

Judgment of the Central Intellectual Property and International Trade Court

Case no. (Black) IP.32/2542	T.C. Pharmaceutical Industry Co., Ltd.	Plaintiff
Case no. (Red) IP.44/2544	T.A.S. Food Products Co., Ltd.	Defendant

Case no. (Black) IP.45/2542	T.C. Pharmaceutical Industry Co., Ltd.	Plaintiff
Case no. (Red) IP.45/2544	T.A.S. Food Products Co., Ltd.	Defendant

Trademark Act B.E.2534 (1991) sections 35, 37, 38, 46 final paragraph Civil and Commercial Code section 420

A plaint that includes straightforward issues turning on whether the defendant intentionally imitates the plaintiff's outer configuration of container or packaging or goods, whether the plaintiff's right to commercial proceeds is infringed by such defendant's act, and whether the defendant's act is thus damaging to the plaintiff, shall not be held to constitute an action for infringement of a trademark under the Trademark Act B.E.2534 (1991). As a result, such infringement shall be promptly actionable without awaiting any decision to be released by the Trademark Registrar or the Trademark Board.

The plaintiff is the proprietor of a registered trademark and is currently opposed to the defendant's application for registering a rival trademark. Another plaint turns on whether the defendant intentionally uses such goods label as imitating the plaintiff's registered trademark. Apparently, a "list of trademarks" as one of entries in the plaintiff's objection form is also taken into account. Although no statement of the plaintiff's application and registration for his trademark is filled in on the list, such trademark is actually one of his grouping registered trademarks which are under the statement of application already filled in as one of the particulars on the list encompassed by the objection form. The defendant's application for registration of his trademark as well as the plaintiff's objection are regarded as pending further consideration executed by the Trademark Registrar or the Trademark Board. Once neither of the two authorities' decisions is reached, the plaintiff shall have no right to court action under sections 35, 37 and 38 of the Trademark Act B.E.2534 (1991). Accordingly, no court's decision shall be made on whether or not the defendant commits a tortious act by using the plaintiff's name, figure, artificial mark or any wording in the plaintiff's trade, or by causing the same to appear on or by imitating the plaintiff's bottle and bottle top, as well as by designing his trademark layout and label on the goods in such a way as being identical

with or similar to those of the plaintiff in order to make the public believe that the defendant's goods are the plaintiff's good or are in the plaintiff's trade.

Taking the rival labels into consideration, the figure of red lion and the combined wording "Red Lion Brand of Drink" are printed on the defendant's label, while the figure of red bull as well as the separate words "A Drink " and "Red Bull - L" are impressed on the plaintiff's label. Obvious differences are consequently pointed out in both litigants' contrasting figures, written words and pronunciations. However, slightly similarities between the rival labels in wording layout and graphic design are held too immaterial to make the public believe that the defendant's energizing drink is one of the plaintiff's goods or trade. The right to configuration of dark-colour square bottles and of bottle tops is held to be conferred upon any manufacturers of the goods, and it is not the plaintiff's exclusive right. Such configuration of both litigants' bottles and bottle tops is not regarded as similar to each other to the extent that there exists a likelihood of confusion on the part of the public or consumers. The defendant's act is held neither to constitute an imitation of the plaintiff's goods bottle, bottle top and label, nor to be detrimental to the plaintiff's right to commercial proceeds without authorization amounting to a **tortious** act as cited in accordance with the plaintiff's claim. Consequently, the issue raised on the occurrence and extent of the plaintiff's damages shall no further be decided.

Translated by Chalormchoke Attavepres / Warakhom Liangpandh