

**Supreme Court of the Kingdom of Thailand**

**S.C. 7202/2011**

**Perrusahaan Automobile Nasional SDN BHD v T – Tiger Part Co., Ltd.**

**Court** : Supreme Court  
**Kind of Case** : Civil Case  
**Date of Judgment** : 2011/02/16  
**Plaintiff** : Perrusahaan Automobile Nasional SDN BHD  
**Defendant** : T – Tiger Part Co., Ltd.  
**Area of Law** : Trademark  
**Statute** : Trademark Act B.E. 2534 (1991)  
**Panel of Justices** :

Prinya Deepadung – Aram Senamontri - Dhajaphand Prabhudhanitisarn

**Background**

Plaintiff was the holder of trademark “proton” for goods such as automobile, automobile parts, automobile device which was well known trademark. Defendant submitted trademark application of the word “proto” for goods in class 12 listed as brake lining, clutch lining, automobile clutch, hub, brake, chain, wheel ring, wire bar, ster for motorcycle. The plaintiff made an objection but Trademark Registrar dismissed the objection. The plaintiff appealed the order to Trademark Board. The Trademark Board affirmed. The plaintiff filed the case to the Central Intellectual Property and International Trade Court and requested the court to judge that the two trademarks were similar and the public might be confused or misled as to the owner or origin of goods and ordered the defendant to withdraw the application.

The defendant defended that the defendant’s trademark was not similar to the plaintiff’s trademark enough to confuse or misled the public because there were many differences and requested the court to dismiss the case.

**Issue**

Whether defendant’s trademark “proto” was similar to plaintiff’s trademark “proton” enough to confuse or mislead the public as to the owner or origin or not.

**Procedural History**

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

Plaintiff appealed to the Supreme Court.

The Intellectual Property and International Trade Division of the Supreme Court affirmed the judgment.

### **Analysis**

The comparison whether the two trademarks were so similar that the public might be confused or misled as to the owner or origin of the goods or not was not compared solely character or phase appearance by eye sight. But, it should be considered the whole picture of the two trademarks including tone, pronunciation, registered trademark and list of goods applied for registration, public who bought goods and good faith of trademark application. The essence was whether the public might be confused or misled as to the owner or origin of the goods in their similarity or not. When comparing trademark “proto” to trademark “proton”, it was clearly that trademark “proto” comprised of 5 Roman alphabets which were the same as plaintiff’s trademark for the first 5 alphabets merely added alphabet “n” at the end of the word. It could be counted that the two trademarks were similar for some stages. But, they were many differences.

Trademark “proto” and “proton” were registered by using inventing alphabets that had totally different character. Pronunciation were different because trademark “proto” might be called “pro-to’ whereas trademark “pro-ton” might be called “pro-ton”. Comparing the goods lists, the defendant’s application was in class 12 which were brake lining, clutch lining, automatic clutch, hub, brake, chain, wheel ring, wire bar and ster for motorcycle whereas plaintiff’s application was in class 12 which was automobile. It could be seen that even though they were also goods about vehicle but there were different in goods list. Defendant’s goods list were spare parts and devices of motorcycle which most of public buyer were motorcycle mechanic or decorator or motorcyclist who interested in fixing or decorating motorcycle. Other publics which were not in a group of users who directly used spare parts and devices of motorcycle even though motorcycle users who might use the said goods under this trademark did not buy spare parts and devices of motorcycle by themselves. Group of people who bough those goods were familiar and had competent knowledge about motorcycle, spare parts and devices of motorcycle. They could differ between defendant’s goods and plaintiff’s goods and knew that spare parts and devices of motorcycle according to such goods of the same owner or origin under trademark “proton” belonged to plaintiff which had higher price than motorcycle and spare parts and widely known as the plaintiff claimed. Therefore, the fact could not be heard that

the trademark “proto” belonged to the defendant was similar to the plaintiff’s trademark “proton” which might be confused or misled the public as to the owner or origin of goods which would not be registrable trademark according to Trademark Act B.E. 2534 (1991) Section 6 (3) appurtenant to Section 13 and Section 6 (2) appurtenant to Section 8 (10) as the plaintiff claimed.

**Keywords**

Trademark Board, might be confused or misled the public as to the owner or origin of goods

**Summarized by**

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