

## Judgement of the Central Intellectual Property and International Trade Court

Case No. (Black) IP 13/2545	Akzzo Nobel Coatings International B.V.	Plaintiff
Case No. (Red) IP 80/2545	Department of Intellectual Property	First Defendant
	Director-General of Intellectual Property Department	Second Defendant
	Trademark Registrar	Third Defendant

### Trademark Act B.E.2534 Section 18,Civil Procedure Code Section 142

The plaintiff filed two applications for trademark registration in two marks "AUTOCLEAR" and "AUTOSURFACER" to be used in connection with goods. Subsequently, the third defendant (the Trademark Registrar) considered the two applications and refused to register on the ground that the two marks had direct reference to the character of the goods; consequently, there was no distinctiveness according to Section 7(2) of the Trademark Act B.E. 2534.

The plaintiff filed an appeal to the Trademark Board. Subsequently, the Board affirmed the Trademark Registrar's decision. The plaintiff dissatisfied with the Board's decision; therefore, he filed the complaint for court review by requesting for the revocation of the Trademark Registrar's and the Trademark Board's decisions.

The Court ruled that first of all there was a question of law, which, if decided, would dispense with further trial of the case. That question of law was whether the Trademark Board's decision was final under Section 18, paragraph 1 of the Trademark Act B.E. 2534, which involved public order according to Section 142 (5) of the Civil Procedure Code. Thus, although the defendants did not raise this issue in their answers, the Court might raise it for decision and give judgment accordingly. Subject to Section 18, paragraph 1 of the Act, the Trademark Board's decision shall be final only on condition that the decision is legitimate. The plaintiff alleged in its complaint that the Board's decision was illegitimate under the Act on the ground that the plaintiff's two marks "AUTOCLEAR" and "AUTOSURFACER" were distinctive according to Section 6 and Section 7, paragraph 1 of the Act. As a result, the Board's decision was not final.

The plaintiff alleged that the subject matter of the Trademark Board's decision was illegal but did not argue about failure of the Board to exercise legal discretion. According to the facts of the Board's decision, the Board defined "AUTOCLEAR" as automatically bright and "AUTOSURFACER" as one who automatically smoothens a surface. Using the two marks in connection with goods would be direct reference to the character of the goods and lack distinctiveness according to Section 7, second paragraph, (2) of the Act. Therefore, the two marks were not qualified for registration under Section 6. Such decision was pursuant to the law and justification. The plaintiff had no right to allege on the mere ground that the decision was unlawful because it was different from the plaintiff's opinion. It was

concluded that the Trademark Board's decision was legitimate, so the plaintiff was not entitled to file the lawsuit petitioning for the revocation of the Trademark Board's decision.

*Translated by Nathadon Kitikamara*