



Republic of the Philippines
 Supreme Court
 Manila

FIRST DIVISION

PETRON CORPORATION and G.R. No. 243328
 PEOPLE OF THE PHILIPPINES,¹
 Petitioners,

Present:

- versus -

PERALTA, C.J., Chairperson,
 CAGUIOA,
 CARANDANG,
 ZALAMEDA, and
 GAERLAN, JJ.

WILLIAM YAO, SR. LUISA C.
 YAO, WILLIAM YAO, JR.,
 RICHARD C. YAO and ROGER C.
 YAO,

Promulgated:

MAR 18 2021

Respondents.

X-----X

DECISION

PERALTA, C.J.:

Before us is a petition for review on *certiorari* which seeks to annul and set aside the Decision² dated March 20, 2018 and the Resolution³ dated November 28, 2018 of the Court of Appeals (CA) issued in CA-G.R. SP No. 143249.

The antecedent facts as narrated by the CA are as follows:

Petitioner Petron Corporation is a corporation duly organized and existing under the Philippine law and one of the bulk suppliers of Liquefied Petroleum Gas (LPG) in the Philippines. It uses the trademark "GASUL" for its LPG products and the only entity in the Philippines authorized to

¹ Per Resolution dated June 26, 2019, the People of the Philippines is impleaded as co-petitioner; *rollo*, p. 1031-A.

² Penned by Justice Zenaida T. Galapate-Laguilles, concurred in by Justices Remedios A. Salazar-Fernando and Jane Aurora C. Lantion; *rollo*, Vol. I, pp. 95-109.

³ *Id.* at 112-114.

refill, use, sell and distribute Petron Gasul LPG containers and/or products.

It has come to the attention of Petron that some entities/establishments were engaged in the unauthorized refilling, sale and distribution of Petron-owned Gasul LPG cylinders. Among them was the Masagana Gas Corp (Masagana). Pursuant to said reports, Petron engaged the services of Bernabe Alajar of Able Research and Consulting Services, Inc., for the investigation of reported violations of the corporation's intellectual property rights and to gather evidence as may be necessary, among others things. Mr. Alajar then coordinated with the National Bureau of Investigation (NBI) for the investigation of Masagana's illegal activities. Thus, sometime in February 2003, the NBI agents, together with Mr. Alajar conducted a discreet surveillance operation on the Masagana refilling plant located in Trece Martires, Cavite.

On February 13 and February 27, 2003, NBI agent Riche N. Oblanca and Mr. Alajar conducted test-buys at the Masagana refilling plant in Trece Martires, Cavite wherein they personally witnessed Masagana employees in the act of refilling Petron Gasul LPG cylinders and selling it to them. Cash invoices were issued to them after they purchased the said LPG tanks.

During their surveillance on February 18, 2003, the NBI agents and Mr. Alajar followed a ten wheeler truck of Masagana carrying Petron Gasul LPG cylinders from its refilling plant in Trece Martirez, Cavite to its warehouse located in Makati City. Upon arrival at the Makati warehouse, they noticed that another four-wheeler truck containing Petron Gasul LPG cylinders was parked in front of said warehouse.

On February 27, 2003, the NBI agents and Mr. Alajar went back to Masagana's warehouse in Makati City where they saw at least one hundred twenty (120) Petron gasul LPG cylinders in the premises. They were then informed by a Masagana employee that the company is engaged in the sale and distribution of Petron Gasul LPG. On the same day, they also purchased another Petron Gasul LPG wherein Cash Invoice No. 981938 was issued evidencing the sale.


On April 3, 2003, NBI Agents Oblanca and Angelo Zarzoso separately applied for the issuance of Search Warrants before the RTC, Branch 17, Cavite City and RTC, Branch 56, Makati City against respondents for violations of Section 155 in relation to Section 170 of R.A. No. 8293.

x x x x

[A]cting on the Complaint Affidavit of Mr. Alajar, on March 8, 2010, the Task Force on Intellectual Property Piracy of the Department of Justice (DOJ) issued a Resolution and recommended that two (2) separate informations for violation of Section 168.3 in relation to Section 170 of RA 8293; x x x be filed against respondents.

Pursuant thereto, an Information for violation of Section 168 in relation to Section 170 of RA No. 8293 was filed against respondents with the trial court of Trece Martires City (TMC RTC) docketed as Criminal Case No. 239-10.

[A]n Information for violation of Section 168, in relation to Section 170 of R.A. No. 8293, was also filed on February 21, 2011 against



respondents with the trial court of Makati City (Makati RTC) docketed as Criminal Case No. 11-529. This is now the root cause of the controversy.

x x x x

On April 15, 2011, private respondents filed a motion to quash information before the Makati RTC arguing that: a) the trial court has no jurisdiction over the subject matter of the case; b) the facts charged do not constitute the offense of unfair competition; c) the accused are being indicted for the same/identical offense arising from the same act in violation of their rights to be protected against double jeopardy; d) the information is vague and ambiguous that violates that right of the accused to be informed of the nature and cause of the [accusation] against them; and e) factual defenses which are within the concept of mandatory judicial notice may be considered in the determination of the motion to quash even if the same was not alleged in the information.

After the Comment and Reply have been filed, the Makati RTC issued a Resolution dated June 23, 2011 denying the motion for lack of merit
x x x:

x x x x


In the same Resolution, the Makati RTC scheduled the case for the arraignment of the accused.

After several postponements, the accused were finally arraigned on July 24, 2014. All of them entered a plea of "NOT GUILTY."

Still Undeterred, private respondents filed an Urgent Motion to Dismiss on December 4, 2014, contended that the two separate informations filed before the trial court of Makati City and Trece Martires City for Unfair Competition under Section 168 in relation to Section 170 of RA 8293, contain the same set of facts, alleged identical acts, all producing one continuing offense, one single crime, which necessitate the filing of only one information. Since the Information for Unfair competition was filed first in Trece Martires City, the said court has already acquired exclusive jurisdiction over the same to the exclusion of all others. Thus, private respondents maintained that the filing of the Information for the same offense before the Makati RTC is not proper because the pending case before TMC RTC operates to exclude all other courts from taking cognizance of the same offense.

On February 16, 2015, taking into consideration the Comment of petitioner and Reply of private respondents, the Makati RTC issued an Order denying the Urgent Motion to Dismiss since the issue of lack of jurisdiction has already been resolved in the Resolution dated January 23, 2011 based on the Motion to Quash Information with Motion to Suspend Proceedings filed by the private respondents. The trial court also ruled that the Motion to Dismiss was a prohibited pleading at this point.

Undaunted, private respondents filed a Motion for Reconsideration reiterating that the issues raised in their Motion To Quash are not similar with the matters surrounding the issue raised in their Urgent Motion to Dismiss. While private respondents recognized the jurisdiction of the Makati RTC over the subject matter of Unfair Competition, the said offense, being a transitory or continuing crime, barred the court *a quo* from



prosecuting the present case because a similar case has been earlier lodged before the TMC RTC which effectively excluded all other courts.

After an exchange of pleadings, *i.e.*, petitioner's Comment dated March 16, 2015 and private respondents' Reply dated May 18, 2015, the Makati City RTC issued the first assailed Resolution dated May 29, 2015 granting the Motion for Reconsideration. The court *a quo* held that the crime of unfair competition is a transitory offense, hence, the court has no more jurisdiction to take cognizance of the criminal case since the TMC RTC already acquired jurisdiction over the same. Thus:

"WHEREFORE, premises considered, the motion is MERITORIOUS, the same is hereby GRANTED. Therefore, the Information filed on February 21, 2011 for Violation of Section 168 in relation to Section 170 of Republic Act No. 8293 (Unfair Competition) is hereby QUASHED for being transitory offense; and the court of Trece Martires had prior taken cognizance of the same, hence this court has no more jurisdiction to entertain the instant case.

Finally, the cash bonds put up by the five (5) accused are hereby ordered released to them.

SO ORDERED."

Petitioner Petron sought for reconsideration but was unsuccessful as shown by second assailed Order dated September 29, 2015.⁴ (Emphasis supplied)

Petron filed with the CA a petition for *certiorari* alleging grave abuse of discretion committed by the RTC of Makati City in issuing the Resolution dated May 29, 2015, and the Order dated September 29, 2015. After the submission of the parties' respective pleadings, the case was submitted for decision.

On March 20, 2018, the CA issued its assailed Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the instant petition for certiorari is DISMISSED. The Resolution dated May 29, 2015 and Order dated September 29, 2015, issued by the Regional Trial Court, Branch 149, Makati City in Criminal Case No. 11-529, quashing the Information dated September 21, 2010, are AFFIRMED.

SO ORDERED.⁵

The CA found, among others, that the RTC correctly quashed the Information for the crime of unfair competition filed against respondents on

⁴ *Id.* at 95-101.

⁵ *Id.* at 108-109.

the basis that it is a transitory or continuing crime and since the RTC of Trece Martires City had taken prior cognizance of the case, it is divested of jurisdiction to entertain the case. It also ruled that the crime of unfair competition committed in Trece Martires City, Cavite and in Makati City are motivated by a single criminal impulse, hence only one crime is committed, to wit:

Jurisprudence further tells Us that what is being punished in the crime of Unfair Competition is the act of deceiving or the calculated maneuver to deceive the ordinary buyer making its purchases under the ordinary conditions of the particular trade to which the controversy relates. In this case, the alleged selling of LPG steel cylinder purportedly containing the appearance of Petron Gasul LPG products is the means to carry out their primary intention to deceive the consuming public. The series of acts of selling is but mere instrument in allegedly violating Petron's intellectual property rights. On this score, it is of no moment how many, to whom or to where the purported fake Petron LPG cylinders were sold because there is only one crime committed, the act of deceiving the public into buying somebody's product by giving them the appearance of the goods of another manufacturer.

It must be emphasized that a continued (*continuous or continuing*) crime is defined as a single crime, consisting of a series of acts but all arising from one criminal resolution. Although there is a series of acts, there is only one crime committed; hence, only one penalty shall be imposed. In here, the acts of selling the subject LPG cylinders in Trece Martires and in Makati City have common denominator or single criminal impulse, i.e., to supposedly deceive the public into buying a product by giving them the appearance of the goods of another manufacturer, thus constitutive of one single offense. It must be noted that a person charged with a continuing or transitory crime may be validly tried in any municipality or territory where the offense was in part committed. Worth stressing is the fact that jurisdiction over the respondent was acquired first by the TMC RTC, hence the Makati RTC correctly dismissed the similar case lodged before it.⁶

Petron filed a motion for reconsideration which the CA denied in a Resolution dated November 28, 2018.

Hence, the instant petition for review on *certiorari* filed by Petron alleging that the CA erred in ruling that the crime of unfair competition is a continuing crime (or *delito continuado*), and in concluding that there is only one single crime of unfair competition committed in Makati City and Trece Martirez City, Cavite since there is only a single criminal impulse.⁷

Petron contends that the CA mischaracterized the crime of unfair competition as a continuing crime thereby erroneously concluding that supposedly there can only be a single crime of unfair competition committed regardless of the acts involved; that it had gone so far as to declare that

⁶ *Id.* at 106-107.

⁷ *Id.* at 54.

criminal acts of unfair competition committed in Trece Martires City, Cavite and those committed in Makati City arose from a common denominator or single criminal impulse despite that the two acts were committed 14 days apart and that the two cities are separated by a distance of 50 kilometers. Petron claims that there is a clear distinction between the concepts of continuing crime, which is a concept used to determine the criminal liability arising from a series of acts, and a transitory crime, which is a concept in a criminal procedure used to determine territorial jurisdiction for crimes, the elements of which occurred in different jurisdictions.

While the crime of unfair competition is a transitory crime, since its elements may occur in different jurisdictions, it is not a continuing crime since the distinct acts of selling counterfeit goods on different dates and in different locations do not arise from a single criminal impulse. The elements of fraud and deception in unfair competition only materialized during the act of selling of counterfeit goods, thus each sale of counterfeit goods constitutes an independent unlawful act of deceiving the public which is separate and distinct commission of the crime of unfair competition; and that the notion of single criminal impulse is inherently incongruent with the elements, nature and purpose of unfair competition provisions of Republic Act No. 8293. Thus, the respondents' alleged crime of unfair competition committed in Makati City is independent and separate from that which was committed in Trece Martires City, Cavite; and that the Makati RTC has jurisdiction to hear the unfair competition case lodged with it notwithstanding the unfair competition case earlier filed by petitioner against them at the RTC, Trece Martires City.

Petron also contends that there are several consumers who are deceived into believing that Petron is the source of Masagana's goods as a result of separate and distinct sales, hence each consumer is an offended party that can initiate separate and distinct complaints for the crime of unfair competition and the liability therefore cannot be limited to a single offense.

The issue before us is whether the CA correctly found no grave abuse of discretion committed by the Makati RTC in quashing the information for the crime of unfair competition filed against respondents on the ground of lack of jurisdiction.

Preliminarily, we address the procedural issue raised by the respondents in their Comment that the instant petition for review which ultimately seeks the reversal of the RTC's quashal of the information in Criminal Case No. 11-529 should not be given due course as it was only filed by Petron, a mere private complainant, and not by the People as represented by the Solicitor General.



There is no dispute that the Office of the Solicitor General (*OSG*) has the authority to represent the government in all criminal proceedings before the CA or the Supreme Court. In *People v. Piccio*,⁸ we held:

[I]t is well-settled that the authority to represent the State in appeals of criminal cases before the Court and the CA is vested solely in the OSG which is the law office of the Government whose specific powers and functions include that of representing the Republic and/or the people before any court in any action which affects the welfare of the people as the ends of justice may require. Explicitly, Section 35(1), Chapter 12, Title III, Book IV of the 1987 Administrative Code provides that:

SECTION 35. Powers and Functions. — The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers. x x x. It shall have the following specific powers and functions:

- (1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party.

Accordingly, jurisprudence holds that if there is a dismissal of a criminal case by the trial court or if there is an acquittal of the accused, it is only the OSG that may bring an appeal on the criminal aspect representing the People. The rationale therefor is rooted in the principle that the party affected by the dismissal of the criminal action is the People and not the petitioners who are mere complaining witnesses. For this reason, the People are therefore deemed as the real parties in interest in the criminal case and, therefore, only the OSG can represent them in criminal proceedings pending in the CA or in this Court. In view of the corollary principle that every action must be prosecuted or defended in the name of the real party-in-interest who stands to be benefited or injured by the judgment in the suit, or by the party entitled to the avails of the suit, an appeal of the criminal case not filed by the People as represented by the OSG is perforce dismissible. The private complainant or the offended party may, however, file an appeal without the intervention of the OSG but only insofar as the civil liability of the accused is concerned. He may also file a special civil action for *certiorari* even without the intervention of the OSG, but only to the end of preserving his interest in the civil aspect of the case.

Here, it is clear that petitioners did not file their appeal merely to preserve their interest in the civil aspect of the case. Rather, by seeking the reversal of the RTC's quashal of the information in Criminal Case No. 06-875 and thereby seeking that the said court be directed to set the case for arraignment and to proceed with trial, it is sufficiently clear that they sought the reinstatement of the criminal prosecution of respondents for libel. Being an obvious attempt to meddle into the criminal aspect of the case without the conformity of the OSG, their recourse, in view of the above discussed principles, must necessarily fail. To repeat, the right to prosecute criminal

cases pertains exclusively to the People, which is therefore the proper party to bring the appeal through the representation of the OSG.⁹

In the instant petition, Petron seeks to assail the CA decision which affirmed the RTC's quashal of the Information for unfair competition against respondents and prays for the RTC to proceed with the continuation of the trial of the case. Hence, it is only the OSG which may bring an appeal on the criminal aspect representing the People, and not merely by Petron. Notably, however, the OSG had filed its Manifestation and Motion¹⁰ dated February 11, 2019, adopting the petition for review filed by Petron and stating that the People of the Philippines is joining the present petition as co-petitioner. In effect, the OSG is giving its conformity to the filing of this petition.

Now on the merits of the case.

Respondents, as Directors and Officers of Masagana Gas Corporation, were charged on February 21, 2011 in the RTC of Makati City with the crime of unfair competition for their alleged acts of selling and offering for sale liquefied petroleum gas with the appearance of Petron in steel cylinders belonging to Petron, that such would likely influence purchasers to believe that the goods are those of Petron which deceived the public and defraud Petron of its legitimate trade. Earlier, on July 2, 2010, respondents were already charged with unfair competition for the same act committed in Cavite on February 13, 2003. Respondents filed with the RTC of Makati City a Motion to Quash Information which was denied, and later, a Motion to Dismiss, which was also denied. However, on motion for reconsideration, the RTC of Makati City quashed the information finding that the crime of unfair competition is a transitory offense, and since the RTC of Trece Martirez City, Cavite had taken prior cognizance of the case, it has no more jurisdiction to entertain the same. The CA found no grave abuse of discretion committed by the RTC in quashing the Information.

We find no reversible error committed by the CA.

Section 15(a), Rule 110 of the 2000 Revised Rules of Criminal Procedure provides:

(a) Subject to existing laws, the criminal action shall be instituted and tried in the court or municipality or territory where the offense was committed or where any of its essential ingredients occurred.

⁹ *Id.* at 621-623.

¹⁰ *Rollo*, Vol. II, pp. 1020-1024.

There are crimes which are called transitory or continuing offenses because some acts material and essential to the crime occur in one province and some in another, in which case, the rule is settled that the court of either province where any of the essential ingredients of the crime took place has jurisdiction to try the case. There are, however, crimes which although all the elements thereof for its consummation may have occurred in a single place, yet by reason of the very nature of the offense committed, the violation of the law is deemed to be continuing, and this is called continued crime.¹¹

In *Sony Computer Entertainment, Inc. v. Supergreen, Incorporated*,¹² which was cited by the RTC of Makati City to support the quashing of the Information for the crime of unfair competition filed against respondents, one of the issues raised therein is whether or not the offenses involved in the subject search warrants, i.e., unfair competition, are continuing crimes which may be validly tried in another jurisdiction where the offense was partially committed. We held that the crime of unfair competition is a transitory or continuing offense, to wit:

Respondent's imitation of the general appearance of petitioner's goods was done allegedly in Cavite. It sold the goods allegedly in Mandaluyong City, Metro Manila. The alleged acts would constitute a transitory or continuing offense. Thus, clearly, under Section 2 (b) of Rule 126, Section 168 of Rep. Act No. 8293 and Article 189 (1) of the Revised Penal Code, petitioner may apply for a search warrant in any court where any element of the alleged offense was committed, including any of the courts within the National Capital Region (Metro Manila).¹³

Petron, however, claims that in *Sony Computer*, the crime of unfair competition is characterized as a transitory crime only insofar as the transitory nature of the offense is concerned, i.e., the essential ingredients of the offense may be committed in different jurisdictions. We never held that the crime of unfair competition is a *delito continuado* or continued crime as to limit criminal liability to a single offense.

We are not persuaded.

The ruling in *Sony Computer* shows that the act of imitation done in Cavite and the selling made in Mandaluyong are not considered separate offenses of the crime of unfair competition but constitute an ingredient thereof; and that the violation of the law is deemed continuing.

Unfair competition is characterized as a continuing offense because of the very nature of the crime. Section 168 of Republic Act No. 8293, known

¹¹ *Parulan v. Director of Prisons*, 130 Phil 641, 644 (1968).

¹² 547 Phil 639 (2007).

¹³ *Id.* at. 645-646.

as the Intellectual Property Code of the Philippines, describes the acts constituting the crime of unfair competition, to wit:

SECTION 168. Unfair Competition, Rights, Regulation and Remedies. - 168.1. 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.

168.2. Any 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, shall be guilty of unfair competition, and shall be subject to an action therefor.

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;

From jurisprudence, unfair competition has been 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.¹⁴ Passing off (or palming off) takes place where the defendant, by imitative devices on the general appearance of the goods, misleads prospective purchasers into buying his merchandise under the impression that they are buying that of his competitors.¹⁵ Thus, the main element of unfair competition is passing off and one way of committing the crime is by sale.

In this case, the complaint affidavit alleged that the NBI agents together with Mr. Alajar conducted test-buys at the respondents' Masagana refilling plant in Trece Martires, Cavite on February 13 and 27, 2003 and they personally witnessed Masagana employees refilled the Petron Gasul LPG cylinders which were sold to them. During a surveillance on February 18, 2003, the NBI agents and Mr. Alajar observed a delivery truck marked with Masagana Gas Corp carrying Petron Gasul LPG cylinders coming from its

¹⁴ *Superior Commercial Enterprises, Inc. v. Kunnan Enterprises Ltd., et al*, 632 Phil 546, 571 (2010).

¹⁵ *Republic Gas Corp, et al. v. Petron Corp., et al.*, 711 Phil. 348, 361 (2013).

refilling plant in Trece Martirez City, Cavite, and they followed it as it made its way to a warehouse located in Makati City; and there, they noticed that another truck loaded with Petron Gasul LPG cylinders was parked in front of the said warehouse. On February 27, 2003, the NBI agents and Mr. Alajar went back to Masagana's warehouse in Makati City where they were informed by a Masagana employee that the company is engaged in the sale and distribution of Petron Gasul LPG so they purchased another Petron Gasul LPG thereat.

As can be seen from the complaint, the Petron owned *gasul* tanks were allegedly refilled by respondents at their Trece Martires City refilling plant and were sold therein. Thus, the crime of unfair competition was already consummated in Trece Martires City. However, respondents continued to pass off the Petron *gasul* tanks as their own by subsequently selling the same in Makati City, hence, there is a continuing violation of the law. Therefore, the sales made in Cavite and Makati City cannot be considered as separate offenses of unfair competition as they merely constitute the ingredients of the crime.

In transitory or continuing offenses in which some acts material and essential to the crime and requisite to its consummation occur in one province and some in another, the court of either province has jurisdiction to try the case. Here, both the RTC of Cavite and Makati City have jurisdiction to try the case for unfair competition filed against respondents. However, it has been held that in cases of concurrent jurisdiction, the court first acquiring jurisdiction excludes the other courts.¹⁶ Since it is the RTC of Trece Martires City, Cavite which had earlier acquired jurisdiction over the case of unfair competition filed against respondents, the RTC of Makati City correctly quashed the Information filed with it for lack of jurisdiction.

The crime of unfair competition is a continuing crime and cannot be considered as *delito continuado*. In *Santiago v. Hon. Justice Garchitorena*,¹⁷ we discussed the concept of *delito continuado* or continuous or continued crimes, to wit:

[I]t should be borne in mind that the concept of *delito continuado* has been a vexing problem in Criminal Law — difficult as it is to define and more difficult to apply.

Accordingly to Cuello Calon, for *delito continuado* to exist there should be a plurality of acts performed during a period of time; unity of penal provision violated; and unity of criminal intent or purpose, which means that two or more violations of the same penal provisions are united in one and same intent or resolution leading to the perpetration of the same criminal purpose or aim.

¹⁶ See *Lee v. Presiding Judge, MTC Legaspi City*, 229 Phil 405,414 (1986), citing *Laquian v. Baltazar*, 142 Phil. 531, 536 (1970).

¹⁷ 298-A Phil. 164 (1993).

Accordingly to Guevarra, in appearance, a *delito continuado* consists of several crimes but in reality there is only one crime in the mind of the perpetrator.

Padilla views such offense as consisting of a series of acts arising from one criminal intent or resolution.

Applying the concept of *delito continuado*, we treated as constituting only one offense the following cases:

(1) The theft of 13 cows belonging to two different owners committed by the accused at the same place and at the same period of time.

(2) The theft of six roosters belonging to two different owners from the same coop and at the same period of time.

(3) The theft of two roosters in the same place and on the same occasion.

(4) The illegal charging of fees for services rendered by a lawyer every time he collects veteran's benefits on behalf of a client, who agreed that the attorney's fees shall be paid out of said benefits. The collection of the legal fees were impelled by the same motive, that of collecting fees for services rendered, and all acts of collection were made under the same criminal impulse.

On the other hand, we declined to apply the concept to the following cases:

(1) Two estafa cases, one of which was committed during the period from January 19 to December 1955 and the other from January 1956 to July 1956. The said acts were committed on two different occasions.

(2) Several malversations committed in May, June and July, 1936, and falsifications to conceal said offenses committed in August and October 1936. The malversations and falsifications "were not the result of only one purpose or of only one resolution to embezzle and falsify x x x."

(3) Two estafa cases, one committed in December 1963 involving the failure of the collector to turn over the installments for a radio and the other in June 1964 involving the pocketing of the installments for a sewing machine.

(4) 75 estafa cases committed by the conversion by the agent of collections from customers of the employer made on different dates.

The concept of *delito continuado*, although an outcrop of the Spanish Penal Code, has been applied to crimes penalized under special laws, e.g. violation of R.A. No. 145 penalizing the charging of fees for services rendered following up claims for war veteran's benefits.

X X X X

In the case at bench, the original information charged petitioner with performing a single criminal act — that of her approving the application for legalization of aliens not qualified under the law to enjoy such privilege.



The original information also averred that the criminal act: (i) committed by petitioner was in violation of a law—Executive Order No. 324 dated April 13, 1988, (ii) caused an undue injury to one offended party, the Government, and (iii) was done on a single day, *i.e.*, on or about October 17, 1988.

The 32 Amended Informations reproduced *verbatim* the allegation of the original information, except that instead of the word “aliens” in the original information each amended information states the name of the individual whose stay was legalized.

x x x x

The 32 Amended Informations aver that the offenses were committed on the same period of time, *i.e.*, on or about October 17, 1988. The strong probability even exists that the approval of the application or the legalization of the stay of the 32 aliens was done by a single stroke of the pen, as when the approval was embodied in the same document.¹⁸ (Citations omitted and underscoring supplied)

Gleaned from the foregoing, for a crime to be considered as *delito continuado* (continued or continuous crime), there must be plurality of acts committed by the actor against different parties on the same occasion with the same criminal intent or purpose of violating the same penal provision. A *delito continuado* is a continuous, unlawful act or series of acts set on foot by a single impulse and operated by an unintermittent force, however long a time it may occupy.¹⁹ Here, respondents did not commit on the same occasion several acts of passing off their gas tanks as that of Petron or other parties. Rather, respondents only continued or repeated the alleged singular crime committed in Cavite and all the way up to Makati. Hence, unfair competition does not fall under the criterion of a *delito continuado*. And there are also no two separate crimes of unfair competition allegedly committed by respondents.

Petron’s contention that since several consumers had been deceived into believing that they were buying Petron owned *gasul* tanks so they can initiate separate and distinct complaints for the crime of unfair competition is not meritorious. It is only the owners of the trademark who can file a case for unfair competition for deceptive trade practices. In *US v. Kyburz*,²⁰ we held:

The rule which protects against unfair competition is primarily for the protection of the party against whom such competition is directed, and only incidentally for the protection of the public. In some of the cases language is used which would suggest that the public is under the protection of the court, but in fact the liability of the article to mislead the public is only an element of proof in the plaintiff’s case, the evidence showing that he has been or may be injured by the fraudulent acts of the defendant. The court therefore, does not interfere for the purpose of preventing the public

¹⁸ *Id.* at 174-178.

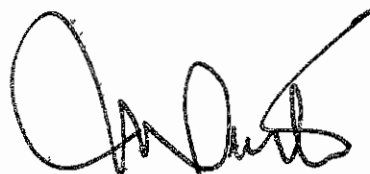
¹⁹ *People v. de Leon*, 608 Phil 701, 722 (2009).

²⁰ *Unites States v. Kyburz*, 28 Phil 475 (1914).

from being misled, except in so far as it is necessary to protect the owner of a business from its fraudulent invasion by others. If what is done tends to mislead the public, it naturally diverts customers from the complainant, to the injury of his business. The prohibition is upon so acting as to beguile the public, and thus mislead an intending purchaser into buying the goods of one person under the belief that he is buying those of a rival.²¹ (Citation omitted)

WHEREFORE, the petition for review on *certiorari* is **DENIED**. The Decision dated March 20, 2018 and the Resolution dated November 28, 2018 of the Court of Appeals issued in CA-G.R. SP No. 143249 are hereby **AFFIRMED**.

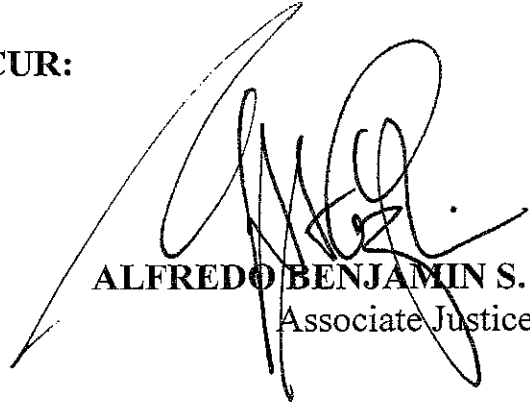
SO ORDERED.



DIOSDADO M. PERALTA
Chief Justice

²¹ *Id.* at 482.

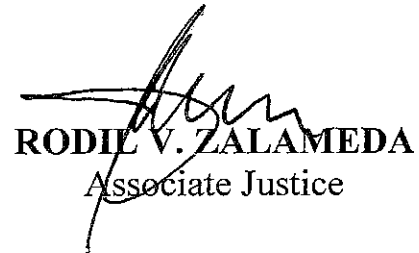
WE CONCUR:



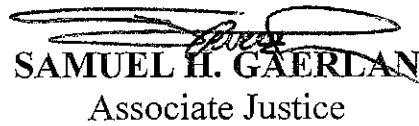
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



ROSMAR D. CARANDANG
Associate Justice



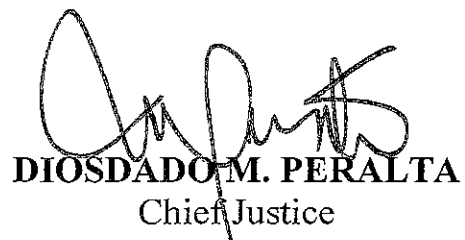
RODIL V. ZALAMEDA
Associate Justice



SAMUEL H. GAERLAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



DIOSDADO M. PERALTA
Chief Justice