

**Supreme Court of the Kingdom of Thailand**

**S.C. 14028/2553**

**KPN Music Company Limited v. Siam Music Square Company Limited, et al.**

**Court** : Supreme Court

**Date of Judgment** : December 30, 2010

**Case** : Civil

**Plaintiff** : KPN Music Company Limited

**Defendants** : Siam Music Square Company Limited (1<sup>st</sup>)  
Siam Music Company Limited (2<sup>nd</sup>)

**Concepts** : Intellectual Property, Trade Name,  
Licensing Agreement, Tort

**Statute** : Civil and Commercial Code sections 420,421

**Panel of Justices**

Prinya Deepadung, Aram Senamontri, Dhajaphan Prabhudhanitisarn

**Case Background**

The plaintiff claimed that it is the owner of a music school and trademark, service mark, and trade name; “KPN MUSIC ACADEMY”. On March 23, 2001, the plaintiff and the first defendant entered into a licensing agreement whereby the plaintiff agreed to grant the first defendant a license to operate KPN Music Academy at its head office for a period of five years commencing from March 23, 2001 to March 23, 2006. After the five-year term had ended, the first defendant notified the plaintiff in writing that it was not desirous of renewing the agreement. The licensing agreement therefore ceased to be binding. According to the agreed terms, within three years after the agreement is terminated, the first defendant shall refrain from participating in or operating a business of the same type as the licensed

business, i.e. music school. However, after the agreement was terminated, the first defendant was still operating a music school under the name “Siam Square Music School”, the second defendant, whom the first defendant had established as its nominee, at the same premise. The defendants operated Siam Square Music School in a manner that the public and prospective students were misled that the school was still operated by the plaintiff or under the plaintiff’s quality control. The plaintiff therefore demanded the defendants to stop operating Siam Square Music School and to compensate the plaintiff for the damages arising from the violation of the licensing agreement.

Both defendants denied that they did not violate the terms of the licensing agreement.

### **Procedural History**

The Central Intellectual Property and International Trade Court held both defendants jointly liable to compensate the plaintiff 10,000 Baht per month commencing from August 3, 2006 until the defendants stop operating the music school.

Both parties appealed to the Supreme Court

The Intellectual Property and International Trade Division of Supreme Court upheld the lower court’s judgment.

### **Issues**

1. Did the first defendant violate the licensing agreement which caused damage to the plaintiff; and did both defendants, the companies of the same corporate group, jointly operate Siam Square Music School which caused damage to the plaintiff?

2. To what amount are the defendants liable to jointly compensate the plaintiff?

3. Could the plaintiff request the defendants to stop operating Siam Square Music School for three years starting from March 23, 2006?

4. Are defendants jointly liable to pay the plaintiff the benefits or profits of Siam Square Music School since August 4, 2006 (the complaint submission date) until March 23, 2009?

### **Rationales**

1. The facts appeared that one of the promoters of both defendants was the same person. Two of the authorized directors and representatives of both defendants were also the same persons. Both defendants have the same company objects, especially to teach and to provide training on musical performances. Besides, the head offices of both defendants were at the same location. This demonstrates a close relationship between both defendants that they are of the same corporate group. The fact that the second defendant was established only 17 days after the first defendant had notified the plaintiff that it was not desirous of renewing the licensing agreement, and that the first defendant allowed the second defendant to operate a music school at the first defendant's head office, explicitly indicates the intention of the first defendant to continue operating the music school at its head office by merely establishing the second defendant as a nominal operator and changing the school's name from KPN Music Academy to Siam Square Music School.

As the first defendant agreed under the licensing agreement with the plaintiff that within three years after the agreement is terminated, the first defendant shall refrain from directly or indirectly participating in or operating a music school, however, by establishing the second defendant to operate a music school at the first

defendant's head office after the agreement was terminated, the first defendant is therefore deemed to have willfully violated the terms of the licensing agreement and caused damage to the plaintiff as the public and prospective students were consequently misled that the school was still operated by the plaintiff or under the plaintiff's quality control. It appeared that both defendants have been operating a music school by abusing the plaintiff's reputation and, as a result of their wrongful acts, the plaintiff has lost profits and business opportunities in franchising music school in Siam Square area. Hence, both defendants shall be held liable for the damages caused to the plaintiff according to Civil and Commercial Code sections 420 and 421.

2. The evidences submitted by the plaintiff were insufficient to prove that due to the wrongful acts committed by the defendants, the plaintiff has suffered damages amounting to 100,000 Baht per month as claimed in the complaint. In this regards, considering the fees stipulated in the licensing agreement, the Supreme Court found the lower court's judgment of holding both defendants jointly liable to compensate the plaintiff 10,000 Baht per month appropriate according to Civil and Commercial Code section 438.

3. The plaintiff asserted in the complaint that as of August 3, 2006, which was the complaint submission date, both defendants were still operating Siam Square Music School and has not yet ceased the operation. The court therefore cannot order the defendants to stop operating Siam Square Music School starting from March 23, 2006 which was 4 months before the complaint submission date as requested in the complaint.

4. The plaintiff did not specify the amount of benefits or profits from the operation of Siam Square Music School it requested the defendants to pay.

Furthermore, such benefits or profits were to recover the same amount of damages for which the plaintiff had requested the defendants to pay 100,000 Baht per month commencing from the complaint submission date, but the lower court has ordered both defendants to jointly compensate the plaintiff 10,000 Baht per month commencing from the complaint submission date until the defendants stop operating Siam Square Music School or until March 23, 2009. The court therefore cannot hold the defendants liable for the damages in this part as requested by the plaintiff.

**Keywords** intellectual property right, trade name, licensing agreement, wrongful act, damages

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