

**Supreme Court of the Kingdom of Thailand**

**S.C. 9513/2011**

**Siam Safety Premier Company Limited v. Siam Safety Technology Company  
Limited**

**Court** : Supreme Court  
**Case** : Civil  
**Date of Judgment** : November 8, 2011  
**Plaintiff** : Siam Safety Premier Company Limited  
**Defendant** : Siam Safety Technology Company Limited  
**Concepts** : Intellectual Property, TradeName, Tort  
**Statute** : Civil and Commercial Code sections 18, 420, 421

**Panel of Justices**

DhajaphanPrabhudhanitisarn, Aram Senamontri, PrinyaDeepadung

**Case Background**

The plaintiff was established in 1999 under the name “Siam Safety Premier Co., Ltd.” and has been using the trade names “Siam Safety Premier” and “SSP”. The plaintiff is the owner of a registered service mark composed of “SSP” and a registered trademark composed of “Siam Safety Premier Co., Ltd.,” used in connection with installation service of fire extinguisher system. The defendant was established in 2003 under the name “Siam Safety Technology Co., Ltd.” It had been using the words “Siam Safety”, which was a specific name and substantial part of the plaintiff’s name, as its entity name. The defendant also used “SST”, which was similar to one of the plaintiff’s trade names, as its trade name. The plaintiff claimed that the defendant has intentionally infringed of the plaintiff’s right to the use of a name and right to a trade name which caused damages to the plaintiff. It

thereforerequested that the court order the defendant to compensate for the damages and to refrain from using the names “Siam Safety Technology Co., Ltd.,” “Siam Safety,” and “SST.”

The defendant responded that the Bangkok Company and Partnership Registrar had duly accepted its registration as a limited company under the name “Safety Technology Co., Ltd.”The plaintiff had already been aware of the registration but had never made any objection. The defendant therefore had a right to use such name for its business and it did not confuse or mislead the public that the defendant was the plaintiff’s agent or subsidiary. The defendant counter-claimed that the false complaint submitted by the plaintiff has caused damages to the defendant and demanded the compensation therefrom.

### **Procedural History**

The Central Intellectual Property and International Trade Court heldthatthe defendant was liable to compensate the plaintiff amounting 300,000 Baht for the damages and that the defendant shall refrain from using“Siam Safety Technology Co., Ltd.” and “Siam Safety” in its name. The defendant’s counter-claimed was dismissed.

The defendant appealed to the Supreme Court.

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

### **Issue**

Did the defendant infringe the right to a trade name of plaintiff?

### **Rationales**

As regards the right to the use of a name, even though another person may use a similar name, it shall not be in a manner that the interest of the prior useris

unlawfully undermined or without his consent. Otherwise, it should be deemed as an infringement of the right to the use of a name under sections 18, 420, or 421 of the Civil and Commercial Code. This principle should also be applied to the right to a trade name.

In this case, the plaintiff was registered as a limited company under the name “Siam Safety Premier Co., Ltd.” in 1999. The plaintiff is a manufacturer and distributor of fire extinguishers, including fire balls of which the plaintiff is the patent owner in both Thailand and the United States of America. The plaintiff has been using such name in business and it is also included in the plaintiff’s registered trademark and service mark. “Siam Safety Premier Co., Ltd.” is therefore considered as the plaintiff’s trade name. As for the defendant, it was registered as a limited company later in 2003 under the name “Siam Safety Technology Co., Ltd.”, which is not only similar to but also contains a substantial part of the plaintiff’s trade name, namely “Siam Safety,” in a manner that it might confuse or mislead the public that the plaintiff and the defendant were the same company. Although the plaintiff’s name contains the word “Premier”, whereas the defendant’s contains the word “Technology”, such difference is not dominantly recognizable as much as the duplication of the words “Siam Safety” in both entity names, which may lead to the misunderstanding that the two companies are related. Moreover, the defendant has been using such name to operate the same type of the business as the plaintiff. It shall be preliminarily concluded that the defendant has used the plaintiff’s trade name in a manner that it might undermine the interest or commercial benefit of the plaintiff.

It appeared that the defendant even produces and sells fire balls, the same products of which the plaintiff is the patent owner. In this regard, the plaintiff has submitted sufficient evidences to prove that it had encountered difficulties in

product sales due to the emergence of the defendant's products in the market. There were customers who mistook the defendant's products for the plaintiff's. The sale amount of the plaintiff's products was lower than estimated. Also taking into account the fact that the plaintiff is the prior manufacturer and distributor of fire balls under its own patent, it is therefore held that the defendant has abused the plaintiff's trade name and the plaintiff suffered the damages therefrom. The act of the defendant is the infringement of the plaintiff's right to a trade name against sections 18, 420, and 421 of the Civil and Commercial Code. The plaintiff is therefore entitled to compensation and the defendant shall refrain from abusing the plaintiff's trade name.

**Keywords** Right to a trade name, tradename, confuse or mislead

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