

Supreme Court of the Kingdom of Thailand

S.C. 8151 – 8152/2011

Cavidi Tech AB v Department of Intellectual Property

Court : Supreme Court
Kind of Case : Civil Case
Date of Judgment : 2011/09/13
Plaintiff : Cavidi Tech AB
Defendant : Department of Intellectual Property
Area of Law : Trademark
Statute : Trademark Act B.E. 2534 (1991)
Panel of Justices :

Rattana Kongkaew - Aram Senamontri – Maitree - Sriarun

Background

Plaintiff was the holder of trademark “HEXAXIM” in foreign countries. Plaintiff registered such trademark for goods in class 5 goods list vaccine. Trademark registrar refused registration because of the same or similar to trademark “EXAZYM” of another person who had registered before. Plaintiff brought the case to the Central Intellectual Property and International Trade Court and requested for the judgment that the plaintiff’s trademark was not the same or similar to trademark “EXAZYM” that the public might be confused or misled as to the owner or origin of the goods and canceled the Trademark Registrar’s order and Trademark Board’s ruling and requested to register the plaintiff’s trademark.

Defendant defended that the plaintiff’s trademark was similar to the word “EXAZYM” that the public might be confused.

Issue

Procedural History

The Central Intellectual Property and International Trade Court judged that the order of the Registrar and the ruling of the Trademark Board shall be revoked and the Registrar shall proceed with the registration of the said trademark.

The defendant appealed to the Supreme Court.

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

Analysis

The appeal of the defendant that the plaintiff's trademark "HEXAXIM" similar to Cavid Tech AB's registered trademark "EXAZYM" that the public might be confused or misled as to the owner or origin of the goods which might not be registered according to Trademark Act B.E. 2534 (1991) Section 6 (3) and Section 13 or not. The fact heard was that the plaintiff's trademark has been registered for goods in class 5 which was medicine same as Cavid Tech AB's trademark but plaintiff's goods was vaccine whereas defendant's goods was substance prepared for diagnosis though they were the same kind of medicine but the usage were different. Plaintiff's witness who was pharmacist and administrative and financial director and authorized director of plaintiff's Thailand branch testified that the said plaintiff's vaccine goods used for children in order to protect diphtheriae, pertussis, tetanus, encephalitis, poliomyelitis and hepatitis B. It did not sell to general shop or drugstore but solely sold to dealer which was Silic Pharma. After that dealer would distribute the said goods to hospital or person who had practice of the art of healing. This vaccine had to be kept in refrigerator. There was quoted on the box that it was poisonous drug and users were doctor, pharmacist or nurse. But, goods with registered trademarked "EXAZYM" were substance prepared for diagnosis and used for medical. It was testified by plaintiff's witness who was lecturer at Department of Clinic Microscopy, Faculty of Allied Health Science, Chulalongkorn University that users of the said goods were medical laboratory by using substance to diagnose from specimens such as blood, urinate, faces, lumbar and bone marrow. The substance goods using for diagnosis has not been sold at drugstore and general shop. It had to be brought from dealer of producer company. Dealer had to contacted medical laboratory directly. Price of the said goods was approximately 10,000 baht to 20,000 baht. For vaccine, dealer had to contact doctor in hospitals. It was clearly that users of goods under trademark "HEXAXIM" and under trademark "EXAZYM" were different groups. Each group of users was professional who had competent knowledge and specialist. Therefore, it could be distinctive between two goods without confusion or misleading. Furthermore, selling channels were different and were not sold at drugstore or general shop. The defendant appealed that Mr. Jumpol, witness, testified that drugstore having

certificate for selling poisonous drug had the said vaccine for sale. Therefore, public might have chance to buy and might cause confusion or misleading. The court had opinion that Mr. Jumpol also testified that drugstore selling poisonous drug had to sell the said medicine as to prescription from doctor. People could not buy the said medicine without the prescription from the doctor. If patients bought it, most of them would not inject by themselves but they would ask doctor or nurse in hospital or clinic to inject for them. Therefore, even though both trademarks had similar call but not enough to confuse or misled the public that the goods with trademark "HEXAXIM" belonged to plaintiff was goods that prepared for medical diagnosis about virus or disease occurred from virus which used trademark "EXAZYM" belonged to Cavid Tech AB or had origin from that company. Therefore, plaintiff's trademark was registrable according to Section 6 (3) and Section 13 of Trademark Act B.E. 2534 (1991). The defendant defended in the appeal that plaintiff did not present agreement between plaintiff and Cavid Tech AB to the Trademark Board in order to be considered with appeal so it did not make the Trademark Board's order become illegally. This was not reason to make the Trademark Board's order become right. The Trademark Registrar's order which denied to register plaintiff's trademark and trademark Board's ruling which affirmed Trademark Registrar's order were illegally as to the judgment of the Central Intellectual Property and International Trade Court.

Keywords

Public might be confused or misled as to the owner or origin of goods

Summarized by

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