

ABSTRACT

Thesis Title : Legal Problems Regarding Well - Known Marks

in The Trademark Act B.E. 2534

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The use of trademarks belonging to others without the prior permission from their rightful owners should be seen as acts of unfairness and abuse or infringement of the owners' rights. Especially so if the trademark in question is widely known. The owner has to devote a lot of efforts and time in building up the reputation. Much investment has also gone into the promotion of the trademark. Thus it is appropriate to give extra protection to trademarks which are more widely known than trademarks which are less famous.

The widely - accepted international principle is Article 6 under the Paris Convention for the Protection of Industrial Property A.D. 1967 and Article 16 (2) and (3) of the Agreement on Trade-Related Aspects of

Intellectual Property Rights. (TRIPs) This also covers the many domestic laws of the United Kingdom, United States of America and Japan, for instance.

As for Thailand, the protection of trademark is based on Article 8 (11) under the Trademark Act B.E. 2534 which stipulates that “trademarks which comprise the following features or characteristics are not registration.

(11) A Trademark which is identical to established and well known trademark, or appears to be similar to the mark in a manner that may confuse the public as to the true origin of the product, irrespective whether the product has been registered or not.”

Although, the well-known mark protection is stipulated in the Thai trademark law. Thailand has not made any precise definition or written criteria in determining how a particular trademark is deemed as widely known.

Thus, this particular research focuses on the study of the line of thoughts and theories relating to famous trademark both in foreign countries and Thailand. It is intended to identify the proper criteria which would determine how a trademark could be judged as being well-known. This will serve as a basis for the protection of well known trademark from any abuse and the promulgation of appropriate laws to ensure such protection.

The research findings point out that Thailand is in need of a well-defined set of criteria in determining how a trademark is judged as being well known. The researcher has proposed 6 decision criteria as follows:

1. The trademark must be in use already.
2. The length of time that the trademark has been utilized.
3. The sales volume of the product which uses the trademark in question
4. Market share
5. Sampling survey of the market
6. The degree of advertising and promotion using the trademark.

The researcher also suggests that there should be an extension of the scope of protection, beyond Article 8 (11) which stipulates that the laws forbids only the imitation of the trademark in such way as to confuse the public or the consumers. Moreover the researcher wants to propose that even if confusion does not follow, the well - known trademark should also be protected. This is because the original trademark would have been infringed anyway whether relying on the Dilution Theory or the Theory on Unfair competition,