Although the Thai Trademark Act provides protection for passing off, filing a lawsuit to defend an IP owner’s unregistered rights can still pose certain challenges. This is especially true where two registered trademarks are different, but the product packaging designs of both marks are confusingly similar. In either appearance or pronunciation, the court must compare the characteristics of the batteries and the packaging of the defendants with those aspects of Panasonic’s batteries to determine whether the two companies’ products are similar.

With regard to the color scheme, the Supreme Court took an approach contrary to the IP&IT Court’s reasoning. Even though color is a common feature that anyone can freely use, a certain color combination (e.g., green and silver; black and silver; or red, white, black and yellow), together with the placement of the colors, text, and images, creates a visual design and pattern indicating that Panasonic’s goods are different from others’ goods.

The Supreme Court emphasized the importance of the bad faith intention of the defendants by determining the manner in which the trademark is used on goods and packages. The court found that even though the registered mark in dispute was not confusingly similar to the PANASONIC trademark in either appearance or pronunciation, the court must compare the characteristics of the batteries and the packaging of the defendants with those aspects of Panasonic’s batteries to determine whether the two companies’ products are similar.

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