

INTELLECTUAL PROPERTY UPDATE

JANUARY 2014

In *Unilever Philippines, Inc. v. Michael Tan* (G.R. No. 179367, January 29, 2014), the Supreme Court held that courts cannot reverse the Secretary of Justice's findings except in clear cases of grave abuse of discretion. Such a case exists when substantial pieces of evidence are not considered in determining the existence of probable cause.

In *Unilever*, Unilever Philippines, Inc. one of the largest manufacturers and distributors of shampoo products in the Philippines, sought the assistance of the National Bureau of Investigation (NBI) after having received reports that a certain Michael Tan was in possession of and dealing in counterfeit shampoo products. Armed with search warrants, the NBI searched an office and warehouse allegedly owned by Michael Tan and his company Probest International Trading.

In the course of the search, the NBI seized hundreds of assorted sachets of counterfeit shampoo. Thereafter, the NBI filed a complaint against Michael Tan for violation

PROBABLE CAUSE FOR INDICTMENT FOR UNFAIR COMPETITION? A THOUSAND AND ONE SHAMPOO PRODUCTS

of Republic Act No. 8293 (Intellectual Property Code), specifically Section 168 (unfair competition), in relation with Section 170 thereof.

Dismissing the complaint on the ground of insufficient evidence, the State Prosecutor found that the evidence failed to show the respondent's actual and direct participation in the offense charged since there is no showing that he owns the warehouse where the alleged counterfeit Unilever products were found. The Secretary of Justice as well as the Court of Appeals affirmed this view.

The Supreme Court overturned the dismissal of the complaint and found that the pieces of evidence were sufficient to form a reasonable ground to believe that the crime of unfair competition was committed and that the respondent was its au-

thor.

First, the NBI search yielded more than a thousand assorted shampoo products. Second, the shampoo products were found neatly packed with a pile of other boxes. Third, these were found in Michael Tan's office and Probest's warehouse. Fourth, these had striking similarities with genuine Unilever shampoo products.

The Supreme Court also held that proof of the warehouse's ownership is not crucial to the finding of probable cause as it is not even an element of unfair competition. The Court noted that what is material to a finding of probable cause is the commission of acts constituting unfair competition, the presence of all its elements and the reasonable belief, based on evidence that respondent



Matthew Aaron D. Ong
(madong@fnslaw.com.ph)

Intellectual Property
Practice Group
Key Lawyers:

Philip Sigfrid A. Fortun
Roderick R.C. Salazar III
Bayani B. Loste
Walter Robin C. Go
Albert Lee G. Angeles
Asisclo A. Castañeda III
Vanessa J. Gumban
Lou Bryan R. Macabodbod
Alison t. Kaw
Matthew Aaron D. Ong

(Continued to next page.)

had committed it.

In this case, the large quantity of counterfeit Unilever shampoos recovered in the respondent's office and warehouse were more than enough to generate a reasonable belief that Michael Tan was engaged in unfair competition. *LF* © April 4, 2014

© 2014 Fortun Narvasa & Salazar. This update is for informational purpose only. If you need legal advice, kindly get in touch with your counsel. fnslaw@info.com.ph