

Supreme Court of the Kingdom of Thailand

S.C. 4049/2012

Caltex Oil (Thailand) Co., Ltd. v Pittikorn Charoenkit Partnership Ltd.

Court : Supreme Court
Kind of Case : Civil Case
Date of Judgment : 2012/04/10
Plaintiff : Caltex Oil (Thailand) Co., Ltd.
Defendant : Pittikorn Charoenkit Partnership Ltd. (1st)
Mr. Pittikorn Laklam (2nd)
Area of Law : Trademark, Trademark Licensing Agreement
Statute : Trademark Act B.E. 2534 (1991)
Panel of Justices :

Prinya Deepadung – Aram Senamontri - Dhajaphand Prabhudhanitisarn

Background

Plaintiff filed and made amendment that the plaintiff has run gasoline business in Thailand under the name and trademark “CALTEX” and invented star symbol more than 50 years. The plaintiff licensed the defendant to run the plaintiff’s gas station. After that, both defendants breached the contract by did not buy gasoline from the plaintiff anymore and did not pay for license and gasoline cost. The plaintiff requested the Court to made judgment against the defendant according to the law.

Issue

Whether or not defendant breached the license contract.

Procedural History

The Central Intellectual Property and International Trade Court judged that the defendants and their servants had to leave from the plaintiff’s gas station and pay for the license fee and gasoline cost to the plaintiff.

Both defendants appealed to the Supreme Court.

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

Analysis

According to the license for running gas station contract, the plaintiff agreed to license the first defendant to merely run the plaintiff’s gas station under trade name and trademark “CALTEX”. The petroleum product the first defendant has to buy in

order to sell at the gas station mentioned in the contract belonged to the plaintiff. Even though there was usage trademark “CALTEX”, it was exercised by the plaintiff and the plaintiff sold goods which have trademark “CALTEX” to the first defendant. There was not in the case that the first defendant provides products or goods itself and put the plaintiff’s trademark “CALTEX” with its goods by permission of the plaintiff which may consider as the plaintiff permitted the first defendant to use the plaintiff’s trademark “CALTEX” with the gasoline goods of the first defendant. The running gas station licensing agreement is not registered trademark licensing agreement which shall be in writing and registered with the Registrar as legislated in Section 68 paragraph two of the Trademark Act B.E. 2534 (1991) as the form of juristic act according to the Civil and Commercial Code Section 152. Therefore, even though the running gas station licensing agreement was not registered to the Registrar, it was not valid as mentioned in the Civil and Commercial Code Section 152.

The appeal of both defendants \that both defendants did not passing off goods as the plaintiff’s goods. The court considered that both defendants did not relate to this issue before and this related issue has not been legally raised in the Central Intellectual Property and International Trade Court. Therefore, this appeal was not legitimate to the Act on the Establishment of and Procedure for Intellectual Property and International Trade Court B.E. 2539 (1996) Section 26 appurtenant to the Civil Procedure Code Section 225 paragraph1. The Intellectual Property and International Trade Division of the Supreme Court did not take into consideration.

Keywords

Trade name, Licensing agreement, Passing off

Summarized by

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