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Fujian Province Qiaodan Sports Goods Co., Ltd. v. Jinjiang City Yangxin Sports Goods Co., Ltd.

Citation: The Supreme People's Court's Civil Judgment No. Minsanzhongzi 9/2002

Date of judgment: September 16, 2003

Procedural history

The Fujian Province Qiaodan Sports Goods Co., Ltd. (Qiaodan) sued the Jinjiang City Yangxin Sports Goods Co., Ltd. (Yangxin) in the Fujian Province Higher People's Court for unfair competition. The court made the judgment, in the first instance, that Yangxin's act constituted unfair competition. Both parties appealed to the Supreme People's Court.

Issue

Establishment of trade dress particular to famous goods and judgment of similarity

Facts

Qiaodan, based in Jinjiang, Fujian Province, made sports shoes and marketed them nationwide, and gained relatively high business reputation from the relevant consumer groups. It had secured the design of the trade dress of the outer shoes case for the sports shoes through license.

Also located in Jinjiang, Yangxin made sports shoes and marketed them in regions such as Shanghai, Jiangsu, Zhejiang, Yunnan, Liaoning, Hubei, Jiangxi and Henan. The trade dress used on the shoe case was similar to that on the package of sports shoes made and marketed by Qiaodan in that the two were substantially red and white, and the cover of the shoes case was basically white with the Qiaodan mark printed thereon; in the center of the upper cover a ring of black frame and red background were visibly printed; wherein was a sketch of a player in white dribbling with a ball;

said ring pattern was printed along the four sides of the upper cover of the shoes case. The bottom of the shoe case was substantially white. The two differed only in that the player had the ball in his left hand inside the ring of the former design while the player in the latter held the ball in his right hand, and the substantial white color of the cover of the former shoes case was changed into light gray. Besides, on the bottom of the shoes case were printed the words, such as the respective names of the manufacture supervisor and/or the manufacturer, address and telephone numbers thereof, and the ring patterns.

The first-instance court decided that the shoes package for the Qiaodan sports shoes was a trade dress particular to the famous goods, and that the trade dress Yangxin used on its shoes package was similar to the one Qiaodan used on the shoes case for the products of the same class in overall layout, pattern design, color combination and global effect, which was sufficient to mislead the consumers. Accordingly, the court held that Yangxin's act constituted unfair competition against Qiaodan.

Yangxin appealed, arguing that Qiaodan's product did not constitute famous goods, and the first-instance decision was factually groundless.



The ring pattern in the shoes package for the Qiaodan sports shoes

Rule of law

Article 5 (2) of the Unfair Competition Law of the People's Republic of China *A business operator shall not harm his competitors in market by resorting to any of the following unfair means: ... (2) using for a commodity without authorization a name, package, or trade dress particular to another party's famous commodity, or using a name, package or trade dress similar to that of another party's famous commodity, thereby confusing the commodity with that famous commodity and leading the purchasers to mistake the former for the latter.*

Reasoning

While the appellant argued that the trade dress on the Qiaodan's shoes box had failed to meet the requirements for making and marketing famous goods, if a business knew or had the reason to know that another party had used the trade dress of some goods and still used one identical with or similar to that of said goods or that of the package of the goods, and the use was sufficient to mislead buyers, the people's court might establish the prior goods as famous and protect them as such under the law. Yangxin and Qiaodan were competitors in the same region, and Yangxin had the reason to know that Qiaodan had used the trade dress of shoes box earlier. Yangxin obviously had the intention to imitate Qiaodan's trade dress. Accordingly, in the present case, it might be determined that the products of sports shoes inside the shoes case Qiaodan used were famous goods, and the trade dress of the shoes case was one particular thereto.

As the overall observation of the two parties' shoes packages showed, there were ring patterns and the Chinese characters for "Qiaodan" printed on the two parties' shoes cases, which were the most conspicuous part, and most likely to draw attention from buyers, constituting the major part of the two parties' trade dresses of the shoes cases. Observed separately, the designs of the trade dresses of the two parties' shoes packages were different not significantly, but in a minor, unnoticeable way, which was not easy to be discerned by the average buyers paying average attention to them, and would not impede them from having the impression that the two trade dresses were similar globally. For example, the generic name of shoe products and the common components of an enterprise name showing the region, industry or form of organization would not have substantial impact on a buyer's perception of the source of the goods and businesses. As the above comparison and observations showed, it might be concluded, in the present case, that the two parties' trade dresses were similar to such an extent that they were sufficient to create confusion on the part of buyers.

Holding

The trade dress on Qiaodan's shoes-packages was one particular to the famous goods; Yangxin's act to imitate the trade dress particular to the famous goods constituted an act of unfair competition.