The Court of Appeal of Beirut -

Ninth Chamber - Decision No

457/2016

Company International foodstuffs Co. v. Societe des Produits Nestle S.A.

President Joumana Khairallah and Counselors Mary Abou Mrad and Abir Safa - Decision No 457 issued on 12/4/2016 - Beirut

Imitation of Mark - Fraudulent Imitation - Similarity Between Trademarks - Deceit of Customers - Unfair Competition - Intention to Deceive Customers - Confusing Average Consumer - Protection of Trademark - Precedence of Use - Territorial Jurisdiction.

Background Facts

The Appellant is a non-Lebanese company based in UAE and dealing in the manufacture and exportation of many types of food products. The Appellant is the owner of commercial brands including the brand TIFFANY CRUNCFI N CREAM that is registered in a number of Arab countries including Lebanon where it was registered in 2011.

The Respondent is an international company specialized in the manufacture of food products and their derivatives and it owns a number of trademarks including the trademark CRUNCFI. Said trademark is used on a chocolate produced since 1938 that has acquired an international reputation which required its protection through registration in many countries including Lebanon in 1968.

Proceedings

The Appellant appealed the judgment issued by the judgment issued by the Third Chamber of the Court of First Instance in Beirut.

The Appellant requested the rejection of the Lawsuit for the lack of territorial jurisdiction, for the non-fulfillment of the conditions of unfair competition and on the ground that the Court has adjudged what was not claimed by the Plaintiff or more than what was claimed.

Submissions

Said facts were corroborated:

* by the trial;
* by all documents present in the case file.

Issues of Law

,4s per the Form

The appeal was submitted within the legal time limit, and fulfills all the formal conditions.

,4s per the Law

When the error attributed to a party and the damage caused to the other party occur inside the Lebanese territories, the Lebanese courts shall be considered as having territorial jurisdiction. In fact, based on article 102 of the Civil Procedure, the place of the Defendants' domicile, the place of occurrence of the wrongful act or of the act necessitating compensation determine the jurisdiction.

Regarding the adjudication by the Court of more than what was claimed, article 454 of the Civil Procedure Law provides that the Court should stick to the requests listed in the last paragraph of the memorandum and shall not decide upon any requests submitted otherwise.

On the request of unfair competition, the mark should first be protected and when said mark a is a non-distinctive one, it is worthy protection as long as it has been used for a long period of time and when it is of international fame.

However, the existence of unfair competition requires the fulfillment of certain conditions which are the exercise by the parties of the same or similar commercial activity; the commission of an illegal act of competition which is the violation of the trade usages and principles of integrity; and the existence of an actual or potential damage.

Disposition

First: to accept the appeal in form;

Second: to confirm Clause 1 of the appealed judgment, annul the remaining clauses and rule again the non-fulfillment of the conditions of unfair competition;

Third: to reject other additional or contrary motives and demands in accordance with the outcome reached by the Court; to reject all the augmenting and contradicting requests;

Fourth: to impose all costs on the Respondent;

Fifth: to return the guarantee.

Decision issued in Beirut on 12/04/2016

Source: SADER Rany, SADER Courts’ Series:

Intellectual Property in Lebanon, SADER Legal Piblishing,2017, P 174.