

Supreme Court of the Kingdom of Thailand

S.C. 5082/2011

Public Prosecutor and T. Kittiwat Limited Partnership v. Tong-Siam Engineering Limited Company

Court : Supreme Court
Case : Civil Case
Date of Judgment : 2012/04/23
Plaintiff : Public Prosecutor
Co-Plaintiff : T. Kittiwat Limited Partnership
Defendant : Tong-Siam Engineering Limited Company and others
Area of Law : Trademark
Statue : The Trademarks Act B.E. 2534 (1991), Section 109

Panel of Justice:

Somkoun Wichienwan - Aram Senamontri - Tanasit Nilkamhang

Background:

Plaintiff and co-plaintiff filed the complaint that the co-plaintiff is the owner of the trademark  which is registered in the Kingdom of Thailand. The trademark is used with the insecticide spray injection machine. The TANONG limited company (hereinafter

"TANONG") is the Taiwanese legal entity, and is the owner of the trademark



which is registered in the Kingdom of Thailand. The Trademark is used with an agricultural spray injection machine. The first defendant is the legal entity as the limited company. The second defendant is the committee who is authorized to act on behalf of the first defendant. TANONG appointed the first defendant to be the authorized distributor of TANONG's agricultural spray injection machine. The defendants possessed for selling of the 715 insecticide spray injection machines on which the trademarks [picture of diamond, diamond

with Roman letters "TANONG" of "DIAMOND", diamond with Chinese letters, are used.

Such marks are imitated the co-plaintiff's trademark  in order to make the public confuse or misled that the imitated mark is co-plaintiff's mark. The defendants knew that the marks on the machines are imitated the co-plaintiff's mark.

The defendants denied .

Issues:

Whether the mark on the defendants' insecticide spray injection machine is imitated the trademark of the co-plaintiff under Section 109 of the Trademark Act B.E. 2534 (1991) or not?

Procedural History:

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

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

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

Analysis:

The insecticide spray injection machine is manufactured by TANONG. Its

trademark  is registered. The mark is featured of the picture of diamond at the top, the Chinese letters read "Jing Jeay Pai" which means "diamond label" at the middle, and the Roman letters "Diamond" at the lowest of the mark. The picture of diamond is cutting edge in angle and sparkle to be so the distinctive character that different from typical. The picture of

diamond is used as a key component of the trademark. So TANONG has the right to use the

picture of diamond  on the insecticide spray injection machine. Although the

picture of diamond  is similar to the co-plaintiff's picture of diamond , the co-plaintiff and TANONG can use their own marks which are registered by law. Therefore, the mark on the insecticide spray injection machine is not a mark that is imitated the co-plaintiff's trademark by the Trademark Act B.E. 2534 (1991), Section 109.

Keywords: trademark, public confuse or misled

Summarized: Non Tuntapong

Edited: