

ABSTRACT

Thesis Title : Exhaustion of Intellectual Property Right with Legal Problems Regarding the Parallel Import concerning Goods or Products under Trademark

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Law concerning intellectual property is the law that aims to benefit and protect the owner of intellectual property coming from research, invention, design, creation of art work, entertainment and building up the name of quality source of goods by law with the purpose to reciprocate and enhance new creation always. But the result of such law also has adverse effects due to excessive exercising of the right of the owner beyond limitation that results in trade monopoly, evidenced by developed countries which popularly exercise their intellectual rights as measure to bar the import of parallel products, allowing manufacturers in their countries to set up prices and distribution channels effectively. The effect of using intellectual property in this manner saves the State Sector from unnecessarily issuing measures or policy to prevent lawful import of similar goods of lower prices

from abroad and avoid them from giving explanation to domestic consumers about higher level of domestic prices using intellectual property as the ground

Issues of the problem and points to be considered are the trade obstruction and parallel importation of goods due to the condition of laws and mechanism of trade. That is parallel importation, in general is the activity of independent entrepreneur who has lawful goods from one country (Normally where prices are less expensive) and export them to another country (Normally where prices of goods are higher). This mechanism has been going on for a long time, as it actually is fundamental of trade seeking for profit and considered liberalization of trade, but still without principle when it involves intellectual property. Therefore this principle needs consistent measure, such as measures to exhaust the right in intellectual property that does not bar trade and enhances liberalization of trade, while measure to protect the right of the owner of intellectual property is available sufficiently and appropriately.

As you may study it from development principle of the intellectual property right exhaustion of European Union, where European countries group together and called "European Union" for the benefit of trade they have with one another. In support of this, there is a theory of giving permission indirectly to exhaust the right but this is still not completely perfect. Herein we emphasize the study of free movement of goods as a criteria of exhaustion of the right in intellectual property, as the European Union Court's principle has already set up a guideline for practice. The reason to study criteria to exhaust the right of intellectual property, especially

concerning trade marks which is an important issue, because it has direct effect on application for or band of parallel imports. TRIP's agreement has not laid down regulations on scrap of right, and still leave it to setup if all the countries themselves. There shall be no international principles to follow. While TRIP's agreement states the desire of the allied countries to reduce the deviation and obstruction to international trade, with the awareness of enhancing and protection of right in intellectual property sufficiently and effectively, including maintaining of measure, and protocol used in enforcing the right in intellectual property for them not to become a hindrance of lawful trade.

Establishment of joint market of EEU is necessary and it is necessary to barrier entirely and legal obstacles that cause all the lawful hindrances to international trade of the member countries. Joint market, therefore is constructed on fundamental of free movement of goods. Although enforcement of the right of intellectual property is a measure to bar trade, but Rome Convention, Article 36, Masstricht Agreement, Article 222 have prescribed the recognition of the right of the holder without considering protection of intellectual property as a measure to bar trade, but protection of intellectual property is not to be used beyond its limit, causing discrepancies against basic principle of aggregation of the economy of the European Joint Market. European court realizes well the dispute of right in intellectual property and principle in free trade movement of goods, and has made an effort to set up the scope of Article 36 with limitation, which is having the right to use intellectual property. This principle can be

applied to the principle of the right to exhaust intellectual property, and also reduce hindrance against the disputes of international countries or member countries to create international criteria and practically be used as a standard of principle of the right of exhaustion.

This study will be the only study of exhaustion of the right in trade mark, under Roman Convention, Article 30-36 according to the policy of free movement of goods, and the result of compact on parallel import on domestic owners of goods comparing to the guideline of practice, provision of law and guideline of judgement of the Thai Court for conclusion of guideline suitable to Thailand concerning limitation and principle of exhaustion of right in trade mark which can coordinate profit between the owner of right and domestic consumer, and at the same time maintaining principle of liberalization of trade.