

**Supreme Court of the Kingdom of Thailand**  
**S.C. 10926/2011**  
**Retail Royalty Company**

v.

**Department of Intellectual Property, Barnyong Limprayunwong,  
Kiat Rhurungrog, Panumard Sittivaekin, Somyud Churthai,  
Radwit Saenthawesuk, Charnwit Suwannabun, Suwan Sukprasert,  
Por Anawin, Jakkaphong Na Bangchang**

<b>Court</b>	:	Supreme Court of Thailand
<b>Kind of Case</b>	:	Civil Case
<b>Date of Judgment</b>	:	21/12/2011
<b>Plaintiff</b>	:	Retail Royalty Company
<b>Defendant</b>	:	Department of Intellectual Property, Barnyong Limprayunwong, Kiat Rhurungrog, Panumard Sittivaekin, Somyud Churthai, Radwit Saenthawesuk, Charnwit Suwannabun, Suwan Sukprasert, Por Anawin, Jakkaphong Na Bangchang
<b>Area of Law</b>	:	Trademark
<b>Statue</b>	:	Trademarks Act B.E 2534
<b>Panel of Justice</b>		
		Maitree Sriarun - Aram Saenamontree - Somkwun Wichienwan

**Background**

Registration of the plaintiff's trademark, Roman alphabet word "AE", was refused by the Trademark Registrar on the grounds that the mark was like or alike others trademark, that had already been registered. Then the plaintiff's had appeal this Trademark Registrar's discretion through the Trademark Board. On appeal therefrom, the Trademark Board passed its decision that the plaintiff's trademark was not like or alike others trademark, that had already been registered, but the plaintiff's trademark had the meaning as one, pursuant Dr. Wit Teangburanathum's dictionary. From this meaning it could count that the plaintiff's trademark was a general word, which has no distinctive character under section 7 of the Trademark Act B.E. 2534 (1991) and not lawful for the Trademark Registrar to allow to registrar the plaintiff's trademark.

Against the Trademark Board's decision, the plaintiff sued the defendants, and requested the court to withdrawn the Trademark Board's decision. Instructed the defendants in the position of the Trademark Board to allow registration of plaintiff's trademark on the grounds that it qualified as a rightful trademark because the plaintiff's trademark had a distinctive character under section 7 of the Trademark Act B.E. 2534 (1991). The word "AE" was not a word that had a meaning or translation by the dictionary. Only Dr. Wit Teangburanathum's dictionary was not enough to listen that "AE" was a dictionary word. Moreover, Webster's Third New International Dictionary specify that "AE" was the word that been used by the Scottish and not been used by general people. The word occurred from the alphabet compounded and can read aloud, but no meaning. Therefore, this was an artificial word, which had a distinctive characteristic. In case it was not an artificial word, it was lawful to registrar in case of ordinary word because it had a meaning as one. The word "AE" didn't had the meaning which aim forward character or quality of the specified products, so it has distinctive character under section 7 paragraph two (2) of the Trademark Act B.E. 2534 (1991).

In response to the plaint, the defendants argued that the plaintiff had the right to review the Trademark Registrar's discretion with both in fact and legal issues. Moreover, the defendants have the right to make the decision by using more other factors that appeared in the Trademark Registrar's discretion. As follows, the Trademark Board's decision was lawful, and requested the court to dismiss the plaintiff lawsuit.

### **Issue**

Whether or not the plaintiff's trademark had distinctive character that should be registered under the Trademark Act B.E. 2534 (1991).

### **Procedure History**

The Central Intellectual Property and International Trade Court withdraw the Trademark Board's decision that suspended to registrar the plaintiff's trademark for the reason that it has no distinctive character.

The defendants appealed to the Supreme Court.

The Intellectual Property and International Trade Division of the Supreme Court confirmed the judgement of the Central Intellectual Property and International Trade Court.

### **Analysis**

There were only two dictionaries that the word "AE" appeared, The Dr. Wit Teangburanathum's dictionary and the Webster's Third New International Dictionary. The Dr. Wit Teangburanathum's dictionary stated that "AE" means one. The Webster's Third New International Dictionary stated that "AE" means one that been used by the Scottish. This illustrated that the word "AE" was not use in general, so it was not the word that had general meaning in the class of common word. As follows, in general, the word "AE" had no meaning so when the plaintiff used the word as its trademark, this can made the people or the good user know and understand that the plaintiff's good was different from other people goods. The Plaintiff's trademark has distinctive character under section 7 paragraph one, of the Trademark Act B.E. 2534 (1991), in addition with no qualification of the meaning which aim forward character or quality of the specified products under section 7 paragraph two (2), of the Trademark Act B.E. 2534 (1991).

### **Keywords**

Trademark – Trademark Registrar's discretion – Trademark Board's decision — Litigants – Department of Intellectual Property –Distinctive– Character or quality of the goods

### **Other**

Summarized and Translated by Yanaphak Mantarat