

Supreme Court of the Kingdom of Thailand

S.C. 11315/2010

**Tang Toh Kang Limited Partnership v Tang Toh Kang Gold Yaowarat The Old
Siam Company Limited**

Court : Supreme Court
Kind of Case : Civil Case
Date of Judgment : 2010/11/26
Plaintiff : Tang Toh Kang Limited Partnership (1st)
Second Lieutenant Attasarn Tantikarn (2nd)
Defendant : Tang Toh Kang Gold Yaowarat the Old Siam
Company Limited
Area of Law : Right to use of a name, Tradename, Trademark
Statute : Trademark Act B.E. 2534 (1991)
Panel of Justices :

ว่าที่ ดิงสมิตร – Aram Senamontri – Somkuan Vichienwan

Background

Two Plaintiffs filed the case against defendant on the ground that the second plaintiff was the heir of juristic person named “toh kang” or “tang toh kang” which also were trademarks of the two plaintiffs. Defendant brought the word “toh kang” which was an essential part of the name of the first plaintiff and trademark of both plaintiffs to register the defendant’s company without consent from both plaintiffs and might be misled to the public. The defendant act was infringement the right to use of a name and trademark of both plaintiffs and was passing off defendant’s goods which were belonged to both plaintiffs. Both plaintiffs requested the court to prohibit the defendant to use or stop using the company name with the word “toh kang” and asked 5,000,000 baht with the interest for the damages.

Issue

Whether both plaintiffs had power to filed the case against defendant in order to prohibit defendant to use the name with the word “ toh kang” and the act of defendant infringed to both plaintiffs or not.

Procedural History

The Central Intellectual Property and International Trade Court judged that the defendant was prohibited to use the name “toh kang” as a part of defendant’s company name and ordered defendant to pay the damages for 3,000,00 baht with interest.

Defendant appealed to the Supreme Court.

The Intellectual Property and International Trade Division of the Supreme Court amended that the defendant had to pay 500,000 baht with interest for the damages. Apart from the amendment was in line with the judgment of the Central Intellectual Property and International Trade Court.

Analysis

Both plaintiffs, Tang Toh Kang Limited Partnership and Second Lieutenant Attasarn Tantikarn, use the words “toh kang” and “tang toh kang” which were grandfather name of second plaintiff and juristic person name and trademark for gold trading more than 50 years. It had reputation before Mr. Phaibul Saengchareontrakul and fellows registered for establishing defendant’s company on 25 February 1992. Though the first plaintiff was juristic person but it had right to use of a name “toh kang” and “tang toh kang” according to Civil and Commercial Code Section 67 and Section 18. The defendant run gold shop business by using the name “Tang Toh Kang Gold Shop Yaowarat the Old Siam Company Limited” which had the word “toh kang” as an essential part of the defendant’s company name. It might be confused and misled that business of defendant involved with gold trading of both plaintiffs which would spoil the interest of both plaintiffs. Even though defendant’s juristic person name comprised of other words besides the word “toh kang” and the first plaintiff and defendant were different kind of juristic person, it was not an essence subject which would be made the defendant had the right to use of the name “toh kang” as essential part of defendant’s company name. The consent to register for company establishment of defendant with the said name by the Bangkok Metropolitan Partner Company Registration Office was the performing as to power and duties and opinion of the Registrar. It did not mean that such an action of the Registrar would establish the defendant’s right to use of the name of the defendant’s company. If the right to use of the name of the defendant’s company would make an argument concerned the right of other person and juristic person to use the name according to Civil and Commercial Code Section 18 and Section 67 and took legal action for the protection. It was to be

considered according to Civil and Commercial Code, especially, Section 18 and Section 67. The right of both plaintiffs to use of the name which inherited from Mr. Tohkang Saetang or Tang Toh Kang, second plaintiff's grandfather, was not concerned to death of the second plaintiff's grandfather. It was appeared that defendant brought the name of the first plaintiff for using as essential part of defendant's name without authority to use. Both plaintiffs might have the right to call defendant to restrain damages and requested the court to prohibit defendant not to perform such act according to Civil and Commercial Code Section 18. Therefore, it was to be heard that both plaintiffs had authorization to sue defendant and prohibited defendant to use of the name with the word "toh kang" including taking the word "toh kang" which was the name of the plaintiff's partnership to be used as part of the defendant's company name without authority and spoiling interest of both plaintiffs might be infringing to both plaintiffs according to Civil and Commercial Code Section 420 appurtenant to Section 18. Therefore, defendant had to pay damages to both plaintiffs.

Keywords

Confused and misled, trademark, juristic person, registration, the right to use of a name

Summarized by

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