

Supreme Court of the Kingdom of Thailand

S.C. 1275/2011

K.M. Interlap Co.Ltd vs. Reexproduct Co., Ltd., et al

Court : Supreme Court
Kind of case : Civil Case
Date of Judgment : 2011/03/02
Plaintiff : K.M. Interlap Co., Ltd.
Defendants : 1. Reexproduct Co., Ltd.
2. Choon Corporation Co., Ltd.
Area of Law : Intellectual Property Trademark
Statue : Trademark ACT B.E.2534

Panel of Justice

Chaleaw Phonwiset / Aram Senamonti / Thanasit Nilkhamhaeng

Background

Plaintiff filed and made amendment to the complaint that plaintiff was the owner of two registered trademarks used with goods in classifications 3, such as powder puff. Both of them were "Cute Press PRESSED POWDER" and "Cute Press EVORY TWO WAY POWDER CAKE," respectively. Afterwards, plaintiff produced a new product, talc, named "Cute Press EVORY Whitening," with its trademark which is well-known. By using "CIVIC IVORY" with the trademark "CIVIC IVORY Whitening SUNSCREEN," to the same product as plaintiff's and using the same color, size and internal format of the powder case, the first defendant, the producer, and the second defendant, the seller, were jointly imitating plaintiff's trademarks. The Plaintiff, therefore, brought the case before the court claiming compensation from the defendants and forcing them to shut down production and distribution, and destroy those goods bearing an imitation trademark which it has in its possession.

Both defendants pleaded not guilty and requested that the complaint be dismissed.

Issue

Whether or not the first defendants' trademark infringed on the plaintiff's trademarks to the extent that it would lead to confusion or misunderstanding among the public with respect to the owner or origin of the goods.

Procedure History

The central Intellectual Property and International Trade Court delivered its judgment in favor of the defendants and held that the complaint be dismissed.

The Supreme Court confirmed the judgment of the central Intellectual Property and International Trade Court.

Analysis

Even though both the plaintiff's trademark and the first defendant's trademark were comprised of two phrases arranged vertically and used the same rectangular frame as a component, these trademarks were different in letter size and presentation style due to the fact that the plaintiff's first phrase putting on the top of the trademark was a capital letter beginning the word "Cute Press" while the first defendant's first phrase put in the same position as the plaintiff's, was all capital letters of the word "CIVIC". The second phrase in the plaintiff's trademark being under the first phrase constituting two words stacked inside the frame of rectangle that clearly saw its width was less than the first phrase did was different from the second phrase in the first defendant's trademark comprising three words stacked by putting the first two terms inside the frame of rectangle. The third word "SUNSCREEN" being on the bottom row outside the frame of rectangle obviously differed from the layout letter of the plaintiff's trademark. The size of the letter of the word "IVORY", the first word in the second phrase in the first defendant's trademark, was equal to those in the first phrase while the size of the letter of the word "EVORY", the first word in the second phrase in the plaintiff's trademark, was unequal in its phrase. This made them differ in presentation style and letter size. Moreover, unlike the plaintiff's trademark that had the width of the letter size of the second phrase smaller than the one in the first phrase, both the width of the letter size of second phrase and the first phrase in the first defendant's trademark were the same, particularly the word "SUNSCREEN" situated on the bottom of the phrase in the first defendant's trademark. This would lead to understanding among the public with respect to the owner or origin of the goods and whether the trademark belonged to the plaintiff or the first defendant. Furthermore, it appeared that the first defendant had submitted its trademark for registration. This demonstrated that the use of that trademark was in good faith. Even though the prices of the first defendant's goods were more expensive than those of the plaintiff, this was just normal mechanisms of active trade of alternative choices for the consumer and did not imitate a trademark or mislead public to believe the first defendant's goods were the plaintiff's goods. The plaintiff did not prove confusion or misunderstanding among the public with respect to the owner or origin of the goods, any deception or giving of any trading information by the defendants, so it could not be accepted that the defendants violated the plaintiff's trademark.

Keywords Confusion-misunderstanding- letter size -styled pronouncement

Summarized and translated Soemsit Sirijaroensuk

Edited