

**Supreme Court of the Kingdom of Thailand**  
**S.C. 6270/2554**  
**Société BIC v. Big Trading, Limited Partnership**

**Court** : Supreme Court  
**Case** : Civil Case  
**Date of Judgment** : 2011/7/20  
**Plaintiff** : Société BIC  
**Defendant** : Big Trading, Limited Partnership  
**Area of Law** : Intellectual Property, Copy rights, Trademarks  
**Statute** : Copy Right Act. B.E. 2537, Trademark Act. B.E. 2534

**Panel of Justices**

Prajub Patchaneerattanakorn – Aram Senamonti – Thanapot Arayaluck

**Background**

The Plaintiff, a juristic person under the Laws of the Republic of France, claims to be the creator of a work of art, a logo of a “Child with a Large Head”. This work of art was first advertised in France. Further, Plaintiff is the owner of the registered trademark of a “Child with a Large Head” along with the word BIC. It is used with 8 types of products, razors for barbers. Moreover, this trademark is registered with many other products, such as stationary related products. The two Defendants infringed on this trademark by creating a trademark, a work of art, of a “Child with a Large Head”. It was arranged and generally resembled the trademark that was a work of art copyrighted by the Plaintiff. It was used with shaving products and razors, in the same manner as the Plaintiff’s products. This caused the Plaintiff damage. The Plaintiff claimed damages jointly from both Defendants, a cease and desist of the use, production and sale of products with this trademark of a “Child with a Large Head”, furthermore all products be recalled from the market at the two Defendants’ expense. Damages to be paid until all production and sales of the products with this trademark have ceased.

Both Defendants testified that Defendant Number 1 was a juristic person called “Big Trading”. Defendant Number 1’s name was duly registered and did not cause confusion to the general public. Defendant Number 1’s trademark was a picture of a man with a razor strapped to his back with the words “RAZOR KING”. This was not the same or similar to the Plaintiff’s trademark. There was no copying of the Plaintiff’s trademark. Defendants petitioned the court to dismiss the case.

**Issues**

1. Did the two Defendants infringe on the copyrights of the Plaintiff’s works of art which was a trademark or not?
2. Did the two Defendants infringe on the copyrights of the Plaintiff’s trademark of “Child with a Large Head” or not.

**Procedural History**

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

The Plaintiff appealed to the Supreme Court.

The Supreme Court for Intellectual Property and International Trade upheld the lower court’s ruling.

**Analysis**

1. The Supreme Court reasoned that the Copyright Act B.E. 2537 and the Trademark Act B.E. 2534 provided protection of copyrights and trademark rights separately. The picture drawn of a “Child with a Large Head”, which the Plaintiff used for a trademark, was the hired work of Mr. Raymon as the artist to be used as a trademark for their line of ball point pens. The artist designed the picture according to the Plaintiff’s intent to create a trademark. It is, therefore, not a work of art for creative purposes. The Plaintiff cannot claim to have copyrights in the picture of the “Child with a Large Head” that can be protected by the Copyright Act B.E. 2537. The two Defendants are not guilty of infringing on the copyrights of the drawing of a “Child with a Large Head”.

2. The Plaintiff used the “Child with a Large Head” as a trademark along with the word “BIC” in connection with stationary, razors and lighters. The Plaintiff registered the trademark in Thailand. As for the Defendants' trademark, it was a picture of a man with a razor strapped across his back with the words “RAZOR KING”. There was a picture of a crown with words that mean *King of razors*. There was a person standing to indicate that this product was meant for men. A picture of people is used all around the world; no one can own it. It is evident that the two trademarks are similar in the drawing of a child or human drawing only, all other points are completely different. The only condition is that the person who uses it last must make the differences distinct enough to be able to distinguish it from already existing products of other owners. Overall, there were many other differences, sufficient to distinguish the two trademarks without confusion or being misled. Neither of the Defendants acted in a manner so as to deceive or give commercial information in such a way as to cause confusion or misleading people to think that Defendant Number 1’s product was actually Plaintiff Number 1’s product. It was a registered trademark and was sold and advertised normally. This shows that the intentions were pure in using their trademark. It is, therefore, ruled that neither Defendant infringed on the Plaintiff’s trademark.

**Key Words:** juristic person, existing products

**Summarized:** Tavinwong Jitviwat

**Edited:**