Notice of Opposition,^[3] claiming that the trademark of private respondents product is confusingly similar to its trademarks for coffee and coffee extracts, to wit: MASTER ROAST and MASTER BLEND.

Likewise, a verified Notice of Opposition was filed by Nestle Philippines, Inc., a Philippine corporation and a licensee of Societe Des Produits Nestle S.A., against CFCs application for registration of the trademark FLAVOR MASTER.^[4] Nestle claimed that the use, if any, by CFC of the trademark FLAVOR MASTER and its registration would likely cause confusion in the trade; or deceive purchasers and would falsely suggest to the purchasing public a connection in the business of Nestle, as the dominant word present in the three (3) trademarks is MASTER; or that the goods of CFC might be mistaken as having originated from the latter.

In answer to the two oppositions, CFC argued that its trademark, FLAVOR MASTER, is not confusingly similar with the formers trademarks, MASTER ROAST and MASTER BLEND, alleging that, except for the word MASTER (which cannot be exclusively appropriated by any person for being a descriptive or generic name), the other words that are used respectively with said word in the three trademarks are very different from each other in meaning, spelling, pronunciation, and sound. CFC further argued that its trademark, FLAVOR MASTER, is clearly very different from any of Nestles alleged trademarks MASTER ROAST and MASTER BLEND, especially when the marks are viewed in their entirety, by considering their pictorial representations, color schemes and the letters of their respective labels.

In its Decision No. 90-47 dated December 27, 1990, the BPTTT denied CFCs application for registration.^[5] CFC elevated the matter to the Court of Appeals, where it was docketed as CA-G.R. SP No. 24101.

The Court of Appeals defined the issue thus: Does appellant CFCs trade dress bear a striking resemblance with appellees trademarks as to create in the purchasing publics mind the mistaken impression

that both coffee products come from one and the same source?

As stated above, the Court of Appeals, in the assailed decision dated September 23, 1993, reversed Decision No. 90-47 of the BPTTT and ordered the Director of Patents to approve CFCs application. The Court of Appeals ruled:

Were We to take even a lackadaisical glance at the overall appearance of the contending marks, the physical discrepancies between appellant CFCs and appellees respective logos are so ostensible that the casual purchaser cannot likely mistake one for the other. Appellant CFCs label (Exhibit 4) is predominantly a blend of dark and lighter shade of orange where the words FLAVOR MASTER, FLAVOR appearing on top of MASTER, shaded in mocha with thin white inner and outer sidings per letter and identically lettered except for the slightly protruding bottom curve of the letter S adjoining the bottom tip of the letter A in the word MASTER, are printed across the top of a simmering red coffee cup. Underneath FLAVOR MASTER appears Premium Instant Coffee printed in white, slim and slanted letters. Appellees MASTER ROAST label (Exhibit 7), however, is almost double the width of appellant CFCs. At the top is printed in brown color the word NESCAFE against a white backdrop. Occupying the center is a square-shaped configuration shaded with dark brown and picturing a heap of coffee beans, where the word MASTER is inscribed in the middle. MASTER in appellees label is printed in taller capital letters, with the letter M further capitalized. The letters are shaded with red and bounded with thin gold-colored inner and outer sidings. Just above the word MASTER is a red window like portrait of what appears to be a coffee shrub clad in gold. Below the MASTER appears the word ROAST impressed in smaller, white print. And further below are the inscriptions in white: A selection of prime Arabica and Robusta coffee. With regard to appellees MASTER BLEND label (Exhibit 6) of which only a xeroxed copy is submitted, the letters are bolder and taller as compared to appellant CFCs and the word MASTER appears on top of the word BLEND and below it are the words 100% pure instant coffee printed in small letters.

From the foregoing description, while the contending marks depict the same product, the glaring dissimilarities in their presentation far outweigh and dispel any aspect of similitude. To borrow the words of the Supreme Court in *American Cyanamid Co. v. Director of Patents* (76 SCRA 568), appellant CFCs and appellees labels are entirely different in size, background, colors, contents and pictorial arrangement; in short, the general appearances of the labels bearing the respective trademarks are so distinct from each other that appellees cannot assert that the dominant features, if any, of its trademarks were used or appropriated in appellant CFCs own. The distinctions are so well-defined so as to foreclose any probability or likelihood of confusion or deception on the part of the normally intelligent buyer when he or she encounters both coffee products at the grocery shelf. The answer therefore to the query is a clear-cut NO.^[6]

Petitioners are now before this Court on the following assignment of errors:

1. RESPONDENT COURT GRAVELY ERRED IN REVERSING AND SETTING ASIDE THE DECISION (NO. 90-47) OF THE DIRECTOR OF THE BUREAU OF PATENTS, TRADEMARKS AND TECHNOLOGY TRANSFER (BPTTT) DATED DECEMBER 27, 1990.
2. RESPONDENT COURT ERRED IN FINDING THAT APPELLANT CFCS TRADE DRESS IS BEYOND THE SCOPE OF THE PROSCRIPTION LAID DOWN BY JURISPRUDENCE AND THE TRADEMARK LAW.
3. RESPONDENT COURT ERRED IN HOLDING THAT THE TOTALITY RULE, RATHER THAN THE TEST OF DOMINANCY, APPLIES TO THE CASE.

4. RESPONDENT COURT ERRED IN INVOKING THE TOTALITY RULE APPLIED IN THE CASES OF BRISTOL MYERS V. DIRECTOR OF PATENTS, ET AL. (17 SCRA 128), MEAD JOHNSON & CO. V. NVJ VAN DORF LTD., (7 SCRA 768) AND AMERICAN CYANAMID CO. V. DIRECTOR OF PATENTS (76 SCRA 568).

The petition is impressed with merit.

A trademark has been generally defined as any word, name, symbol or device adopted and used by a manufacturer or merchant to identify his goods and distinguish them from those manufactured and sold by others.^[7]

A manufacturers trademark is entitled to protection. As Mr. Justice Frankfurter observed in the case of *Mishawaka Mfg. Co. v. Kresge Co.*:^[8]

The protection of trade-marks is the laws recognition of the psychological function of symbols. If it is true that we live by symbols, it is no less true that we purchase goods by them. A trade-mark is a merchandising short-cut which induces a purchaser to select what he wants, or what he has been led to believe he wants. The owner of a mark exploits this human propensity by making every effort to impregnate the atmosphere of the market with the drawing power of a congenial symbol. Whatever the means employed, the aim is the same --- to convey through the mark, in the minds of potential customers, the desirability of the commodity upon which it appears. Once this is attained, the trade-mark owner has something of value. If another poaches upon the commercial magnetism of the symbol he has created, the owner can obtain legal redress.

Section 4 (d) of Republic Act No. 166 or the Trademark Law, as amended, which was in force at the time, provides thus:

Registration of trade-marks, trade-names and service-marks on the principal register. - There is hereby established a register of trade-marks, trade-names and service marks which shall be known as the principal register. The owner of a trade-mark, trade-name or service-mark used to distinguish his goods, business or services from the goods, business or services of others shall have the right to register the same on the principal register, unless it:

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(d) Consists of or comprises a mark or trade-name which so resembles a mark or trade-name registered in the Philippines or a mark or trade-name previously used in the Philippines by another and not abandoned, as to be likely, when applied to or used in connection with the goods, business or services of the applicant, to cause confusion or mistake or to deceive purchasers;

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(Emphasis supplied)

The law prescribes a more stringent standard in that there should not only be confusing similarity but that it should not likely cause confusion or mistake or deceive purchasers.

Hence, the question in this case is whether there is a likelihood that the trademark FLAVOR MASTER may cause confusion or mistake or may deceive purchasers that said product is the same or is manufactured by the same company. In other words, the issue is whether the trademark FLAVOR MASTER is a colorable imitation of the trademarks MASTER ROAST and MASTER BLEND.

Colorable imitation denotes such a close or ingenious imitation as to be calculated to deceive ordinary persons, or such a resemblance to the original as to deceive an ordinary purchaser giving such attention as a purchaser usually gives, as to cause him to purchase the one supposing it to be the other.^[9] In determining if colorable imitation exists, jurisprudence has developed two kinds of tests - the Dominancy Test and the Holistic Test.^[10] The test of dominancy focuses on the similarity of the prevalent features of the competing trademarks which might cause confusion or deception and thus constitute infringement. On the other side of the spectrum, the holistic test mandates that the entirety of the marks in question must be considered in determining confusing similarity.^[11]

In the case at bar, the Court of Appeals held that:

The determination of whether two trademarks are indeed confusingly similar must be taken from the viewpoint of the ordinary purchasers who are, in general, undiscerningly rash in buying the more common and less expensive household products like coffee, and are therefore less inclined to closely examine specific details of similarities and dissimilarities between competing products. The Supreme Court in *Del Monte Corporation v. CA*, 181 SCRA 410, held that:

The question is not whether the two articles are distinguishable by their labels when set side by side but whether the general confusion made by the article upon the eye of the casual purchaser who is unsuspecting and off his guard, is such as to likely result in his confounding it with the original. As observed in several cases, the general impression of the ordinary purchaser, buying under the normally prevalent conditions in trade and giving the attention such purchasers usually give in buying that class of goods, is the touchstone.

From this perspective, the test of similarity is to consider the two marks in their entirety, as they appear in the respective labels, in relation to the goods to which they are attached (*Bristol Myers Company v. Director of Patents, et al.*, 17 SCRA 128, citing *Mead Johnson & Co. v. NVJ Van Dorp, Ltd., et al.*, 7 SCRA 768). The mark must be considered as a whole and not as dissected. If the buyer is deceived, it is attributable to the marks as a totality, not usually to any part of it (*Del Monte Corp. v. CA, supra*), as what appellees would want it to be when they essentially argue that much of the confusion springs from appellant CFCs use of the word MASTER which appellees claim to be the dominant feature of their own trademarks that captivates the prospective consumers. Be it further emphasized that the discerning eye of the observer must focus not only on the predominant words but also on the other features appearing in both labels in order that he may draw his conclusion whether one is confusingly similar to the other (*Mead Johnson & Co. v. NVJ Van Dorp, Ltd., supra*).^[12]

The Court of Appeals applied some judicial precedents which are not on all fours with this case. It must be emphasized that in infringement or trademark cases in the Philippines, particularly in ascertaining whether one trademark is confusingly similar to or is a colorable imitation of another, no set rules can be deduced. Each case must be decided on its own merits.^[13] In *Esso Standard, Inc. v. Court of Appeals*,^[14] we ruled that the likelihood of confusion is a relative concept; to be determined only according to the particular, and sometimes peculiar, circumstances of each case. In trademark cases, even more than in any other litigation, precedent must be studied in light of the facts of the particular case. The wisdom of the likelihood of confusion test lies in its recognition that each trademark infringement case presents its own unique set of facts. Indeed, the complexities attendant to an accurate assessment of likelihood of confusion require that the entire panoply of elements constituting the relevant factual landscape be comprehensively examined.^[15]

The Court of Appeals application of the case of *Del Monte Corporation v. Court of Appeals*^[16] is, therefore, misplaced. In *Del Monte*, the issue was about the alleged similarity of Del Montes logo with that of

Sunshine Sauce Manufacturing Industries. Both corporations market the catsup product which is an inexpensive and common household item.

Since Del Monte alleged that Sunshines logo was confusingly similar to or was a colorable imitation of the formers logo, there was a need to go into the details of the two logos as well as the shapes of the labels or marks, the brands printed on the labels, the words or lettering on the labels or marks and the shapes and colors of the labels or marks. The same criteria, however, cannot be applied in the instant petition as the facts and circumstances herein are peculiarly different from those in the *Del Monte* case.

In the same manner, the Court of Appeals erred in applying the totality rule as defined in the cases of *Bristol Myers v. Director of Patents*;^[17] *Mead Johnson & Co. v. NVJ Van Dorf Ltd.*;^[18] and *American Cyanamid Co. v. Director of Patents*.^[19] The totality rule states that the test is not simply to take their words and compare the spelling and pronunciation of said words. In determining whether two trademarks are confusingly similar, the two marks in their entirety as they appear in the respective labels must be considered in relation to the goods to which they are attached; the discerning eye of the observer must focus not only on the predominant words but also on the other features appearing on both labels.^[20]

As this Court has often declared, each case must be studied according to the peculiar circumstances of each case. That is the reason why in trademark cases, jurisprudential precedents should be applied only to a case if they are specifically in point.

In the above cases cited by the Court of Appeals to justify the application of the totality or holistic test to this instant case, the factual circumstances are substantially different. In the *Bristol Myers* case, this Court held that although both BIOFERIN and BUFFERIN are primarily used for the relief of pains such as headaches and colds, and their names are practically the same in spelling and pronunciation, both labels have strikingly different backgrounds and surroundings. In addition, one is dispensable only upon doctors prescription, while the other may be purchased over-the-counter.

In the *Mead Johnson* case, the differences between ALACTA and ALASKA are glaring and striking to the eye. Also, ALACTA refers to Pharmaceutical Preparations which Supply Nutritional Needs, falling under Class 6 of the official classification of Medicines and Pharmaceutical Preparations to be used as prescribed by physicians. On the other hand, ALASKA refers to Foods and Ingredients of Foods falling under Class 47, and does not require medical prescription.

In the *American Cyanamid* case, the word SULMET is distinguishable from the word SULMETINE, as the former is derived from a combination of the syllables SUL which is derived from sulfa and MET from methyl, both of which are chemical compounds present in the article manufactured by the contending parties. This Court held that the addition of the syllable INE in respondents label is sufficient to distinguish respondents product or trademark from that of petitioner. Also, both products are for medicinal veterinary use and the buyer will be more wary of the nature of the product he is buying. In any case, both products are not identical as SULMETs label indicates that it is used in a drinking water solution while that of SULMETINE indicates that they are tablets.

It cannot also be said that the products in the above cases can be bought off the shelf except, perhaps, for ALASKA. The said products are not the usual common and inexpensive household items which an undiscerningly rash buyer would unthinkingly buy.

In the case at bar, other than the fact that both Nestles and CFCs products are inexpensive and common household items, the similarity ends there. What is being questioned here is the use by CFC of the trademark MASTER. In view of the difficulty of applying jurisprudential precedents to trademark cases due to the peculiarity of each case, judicial fora should not readily apply a certain test or standard just because of

seeming similarities. As this Court has pointed above, there could be more telling differences than similarities as to make a jurisprudential precedent inapplicable.

Nestle points out that the dominancy test should have been applied to determine whether there is a confusing similarity between CFCs FLAVOR MASTER and Nestles MASTER ROAST and MASTER BLEND.

We agree.

As the Court of Appeals itself has stated, [t]he determination of whether two trademarks are indeed confusingly similar must be taken from the viewpoint of the ordinary purchasers who are, in general, undiscerningly rash in buying the more common and less expensive household products like coffee, and are therefore less inclined to closely examine specific details of similarities and dissimilarities between competing products.^[21]

The basis for the Court of Appeals application of the totality or holistic test is the ordinary purchaser buying the product under normally prevalent conditions in trade and the attention such products normally elicit from said ordinary purchaser. An ordinary purchaser or buyer does not usually make such scrutiny nor does he usually have the time to do so. The average shopper is usually in a hurry and does not inspect every product on the shelf as if he were browsing in a library.^[22]

The Court of Appeals held that the test to be applied should be the totality or holistic test reasoning, since what is of paramount consideration is the ordinary purchaser who is, in general, undiscerningly rash in buying the more common and less expensive household products like coffee, and is therefore less inclined to closely examine specific details of similarities and dissimilarities between competing products.

This Court cannot agree with the above reasoning. If the ordinary purchaser is undiscerningly rash in buying such common and inexpensive household products as instant coffee, and would therefore be less inclined to closely examine specific details of similarities and dissimilarities between the two competing products, then it would be less likely for the ordinary purchaser to notice that CFCs trademark FLAVOR MASTER carries the colors orange and mocha while that of Nestles uses red and brown. The application of the totality or holistic test is improper since the ordinary purchaser would not be inclined to notice the specific features, similarities or dissimilarities, considering that the product is an inexpensive and common household item.

It must be emphasized that the products bearing the trademarks in question are inexpensive and common household items bought off the shelf by undiscerningly rash purchasers. As such, if the ordinary purchaser is undiscerningly rash, then he would not have the time nor the inclination to make a keen and perceptive examination of the physical discrepancies in the trademarks of the products in order to exercise his choice.

While this Court agrees with the Court of Appeals detailed enumeration of differences between the respective trademarks of the two coffee products, this Court cannot agree that totality test is the one applicable in this case. Rather, this Court believes that the dominancy test is more suitable to this case in light of its peculiar factual milieu.

Moreover, the totality or holistic test is contrary to the elementary postulate of the law on trademarks and unfair competition that confusing similarity is to be determined on the basis of visual, aural, connotative comparisons and overall impressions engendered by the marks in controversy as they are encountered in the realities of the marketplace.^[23] The totality or holistic test only relies on visual comparison between two trademarks whereas the dominancy test relies not only on the visual but also on the aural and connotative comparisons and overall impressions between the two trademarks.

For this reason, this Court agrees with the BPTTT when it applied the test of dominancy and held that:

From the evidence at hand, it is sufficiently established that the word MASTER is the dominant feature of opposers mark. The word MASTER is printed across the middle portion of the label in bold letters almost twice the size of the printed word ROAST. Further, the word MASTER has always been given emphasis in the TV and radio commercials and other advertisements made in promoting the product. This can be gleaned from the fact that Robert Jaworski and Atty. Ric Puno Jr., the personalities engaged to promote the product, are given the titles Master of the Game and Master of the Talk Show, respectively. In due time, because of these advertising schemes the mind of the buying public had come to learn to associate the word MASTER with the opposers goods.

x x x. It is the observation of this Office that much of the dominance which the word MASTER has acquired through Opposers advertising schemes is carried over when the same is incorporated into respondent-applicants trademark FLAVOR MASTER. Thus, when one looks at the label bearing the trademark FLAVOR MASTER (Exh. 4) ones attention is easily attracted to the word MASTER, rather than to the dissimilarities that exist. Therefore, the possibility of confusion as to the goods which bear the competing marks or as to the origins thereof is not farfetched. x x x.^[24]

In addition, the word MASTER is neither a generic nor a descriptive term. As such, said term can not be invalidated as a trademark and, therefore, may be legally protected. Generic terms^[25] are those which constitute the common descriptive name of an article or substance, or comprise the genus of which the particular product is a species, or are commonly used as the name or description of a kind of goods, or imply reference to every member of a genus and the exclusion of individuating characters, or refer to the basic nature of the wares or services provided rather than to the more idiosyncratic characteristics of a particular product, and are not legally protectable. On the other hand, a term is descriptive^[26] and therefore invalid as a trademark if, as understood in its normal and natural sense, it forthwith conveys the characteristics, functions, qualities or ingredients of a product to one who has never seen it and does not know what it is, or if it forthwith conveys an immediate idea of the ingredients, qualities or characteristics of the goods, or if it clearly denotes what goods or services are provided in such a way that the consumer does not have to exercise powers of perception or imagination.

Rather, the term MASTER is a suggestive term brought about by the advertising scheme of Nestle. Suggestive terms^[27] are those which, in the phraseology of one court, require imagination, thought and perception to reach a conclusion as to the nature of the goods. Such terms, which subtly connote something about the product, are eligible for protection in the absence of secondary meaning. While suggestive marks are capable of shedding some light upon certain characteristics of the goods or services in dispute, they nevertheless involve an element of incongruity, figurativeness, or imaginative effort on the part of the observer.

This is evident from the advertising scheme adopted by Nestle in promoting its coffee products. In this case, Nestle has, over time, promoted its products as coffee perfection worthy of masters like Robert Jaworski and Ric Puno Jr.

In associating its coffee products with the term MASTER and thereby impressing them with the attributes of said term, Nestle advertised its products thus:

Robert Jaworski. Living Legend. A true hard court hero. Fast on his feet. Sure in every shot he makes. A master strategist. In one word, unmatched.

MASTER ROAST. Equally unmatched. Rich and deeply satisfying. Made from a unique combination of the

best coffee beans - Arabica for superior taste and aroma, Robusta for strength and body. A masterpiece only NESCAFE, the worlds coffee masters, can create.

MASTER ROAST. Coffee perfection worthy of masters like Robert Jaworski.^[28]

In the art of conversation, Ric Puno Jr. is master. Witty. Well-informed. Confident.

In the art of coffee-making, nothing equals Master Roast, the coffee masterpiece from Nescafe, the worlds coffee masters. A unique combination of the best coffee beans - Arabica for superior taste and aroma, Robusta for strength and body. Truly distinctive and rich in flavor.

Master Roast. Coffee perfection worthy of masters like Ric Puno Jr.^[29]

The term MASTER, therefore, has acquired a certain connotation to mean the coffee products MASTER ROAST and MASTER BLEND produced by Nestle. As such, the use by CFC of the term MASTER in the trademark for its coffee product FLAVOR MASTER is likely to cause confusion or mistake or even to deceive the ordinary purchasers.

In closing, it may not be amiss to quote the case of *American Chicle Co. v. Topps Chewing Gum, Inc.*,^[30] to wit:

Why it should have chosen a mark that had long been employed by [plaintiff] and had become known to the trade instead of adopting some other means of identifying its goods is hard to see unless there was a deliberate purpose to obtain some advantage from the trade that [plaintiff] had built up. Indeed, it is generally true that, as soon as we see that a second comer in a market has, for no reason that he can assign, plagiarized the make-up of an earlier comer, we need no more; . . . [W]e feel bound to compel him to exercise his ingenuity in quarters further afield.

WHEREFORE, in view of the foregoing, the decision of the Court of Appeals in CA-G.R. SP No. 24101 is REVERSED and SET ASIDE and the decision of the Bureau of Patents, Trademarks and Technology Transfer in Inter Partes Cases Nos. 3200 and 3202 is REINSTATED.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Kapunan, and Pardo, JJ., concur.
Puno J., on official leave.

^[1] Penned by Associate Justice Ricardo J. Francisco and concurred in by Associate Justices Lourdes K. Tayao-Jaguros and Eubulo G. Verzola.

^[2] Penned by Director Ignacio S. Sapalo.

^[3] Inter Partes Case No. 3202.

^[4] Inter Partes Case No. 3200.

^[5] *Rollo*, pp. 35-48.

^[6] *Ibid.*, pp. 33-34.

^[7] *Bass Buster, Inc. v. Gapen Mfg. Co.*, 420 F. Supp. 144, 156, 191 USPQ 315, 325 (W.D. Mo. 1976).

^[8] 316 U.S. 203, 53 USPQ 323 [1942].

[\[9\]](#) *Etepha v. Director of Patents, et al.*, 16 SCRA 495, 497-498 [1966].

[\[10\]](#) *Ibid.*

[\[11\]](#) *Id.*

[\[12\]](#) *Rollo*, p. 32.

[\[13\]](#) *Emerald Garment Manufacturing Corporation v. Court of Appeals*, 251 SCRA 600 [1995].

[\[14\]](#) 116 SCRA 336 [1982] as cited in *Emerald Garment Manufacturing Corporation v. Court of Appeals*, *supra*.

[\[15\]](#) *Thompson Medical Co. v. Pfizer, Inc.*, 753 F. 2d 208, 225 USPQ 124 (2d Cir. 1985).

[\[16\]](#) 181 SCRA 410 [1990].

[\[17\]](#) 17 SCRA 128 [1966].

[\[18\]](#) 7 SCRA 768 [1963].

[\[19\]](#) 76 SCRA 568 [1977].

[\[20\]](#) *Mead Johnson & Co. v. NVJ Van Dorf Ltd.*, *supra*.

[\[21\]](#) *Rollo*, p. 32.

[\[22\]](#) *Del Monte Corporation v. Court of Appeals*, 181 SCRA 410 [1990].

[\[23\]](#) Federal Unfair Competition: Lanham Act 43(a), p. 3-76.

[\[24\]](#) *Rollo*, pp. 38-39.

[\[25\]](#) Federal Unfair Competition: Lanham Act 43(a), p. 3-22.1.

[\[26\]](#) *Id.*, p. 3-36.

[\[27\]](#) *Id.*, p. 3-54.

[\[28\]](#) Exhibit N.

[\[29\]](#) Exhibit O.

[\[30\]](#) 208 F. 2d 560, 562-63, 99 USPQ 362, 364-65 (2d Cir. 1953).