



<< Left
Srila Thongklang
Partner
srila.t@tilleke.com

<< Right
Suebsiri Taweepon
Attorney-at-Law
suebsiri.t@tilleke.com

Copyright on the Catwalk

Can a professional model claim for protection of copyright over her walk on the runway? In August 2012, the Thai Supreme Court rendered a final decision to resolve one of the most controversial copyright cases in Thailand: whether the “performers’ rights” under the Thai Copyright Act include the walk by a model on the runway during a fashion show.

Dilemma of a Protected Performance

It is universally accepted that performers’ rights are regarded as neighboring rights, which are granted different protection from general copyright works. According to the Copyright Act, a performer can enjoy two kinds of rights: the exclusive rights to certain acts and the right to remuneration from the use of his or her performance.

The term “performer” is defined by the Act as a person who performs, or a musician, vocalist, choreographer, dancer, actor, singer, or a person who speaks, dubs a translation, narrates or gives commentaries, performs in accordance with a script, or performs in any other manner.

However, the law does not explicitly specify to what extent the “act of a performer” would qualify as a protected performance.

Supermodel Seeking Protection for Performers’ Rights

In November 2005, two Thai supermodels, Metinee Kingpayom and Sara Lane, filed a copyright lawsuit against Dapper, a famous fashion brand company, based on the alleged infringement of performers’ rights under the Copyright Act.

The facts involved a large fashion show in Bangkok where Dapper hired several famous supermodels to demonstrate its apparel products on the catwalk. Dapper also hired photographers to take photos of the event while the models were walking on the catwalk. Later, Dapper promoted its fashion show event by publishing photos in magazines of several models walking on the catwalk during the event.

Literally speaking, the rights to the photos belonged to Dapper, but the problem arose when the two supermodels attempted to claim their performers’ rights against the use of those photos by Dapper.

In May 2006, the Intellectual Property and International Trade Court (IP&IT Court), the court of first instance, ruled in favor of the two supermodels, reasoning that the two plaintiffs were models who were presenting Dapper’s apparel products (by walking on the catwalk) and were considered to be “performers.” The act of the performers in this case was therefore a “performance.” Dapper, the defen-

dant in the case, was found to have infringed the performers’ rights of the two supermodels.

The IP&IT Court’s decision in this case became hugely controversial among professional models, fashion apparel brands, and the legal profession. Dapper appealed the decision to Thailand’s Supreme Court.

How to Qualify as a Performer

On August 28, 2012, the Supreme Court’s judgment was announced, reversing the IP&IT Court’s decision and dismissing the plaintiffs’ case. This was a much-anticipated judgment, as it will help to settle the controversy regarding performers’ rights under the Copyright Act.

The Supreme Court asserted that the act concerning the performance of a performer is essential to the protection of performers’ rights. It is impossible to interpret the act of a performer to be anything that a person performs, without having any limits. The Copyright Act is intended to protect the rights of performers in relation to the works qualified as eligible copyright works under the Act. A performer’s performance that could be protected as a neighboring right must be the act of performing a copyright work, recognized by the Act. This includes the performance of “musical work,” “dramatic work,” and “literary work” which is expressed in

“ the Supreme Court viewed that the plaintiffs did not successfully contend that performing as a runway model presenting apparel products could be considered performing in a dramatic arrangement, and thus a dramatic work as recognized by the Act ”

the manner of a narrative or is performed in accordance with a script or other composition.

In this case, the Supreme Court viewed that the plaintiffs did not successfully contend that performing as a runway model presenting apparel products could be considered performing in a dramatic arrangement, and thus a dramatic work as recognized by the Act. Although the plaintiffs were performers who performed walks in the runway shows, they were not deemed eligible for performers’ rights. Therefore, the defendant did not infringe on the performers’ rights of the plaintiffs.

Landmark Case

It is interesting to note that the Supreme Court did not state that the walk of a model on the catwalk cannot be protected as performers’ rights. Rather, the Court clarified that the performance of the performer must fall within the works eligible for protection under the Copyright Act, such as the performance of music, performance in a dramatic arrangement, and performance with respect to a screenplay or script, etc.

This case will inevitably be viewed one of Thailand’s landmark intellectual property cases, as it is the first time the Supreme Court has clearly explained the scope of the act of performance by a performer that can qualify as performers’ rights under the Copyright Act. ⚖️