

Black Case No. 517/2562

Red Case No. 7926/2562

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In the Name of His Majesty the King

Court of Appeal

20th June B.E. 2562 (2019)

Civil Case

Between	Mr. Chanchai Ruayrungruang	Plaintiff
	Red Bull Vitamin Drink (Thailand) Co., Ltd.	Defendant No. 1
	Mr. Saravoot Yoovidhya	Defendant No. 2
	Ms. Suthirat Yoovidhya	Defendant No. 3
	Ms. Pavana Langthara	Defendant No. 4

Re: Request for revocation of a resolution of the board of directors meeting of the company.

The Plaintiff filed the appeal against the judgement of the Southern Bangkok Civil Court dated 3 July 2018. The court of appeal accepted it on 8 March 2019.

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The Plaintiff filed the complaint and amended it saying that Defendant No. 1 is a juristic person in a category of limited company having the Plaintiff and Defendants No. 2, No. 3, and No. 4 as its directors. From late 1994 until early 1995, Mr. Chaleo Yoovidhya, the owner and chairman of Red Bull Beverage Co., Ltd., and T.C. Pharmaceutical Industries Co., Ltd., which owns the energy drink trademark, "Kratingdaeng " or "Red Bull", intended to distribute Red Bull energy drinks in the People's Republic of China. The problem was that the company failed to obtain permission from the Chinese government. He decided to seek assistance from the Plaintiff to negotiate and help get permission from the Chinese government to distribute Red Bull beverages in the country. Then, the Plaintiff and Mr. Chaleo agreed to establish the company, Defendant No. 1 on 27 March 1995, with the objective to distribute Red Bull energy drinks in the People's Republic of China. Other business partners also contributed funds to establish the company. Other business partners

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held a slight proportion of shares while the rest of the shares were equally held by the Plaintiff and Mr. Chaleo. After the incorporation of Defendant No. 1, Mr. Chaleo and the Plaintiff agreed to establish Red Bull Vitamin Drink (China) Co., Ltd. in China (also called RBVC) to produce and distribute energy drinks under the Red Bull trademark for distribution in China. Defendant No. 1 held 88 percent of shares of RBVC, the remaining shares were equally held by Mr. Chaleo's personal company and the Plaintiff's company, and the shares held by the Chinese entities which were a small portion. After its establishment, RBVC produced Red Bull beverages and made the marketing in China by buying flavors and raw materials from T.C. Pharmaceutical Industries Co., Ltd. The beverages distributed nationwide in China became very successful. On 14 September 2016, Defendant No. 2 sent an electronic mail to Mr. Pinid Khawto, a consultant to the Plaintiff, to summon a meeting of the board of directors of Defendant No. 1 on 20 September 2016. The proposed venue was 288 Ekachai Road,

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, Bang Bon Sub-district, Bang Bon District, Bangkok. Agenda to be considered at the meeting were: 1) relevant matters including appropriate measures in connection with a representative of Defendant No. 1 as a director of RBVC; and 2) any other business (if any). Due to the fact that the Plaintiff is domiciled in Beijing, the People's Republic of China, and that the Plaintiff is responsible for monitoring a lot of activities of RBVC, at that short notice of scheduling the meeting, it was impossible for the Plaintiff to attend a meeting of the board of directors of Defendant No. 1 on 20 September 2016. The Plaintiff appointed Mr. Pinid to contact Defendant No. 2 to postpone the meeting to 21 September 2016. Defendant No. 2 could not be reached. A message was also left on Defendant No. 2's mobile phone but Defendant No. 2 did not call back. Then, Mr. Pinid also sent an electronic mail to Defendant No. 2 to ask to postpone the meeting to 21 September 2016. No reply was made by Defendant No. 2 to say that he agreed to postpone the meeting of the board of directors of Defendant No. 1 as the Plaintiff requested. On 20

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September 2016, Defendant No. 2 sent an electronic mail attached with minutes of the meeting of Defendant No. 1 to the Plaintiff. It was described in the minutes that a meeting of the board of directors of Defendant No. 1 was held on 20 September 2016. Defendants No. 2, No. 3, and No. 4 were present at the meeting. It was resolved at the meeting that the Plaintiff would be removed as Defendant No. 1's representative, who also was a director of RBVC, as RBVC's legal representative registered with the Chinese authority, as the chairman of RBVC's board of directors, and as RBVC's legal representative, with immediate effect; Ms. Woraphanit Ruayrungruang, Ms. Fei Xiaoxuan, and Mr. Zhang Ligang were also removed with immediate effect as Defendant No. 1's representatives who also were directors of RBVC. It was resolved at the meeting to appoint Mr. Yip Sang Choi as a representative of Defendant No. 1 to hold the office of RBVC director,

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chairman of the RBVC's board of directors, and RBVC's legal representative with immediate effect; Defendant No. 3 as a representative of Defendant No. 1 to hold the office of RBVC director with immediate effect; Ms. Nucharee Yoovidhya as a representative of Defendant No. 1 to hold the office of RBVC director with immediate effect; Ms. Wanvimol Chotipuech as a representative of Defendant No. 1 to hold the office of RBVC director with immediate effect; and Defendant No. 2 as a RBVC's legal representative to be registered with the Chinese authority with immediate effect. It was also resolved at the meeting that Defendant No. 1 must send notice of the minutes of the meeting and Defendant No. 2 must send a copy thereof by electronic mail to RBVC to notify RBVC of the removals and appointments of representatives of Defendant No. 1, and to instruct RBVC to proceed with the registration in accordance with the resolution of Defendant No. 1

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with the Chinese authorities including the Beijing Municipal Administration of Industry and Commerce within 14 days from receipt of the notice, and to send all seals, certification documents, and account books in connection with RBVC businesses to Mr. Yip Sang Choi, as new RBVC board chairman and legal representative, within 14 days from receipt of the notice. It was resolved at the meeting that if RBVC ignored or failed to effect registration or to hand over those seals certification documents, and account books, within the specified time, Defendant No. 1 would take appropriate legal action, including bringing an action against RBVC to request a court order forcing RBVC to effect the registrations and to hand over all seals, certification documents, and account books. The Plaintiff notes that the resolutions passed by Defendant No. 1's board of directors are invalid, because Defendant No. 2 did not ask the Plaintiff if the Plaintiff was available to attend the meeting on 20 September 2016. Defendant No. 2 was fully aware of the fact that the Plaintiff is usually domiciled

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in China and responsible for managing the business activities of RBVC in China and would occasionally come to Thailand. Defendant No. 2 did not check with the Plaintiff whether it would be convenient for the Plaintiff to attend that meeting. Defendant No. 2 unilaterally decided to summon that meeting. Mr. Pinid, consultant to the Plaintiff, proposed to postpone the meeting from 20 September 2016 to 21 September 2016 and asked Defendant No. 2 to set a time and a venue to hold that meeting. Defendant No. 2 rejected the proposal although he was fully aware that resolutions passed at the meeting would have a significant effect on the business operation of RBVC in China and would have a direct effect on the Plaintiff. The agenda of the meeting is unclear. Nothing in the agenda items refers to a change of directors of RBVC. However, at the meeting, it was resolved to change directors in RBVC. Such removal and discharge of RBVC directors in China were tantamount to change of directors, the matter required the calling of an extraordinary meeting, and a resolution passed by a shareholders meeting. Directors of Defendant No. 1 have no power to change

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any director or to pass any resolution regarding a change of directors of RBVC in China. An invitation to the meeting was not duly sent in accordance with the law. The invitation letter was not sent by return receipt requested mail. Six days' notice was too short. It was inadequate for the Plaintiff, as a director whose domicile is overseas to attend the meeting. The meeting and the resolutions were passed without acknowledging the correct fact. Directors of RBVC had no chance to explain the facts before the resolutions were passed. The resolutions passed by board of directors of Defendant No. 1 were not based on understanding or detailed information. The resolutions were intended to get rid of shareholders who were the Plaintiff from the management or the board of directors. The meeting of Defendant No. 1's board of directors was held at a venue that is not Defendant No. 1's office. It was improper, and incorrect to hold a meeting at another place as directors must go to work at the company's office. It was unsuitable and impractical to hold the meeting at a distant place that was inconvenient for them. The Plaintiff sent a letter dated 22 September 2016 to Defendant No. 2 to No. 4 to object to and revoke the resolutions passed at the meeting of

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Defendant No. 1's board of directors. The Defendants disregarded the objection. The Plaintiff, as director of Defendant No. 1, and as director and shareholder of RBVC, suffers damage. The Plaintiff asked for a court order to force the four Defendants to revoke the resolutions passed at Defendant No. 1's board of director meeting on 20 September 2016, and if the Defendants do not revoke the resolutions, a judgment will be substituted for a declaration of intention. It is also requested that the resolutions passed at the meeting shall not be presented to any person or agency, domestically or internationally, by the Defendants.

The four Defendants gave their testimony that Defendant No. 2, as one of authorized directors of Defendant No. 1, sent a letter of invitation to the meeting by return receipt requested mail to the Plaintiff on 14 September 2016. The letter of invitation was sent to the address provided by the Plaintiff to be recorded in the shareholders register book and the notice of new director form registered with the Ministry of Commerce. The Plaintiff acknowledged receipt of the mail. Defendant No. 2 also sent the invitation to the Plaintiff by electronic mail to Mr. Pinid Khawto, consultant to the Plaintiff, on 15

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September 2016. The Plaintiff acknowledged receipt of the electronic mail. It is deemed that Defendant No. 1 summoned the meeting of the board of directors by giving five days' notice in advance. The five days' notice was reasonable. No provision for summoning of a meeting of directors is specifically provided for in the articles of association of Defendant No. 1. The fact that the letter of invitation to a meeting of directors of Defendant No. 1 was sent by Defendant No. 2 on 14 September 2016, for scheduling the meeting on 20 September 2016, that five days' notice in advance was given at a reasonable time. The notice did not breach any provision of the articles of association of Defendant No. 1. Although the Plaintiff mentions that he usually domiciles in China, he also has a permanent domicile in Thailand where Defendant No. 2 sent the invitation letter to the Plaintiff. Mr. Pinid Khawto, consultant to the Plaintiff, did not send an electronic mail asking to postpone the meeting to 21 September 2016. He sent a text message by mobile telephone asking to postpone the meeting to 22 September 2016. As Defendant No. 2 and other directors were engaged with other appointments on that day, Defendants No. 2 to No. 4 proposed postponing the meeting to

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26 September or 27 September 2016 but the Plaintiff was not available on those dates. Therefore, Defendants No. 2 to No. 4 agreed to hold the meeting on the original date of the meeting, 20 September 2016, which was the date that all of directors were available to attend the meeting. On the date of the meeting, 20 September 2016, three directors, i.e. Defendants No. 2, No. 3, and No. 4, were present at the meeting, while only the Plaintiff was not present thereat, thus the quorum was formed. The meeting discussed agenda items stated in the invitation letter, in sequential order. The first agenda involved relevant matters including appropriate measures in connection with a representative of the company in the capacity of a director of RBVC. The matters discussed at the meeting was clearly covering the content and the agenda stated in the invitation letter. The consideration and the resolution of the matter to remove a representative of Defendant No. 1 who was dispatched to be a director of RBVC's board of directors is included in the agenda stated in the invitation letter. The Plaintiff's claim – that in establishing Defendant No. 1, it was agreed that the Plaintiff and the shareholders, associates of Mr. Chaleo, who is the father of Defendants No. 2 and No. 3, would hold equal shares of the company

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– is not true. The Plaintiff holds 49 percent of the total shares while the Yoovidhya Family hold 51 percent thereof. Defendant No. 1 was established with the objective to distribute energy drinks under Kratingdaeng or Red Bull trademark in the People's Republic of China. As Defendant No. 1 is Defendant No. 2, No. 3, and No. 4's family business, they must control the majority of shareholders in Defendant No. 1. Defendant No. 1 contributed funds to establish another company in China, known as Red Bull Vitamin Drink Co., Ltd. Four shareholders of RBVC are: (1) Defendant No. 1, the majority shareholder holding 88 percent of the total share capital; (2) Inter Biopharm Holding Limited, a company owned by the Yoovidhya Family, or the family of Defendants No. 2, No. 3 and No. 4, holding 7 percent thereof, (3) Market Global Holding Limited, a company owned by associates of the Plaintiff, holding 4 percent thereof, and (4) Beijing Huiyou County Township Enterprises Corporation, an enterprise owned by a local administration of China, holding 1 percent thereof.

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Subject to the joint venture agreement and the articles of association of RBVC, each shareholder would appoint its representative to be a director of the company, based on its shareholding proportion. The board of directors of RBVC consisted of seven members. Defendant No. 1, as majority shareholder, appointed four directors, i.e. the Plaintiff, Ms. Woraphanit Ruayrungruang who is the Plaintiff's daughter, Ms. Fei Xiaoxuan, and Mr. Zhang Ligang. Inter-Biopharm Holding Limited appointed one director, i.e. Defendant No. 2. Market Global Holding Limited appointed one director. Beijing Haurou County Township Enterprise appointed one director. In RBVC's organizational structure, other than its board of directors, a representative or legal representative is also authorized to act for and on behalf of the company. The Plaintiff were the representative and RBVC's legal representative, since its establishment. The Plaintiff and his associates were entrusted by the Yoovidhya Family to exclusively manage the activities of RBVC in China. The Plaintiff controlled

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the administration, the production, and the local marketing in China. The Yoovidhya Family contributed funds to the capital investment, and to provide technical support in relation to the production and quality control. The Yoovidhyas also granted the license to use the Kratingdaeng or Red Bull trademark which belong to the Yoovidhyas, and supplied raw materials, that is the flavor to be ingredients in producing energy drinks bearing the Red Bull trademark at the plants in China. It was anticipated that the joint venture would generate income and profits from the production that would be distributed in the form of dividends among shareholders. Since its incorporation, no dividend or profit was distributed by RBVC to its shareholders, including Defendant No. 1, while its operations generated significant operating profit per year. Requests to examine accounting data of RBVC were sent by Defendant No. 2 to the Plaintiff. Defendant No. 2 also inquired of the Plaintiff about dividend payments. The Plaintiff declined to allow

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Defendant No. 1 to send an auditor to audit RBVC's accounts. The Plaintiff also exercised his power in the capacity of RBVC's legal representative and as director of RBVC to transfer a large amount of funds from RBVC's bank account to his private company located in Hong Kong Special Administrative Region. The Plaintiff also established another company owned by him to compete with RBVC and conducted business in the manner that the business of RBVC would gradually be transferred to his private company. The Plaintiff breached the duty of a director of RBVC. RBVC directly suffers damage and loss. Due to the breach, Defendant No. 1, as largest shareholder of RBVC, as well as Defendants No. 2, No. 3, and No. 4 as majority shareholders, also suffer damage. Consequently, Defendants No. 2, No. 3 and No. 4 as shareholders related to the Yoovidhyas, major shareholders and authorized directors of Defendant No. 1 no longer trusted the Plaintiff and his associates to run RBVC as a representative of Defendant No. 1. As the majority shareholder of RBVC, Defendant No. 1 wanted to exercise its power to change

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four representatives of the company, who were appointed as the directors in the board of directors of RBVC. Defendant No. 2 as director of Defendant No. 1 summoned a meeting of board of directors of Defendant No. 1 to allow Defendant No. 1, as the majority shareholder of RBVC in China, to send notice to inform RBVC that Defendant No. 1 wanted to replace its existing four representative in the board of directors of RBVC and nominated four other persons who would be representatives of Defendant No. 1 and directors in the board of directors of RBVC in China. Therefore, a board of directors meeting was held on 20 September 2016, which is the ground of this disputed litigation. The resolutions passed at the meeting held on 20 September 2016 are intended to protect and preserve Defendant No. 1's interests that suffered damage from the Plaintiff's breach of duty. The convening of Defendant No. 1 board of directors meeting was held at the head office of the Kratingdaeng or Red Bull group of companies located at 288 Ekachai Road, Bang Bon Sub-district, Bang Bon District, Bangkok.

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Defendant No. 1 is also a affiliated company of Kratingdaeng or Red Bull group. All preceding meetings were also held at that meeting venue. There are no grounds to revoke the meeting. The Plaintiff exercised his right of action in bad faith in order to impede or defer the legal proceedings brought in China by Defendant No. 1 against the Plaintiff. The Plaintiff does not bring a lawsuit in good faith. The Defendants therefore request to dismiss the case.

The court of the first instance considered and dismissed the case. The legal fee and attorney fee shall be borne by each side.

The Plaintiff filed the appeal.

The court of appeal reviewed the case. The preliminary facts, which neither the Plaintiff nor the Defendants disputed, are settled, and it can be concluded to be admissible that Red Bull Vitamin Drink (Thailand) Co., Ltd., Defendant No. 1, was registered to be juristic person on 27 March 1995. It had four directors, which were the Plaintiff, having Chinese name as Yan Bin, and Defendant Nos. 2, 3 and 4. The company's objective is to hold shares in Red Bull Vitamin Drink Co., Ltd. (China)

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or RBVC, which was registered in the People's Republic of China. RBVC manufactures and sells the energy drinks branded Kratingdaeng or Red Bull in China. On 14 September 2016, Defendant No. 2, as a director of Defendant No. 1, sent invitation letters to the other three directors of Defendant No. 1 in order to convene a board of directors meeting of Defendant No. 1 on 20 September 2016 at the venue No. 288, Ekkachai Road, Bang Bon Sub-district, Bang Bon District, Bangkok. At the time of the meeting, the board of directors meeting was convened and attended by Defendants Nos. 2, 3, and 4, while the Plaintiff did not attend. The meeting resolved that: the Plaintiff be removed as a director of RBVC, RBVC's legal representative recorded with the relevant government authorities in China, the chairman of RBVC's board of directors, and RBVC's legal representative, with immediate effect; Ms. Woraphanit Ruayrungruang, Ms. Fei Xiaoxuan, and

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Mr. Zhang Ligang be removed as directors of RBVC with immediate effect; Mr. Yip Sang Choi be appointed as a director of RBVC, the chairman of the RBVC's board of directors, and RBVC's legal representative with immediate effect; Defendant No. 3 be appointed as a director of RBVC with immediate effect; Ms. Nucharee Yoovidhya be appointed as a director of RBVC with immediate effect; Ms. Wanvimol Chotipuech be appointed as a director of RBVC with immediate effect; Defendant No. 2 be appointed as a legal representative of RBVC registered with relevant government authorities in China with immediate effect; and RBVC proceed according to the regulation with the relevant authorities of the government authorities in China to reflect the resolution of the meeting within 14 days, per the minutes of the meeting, Exhibit Jor 12. On 22 September 2016, the Plaintiff sent a letter to Defendant Nos. 2, 3, and 4 to object to and revoke the meeting of the board of directors meeting of Defendant No. 1, per Exhibit Jor 13.

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Therefore, there is an issue to be decided whether there are justifiable grounds to revoke the meeting of the board of directors of Defendant No. 1. on 20 September or not. The Plaintiff's appeal is that the board of directors meeting of Defendant No. 1 was invalid because the invitation to the meeting was sent under short period of time. The Plaintiff, who was in China, then was unable to travel back to attend the meeting in time. The place of the meeting was also far away from the office of Defendant No. 1. The agenda of the meeting was also unclear. The resolution of board of directors of Defendant No. 1 to remove the Plaintiff from being director, chairman, and legal representative of RBVC in China and to appoint other persons in replacement was invalid because it was a removal of directors in which it must be done by the shareholders meeting only. In this instance, Mr. Pinid Khawto, the Plaintiff's consultant, gave his testimony that during 1994 to 1995, Mr. Chaleo Yoovidhya, the owner and chairman of

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Red Bull Beverage Co., Ltd., and T.C. Pharmaceutical Industries Co., Ltd., which owns the energy drink trademark, "Kratingdaeng " or "Red Bull", intended to distribute Red Bull energy drinks in the People's Republic of China. He decided to negotiate with the Plaintiff to seek assistance from the Plaintiff. Eventually, the Plaintiff and Mr. Chaleo agreed to establish the company, Defendant No. 1 on 27 March 1995. Each of the Plaintiff and Mr. Chaleo held 50 percent of shares in the company. The Plaintiff and Mr. Chaleo were also the authorized directors who must jointly act together. The objective of the company was to distribute Red Bull energy drinks in the People's Republic of China. Then, Defendant No. 1, T.C. Pharmaceutical Industries Co., Ltd., Rouychai International Group Co., Ltd. – a company owned by the Plaintiff, and Beijing Haurou County Township Enterprises Corporation jointly entered into the joint venture agreement in the Republic of China under the name Red Bull Vitamin Drink Ltd., and prepared the articles of association of such company in which the Plaintiff, Defendant No. 2, Mr. Zhang Ligang,

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Ms. Fei Xiaoxuan and Ms. Woraphanit Ruayrungruang acted as directors. The Plaintiff operated RBVC in the Republic of China with success and was able to generate a lot of profits while the Defendants and other investors did not provide assistance to the Plaintiff. The Plaintiff sought and arranged for the funding to expand the business. Defendant No. 1 only invested around THB 300,000,000, but RBVC had increasing fund because of the management solely by the Plaintiff. Defendants gained income from granting RBVC to use the trademark and selling raw materials used in the production of the energy drinks in each year for not less than THB 100,000,000. Defendants were not interested in investing more. In addition to holding 88 percent of shares in RBVC, Defendant No. 1 did not operate other business. On 14 September 2016, Defendant No. 2, thought Mr. Prasit Somnet – legal advisor, sent an electronic mail to the witness

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informing him of schedule of the board of directors meeting of Defendant No. 1 on 20 September 2016 at 288 Ekachai Road, Bang Bon Sub-district, Bang Bon District, Bangkok. Agenda to be considered at the meeting were relevant matters including appropriate measures in connection with a representative of Defendant No. 1 as a director of RBVC. However, due to the Plaintiff being domiciled in Beijing, the Republic of China, setting the meeting date at short notice may cause the Plaintiff not be able to attend the meeting. The Plaintiff assigned the witness to contact Defendant No. 2 to postpone the meeting to be on 21 September 2016, but it cannot be reached. A message was also left on Defendant No. 2's mobile phone but Defendant No. 2 did not call back. The witness then asked Mr. Swasdi Chandrasuwan to send an electronic mail to Defendant No. 2 for postponing the meeting, but Defendant No. 2 did not respond. On 20 September 2016, Defendant No. 2 sent a minutes of the meeting of Defendant No. 1 to the witness. The Plaintiff then was aware of the existence of the board of directors meeting of Defendant No. 1 on 20 September 2016.

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It was resolved at the meeting that the Plaintiff would be removed as Defendant No. 1's directors, as RBVC's legal representative registered with the Chinese authority, as the chairman of RBVC's board of directors, and as RBVC's legal representative; Ms. Woraphanit Ruayrungruang, Ms. Fei Xiaoxuan, and Mr. Zhang Ligang were also removed as Defendant No. 1's directors of RBVC. It was resolved at the meeting to appoint Mr. Yip Sang Choi to replace the Plaintiff and appoint Defendant No. 3, Ms. Nucharee Yoovidhya, and Ms. Wanvimol Chotipuech as directors of RBVC. It was resolved at the meeting to appoint Defendant No. 2 as a legal representative of RBVC registered with the Chinese authority in accordance with the minutes of the meeting together with its translation, Exhibit Jor. 12. The resolution of the directors of Defendant No. 1 was unlawful.

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The four Defendants attested that as part of the business of manufacturing and distributing the drinks branded Kratingdaeng in the People's Republic of China, the Plaintiff was responsible for the marketing and managing the business, while the Defendants, the owner of the Kratingdaeng or Red Bull trademark, supplied Mixed Fruit Flavor to RBVC to manufacture and distribute the product in the People's Republic of China, and granted RBVC the rights to use the trademark, including sending employee to provide know-how to RBVC's employees. Afterwards, Mr. Chaleo passed away and the Plaintiff presented the memorandum of agreement with Mr. Chaleo's signature stating that the Plaintiff agreed to pay for 49 percent of the shares in Defendant No. 1; however, the Plaintiff overpaid the money. Therefore, Mr. Chaleo agreed to pay the overpaid amount to the Plaintiff, but Mr. Chaleo had passed away before transferring the 49 percent of shares and repaying the overpaid money to the Plaintiff. The Plaintiff then requested it from the Defendants.

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The Defendants never know about this story before and cannot confirm the truth of the story. This led to the dispute between the Plaintiff and the Defendants regarding the shareholding ratio of Defendant No. 1, in which the Plaintiff was holding only 32 percent of shares. Then, there was the extraordinary general meeting of Defendant No. 1, No. 1/2558 on 16 October 2015. The Plaintiff attended the meeting. The meeting considered the shareholding ratio of Defendant No. 1 and reached a resolution that the Defendants would hold 51 percent of shares and the Plaintiff would hold 49 percent of shares. The Defendants had to transfer the shares to the Plaintiff to meet that ratio and repay the overpaid share payment money to the Plaintiff. For RBVC in People's Republic of China, Defendant No. 1 held 88 percent of shares and had the rights to appoint four directors, while the other shareholders had the rights to each appoint one director as their representative in the board of director. The Defendants agreed that Plaintiff can appoint his people as management; according to the People's Republic of China's law, for the operations or the entering into transactions by the company,

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including contacting with the government's sector must be done through the legal representative of the company, not through the director of the company like in Thai law. According to the joint venture agreement and articles of association of RBVC, the legal representative of the company was the person who was the Chairman of the company's board of directors and was appointed from the board of directors meeting of the company. The Plaintiff was appointed from the board of directors to be the Chairman of the company's board of directors, and to be the legal representative of the company. This means the Plaintiff solely has the authority under the law of the People's Republic of China to act for and on behalf of RBVC. After Mr. Chaleo passed away, Defendant No. 2 - No. 4 investigated and found that since the establishment of RBVC, the management of the RBVC was under the Plaintiff's control, and there had been large profits from the RBVC's annual operations, but there were no dividend payments to the shareholders, including Defendant No. 1.

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Therefore, Defendant No. 2 pressed for dividend payments from the Plaintiff. In the meeting with the Plaintiff in the People's Republic of China on 6 September 2015, Defendant No. 2 asked the Plaintiff again, and the Plaintiff claimed that there had been dividend payments, but that the Plaintiff transferred the dividend money to Hong Kong Reinwood's account, his private company located in Hong Kong Special Administrative Region, while awaiting for clarity regarding the shareholding dispute in Defendant No. 1. Once the dispute was resolved, the Plaintiff will transfer the dividend money. To settle the dispute, the Plaintiff and Defendants agreed to settle the dispute in an extraordinary general meeting, on 16 October 2015, and transfer 49 percent of shares to the Plaintiff on 30 October 2015; the Defendants also transferred Baht 4,360,000 to the Plaintiff. After the dispute was settled, the Plaintiff still did not pay the dividend to Defendant No. 1. In addition, an investigation of the Plaintiff's management showed that the Plaintiff mischievously managed RBVC and caused damages to the company and shareholders. Therefore, the Defendants used their rights to file a claim against the Plaintiff,

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under the law of the People's Republic of China, in several cases. After the investigation of the expansion of plants manufacturing Red Bull drinks in the People's Republic of China, it was found that there were four new manufacturing plants. However, it turned out that plants no. 2 - no. 4 were the Plaintiff's private plants, although the Plaintiff still ordered the flavors for manufacturing Red Bull drinks from T.C. Pharmaceutical Industries Co., Ltd. The Defendants filed a claim against the Plaintiff's company, the owner of the plants, for the infringement of trademarks to the court in the People's Republic of China. The Defendants were worried, and no longer trusted the Plaintiff to manage RBVC, and because the trademark licensing agreement would expire on 6 October 2016, there was no consideration regarding the renewal of the agreement. As they were afraid of the damages that could occur, Defendants No. 2 - No. 4 wanted Defendant No. 1 to change the representative of Defendant No. 1 on the board of directors of RBVC, which must be done by holding a board of directors meeting of Defendant No. 1. Hence, Defendant No. 2 appointed Ms. Nuchaya Timrat, their

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legal counsel, to send an invitation to Defendant No. 1's board of directors meeting on 14 September 2016. Defendant No. 2 sent the invitation to Defendant No. 1's board of directors meeting on 20 September 2016 at 9:00 a.m. In addition, an invitation was sent via return receipt requested mail to the Plaintiff, at No. 29/183, Rama IX road, Huai Khwang Subdistrict, Huai Khwang District, Bangkok, as was done previously. On 15 September 2016, Defendant No. 2 assigned Mr. Prasit to send the invitation by electronic mail to Mr. Pinid too. However, Mr. Pinid stated that the Plaintiff would like to postpone the meeting to 22 September 2016, because the original date was inconvenient for the Plaintiff. However, Defendant No. 2 and No. 3 were unable to attend the meeting on this date. Defendant No. 2 proposed the new meeting date to be 26 or 27 September 2016, but they were informed that the Plaintiff could not attend the meeting on either date, and Mr. Pinid insisted that the only convenient date was 22 September 2016. Defendant No. 2 - No. 4 were of the view that since they could not agree on the meeting date, the agenda of this meeting concerned the protection of Defendant No. 1's benefits, and the Plaintiff and his related parties were adverse parties in this matter,

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Defendants No. 2 - No. 4 decided that the meeting must be held on 20 September 2016. On the meeting date, Defendants No. 2 - No. 4 attended the meeting, the company had four directors. The meeting passed a resolution according to the minutes of the meeting, attached along with the translation as Exhibit Jor. 12. The meeting removed the Plaintiff as a representative of Defendant No. 1 on the board of directors of RBVC, which did not affect the directorship of the Plaintiff in Defendant No. 1. Hence, the resolution of the meeting of Defendant No. 1 was lawful. The articles of association of Defendant No. 1 did not prescribe the period for the calling a board of directors meeting in particular, but according to the minutes of the statutory meeting of Defendant No. 1 on 23 March 1995, Exhibit Jor. 3, it is clearly stated that the meeting unanimously resolved that the Civil and Commercial Code shall be used as the company's articles of association. Therefore, the calling of the board of directors meeting of Defendant No. 1 was in accordance with section 1162 of the Civil and Commercial Code, which stated that any one of the director can call for board of directors meeting at any time.

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Defendant No. 2, who is one of Defendant No. 1's directors, can call for the board of directors meeting at any time. Defendant No. 2 sent the invitation to the Plaintiff as the director of Defendant No. 1 to attend the meeting on 20 September 2016, at 9:00 a.m, by return receipt mail, per the copy of receipt, Exhibit Lor. 6 and by electronic mail to Mr. Pinid, Exhibit Jor. 10 (or Lor. 7). The invitation to the meeting was sent on 14 and 15 September 2016 for the meeting on 20 September 2016 , which was five days prior to the meeting date. When considering the time period of the calling of this directors meeting when compared to other meetings, such as the calling of Defendant No. 1's board of directors meeting on 22 September 2015, which allowed approximately 6-7 days prior to the meeting date, as per the invitation, Exhibit Jor. 19, and the meeting on 10 October 2016, which allowed approximately 6-7 days prior to the meeting date, as per the invitation, Exhibit Lor. 8,

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these were similar to the advance period before the meeting on 20 September 2016. Therefore, the advance period before this meeting was almost similar to other meeting and therefore deemed appropriate. Even if during the sending of invitation, the Plaintiff was at Beijing, the People's Republic of China, it was learned from the Plaintiff's witness that Plaintiff owned a private aircraft. Hence, the Plaintiff had sufficient time to travel and attend the meeting according to the appointment proposed by Defendant No. 2. The Plaintiff asked Mr. Pinid to postpone the meeting to 21 or 22 September 2016, but Defendant No. 2 and No. 3 could not attend the meeting on those days, and when Defendant No. 2 proposed free date for the Plaintiff to attend the meeting on 26 or 27 September 2016, the Plaintiff stated that he could not attend the meeting on either date. It is deemed that the Plaintiff did not try to find a free date to match the free dates of the Defendants to attend the meeting, as Defendant No. 2, one of the director of Defendant No. 1 called for in accordance with

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the law. Even though, the Plaintiff attested and appealed that when Defendant No. 1 does not have articles of association concerning the advance period before the meeting date, the advance period before the meeting date should be in accordance with the articles of association of RBVC which is considered as conducting the same type of business as Defendant No. 1. According to clause 23 of the joint venture agreement, Exhibit Jor. 6, the calling of a board of directors meeting must be done at least 15 days prior to the meeting date. For this claim, it is deemed that RBVC is a company established as a joint venture under the law of the People's Republic of China and it is a different entity, separate from Defendant No. 1, which is just one of the shareholders. The joint venture agreement does not bind Defendant No. 1. Furthermore, there are no cases in which Defendant No. 1 has required the use of RBVC's period for calling a meeting for its own meetings. The calling of a meeting of Defendant No. 1 must be in accordance with the Civil and Commercial Code, as discussed above. In addition, according to the four Defendants, the reason why Defendant No. 2 had to call for board of directors meeting on the date it did was because the Plaintiff had mismanaged

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RBVC, which could led to damages to the company and shareholders. In addition, there were no dividend payments to RBVC's shareholders, and Defendant No. 1 held 88 percent of shares in RBVC. The business operation was successful and profits were high, according to the minutes of the board of directors meeting of RBVC, and its translation, Exhibit Lor. 24, in which the Plaintiff and Defendant No. 2 both attended the meeting. The minutes stated that for more than 20 years of operation of RBVC, the profits which could be paid to shareholders totaled CNY 1,251,000,000, and the profits which could be paid to Defendant No. 1 totaled CNY 728,000,000. However, since the Plaintiff and Defendants did not agree on the shareholding ratio in Defendant No. 1, Hong Kong Reinwood Co., Ltd. received the profit on behalf of Defendant No. 1, and the profit remains in Hong Kong Reinwood Co., Ltd's account. This shows that if Defendant No. 2 did not call for

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a board of directors meeting of Defendant No. 1, it could damage Defendant No. 1 and the shareholders, which would not receive the large amount of dividends or profit that they should have had. The Plaintiff attested and appealed that when Mr. Chaleo was still alive, Mr. Chaleo stated that RBVC was the Plaintiff's company, the Plaintiff should manage and take care of additional investments, that the debt should be the burden of the Plaintiff. The Defendants were never interested in additional investment. Therefore, the company belonged solely to the Plaintiff. Furthermore, RBVC had to pay a large amount trademark fee to the Defendants instead of paying dividends, and also purchased material for manufacturing from the Defendants. However, RBVC ,as a company, has a number of shareholders, including Defendant No. 1, which is the major shareholder. As a shareholder, it is entitled to dividends or profits resulting from the operation according to the section 1012 of the Civil and Commercial Code. All of the profits can not go to the Plaintiff, because that the Plaintiff had managerial authority, and was the only person who made additional investments or the Plaintiff

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had paid a lot of money for trademark licensing to the Plaintiff and bought a material manufactured from the Defendants as claimed by the Plaintiff. Furthermore, the dispute regarding the shareholding ratio between the Plaintiff and the Defendants in Defendant No. 1 was settled in the extraordinary meeting of Defendant No. 1 on 16 October 2015. In addition, there was a complete transfer of shares to the Plaintiff to hold 49 percent of shares according to the agreement, Exhibit Lor. 28. The Plaintiff still did not pay the dividend to the Defendants. This led to the Defendants filing a claim against the Plaintiff in the People's Republic of China on behalf of Inter Biopharm Holding Limited, a company owned by the Defendants registered under foreign law, according to the claim and its translation, Exhibit Lor. 41. The Plaintiff also admitted that there were no dividend payments. The Plaintiff's attestation that RBVC belong solely to the Plaintiff is only the Plaintiff's understanding. The four Defendants also attested that the trademark licensing agreement would expire on 6 October 2016

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and there were no consideration regarding the renewal of the agreement, afraid of the damages that could happen from such cause, the evidence from Defendants No. 2 - No. 4 is better than the Plaintiff's. Defendant No. 2 had sufficient reasons to call for a board of directors meeting from Defendant No. 1 as soon as possible. Furthermore, the sending of an invitation to the domicile which the Plaintiff informed Defendant No. 1 of, which is No. 29/183, Rama IX Road, Huai Khwang Subdistrict, Huai Khwang District, according to the memorandum of association, name reservation form, minutes of the statutory meeting, and copy of the list of shareholders, Exhibit Jor. 3, was lawful. This is despite the fact that the Plaintiff attested that when the Plaintiff visited Bangkok, the Plaintiff would stay at JW Marriott Hotel, Sukhumvit Soi 3, which is near the head office of Defendant No. 1, but the hotel is not the permanent domicile of the Plaintiff. Also, despite the fact that the venue of the meeting was at No. 288, Ekkachai Road, Bang Bon Sub-district, Bang Bon District, Bangkok, which was not the head office of

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Defendant No. 1, the previous directors meeting of Defendant No. 1 was held at this venue. The Plaintiff used to be able to attend the meetings according the minutes of that previous meeting, Exhibits Lor. 4 and Lor. 5. Therefore, a venue for the meeting was chosen that was neither far from the Plaintiff's address or Defendant No. 1's head office to cause any obstacle that might prevent the Plaintiff from attending the meeting. As for the claim in the appeal, which stated that the agenda in the invitation was unclear. For the item regarding the removal of the Plaintiff from their position, on the item in the invitation to the board of directors meeting of Defendant No. 1, Exhibit Jor. 10, reads: "Other matters, including relevant matters including appropriate measures in connection with a representative of Defendant No. 1 as a director of RBVC in the People's Republic of China" This was understandable that the meeting was about any appropriate matters concerning the representative of the company as a director of RBVC, which included the remaining or the removal or status of the representative and directorship of RBVC.

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The agenda of the meeting was clear. The Plaintiff also appealed that Defendants No. 2 - No. 4, who are the directors of Defendant No. 1, attended the meeting and passed a resolution removing the Plaintiff from their position as director in RBVC in the board of directors of the company, as legal representative registered with the Chinese authority, as the chairman of RBVC's board of directors, and as RBVC's legal representative, and appointed Mr. Yip Sang Choi to replace the Plaintiff, according to the minutes of the meeting and its translation, Exhibit Jor. 12. The Plaintiff attested and appealed that the removal of the Plaintiff from this position was tantamount to the removal of the Plaintiff from the directorship of RBVC, which cannot be done by a resolution from the Defendant No. 1's board of directors meeting, but must be done by a resolution from the shareholders meeting. Defendant No. 2 attested that this removal was constituted the removal of the Plaintiff as a legal representative of RBVC in the People's Republic of China, and did not

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affect the directorship of the Plaintiff in Defendant No. 1. Furthermore, the appointment of the director and legal representative was done by Defendant No. 1's board of directors meeting. Mr. Prasit, the witness of the four Defendants, responded to the Plaintiff's lawyer's cross-examination question by stating that the Plaintiff had three positions in RBVC: (1) legal representative; (2) Chairman of the management board of directors; and (3) authorized director. As the legal representative, it was deemed to have the highest authority of the juristic person according to the law of the People's Republic of China. The fact that Defendant No. 1's directors passed a resolution removing the Plaintiff from the legal representative position of RBVC would require cooperation from the Plaintiff. This is to say that currently the Plaintiff is still the legal representative of RBVC due to the dispute. The court of the People's Republic of China is still awaiting the judgment in this case as to whether the board of directors meeting of Defendant No. 1 was lawful or not. Defendant No. 2 stated that when the Plaintiff was removed from the legal representative position, the Plaintiff did not

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received any damage, because it did not affect the directorship in Defendant No. 1, and because the change would happen in the People's Republic of China and did would not affect the Plaintiff's directorship in Defendant No. 1. When considering the establishment of RBVC that started from the entering into under the joint venture agreement and its translation, Exhibit Jor. 5 and Jor. 6, including the articles of association of RBVC, and its translation, Exhibit Jor. 7, it can be seen that RBVC is the joint venture and a juristic person according to the law of the People's Republic of China, having seven directors, comprising comprised of persons who were appointed from each parties party as per the ratio given in the articles of association. The board of director of the company has the highest authority and the authority to make a decision on the crucial matters of the joint venture. The Chairman of the board of directors of the company is the legal representative of the joint venture. Since the Plaintiff have has three positions in RBVC, as stated by Mr. Prasit,

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the removal of the Plaintiff from their positions as director, chairman of the board of directors, and legal representative of RBVC by the meeting of Defendants No. 2 - No. 4 and appointing new person to replace the Plaintiff in all of the positions, as done according to the minutes of the meeting and its translation, Exhibit Jor .12, constitutes the removal of the Plaintiff from all of the three positions in RBVC, not just from the legal representative position of RBVC, as the court of first instance had ruled, but it was also the removal of the Plaintiff from the director position in RBVC as appeal by the Plaintiff. If RBVC was registered under Thai law and had domicile in Thailand, the removal of the director could not have been done, because it would have been contrary to section 1151 of the Civil and Commercial Code, which states that the appointment or the removal of the company's directors must be done by a resolution from the shareholders meeting.

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However, RBVC was established under the law of the People's Republic of China, operating its business in the People's Republic of China, and each director of the company was appointed by the parties as prescribed in the agreement and the articles of association, Exhibits Jor. 5 - Jor. 7. In this case, the Civil and Commercial Code is not applicable to RBVC. Therefore, Defendant No. 1, the major shareholder of RBVC (holding 88 percent of shares). Even though, the resolution of Defendant No. 1 from the meeting between Defendant No. 2 - No. 4, as their authorized directors affect the Plaintiff's directorship, Chairman of the board of directors and legal representative positions in RBVC, it did not affect the directorship of the Plaintiff in Defendant No. 1. This could be deemed as the management of RBVC by the four Defendants. Defendant No. 2 also stated that the board of directors meeting of Defendant No. 1 appointed the Plaintiff to the positions they held in RBVC, and the Plaintiff did not attested otherwise. Therefore, the appointment of the Plaintiff in these three positions did not come from

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the shareholders' resolution. The four Defendants will be able to use the resolution from the meeting to register the change of the Plaintiff's authority or with RBVC or third party in the People's Republic of China or not is subject to the law of the People's Republic of China. The meeting of Defendant No. 1 was not contrary to the Civil and Commercial Code. Therefore, there is no reason to revoke the resolution of the board of directors meeting of Defendant No. 1 on 20 September 2016. Other appeals of the Plaintiff relate to minor details, and not to essential elements which could affect the judgement. The court of appeal does not have to consider these appeals. The court of appeal agrees with the ruling of the court of first instance. The Plaintiff's appeal must not be taken into account.

The judgment is upheld. Court fees will not be charged for the appeal court stage.

Mr. Chakkrapan Sornsuphab

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Mr. Supit PranetPolgrung

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Mr. Mookmontri Grunnura

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Southern Bangkok Civil Court

20 August 2019

The hearing for the judgment is held today. The clerk of the Plaintiff's lawyers and clerk of the four Defendants' lawyers are present.

The judgement is read to the Plaintiff and the four Defendants.

The reading of the judgement were informed / read.

-signature-

(Ms. Aorn Chavalitnitikul)

-signature-

(Mr. Pattapol Kwanmuang)

record-read

Judge

Certified true copy

-signature-

Clerk of the Plaintiff's lawyer

-signature-

Clerk of the Defendants' lawyer

-signature-

(Ms. Nongyaow Kerdchote)

The expertise court official

20 August 2019