The Court of Appeal of Beirut - 10th Chamber - Decision No 428 /2013

Zuhair Ali Ghadar v. Societe des Produits Nestle S.A. and Moham- med Ziad Da'da'

Decision No 428 issued on 29/10/2015 - Beirut

Counterfeit- Imitation of Trademark- Unfair Competition - Intention to Deviate Clients - Consumer Protections.

Background Facts

The Plaintiff - Respondant, Societe des Produits Nestle S.A. is a Swiss based company specialized with the manufacture, export and trade of food. The company owns brands including Nescafe which is duly registered.

Quantity of counterfeit Nescafe goods were seized in the warehouse of the Defendant - Appellant. This latter purchased said products from the Defendant - Respondent, Da'da', who is a merchant.

Proceedings

The Single Criminal Judge in Beirut issued a judgment on 27/03/2013 and convicted the Defendants the misdemeanors provided for in articles 702 and 714 of the Penal Code, and of the misdemeanor provided for in article 114 of the Consumer Protection Law No. 759 dated 04/02/2005. He ordered as well to confiscate the seized goods.

The Defendant Zuhair Ali Ghadar appealed said judgment and requested the Court to declare him not guilty of the misdemeanor under in article 114 of Law No 659/2005 for lack of evidence and of the misdemeanors provided for in articles 702 and 714 of the Penal Code for lack of material and moral elements.

Submissions

Said facts were corroborated:

* by the merits of the present case;
* by the documents of the file.

Issues of Law

,4s per the Form

The four appeals were filed within the legal period and fulfill all procedural requirements.

,4s per the Law

Article 114 of Law No. 659/2005 provides for the punishment of anyone who proceeds to sell or offer for sale products bearing an infringing or counterfeit mark. The counterfeit of the goods was established by the match between the original and the counterfeit products that were offered for sale by the Appellant.

Moreover, being a trader in the field shows the experience of the Appellant and proves his ability to distinguish between original and counterfeit goods and to be aware of their normal price.

In addition, the elements of articles 702 and 714 of the Penal Code are materialized when a person misleads consumer by knowingly selling or putting on the market products bearing a counterfeited or imitated mark and deviates in bad faith others' customers in his favor by means of deceit or false claims.

Disposition

First: to accept the appeal in form and reject it in substance;

Second: to confirm the first instance judgment in respect of the Appellant Zuhair Ghaddar and impose upon him all the fees.

Decision issued in Beirut on 29/10/2015

Source: SADER Rany,

SADER Courts’ Series:

Intellectual Property in Lebanon,

SADER Legal Piblishing,2017, P 129.