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Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated February 10, 2021 which reads as follows:*

**“G.R. No. 201508 – (UNILEVER PHILIPPINES, INC., petitioner v. HON. LEILA M. DE LIMA, ET AL., respondents). –** This is a Petition for Review on *Certiorari*<sup>1</sup> under Rule 45 of the Rules of Court, as amended, assailing the Decision<sup>2</sup> dated January 13, 2012 and the Resolution<sup>3</sup> dated March 30, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 119961. The said issuances affirmed the Resolutions dated July 8, 2010<sup>4</sup> and April 1, 2011<sup>5</sup> issued by public respondent Hon. Leila M. De Lima, in her capacity as Secretary of the Department of Justice (DOJ), in I.S. No. 2006-118 which, in turn, upheld the Resolutions dated January 29, 2009<sup>6</sup> and May 4, 2009<sup>7</sup> of the DOJ’s Task Force on Anti-Intellectual Property Piracy ordering the dismissal of the complaint filed by petitioner Unilever Philippines, Inc. (petitioner) against private respondent Luz Fernandez (private respondent), for violation of Section 168 in relation to Section 170 of Republic Act (R.A.) No. 8293, otherwise known as the Intellectual Property Code of the Philippines.

**The Antecedents**

Petitioner is engaged in the manufacture, sale and distribution of personal care products including, but not limited to, soap and

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<sup>1</sup> *Rollo*, pp. 23-63.

<sup>2</sup> *Id.* at 68-75; penned by Associate Justice Amy C. Lazaro-Javier (now a Member of this Court) and concurred in by Associate Justices Remedios A. Salazar-Fernando and Sesinando E. Villon.

<sup>3</sup> *Id.* at 78.

<sup>4</sup> *Id.* at 323-324.

<sup>5</sup> *Id.* at 325-328.

<sup>6</sup> *Id.* at 208-211; rendered by Senior State Prosecutor Lilian Doris S. Alejo, recommended for approval by Assistant Chief State Prosecutor Pedrito L. Rances, and approved by Senior Assistant Chief State Prosecutor Severino H. Gana Jr.

<sup>7</sup> *Id.* at 212-213.



shampoo. It is the registered owner of the trademarks Vaseline,<sup>8</sup> Sunsilk,<sup>9</sup> Cream Silk<sup>10</sup> and Lux,<sup>11</sup> among other products.

In the course of its operations, petitioner caused the investigation of traders in Manila, particularly those who were allegedly selling counterfeit Unilever products. One of the subjects of petitioner's investigation was private respondent Luz Fernandez (private respondent), doing business under the name and style "LAF Toys Balloons."

Acting upon petitioner's Complaint-Affidavit<sup>12</sup> dated July 23, 2004, the National Bureau of Investigation (NBI) filed an Application for Search Warrant<sup>13</sup> with Branch 256 of the Regional Trial Court (RTC) of Muntinlupa City. Judge Alberto L. Lerma granted the said application on the same day and thereafter issued Search Warrant No. 04-013.<sup>14</sup>

Accordingly, a search was conducted by the NBI at private respondent's place of business in Batasan Road, Barangay Commonwealth, Quezon City, at around 5:30 in the afternoon of July 28, 2004. Based on the Receipt and Inventory of Property Seized,<sup>15</sup> the NBI operatives seized the following items:

1. One (1) sack of empty Lux Plastic Bottles[;]
2. Two (2) sacks of empty Sunsilk Bottles[;]
3. Two (2) sacks of empty Creamsilk Bottles[;]
4. Two (2) drums of white liquid allegedly used to manufacture of fake Unilever products[; and]
5. One (1) [photocopy] of Business Registration.

Thereafter, petitioner filed before the DOJ a Complaint-Affidavit<sup>16</sup> against respondent for violation of Section 168 in relation to Section 170 of R.A. No. 8293. Thus, the preliminary investigation of the case ensued.

In her Counter-Affidavit,<sup>17</sup> private respondent admitted that the items seized by the NBI belonged to her. However, she denied that she

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<sup>8</sup> Id. at 116-117.

<sup>9</sup> Id. at 118-124.

<sup>10</sup> Id. at 127-129.

<sup>11</sup> Id. at 130-133.

<sup>12</sup> Id. at 83-84.

<sup>13</sup> Id. at 80-82.

<sup>14</sup> Id. at 103-104.

<sup>15</sup> Id. at 106.

<sup>16</sup> Id. at 108-111.

<sup>17</sup> Id. at 144-145.

was engaged in the repacking and selling of counterfeit Unilever products. Private respondent claimed that she sold the empty bottles of Lux, Sunsilk, and Creamsilk to persons who need the same to be able to join Unilever promotions. As for the white liquid substances, private respondent averred that she sold the same to beauty salons and massage parlors as lotion.

On January 29, 2009, the DOJ Task Force on Anti-Intellectual Property Piracy issued a Resolution dismissing petitioner's complaint, ratiocinating as follows:

Section 168.3 (a) of R.A. 8293 penalizes "any person, who is selling his goods and gives them the general appearance of goods of another manufacturer or dealer, either as to the goods themselves or in the wrapping of the packages in which they are contained, or the devices or words thereon, or in any other feature of their appearance, which would be likely to influence purchasers to believe that the goods offered are those of a manufacturer or dealer, other than the actual manufacturer or dealer, or who otherwise clothes the goods with such appearance as shall deceive the public and defraud another of his legitimate trade, or any subsequent vendor of such goods or any agent of any vendor engaged in selling such goods with a like purpose."

In the instant case, what were seized from respondent are empty containers of UNILEVER products and a white liquid which was not even identified, i.e., was it shampoo or a lotion or liquid soap, etc. While we do not wish to tolerate the proliferation of fraudulent products, it is lamentable to note that the empty containers/bottles and the white liquid not found inside the said containers, do not per se support the allegation that respondent manufactures and sells fake UNILEVER products. Even the white liquid inside a drum seized from respondent was not identified as to whether the same is shampoo, conditioner, lotion or liquid soap or whatever. There was nobody presented to confirm the allegation that respondent sold fraudulent UNILEVER products, i.e., somebody who purchased the fraudulent product from respondent. Respondent cannot be held liable for violation of Section 168 of R.A. 8293 for possession of **empty containers** of UNILEVER products and an **unidentified liquid** in drums.

**IN VIEW THEREOF**, it is hereby recommended that the complaint against respondent Fernandez be **DISMISSED** for insufficiency of evidence.<sup>18</sup>

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<sup>18</sup> Id. at 209-210.

Petitioner's Motion for Reconsideration<sup>19</sup> of the foregoing Resolution was denied through a second Resolution<sup>20</sup> dated May 4, 2009.

Aggrieved, petitioner filed a Petition for Review<sup>21</sup> with public respondent DOJ Secretary. On July 8, 2010, the DOJ Secretary issued a Resolution<sup>22</sup> dismissing *motu proprio* the said Petition for Review. Petitioner interposed a Motion for Reconsideration<sup>23</sup> but the same was denied with finality by virtue of the DOJ Secretary's Resolution<sup>24</sup> dated April 1, 2011.

Undaunted, petitioner filed a Petition for *Certiorari* and *Mandamus*<sup>25</sup> before the CA, contending that the DOJ committed grave abuse of discretion amounting to lack or excess of jurisdiction when it did not find probable cause to indict private respondent for the crime of unfair competition.

On January 13, 2012, the CA rendered the herein assailed Decision holding that, indeed, there is no evidence that private respondent was passing off any of the seized items as Unilever products. Likewise, the appellate court ruled that the appreciation of evidence on the part of the DOJ is not a badge of grave abuse of discretion. Thus, the DOJ Secretary did not err when she affirmed the dismissal of petitioner's complaint.

Ultimately, the CA decreed:

ACCORDINGLY, the petition is DISMISSED. The Resolutions dated April 1, 2011 and July 8, 2010 in I.S. No. 2006-118, are AFFIRMED. No costs.

SO ORDERED.<sup>26</sup>

Petitioner's Motion for Reconsideration<sup>27</sup> was denied by the CA in the herein assailed Resolution<sup>28</sup> dated March 30, 2012.

Hence, the present recourse, petitioner ascribing to the CA the following errors:

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<sup>19</sup> Id. at 244-257.  
<sup>20</sup> Id. at 212-213.  
<sup>21</sup> Id. at 427-449.  
<sup>22</sup> Id. at 323-324.  
<sup>23</sup> Id. at 510-526.  
<sup>24</sup> Id. at 325-328.  
<sup>25</sup> Id. at 292-319.  
<sup>26</sup> Id. at 74.  
<sup>27</sup> Id. at 532-549.  
<sup>28</sup> Id. at 78.

## I.

THE PUBLIC RESPONDENT ACTED WITHOUT AND IN EXCESS OF THEIR JURISDICTION AND WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO A LACK OR EXCESS OF JURISDICTION IN FINDING THAT THERE IS NO PROBABLE CAUSE TO INDICT RESPONDENT LUZ FERNANDEZ FOR UNFAIR COMPETITION IN VIOLATION OF SECTION 168 IN RELATION TO SECTION 170 OF REPUBLIC ACT NO. 8293.

## II.

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO A LACK OR EXCESS OF JURISDICTION IN NOT RECOMMENDING THE FILING WITH THE PROPER COURT OF A CRIMINAL INFORMATION FOR UNFAIR COMPETITION AGAINST RESPONDENT LUZ FERNANDEZ.

## III.

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT UPHELD THE ASSAILED RESOLUTIONS DESPITE THE FACT THAT RESPONDENT FERNANDEZ FAILED TO PRESENT EVIDENCE TO SUBSTANTIATE HER ALLEGATIONS.

## IV.

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT DISREGARDED THE PRESUMPTION OF REGULARITY OF THE NBI AGENTS' PERFORMANCE OF THEIR DUTY ABSENT ANY PROOF THAT PETITIONER'S WITNESSES WERE IMPELLED BY ANY IMPROPER MOTIVE, OR WERE NOT PROPERLY PERFORMING THEIR DUTIES.<sup>29</sup>

### The Issue

The Court is tasked to determine whether the CA committed a reversible error when it ruled that public respondent DOJ Secretary did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in affirming the dismissal of petitioner's criminal complaint for unfair competition against private respondent.

### The Ruling of the Court

The petition is bereft of merit.

*Petitioner cannot raise questions of fact in a Rule 45 petition.*

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<sup>29</sup> Id. at 37.

Only questions of law, not questions of facts,<sup>30</sup> may be raised in a petition for review on *certiorari*<sup>31</sup> as the Court is not a trier of facts.<sup>32</sup> The Court will not entertain questions of fact as the factual findings of the appellate courts are final, binding, or conclusive on the parties and upon this Court when supported by substantial evidence.<sup>33</sup> For a question to be one of law, the question must not involve an examination of the probative value of the evidence presented by any of the litigants. The resolution of the issue must solely depend on what the law provides on the given set of circumstances. Once it is obvious that the issue invites a review of the evidence presented, the question posed is one of fact.<sup>34</sup> In *Cheesman v. Intermediate Appellate Court*,<sup>35</sup> We distinguished questions of fact and questions of law in the following manner:

As distinguished from a question of law—which exists “when the doubt or difference arises as to what the law is on a certain state of facts” — “there is a question of fact when the doubt or difference arises as to the truth or the falsehood of alleged facts;” or when the “query necessarily invites calibration of the whole evidence considering mainly the credibility of witnesses, existence and relevancy of specific surrounding circumstances, their relation; to each other and to the whole and the probabilities of the situation.”<sup>36</sup>

In raising questions of fact, the instant petition merits an outright dismissal. Nevertheless, the Court has examined the errors that petitioner ascribes to the CA. Even if we were to overlook petitioner’s procedural lapses, Our position remains unswayed. The CA did not commit any reversible error in rendering the herein assailed issuances.

*Courts cannot interfere with the determination of probable cause by the public prosecutor in the absence of grave abuse of discretion.*

During preliminary investigation, the prosecutor determines the existence of probable cause for the purpose of filing an information in

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<sup>30</sup> *Chu, Jr., et al. v. Caparas, et al.*, 709 Phil. 319, 324 (2013).

<sup>31</sup> *Pascual v. Burgos, et al.*, 776 Phil. 167, 169 (2016).

<sup>32</sup> *Gatan, et al. v. Vinarao, et al.*, 820 Phil. 257, 265 (2017).

<sup>33</sup> *Cu v. Ventura*, G.R. No. 224567, September 26, 2018.

<sup>34</sup> *Heirs of Teresita Villanueva v. Heirs of Petronila Syquia Mendoza, et al.*, 810 Phil. 172, 178 (2017).

<sup>35</sup> 271 Phil. 89 (1991).

<sup>36</sup> *Id.* at 92.

court or dismissing the criminal complaint.<sup>37</sup> Probable cause has been defined as the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted.<sup>38</sup> Being based merely on opinion and reasonable belief, it does not import absolute certainty.<sup>39</sup> What is merely required is “probability of guilt.”<sup>40</sup>

The determination of the existence of probable cause lies within the discretion of the prosecuting officers after conducting a preliminary investigation upon complaint of an offended party.<sup>41</sup> A public prosecutor’s determination of probable cause for the purpose of filing an information in court is essentially an executive function.<sup>42</sup> If upon evaluation of the evidence, the prosecutor finds sufficient basis to find probable cause, he or she shall then cause the filing of the information with the court.<sup>43</sup> Alternatively, a finding that there is no probable cause will naturally result in the dismissal of a criminal complaint.

The Court considers it a sound judicial policy to refrain from interfering in the conduct of preliminary investigations and to leave the DOJ a wide latitude of discretion in the determination of what constitutes sufficient evidence to establish probable cause for the prosecution of the supposed offenders.<sup>44</sup> In *Crespo v. Judge Mogul*,<sup>45</sup> We ratiocinated:

It is a cardinal principle that all criminal actions either commenced by complaint or by information shall be prosecuted under the direction and control of the fiscal. The institution of a criminal action depends upon the sound discretion of the fiscal. He may or may not file the complaint or information, follow or not follow that presented by the offended party, according to whether the evidence in his opinion, is sufficient or not to establish the guilt of the accused beyond reasonable doubt. The reason for placing the criminal prosecution under the direction and control of the fiscal is to prevent malicious or unfounded prosecution by private persons. It cannot be controlled by the complainant. Prosecuting officers under the power vested in them by law, not only have the authority but also the duty of prosecuting persons who, according

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<sup>37</sup> *Napoles v. Secretary De Lima, et al.*, 790 Phil. 161, 174-175 (2016).

<sup>38</sup> *Sales v. Adapon, et al.*, 796 Phil. 368, 379 (2016).

<sup>39</sup> *Chan v. Fomaran III, et al.*, 572 Phil. 118, 132 (2008).

<sup>40</sup> *Unilever Philippines, Inc. v. Tan*, 725 Phil. 486, 492 (2014).

<sup>41</sup> *Villanueva v. Secretary of Justice*, 512 Phil. 145, 159-160 (2005).

<sup>42</sup> *Rural Bank of Mabitac, Laguna, Inc. v. Canonon*, G.R. No. 196015, June 27, 2018.

<sup>43</sup> *Mendoza v. People, et al.*, 733 Phil. 603, 609 (2014).

<sup>44</sup> *Punzalan, et al. v. Plata, et al.*, 717 Phil. 21, 33 (2013).

<sup>45</sup> 235 Phil. 465 (1987).

to the evidence received from the complainant, are shown to be guilty of a crime committed within the jurisdiction of their office. They have equally the legal duty not to prosecute when after an investigation they become convinced that the evidence adduced is not sufficient to establish a *prima facie* case.<sup>46</sup>

Accordingly, in *Sec. De Lima, et al. v. Reyes*,<sup>47</sup> the Court held that:

The courts do not interfere with the prosecutor's conduct of a preliminary investigation. The prosecutor's determination of probable cause is solely within his or her discretion. Prosecutors are given a wide latitude of discretion to determine whether an information should be filed in court or whether the complaint should be dismissed.<sup>48</sup>

Absent grave abuse of discretion, the executive determination of probable cause cannot be interfered with by the courts.<sup>49</sup> This is consistent with the doctrine of separation of powers.<sup>50</sup>

In *First Women's Credit Corp. v. Hon. Perez*,<sup>51</sup> the Court declared:

x x x Consistent with this policy, courts do not reverse the Secretary of Justice's findings and conclusions on the matter of probable cause except in clear cases of grave abuse of discretion. Thus, petitioners will prevail only if they can show that the CA erred in not holding that public respondent's resolutions were tainted with grave abuse of discretion.<sup>52</sup>

In *PCGG Chairman Elma, et al. v. Jacobi, et al.*,<sup>53</sup> the Court elaborated further:

The necessary component of the Executive's power to faithfully execute the laws of the land is the State's self-preserving power to prosecute violators of its penal laws. This responsibility is primarily lodged with the DOJ, as the principal law agency of the government. The prosecutor has the discretionary authority to determine whether facts and circumstances exist meriting reasonable belief that a person has committed a crime. The question of whether or not to dismiss a criminal complaint is

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<sup>46</sup> Id. at 472.

<sup>47</sup> 776 Phil. 623 (2016).

<sup>48</sup> Id. at 647.

<sup>49</sup> *Napoles v. Secretary De Lima, et al.*, supra note 37 at 174-175.

<sup>50</sup> Id.

<sup>51</sup> 524 Phil. 305 (2006).

<sup>52</sup> Id. at 308-309.

<sup>53</sup> 689 Phil. 307 (2012).

necessarily dependent on the sound discretion of the investigating prosecutor and, ultimately, of the Secretary (or Undersecretary acting for the Secretary) of Justice. Who to charge with what crime or none at all is basically the prosecutor's call.

Accordingly, the Court has consistently adopted the policy of non-interference in the conduct of preliminary investigations, and to leave the investigating prosecutor sufficient latitude of discretion in the determination of what constitutes sufficient evidence to establish probable cause. Courts cannot order the prosecution of one against whom the prosecutor has not found a *prima facie* case; as a rule, courts, too, cannot substitute their own judgment for that of the Executive.

In fact, the prosecutor may err or may even abuse the discretion lodged in him by law. This error or abuse alone, however, does not render his act amenable to correction and annulment by the extraordinary remedy of *certiorari*. To justify judicial intrusion into what is fundamentally the domain of the Executive, the petitioner must clearly show that the prosecutor gravely abused his discretion amounting to lack or excess of jurisdiction in making his determination and in arriving at the conclusion he reached. This requires the petitioner to establish that the prosecutor exercised his power in an arbitrary and despotic manner by reason of passion or personal hostility; and it must be so patent and gross as to amount to an evasion or to a unilateral refusal to perform the duty enjoined or to act in contemplation of law, before judicial relief from a discretionary prosecutorial action may be obtained. x x x<sup>54</sup>

In *Aguilar v. Department of Justice, et al.*,<sup>55</sup> the Court laid down the guiding principles in determining whether the public prosecutor committed grave abuse of discretion in the exercise of his/her function.<sup>56</sup> Thus:

A public prosecutor's determination of probable cause – that is, one made for the purpose of filing an information in court – is essentially an executive function and, therefore, generally lies beyond the pale of judicial scrutiny. The exception to this rule is when such determination is tainted with grave abuse of discretion and perforce becomes correctible through the extraordinary writ of *certiorari*. It is fundamental that the concept of grave abuse of discretion transcends mere judgmental error as it properly pertains to a jurisdictional aberration. While defying precise definition, grave abuse of discretion generally refers to a “capricious or whimsical exercise of judgment as is equivalent to lack of

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<sup>54</sup> Id. at 340-342.

<sup>55</sup> 717 Phil. 789 (2013).

<sup>56</sup> *Atty. Hilbero v. Morales*, 803 Phil. 220 (2017).

jurisdiction.” Corollary, the abuse of discretion must be patent and gross so as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law. To note, the underlying principle behind the courts’ power to review a public prosecutor’s determination of probable cause is to ensure that the latter acts within the permissible bounds of his authority or does not gravely abuse the same. This manner of judicial review is a constitutionally-enshrined form of check and balance which underpins the very core of our system of government. As aptly edified in the recent case of *Alberto v. CA*:

It is well-settled that courts of law are precluded from disturbing the findings of public prosecutors and the DOJ on the existence or non-existence of probable cause for the purpose of filing criminal informations, unless such findings are tainted with grave abuse of discretion, amounting to lack or excess of jurisdiction. The rationale behind the general rule rests on the principle of separation of powers, dictating that the determination of probable cause for the purpose of indicting a suspect is properly an executive function; while the exception hinges on the limiting principle of checks and balances, whereby the judiciary, through a special civil action of *certiorari*, has been tasked by the present Constitution “to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.” (Emphasis supplied; citations omitted)

In the foregoing context, the Court observes that grave abuse of discretion taints a public prosecutor’s resolution if he arbitrarily disregards the jurisprudential parameters of probable cause. In particular, case law states that probable cause, for the purpose of filing a criminal information, exists when the facts are sufficient to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof. It does not mean “actual and positive cause” nor does it import absolute certainty. Rather, it is merely based on opinion and reasonable belief and, as such, does not require an inquiry into whether there is sufficient evidence to procure a conviction; it is enough that it is believed that the act or omission complained of constitutes the offense charged. As pronounced in *Reyes v. Pearlbank Securities, Inc.*:

A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed by the suspects. It need not be based on clear and convincing evidence of

guilt, not on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt. In determining probable cause, the average man weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. What is determined is whether there is sufficient ground to engender a well-founded belief that a crime has been committed, and that the accused is probably guilty thereof and should be held for trial. It does not require an inquiry as to whether there is sufficient evidence to secure a conviction. (*Emphasis supplied*)

Apropos thereto, for the public prosecutor to determine if there exists a well-founded belief that a crime has been committed, and that the suspect is probably guilty of the same, the elements of the crime charged should, in all reasonable likelihood, be present. This is based on the principle that every crime is defined by its elements, without which there should be, at the most, no criminal offense.<sup>57</sup>

Indeed, as exhaustively discussed in the foregoing jurisprudential authorities, judicial review of the resolution of the Secretary of Justice is limited to a determination of whether there has been a grave abuse of discretion amounting to lack or excess of jurisdiction.<sup>58</sup> In the same vein, by the nature of his or her office, a public prosecutor is under no compulsion to file a particular criminal information where he or she is not convinced that he or she has evidence to prop up the averments thereof, or that the evidence at hand points to a different conclusion.<sup>59</sup> After all, a preliminary investigation is also intended to protect the State from having to conduct useless and expensive trials.<sup>60</sup>

*The public prosecutor did not err in concluding that petitioner failed to establish probable cause against private respondent.*

In the instant case, private respondent was charged with unfair competition which is punishable under Section 168 in relation to

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<sup>57</sup> *Aguilar v. Department of Justice, et al.*, supra note 55 at 250-252.

<sup>58</sup> *Asetre, et al. v. Asetre, et al.*, 602 Phil. 840, 847-848 (2009).

<sup>59</sup> *Sps. Balangauan v. The Hon. CA, Special 19<sup>th</sup> Div., et al.*, 584 Phil. 183, 202 (2008).

<sup>60</sup> *Duterte v. Sandiganbayan*, 352 Phil. 557, 576 (1998).

Section 170 of R.A. No. 8293. In *Shang Properties Realty Corporation v. St. Francis Development Corporation*,<sup>61</sup> the Court summarized the salient provisions of Section 168 as follows:

To begin, Section 168.1 qualifies who is entitled to protection against unfair competition. It states that “[a]person who has identified in the mind of the public the goods he manufactures or deals in, his business or services from those of others, whether or not a registered mark is employed, has a property right in the goodwill of the said goods, business or services so identified, which will be protected in the same manner as other property rights.”

Section 168.2 proceeds to the core of the provision, describing forthwith who may be found guilty of and subject to an action of unfair competition – that is, “[a]ny person who shall employ deception or any other means contrary to good faith by which he shall pass off the goods manufactured by him or in which he deals, or his business, or services for those of the one having established such goodwill, or who shall commit any acts calculated to produce said result x x x.”

Without limiting its generality, Section 168.3 goes on to specify examples of acts which are considered as constitutive of unfair competition, viz.:

168.3. In particular, and without in any way limiting the scope of protection against unfair competition, the following shall be deemed guilty of unfair competition:

(a) Any person who is selling his goods and gives them the general appearance of goods of another manufacturer or dealer, either as to the goods themselves or in the wrapping of the packages in which they are contained, or the devices or words thereon, or in any other feature of their appearance, which would be likely to influence purchasers to believe that the goods offered are those of a manufacturer or dealer, other than the actual manufacturer or dealer, or who otherwise clothes the goods with such appearance as shall deceive the public and defraud another of his legitimate trade, or any subsequent vendor of such goods or any agent of any vendor engaged in selling such goods with a like purpose;

(b) Any person who by any artifice, or device, or who employs any other means calculated to induce the false belief that such person is offering the service of another who has identified such services in the mind of the public; or

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<sup>61</sup> 739 Phil. 244 (2014).

(c) Any person who shall make any false statement in the course of trade or who shall commit any other act contrary to good faith of a nature calculated to discredit the goods, business or services of another.

Finally, Section 168.4 dwells on a matter of procedure by stating that the “[t]he remedies provided by Sections 156, 157, and 161 shall apply *mutatis mutandis*.”

Concomitantly, Section 170 of R.A. No. 8293 provides:

SECTION 170. Penalties. Independent of the civil and administrative sanctions imposed by law, a criminal penalty of imprisonment from two (2) years to five (5) years and a fine ranging from Fifty thousand pesos (P50,000) to Two hundred thousand pesos (P200,000), shall be imposed on any person who is found guilty of committing any of the acts mentioned in Section 155, Section 168 and Subsection 169.1.

Unfair competition is defined as the passing off (or palming off) or attempting to pass off upon the public of the goods or business of one person as the goods or business of another with the end and probable effect of deceiving the public.<sup>62</sup> In *Alhambra Cigar, etc., Co. v. Mojica*,<sup>63</sup> the Court elaborated further:

x x x Unfair competition, as thus defined, is a legal wrong for which the courts afford a remedy. It is a tort and a fraud. The basic principle is that no one has a right to dress up his goods or otherwise represent them in such a manner as to deceive an intending purchaser and induce him to believe he is buying the goods of another. Protection against unfair competition is not intended to create or foster a monopoly and the court should always be careful not to interfere with free and fair competition, but should confine itself, rather, to preventing fraud and imposition resulting from some real resemblance in name or dress of goods. Nothing less than conduct tending to pass off one man's goods or business as that of another will constitute unfair competition. Actual or probable deception and confusion on the part of customers by reason of defendant's practices must always appear.<sup>64</sup>

Unfair competition is always a question of fact.<sup>65</sup> The “true test” of unfair competition is: whether the acts of the defendant are such as are calculated to deceive the ordinary buyer making his

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<sup>62</sup> *Co v. Spouses Yeung*, 742 Phil. 803, 808 (2014).

<sup>63</sup> 27 Phil. 267 (1914).

<sup>64</sup> *Id.* at 270-271.

<sup>65</sup> *Asia Pacific Resources International Holdings, Ltd. v. Paperone, Inc.*, G.R. Nos. 213365-66, December 10, 2018.

purchases under the ordinary conditions which prevail in the particular trade to which the controversy relates.<sup>66</sup> The essential elements of unfair competition are (1) confusing similarity in the general appearance of the goods; and (2) intent to deceive the public and defraud a competitor.<sup>67</sup> The confusing similarity may or may not result from similarity in the marks, but may result from other external factors in the packaging or presentation of the goods.<sup>68</sup> The intent to deceive and defraud may be inferred from the similarity of the appearance of the goods as offered for sale to the public.<sup>69</sup>

In the case at bar, petitioner, being the complainant, had the burden of establishing probable cause<sup>70</sup> to indict private respondent of the crime of unfair competition. However, a punctilious review of the records reveals that there is no evidence as would establish that private respondent attempted to sell or pass off to the general public the seized empty Unilever product bottles or the drums containing white liquid substance as petitioner's actual products. As the CA succinctly discussed in the assailed Decision:

We share the DOJ's assessment that the confiscated items during the search and seizure operation cannot, standing alone, prove the charge of Unfair Competition. They consist merely of empty plastic bottles and some white liquid substance in drums. No one was caught passing them off as Unilever products. Petitioner apparently believes this much, as well. Hence, it posits the affidavits of NBI agent Glenn Lacaran and one Rene Baltazar as capable of demonstrating probable cause.

The existence of these affidavits, however, does not by itself show that grave abuse of discretion attended the DOJ's assailed issuances. These affidavits after all were considered by the DOJ in resolving petitioner's complaint. This can be discerned from the statement in the Resolution dated April 1, 2011 that "[i]n this case, there was no purchase made by the law enforcers of the alleged fake products. There was only seizure of empty containers of Unilever products and a drum of unidentified white liquid. There were no photographs presented of the white liquid inside the containers of Unilever products (for) which (it) can be said that the respondent influences purchasers to believe that the goods were offered are those of Unilever's."<sup>71</sup>

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<sup>66</sup> *Coca-Cola Bottlers, Phils., Inc. (CCBPI) v. Gomez, et al.*, 591 Phil. 642, 656-657 (2008).

<sup>67</sup> *Superior Commercial Enterprises, Inc. v. Kunnan Enterprises Ltd., et al.*, 632 Phil. 546, 571 (2010).

<sup>68</sup> *San Miguel Pure Foods Company, Inc. v. Foodsphere, Inc.*, G.R. No. 217781, June 20, 2018.

<sup>69</sup> *Id.*

<sup>70</sup> *Cam v. Casimiro*, 672 Phil. 72, 82 (2015).

<sup>71</sup> *Rollo*, p. 72.

It bears stressing that nothing less than conduct tending to pass off one man's goods or business as that of another constitutes unfair competition.<sup>72</sup> There being an abject lack of evidence that private respondent committed the acts attributed against her by petitioner, the Court sustains the dismissal of the criminal complaint by the DOJ.

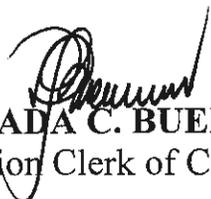
All told, the Court finds no reversible error on the part of the CA when it issued the assailed Decision and Resolution. Indeed, in *Ang-Abaya, et al. v. Ang*,<sup>73</sup> the Court had occasion to declare that:

x x x x After all, the purpose of preliminary investigation is not only to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent therein is probably guilty thereof and should be held for trial; it is just as well for the purpose of securing the innocent against hasty, malicious and oppressive prosecution, and to protect him from an open and public accusation of a crime, from the trouble, expense and anxiety of a public trial. More importantly, in the appraisal of the case presented to him for resolution, the duty of a prosecutor is more to do justice and less to prosecute.<sup>74</sup>

**WHEREFORE**, in the light of all the foregoing, the petition is **DENIED** for lack of merit.

**SO ORDERED.”**

**By authority of the Court:**

  
**LIBRADA C. BUENA**  
Division Clerk of Court  
6/5/17

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court  
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<sup>72</sup> *Mighty Corporation v. E. & J. Gallo Winery*, 478 Phil. 615, 627-628 (2004).

<sup>73</sup> 593 Phil. 530 (2008).

<sup>74</sup> Id. at 545.



LAW FIRM OF R.V. DOMINGO  
AND ASSOCIATES  
Counsel for Petitioner  
Executive Offices, 7<sup>th</sup> & 8<sup>th</sup> Floors  
The Valero Tower, 122 Valero Street  
Salcedo Village, 1227 Makati City

Court of Appeals (x)  
Manila  
(CA-G.R. SP No. 119961)

The Secretary (x)  
DEPARTMENT OF JUSTICE  
Padre Faura Street, Ermita  
1000 Manila

The Solicitor General  
134 Amorsolo Street, Legaspi Village  
1229 Makati City

PUBLIC ATTORNEY'S OFFICE  
Special and Appealed Cases Service  
Counsel for Resp. Luz Fernandez  
DOJ Agencies Building  
Diliman, 1101 Quezon City

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