

Supreme Court of the Kingdom of Thailand

S.C. 5082/2011

Public Prosecutor, et al. v. Thong Siam Engineering Company Limited, et al.

Court : Supreme Court

Case : Criminal

Date of Judgment : June 16, 2011

Plaintiff : Public Prosecutor of the Office of the Attorney General

Co-plaintiff : T. Kittiwattana Limited Partnership

Defendants : Thong Siam Engineering Company Limited (1st)
Chavalit Kijpalakorn (2nd)

Concept : Trademark Imitation

Statue : The Trademarks Act B.E. 2534 (1991) section 109

Panel of Justices

Somkuan Wichienwan, Aram Senamontri, Tanasit Nilkamhaeng

Case Background

The co-plaintiff is the owner of the registered trademark  which has been registered since September 14, 1981. The co-plaintiff's trademark is used in connection with pumps, washer pumps, and motor sprayers for insecticide. Tanong Company, a limited

company under Taiwanese law, is the owner of the trademark  which has been

registered since August 30, 1977. Tanong Company's trademark is used in connection with spraying machines and their components. The first defendant, a limited company of whom the second defendant is the authorized director, is an authorized distributor of Tanong Company's products. On November 25, 2003, the defendants had in possession for distribution 715 insecticide spraying machines. All of them were manufactured by Tanong Company. Some of the goods bore trademark of a diamond picture with no Chinese characters, whereas some bore a diamond picture with the word "TANONG" or "DIAMOND" written below. The police officer had forfeited such goods and charged the defendants of jointly having in possession for distribution goods bearing imitated trademark.

The defendants pleaded not guilty.

Procedural History

The Central Intellectual Property and International Trade Court dismissed the case.

The plaintiff and the co-plaintiff appealed to the Supreme Court.

The Intellectual Property and International Trade Division of the Supreme Court upheld the judgment of the lower court.

Issue

Did the forfeited goods bear the trademark which was the imitation of the co-plaintiff's trademark under section 109 of the Trademark Act B.E. 2534 (1991)?

Rationale

The forfeited insecticide spraying machines were manufactured by Tanong

Company. Its registered trademark  is composed of a picture of diamond, Chinese

characters meaning *diamond label* written below the diamond, and a Roman alphabet word "DIAMOND" written below the Chinese characters. The diamond picture is designed to have special dimension and sparks to be distinctive from other typical diamond pictures. The diamond picture is therefore a significant component of the trademark. Consequently, Tanong Company has the right to use the diamond picture  on the insecticide spraying machines.

Although the diamond picture is similar to the diamond picture  of the co-plaintiff's trademark, both parties have the rights to use their own lawfully registered trademarks. Thus, it cannot be held that the forfeited goods of the defendants bore a trademark which was an imitation of the co-plaintiff's trademark according to section 109 of the Trademark Act B.E. 2534 (1991). The appeal shall be dismissed.

Keywords trademark, imitation

Summarized and translated by Non Tuntapong

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