

**Supreme Court of the Kingdom of Thailand**

**S.C. 1275/2011**

**K.M. Interlab Company Limited v. Re-X Product Company Limited, et al.**

**Court** : Supreme Court

**Case** : Civil

**Date of Judgment** : March 2, 2011

**Plaintiff** : K.M. Interlab Company Limited

**Defendants** : Re-x Product Company Limited (1<sup>st</sup>)  
Chun Corporation Company Limited (2<sup>nd</sup>)

**Concepts** : Intellectual Property, Trademark

**Statue** : Trademark Act B.E.2534 (1991)

**Panel of Justices**

Chaleaw Phonwiset, Aram Senamontri, Tanasit Nilkamhaeng

**Case Background**

The plaintiff is the owner of two registered trademarks “Cute Press PRESSED POWDER” and “Cute Press EVORY TWO WAY POWDER CAKE,” used in connection with a class of goods such as facial pressed powder. In 2007, the plaintiff launched a new facial powder product titled “Cute Press EVORY Whitening.” In December 2007 the first defendant, the manufacturer, and the second defendant, the distributor, jointly used the

trademark “Civic IVORY Whitening SUNSCREEN” in connection with facial powder product which was the imitation of the plaintiff’s trademark and product package. The defendants sold their products in a cheaper price in a manner that the public might be confused that the defendants’ products were those of the plaintiff. The plaintiff therefore brought the case before the court demanding compensation for the damages and requested the court to order the defendants to stop producing and distributing the goods in connection with the illegal trademark.

The first defendant argued that it was a manufacturer of facial powder under the lawfully registered trademark “CIVIC” and that it never used the plaintiff’s trademark “Cute Press.” The first defendant’s product package was significantly different from that of the plaintiff. Hence, the public could not be confused as to the owner or the origin of the goods. The second defendant responded that it was the distributor of the first defendant’s products and had already verified the validity of the trademark in dispute.

### **Procedural History**

The Central Intellectual Property and International Trade Court dismissed the case.

The plaintiff appealed to the Supreme Court.

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

### **Issue**

Was the first defendant’s trademark “CIVIC IVORY Whitening SUNSCREEN” an imitation of the plaintiff’s trademark “Cute Press EVORY Whitening” and used in a manner that it might confuse or mislead the public as to the owner or origin of the goods?

## **Rationale**

The trademarks of both the plaintiff and the first defendant comprise two vertically-arranged phrases and a rectangular frame. However, the first phrase in the plaintiff's trademark is the Roman alphabet word "Cute Press," whereas the same position in the first defendant's trademark is the Roman alphabet word "CIVIC." The second phrase in the plaintiff's trademark is composed of two words, whereas the first defendant's is composed of three. The two trademarks are prominently different in pronunciation, letter size, composition, and style. The consumers could accordingly distinguish the difference between the goods under the plaintiff's trademark and those under the first defendant's. Therefore, the public was unlikely to be confused that the first defendant's trademark was the plaintiff's. Furthermore, as the first defendant had duly proceeded to register its trademark, it was evidenced that the first defendant intended to use the trademark in good faith. Even though the price of the first defendant's respective products was lower than those of the plaintiff, it was merely due to the marketing competition which provided the consumers with more choices. Hence, it cannot be held that the first defendant imitated the plaintiff's trademark in order to mislead the public that the goods of the first defendant were those of the plaintiff. As there was no evidence produced by the plaintiff about how the defendants had deceived or distributed false trade information in order to confuse or mislead the public as to the owner or the origins of the goods, the defendants cannot be held liable for trademark infringement.

**Keywords** trademark infringement, imitation, confuse or mislead the public

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