

Supreme Court of the Kingdom of Thailand

S.C. 1740/2554

**Sarangsas Ruangsri or Nu Meter v. Metro Records – Tape (1981) Company
Limited, et al.**

Court	:	Supreme Court
Case	:	Civil
Date of Judgment	:	March 14, 2011
Plaintiff	:	Sarangsas Ruangsri or Nu Meter
Defendants	:	Metro Records – Tape (1981) Company Limited (1 st) Pipat Boriboon (2 nd)
Concepts	:	Intellectual Property, Performers' Right, Tort, Identity Right
Statutes	:	Copyright Act B.E. 2537 (1994) section 44 Civil and Commercial Code sections 18, 420

Panel of Justices

Prinya Deepadung, Aram Senamontri, Maitree Sriarun

Background

The plaintiff claimed that the defendants jointly produced and distributed Karaoke VCDs and music CDs and, without the plaintiff's consent, attached the plaintiff's photo and pseudonym "Nu Meter" thereon for commercial purpose, which was the infringement of the performer's right of the plaintiff and misled the public that the plaintiff had released Karaoke VCDs and music CDs under the pseudonym "Nu Meter." The plaintiff therefore demanded compensation for the damages caused by the defendants amounted 1,434,895.75 Baht.

The defendants responded that the second defendant had hired the plaintiff to sing songs composed by the second defendant. The second defendant was therefore the author of such musical works and entitled to the exclusive rights thereof. The second defendant later assigned those rights to the first defendant. Both the defendants argued that they did not cause any damage to the plaintiff and requested the court to dismiss the case.

Procedural History

The Central and Intellectual Property and International Trade Court ordered the defendants to jointly compensate the plaintiff amounted 10,000 Baht.

The plaintiff appealed to the Supreme Court.

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

Issues

1. According to the pleading of the defendants, do the contending issues include the issue of whether the plaintiff permitted the defendants to use its pseudonym and photo on the Karaoke VCDs and music CDs in dispute or not?

2. Did the defendants infringe on the rights of the plaintiff and cause the damage to the plaintiff?

Rationales

1. The plaintiff filed a complaint that the defendants jointly produced and distributed Karaoke VCDs and music CDs and, without the plaintiff's consent, attached the plaintiff's photo and pseudonym "Nu Meter" thereon, which caused the damage to the plaintiff. The defendants argued that attaching the plaintiff's photo and pseudonym onto the VCDs and CDs did not result in any damage to the plaintiff,

without arguing that the plaintiff had permitted them to do so. Hence, the defendants were deemed to admit that they had indeed attached the plaintiff's photo and pseudonym onto the VCDs and CDs without the plaintiff's consent.

2. Although the plaintiff is a musician or vocalist who sings or performs in along with the script which is deemed to be a "performer" under the definition in section 4 of the Copyright Act B.E. 2537 (1994), the defendants' act of producing and distributing Karaoke VCDs and music CDs and attaching the plaintiff's photo and pseudonym thereon without the plaintiff's consent did not concern any sound or video broadcasting or communication to public of the plaintiff's live performance. Nor was it recording of the plaintiff's performance, or reproducing the recording material under the plaintiff's consent but for different purpose, or reproducing the recording material which fell within the exceptions of the infringement of performers' rights by virtue of section 53, which are the exclusive rights of the plaintiff who is a performer under section 44. The defendants therefore cannot be held liable for infringement of performer's rights. However, the defendants has caused damage to the plaintiff because it misled the public that the plaintiff released Karaoke VCDs and music CDs under the pseudonym "Nu Meter." The defendants shall therefore compensate the plaintiff for using his pseudonym without his consent under the Civil and Commercial Code section 18 and section 420.

Keywords performer's right, pseudonym

Summarized and translated by Tavinwong Jitviwat

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