

**Supreme Court of the kingdom of Thailand**

**S.C. 14028/2553**

**KPN MUSIC Co., Ltd. V Siam Music Square Co., Ltd. No1 et' al.**

**Court** : Supreme Court, Thailand  
**Date of Judgment** : 2010/12/30  
**Case** : Civil  
**Plaintiff** : KPN MUSIC Co., Ltd.  
**Defendants** : Siam Music Square Co., Ltd. defendant No.1, Siam Music Co., Ltd. defendant No.2  
**Area of Law** : Intellectual property, Trade name, License agreement, Violate  
**Statute** : Civil and Commercial Code section 420,421  
**Panel of Judgment** :  
Parinya Deepadung, Aram Senamontree, Tatchpun Prabudhanitsarn

**Background**

The plaintiff sued the first and the second defendants that the plaintiff conducts the school of music and is the owner of the trademark, service mark, and trade name, the word “ KPN MUSIC ACADEMY ”. On 2 March, 2544, the plaintiff agreed to the first defendant use right under the Licensing Agreement in the Trade, operate the KPN MUSIC SCHOOL at the head office of the first defendant for a period of 5 years since March 23, 2001 to March 23, 2549. There are an agreement in one of the promise that “within a period of three years when the Licensing Agreement runs out of its term without being renewed. The first defendant will not be the owner, operations, join or to become a partner with any party to compound business in trade operates a school of music, whether by yourself, of related financial business trade rights or similarly” when the License Agreement without being renewed. The contract has been terminated. But it appears that the first defendant breached the contract. By the first defendant has established the second defendant to do business school of music, name “The Siam Square Music School” in the same place. An action of the first and the second defendants were sharing violates the Licensing Agreement that the first defendant agreed with the plaintiff, the plaintiff has been damaged. To force the both defendants stop operation of the Siam Square Music School, within 3 years from March 23, 2006, and to force the both defendants are jointly liable for the damages to the plaintiff as a monthly amount 100,00 baht per month, since the next

day from the date of filing until the both defendants will stop operate the school of music by use name “The Siam Square Music School” and to force the both defendants jointly liable the benefit and/or profit from the operation of The Siam Square Music School, since the next day from date of filing until March 23, 2009.

Both defendants pleaded to deny that the two defendants did no not breach the contract to the plaintiff. Ask the Jude dismissed the case.

### **Issues**

(1) The first Defendant breached the License Agreement in the trade, As a result, the plaintiff has been damaged or not. and the first Defendant have joined the second defendant which is a same business group operate Siam Square Music School. Which is a violation to the plaintiff, the plaintiff has been damaged or not.

(2) Both defendants must be jointly liable for the damages to the plaintiff as a monthly amount 100,000 baht per month or 10,000 baht per month as The Central Intellectual Property and International Trade Court Judged.

(3) The court ordered the both defendants stop the operation of the Siam Square Music School from March 23, 2006 onward or not.

(4) Both defendants must be jointly liable the benefit or profit from the operation of the Siam Square Music School since the next day from the date of filing until March 23, 2009 or not.

### **Procedural History**

The Central Intellectual Property and International Trade Court sentenced the both defendants are jointly liable for damages to the plaintiff amounted 10,000 bath from March 23, 2009.

The plaintiff and the both defendants appealed to the Supreme Court

The Intellectual property and International Trade Division of Supreme Court amended the judgment about the lawyer’ fee, the in addition, according to the judgment of the Central Intellectual Property and International Trade Court.

### **Analysis**

(1) The Supreme Court was the opinion that the first defendant and the second defendant had one in seven of board who started the establishment of the company is the same person, has objective of the company is the same, especially the acts get coaching and training to play music, and the establishment of the second defendant is the husband of the founder companies of the first defendant. And there

were also accounting and auditors is the same person. And especially the both defendants had the same head office which was the same as the both defendants used to be a place of operation music. Demonstrated a close relationship between the first defendant and the second defendant is the same as a company in the same group. In which the first defendant has given the second defendant operated the Siam Square Music School at the head office of the first defendant after the first defendant did not renewed the contract with the plaintiff only 17 days. There is reason to believe that first defendant was established the second defendant to operate the music school of the first defendant continues. And show a manifest intention of the first defendant to perform acts to continue music school in the old place next on behalf of the second defendant by simply renaming the school from the KPN Music School or KPN Music Academy is the Siam Square Music School only. When the first defendant agreed with the plaintiff according to the License Agreement in the trade that within a period of three years when the License Agreement run out of it' term. The first defendant will not be the owner, operations, join or to become a partner with any party to compound business in trade operates a music school, whether by yourself, of related financial business trade rights or similarly. In which the first defendant is established the second defendant and the first defendant has given the second defendant operate the Siam Square Music School at the head office of the first defendant 1 after the first defendant did not renewed the contract with the plaintiff only 17 days. Is that the first defendant practice violates the provisions of a contract. An intentional breach of contract wrongful act the plaintiff, the plaintiff has been damaged. By the general public and students at the school of music of the first defendant may understand that it is a school of music that is performed by the plaintiff or under the control of the quality of the KPN Music Academy of the plaintiff. The actions of the first defendant held that the first Defendant have joined the second defendant which is a same business group operate Siam Square Music School violates the provision of a contract, by willfully voting which will cause damage to the plaintiff has been damaged according to the Civil and Commercial Code. Section 420 and 421. And The Supreme Court agreed with the decision of The Central Intellectual Property and International Trade Court that the action of the both defendants, make the plaintiff has been damaged by losing the opportunity to extend the franchise business for the operation school of music in the Siam Square area.

(2) The plaintiff has no evidence to investigate whether plaintiff received damage from both defendant's infringement amounted to 100,000 Bath per month, so the plaintiff could not call the two defendant to pay damages in the amount of such reduction. That The Central Intellectual Property and International Trade Court sentenced the two defendant to pay damages to the plaintiff the amount of 10,000 baht per month is appropriate to the circumstances and gravity of the wrongful act.

(3) The plaintiff confirm in the plaint that the defendant No 1 and defendant No2 are still engaging in the Siam Square Music School until August 3, 2006 which is the filing date and has not ceased operations. The court can not order the two defendants to stop engaging the Siam Square Music School from March 23, 2006, the day before the filing date of the petition to 4 months, at the request of the plaintiff.

(4) Plaintiff did not specify the amount of benefits or profit. And the benefits and profits as damages for the same amount of damages which the plaintiff demand the two defendants paid, which The Central Intellectual Property and International Trade Court has issued that the two defendants jointly pay compensation of 10,000 baht per month to the plaintiff since the next day from the date of filing until March 23, 2009, which is the amount of damage to the circumstance and gravity of the wrongful act severity of the violation. It may not provide the damage in the section to the both defendants to pay to the plaintiff again.

**Keywords**

Intellectual property rights, trade name,  
License Agreement, Violate, Damages

**Summarized by:** Lormpetch Vaidyanuvatti

**Edited :**