

THAILAND: A case note Contribution for April 1, 2001.

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Tilleke & Gibbins International Ltd.

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Double Punishment

Thailand – Supreme Court Case No. 8877/2542 (A.D. 1999)

Section 113 of the Thailand Trademark Act 1991 ("the Act") states, "*Whoever has committed an offense for which he was punished under this Act and commits the same or another offense under this Act within a period of **five years after completion of the previous punishment** shall be liable to double punishment.*"

On June 15, 1999, the plaintiff filed a complaint with the Central Intellectual Property and International Trade Court (IP&IT Court) against the defendant on behalf of five world-famous watch companies for sale and possession of wristwatches bearing forgeries of their registered trademarks. This followed the arrest of the defendant two months earlier (on April 7, 1999) by police authorities when 111 wristwatches bearing counterfeit trademarks of the five foreign watch companies in the defendant's possession were also seized.

The defendant had a previous conviction. In 1997, he had been sentenced to six months' imprisonment (which was suspended for one year) and fined 5,500 baht for committing an offense under the Act.¹ Accordingly, the plaintiff requested the IP&IT Court to impose double punishment against the defendant under Section 113 of the Act on the grounds that the defendant had committed a previous violation and was punished under the Act and repeated the violation within a period of five years after the completion of the original punishment.

The IP&IT Court passed judgment against the defendant for the sale and possession of products bearing a forged trademark under Section 108 and Section 110(1) of the Act. The defendant was sentenced to a two-year imprisonment and fined 60,000 baht. However, as the defendant pleaded guilty to the charge, the Court halved the penalty to a one-year imprisonment (suspended for

¹ Red Case No. 2529/2540 (A.D.1997))

two years) and a fine of 30,000 baht. The seized counterfeit products were confiscated by the Court. However, with regard to the plaintiff's request for double punishment to be imposed on the defendant, the IP&IT Court stated that for the previous offense, the Court had rendered both imprisonment (suspended) and a fine. Although the Court considered the fine punishment paid, it however deemed that the imprisonment punishment had not been completed. Therefore, double punishment under Section 113 of the Act could not be used in this case.

The plaintiff appealed to the Supreme Court against the IP&IT Court's decision not to render double punishment against the defendant. The Supreme Court reversed the decision of the IP&IT Court, stating that Section 113 of the Trademark Act 1991 can be used in this case because the sentence of a fine is deemed to be one of the punishments against a person who has committed an offense under Section 18 of the Penal Code. As the defendant had been sentenced to a fine in a previous case under the Trademark Act and repeated the offense within a period of five years after completion of such punishment, Section 113 could be invoked. It was not necessary to consider whether the imprisonment (suspended) had been completed or not, because the sentence of a fine is deemed a punishment under the Act.

The Supreme Court rectified the decision of the IP&IT Court by doubling the punishment against the defendant according to Section 113 of the Trademark Act 1991. The defendant was sentenced to imprisonment of four years and a fine of 120,000 baht. As the defendant pleaded guilty to the charge, the Supreme Court reduced the penalty by half to imprisonment of two years (suspended for two years) and a fine of 60,000 baht.