

Supreme Court of the Kingdom of Thailand

S.C. 6938/2011

Public Attorney v. Mr. Smith Kolkit

Court : Supreme Court

Case : Civil Case

Date of Judgment : 2012/03/06

Area of Law : Copyright

Statue : The Copyright Act B.E. 2537 (1994) Section 31, 70 paragraph 2

The Act of the Establishment of the Intellectual Property and International Trade Court and the Procedure for Intellectual Property and International Trade B.E. 2539 (1996), Article 26, 45

The Penal Code Section 56

The Code of Criminal Procedure, Article 158 (5), 195 paragraph 2

Panel of Justice:

Somkoun Wichienwan - Aram Senamontri - Tanasit Nilkamhang

Background :

Plaintiff filed the complaint that the Catalyst Alliance (Thailand) Co., Ltd. [hereinafter "the company"] is the owner of the copyright in the creation of a movie, music and audiovisual recordings. The defendants infringed the company 's copyright by sale or offering for selling and possessed for selling to the public the 25 movie DVDs which are illegal repeatedly pirated. This infringement was for trade profit, and the defendants knew that it was the piracy of the company's copyright and does not get the permission from the company.

The defendants pleaded guilty.

Procedural History:

The Central Intellectual Property and International Trade Court ruled that the defendants guilty under the Copyright Act B.E. 2537 (1994) Section 31, 70 paragraph 2, pending to be sentenced for one year according to the Penal Code Section 56. The 25 movie DVDs will be vested to the right of the company.

The plaintiff lodged the appeal to the Supreme Court. The Intellectual Property and International Trade Division of the Supreme Court dismissed the complaint

Issue:

Whether the complaint was described the elements of the action claiming the defendants' offense committing under the Copyright Act B.E. 2537 (1994), Section 31 or not.

Analysis:

The complaint does not appear that when the company has advertised the movies for the first time. According to the charge of sale or possessed for selling or offering for selling the works which pirated other copyright for trade profit under the Copyright Act B.E. 2537 (1994), Section 31 (1), 70 paragraph 2, the offense elements of the action are the action of sale or possess for selling or offer for selling the work pirated other copyright. The copyrighted work of others must be creative to get the legal copyright protection. The protection must be acquired by the terms of law and must be within the limitation of time. After the expiration of the statutory protection, the copyright work is vested in the public where any person can take advantage of the work. So the element of the offense that the copyrighted work must be within the limitation of time is the essence of the offense. To know whether the creative work of producer is under the statutory copyright protection or not, we need to know when the creative work is first publicized. By the Act, Section 19 last paragraph stipulates that "In case the creator is a legal entity, the copyright is last for fifty years from the date when the creator had created the work. But if the creative work is not publicized during such period, the copyright is last for fifty years from the first publicized " The complaint does not describe when the creative work of the company is publicized. Therefore it can be concluded that the complaint is not fully described the actions they claim that the defendant committed an offense under the Copyright Act B.E. 2537 (1994), Section 31. It is against the Act of the Establishment of the Intellectual Property and International Trade Court and the Procedure for Intellectual Property and International Trade B.E. 2539 (1996), Article 26, and the Code of Criminal Procedure, Article 158 (5). This issue is the legal problem related to public order. Although no party appeals this issue, the Intellectual Property and International Trade Division of the Supreme Court has the authority to raise and settle down such issue by the Act of the Establishment of the Intellectual Property and International Trade Court and the Procedure for Intellectual Property and International Trade B.E. 2539 (1996), Article 45, and the Code of Criminal Procedure, Article 195 paragraph 2. Therefore, the Intellectual Property and International Trade Division of the Supreme Court dismissed the case.

Keyword: copyright protection, creative work

Summarized: Non Tuntapong

Edited: