

**Supreme Court of the Kingdom of Thailand**

**S.C. 9452/2011**

**Mr. Anucha Saeng-Laleau v. GMM Grammy Public Company Limited**

**Court** : Supreme Court  
**Case** : Civil Case  
**Date of Judgment** : 2012/03/29  
**Plaintiff** : Mr. Anucha Saeng-Laleau  
**Defendant** : GMM Grammy Public Company Limited and others  
**Area of Law** : Copyright  
**Statue** : The Trademarks Act B.E. 2534 (1991), Section 109

**Panel of Justice:**

Maitree Sriarun - Aram Senamontri - Dhajaphand Prabhudhanitisarn

**Background:**

Plaintiff file the complaint that the plaintiff was the creator of a literary and musical works by the composer. The plaintiff has made a demo tape and sent it to the first defense for the selection of making the original music. But the first defendant inform the plaintiff that the plaintiff's music was not pass the qualification of the first defendant. The plaintiff, then, took the demo tape from the first defendant. Later, the plaintiff found that the songs in the album "Drizzle Rainy Day" of the first defendant had been infringed the plaintiff's copyright by repeated the musical lyrics and rhythms in the demo tape of the plaintiff.

The defendants denied.

**Procedural History:**

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

The plaintiff lodged the appeal to the Supreme Court.

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

**Issue:**

Whether the first defendant's first songs in the album "Drizzle Rainy Day" are copied or modified from the plaintiff's music or not?

**Analysis:**

The defendants' witnesses, for example, Mr. Virat Youtaworn, a musical composer and musical teacher who has been awarded the MEKHALA Music branch of musical soundtrack, Mr. Wanit Charungkitarnan, freelance writer who has been awarded the best creative of the ASEAN, had asserted that comparing the lyrics of the plaintiff's song and the defendants', they are different . There are no sign that the defendants' music have copied or modified from the plaintiffs'. Miss Supunya Chomjinda, an literary official, testified that, after comparing the plaintiff's songs and the defendants', it is found that the meaning of each song is different, and cannot be identified there is any copy or modification. The lyrics of the plaintiff's songs are not special meaning, they are a generic term. Mr. Somsong Gornnaga, plaintiff's witness, testified on the cross-examination that, listening song for the first time, they are the same as or similar to the plaintiff's songs. For criminal prosecution, the plaintiff has the burden of proving beyond a reasonable doubt that the defendants copied or modified the musical lyrics or rhythms of the plaintiff's songs. The plaintiff asserted that the defendants has copied or modified the music of the plaintiff. The defendants' witnesses asserted the testimony in the contrary. But Mr. Somsong , plaintiff's witness, testified in accordance with the defendants' evidences. So the plaintiff's evidence cannot hearing that the defendants copied or modified the plaintiff's songs.

**Keyword:** Copied or modified

**Summarized:** Non Tuntapong

**Edited:**