

Supreme Court of the Kingdom of Thailand
S.C. 3760/2554
Marriott Worldwide Corporation v. Department of Intellectual Property

Court : Supreme Court
Case : Civil Case
Date of Judgment : 2011/5/19
Plaintiff : Marriott Worldwide Corporation
Defendant : Department of Intellectual Property, Defendant number
1, et al. (total of 2 persons)
Area of Law : Intellectual Property, Service Marks
Statute : Trademark Act, B.E. 2534
Panel of Justices
Chaleaw Polwisade– Aram Senamonti – Thanasit Nilkhamhaeng

Background

The Plaintiff claim that Defendant Number 1 is a Department under the Ministry of Commerce, while Defendant Number 2 is a representative with authority to register trademarks. The Plaintiff filed an application for a service Mark but the Registrar alleging that the word "COURTYARD" as a service mark in this case did not meet the registration criteria. The Plaintiff appealed to the Trademark Board. The Trademark Board ruled that the word "COURTYARD" is a word that refers directly to the character of the service and did not meet the registration criteria. The Plaintiff maintains that its service mark is distinctive and that it meets the registration criteria. It petitioned the court to overturn the refusal of the Registrar and force both Defendants to proceed with registering the service mark as per application.

Both Defendants asserted that the Plaintiff's service mark was not widely known and, moreover, that the Plaintiff did not have the right to file suit against them. They petitioned the court to dismiss the case.

Issues

1. Did the Plaintiff have the right to file suit or not?
- 2 Does the word "COURTYARD" directly refer to the type of service the plaintiff provides or not?

Procedural History

The Central and Intellectual Property and International Trade Court revoked the Registrar and the ruling of the Trademark Board be overturned.

The Defendants appealed to the Supreme Court.

The Supreme Court for Intellectual Property and International Trade upheld the lower court's ruling, that the refusal of the Registrar be overturned and that the ruling of the Trademark Board be overturned.

Analysis

1. The Supreme Court reasoned that the order of the Registrar and the ruling of the Trademark Board were just and legal. It was the final appeal according to the Trademark Act, B.E. 2534, Section 18 (1). This only means that the appellant cannot appeal the case any further with officials in that branch of government. It does not disqualify a person from filing a lawsuit with the court. The Plaintiff has the right to file suit.

2. The word "COURTYARD" was the important factor in the mark. It means *the yard of a house*, and communicates that the character of the service that the Plaintiff offers is a place in the open or a place to rest. It appears to be a way to attract the attention of the general public who may wish to use these services, arousing interest and making it possible to find. It tells of or indicates the type of rooms in the hotel or service, indicating especially that they are more spacious than other places. Therefore, "COURTYARD" is a word that does not directly refer to the character or quality of the service.

Key Words: service mark

Summarized: Tavinwong Jitviwat

Edited: