Judgment of the Central Intellectual Property and International Trade Court

Cases nos. (Black) IP 1/2542, IP 2/2542	Mr. Mongkol Wongkalasin and another **Plaintiffs**
Cases nos. (Red) IP 31/2545, IP 32/2545	Saha Karn Bhaet Co., Ltd. and others **Defendants**
	Mrs. Suparb Lekagul **Interpleader**

Copyright Act B.E. 2521 (1978), sections 4, 7, 13(2), 29
Copyright Act B.E. 2537 (1994), sections 78 paragraph one, 15(3), 63, 64

Statutory criteria for assessing copyright works, authorship, as well as rights and duties shall be in compliance with the law effective at the time of authorship of works.

Under section 4 of the Copyright Act B.E. 2521 (1978), an "author" is defined as the person who creates a work out of his own originality. However, such "originality" does not include any requirements of "novelty" – in other words "novelty" is not a statutory condition or requisite for copyright works. According to a universal concept on copyright law, the "originality" simply denotes that the work must be knowledgeably, capably, skillfully and industriously originated from the author and must not be copied from another work. There is no need for an author to possess originality in the never-before-existed item. A creative work imitated from the real thing or nature is deemed an original work of authorship on condition that it is not copied from any previous work. The creative work in this regard is held to qualify for copyright protection. Accordingly, illustrations of birds at issue are considered to attract copyright works under the Copyright Act B.E. 2521 (1978).

As legally admitted, the subject-matter encompassed by copyright protection shall extend exclusively to expressions and not to ideas. Consequently, any person who, although lacking in ownership of creativity, sets out to work with sufficient skill and labour without copying from another one's work, is regarded as the creator of the work of his own originality and shall be an author within such legal definition. On the contrary, the owner of creativity without any setting out to work is not held an author or joint author.

In the course of employment at issue, the remuneration is paid on a monthly basis or at occasional intervals throughout the duration of the services without any exact period agreed. In additional circumstances, the employer agrees to pay for the expenses, to supply tools or instruments necessary for any execution of the work, to provide relevant information, as well as to take command by regulating work arrangements in order of priority, discussing and scrutinizing the extent of work achievement. All in all the course of employment under the contract at issue is

regarded as a hire of services and not a hire of work. Unless otherwise provided by a written agreement, the work created by an employee author shall belong to such author. However, the employer remains entitled to publish that work under the objectives of the contract. Where no written agreement on copyright ownership is believed to exist, both plaintiffs are held to be the owner of the copyright in such illustrations of birds at issue.

Publication of a work under the employer's right is defined as the issuing of copies, or making of the work available, to the public. Nonetheless, a certain number of the work being available is required to some extent as appropriate for the circumstances of such work and the employer has no right to unlimited publication. A test to decide whether any publication leads to copyright infringement shall not depend on a certain number of editions or impressions or publications, but it depends merely on a number of copies of the work in print.

Translated by Warakhom Liangpandh