

**PATTERNS OF WRONG DOING UNDER INTELLECTUAL  
PROPERTY LAWS: A CASE STUDY OF TRADEMARKS FRAUD**

**POL.LT.COL. PHIPHOP PATCHARALAPAT**

**A THESIS SUBMITTED IN PARTIAL FULFILLMENT  
OF THE REQUIREMENTS FOR  
THE DEGREE OF DOCTOR OF PHILOSOPHY  
(CRIMINOLOGY, JUSTICE ADMINISTRATION AND SOCIETY)  
FACULTY OF GRADUATE STUDIES  
MAHIDOL UNIVERSITY  
2012**

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entitled

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was submitted to Faculty of Graduate Studies, Mahidol University  
for Doctor of Philosophy (Criminology, Justice Administration and Society)  
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## ACKNOWLEDGEMENTS

The accomplishment of this dissertation is not possible without the kind assistance of the following persons: Prof. Viraphong Boonyobhas, Faculty of Law, Chulalongkorn University, Assoc. Prof. Sirivit Kulrojpatra, Ph.D., Assoc. Prof. Srisombat Chokprajakchat, Ph.D., Asst. Prof. Sunee Kanyajit, Ph.D., Asst. Prof. Chankanit Kritya Suriyamanee, Ph.D., Mahidol University. and Lect. Sriparinya Toopgrajank, Ph.D., I would like to extend my deepest appreciation for their valuable advice and guidance from the start to the completion of my dissertation.

I am grateful to the investigated officers at the Suppression Unit of Economic Crime Division, Central Police Bureau, Royal Thai Police, including the special investigated officers and special case officers, Bureau of Intellectual Property, Department of Special Investigation, Ministry of Justice for their times to complete the interview and their opinions regarding the intellectual property rights: A case of trademarks fraud which made this research more reliable, reflecting the patterns and methods of Intellectual Property wrong doing in trademarks fraud.

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PATTERNS OF WRONG DOING UNDER INTELLECTUAL PROPERTY LAWS:  
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ABSTRACT

The research aimed to investigate situations, patterns and the tendency to infringe intellectual property laws, especially on trademark fraud. The study intended to study problems and obstacles in the trials against trademark fraud through gathering both qualitative and quantitative data.

Samples for quantitative research were 300 consumers who previously used counterfeit goods, selected by Purposive Sampling. As for qualitative research, samples were selected through Purposive Sampling from 3 principle groups: 5 interrogated officers from Economic Crime Division, 5 interrogated officers from Department of Special Investigation and 10 violators of intellectual property laws.

Research findings suggested increasing numbers of intellectual property trials with different patterns and methods of violations that involved both producers and sellers. The producers usually produced domestic counterfeit goods in secluded places and smuggled illegal goods through the border. Meanwhile, the sellers constantly developed new distribution patterns such as engaging information technology to avoid arrest.

Those who consumed counterfeit goods preferred fashionable goods with an authentic look, affordable price and always available. The problems and obstacles dealing with intellectual property trials concerned the following: (1) Legality (2) Arrest and (3) The buyer's cooperation.

KEY WORDS: INTELLECTUAL PROPERTY TRIALS / TRADEMARKS FRAUD

162 pages

รูปแบบและวิธีการกระทำความผิดคดีทรัพย์สินทางปัญญา : ศึกษากรณีการปลอมเครื่องหมายการค้า  
 PATTERNS OF WRONG DOING UNDER INTELLECTUAL PROPERTY LAWS: A CASE STUDY  
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บทคัดย่อ

การวิจัยเรื่องรูปแบบและการกระทำความผิดคดีทรัพย์สินทางปัญญา ศึกษากรณีการปลอมเครื่องหมายการค้า มีวัตถุประสงค์เพื่อศึกษาสภาพการณ์กระทำความผิด รูปแบบ และวิธีการการกระทำความผิดคดีทรัพย์สินทางปัญญากรณีปลอมเครื่องหมายการค้า ศึกษาสาเหตุ ความต้องการในการบริโภคสินค้าปลอมเครื่องหมายการค้า ศึกษาปัญหาและอุปสรรคในการดำเนินคดีความผิดคดีทรัพย์สินทางปัญญากรณีปลอมเครื่องหมายการค้า โดยใช้วิธีการเก็บรวบรวมข้อมูลทั้งเชิงปริมาณและเชิงคุณภาพ

การวิจัยเชิงปริมาณได้กำหนดกลุ่มตัวอย่างคือกลุ่มผู้บริโภคสินค้าปลอมเครื่องหมายการค้า จำนวน 300 ราย โดยการสุ่มแบบเฉพาะเจาะจง (Purposive Sampling) โดยจะต้องเป็นผู้ที่ใช้หรือเคยใช้สินค้าปลอมเครื่องหมายการค้ามาก่อน

การศึกษาวิจัยเชิงคุณภาพได้กำหนดกลุ่มที่จะศึกษา จำนวน 3 กลุ่ม ได้แก่ กลุ่มพนักงานสอบสวนจากกองบังคับการปราบปรามการกระทำผิดเกี่ยวกับอาชญากรรมทางเศรษฐกิจ จำนวน 5 ราย กลุ่มพนักงานสอบสวนจากกรมสอบสวนคดีพิเศษ จำนวน 5 ราย และกลุ่มผู้กระทำผิดคดีละเมิดทรัพย์สินทางปัญญา จำนวน 10 ราย การคัดเลือกกลุ่มตัวอย่างแบบเฉพาะเจาะจง (Purposive Sampling)

ผลการวิจัยพบว่า คดีทรัพย์สินทางปัญญามีแนวโน้มที่จะทวีความรุนแรงมากขึ้น มีรูปแบบและวิธีการการกระทำความผิดดังนี้ กลุ่มผู้ผลิต สินค้าที่ผลิตในประเทศมักใช้สถานที่ลับตาคนเป็นสถานที่ผลิต สำหรับสินค้าที่ผลิตในต่างประเทศ จะมีการลักลอบนำเข้ามาทางชายแดน กลุ่มผู้ขายรูปแบบการจำหน่ายจะมีการพัฒนารูปแบบไปเรื่อย ๆ เป็นต้นว่าใช้ระบบไอทีเข้ามาช่วยเพื่อหลีกเลี่ยงการจับกุม

สำหรับสาเหตุความต้องการในการบริโภคสินค้าปลอมเครื่องหมายการค้า เนื่องจากราคาสินค้าถูก และมีลักษณะคล้ายกับสินค้าของจริง สามารถหาได้ง่าย โดยเป็นลักษณะสินค้าแฟชั่น ปัญหาและอุปสรรคในการดำเนินคดีความผิดคดีทรัพย์สินทางปัญญากรณีปลอมแปลงเครื่องหมายการค้า สรุปได้ดังนี้ (1) ปัญหาเรื่องตัวบทกฎหมาย (2) ปัญหาในด้านการจับกุม และ (3) ปัญหาเรื่องผู้ซื้อให้การสนับสนุน

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# CHAPTER I

## INTRODUCTION

### 1.1 Background and Significance of Problem

Crime is a phenomenon that occurs within society. There had never been any crime-free period, only different crime patterns which transformed throughout times. Social relations in the past were uncomplicated. Most committed crimes were violence by nature and associated with crime against person properties, life and physical well-being, so-called “ Street Crime “ such as stealing, snatching and robbing which could be enforced easily by laws.

With time changes, crimes patterns had evolved, starting with “White Collar Crime” or “economic crime”. Meantime, many aspects of eastern cultures have influenced people’s daily lifestyles, particularly in cultures and values which relied more on capitalism, including the popular foreign merchandises or so-called “Brand Name Merchandises” (<http://www.nationejobs.com/citylife/content.php?ContentID=1103>). Because these merchandises have been manufactured abroad, their prices are quite high as compared to merchandises manufactured domestically. Nonetheless, these merchandises have played important roles to members’ lifestyles, especially among teenagers and working adults.

Presently, brand name merchandises have become the symbol of wealth or represented one’s social status. Wealthy people, especially those living in urban society are trying to gain these materials wealth to show off their social status which would not be difficult to achieve. But for those with moderate to low social statuses, frivolous spending on luxury goods is unnecessary for life existence. However, for some people keeping up the Jones seems to open the door to social fame. With limited budget, good counterfeit merchandises with similar features but cheaper prices are

quite appealing. Moreover, many consumers are unaware of intellectual violation. Without apparent enforceable laws, they have seen nothing wrong with purchasing counterfeit goods. This is one type of crimes that developed from Street Crime and currently listed as Economic Crime. For the purpose of this research, the focus is on Trademarks Fraud only.

The causes of Trademarks Fraud could be summarized as follows:  
(<http://www.miracleconsultant.co.th/node/31174>).

### **1.1.1 Legal Obstructions**

#### 1) Obstructions

The enforceable law on violation of intellectual property rights was under Thailand Trademark Act B.E. 2534, amended B.E 2543 and Thai Code Section 273. Nonetheless, law enforcement in this area was not successful as being planned. However the law enforcement was not quite successful as expected, due to light punishment, only small fines and minor jail sentences as compared to the profits from selling counterfeit products (Bureau of Intellectual Property, Department of Special Investigation, Ministry of Justice, 2006, Page 27) as high as 85.0 percent, whereas, selling narcotics only yielded return of 40.0 percent. Therefore, the wrongdoers usually considered worth the risk and in turn the counterfeit business continues spreading even further. Moreover, Thai laws had never clearly imposed the punishment on trademarks fraud even the Trade Act had been amended for 2 sections, namely, section 110/1 stated that any person intentionally bought merchandises bearing counterfeit trademark as shown in section 108 shall be liable to fine not exceeding 1,000 baht. The section 110/2 stated that the owner of building or facility allowed or offered such location to harbor merchandises bearing counterfeit marks or conducted related businesses as stated in section 108 or imitates a trademark service mark, certification mark or collective mark registered in the Kingdom by other person as states in section 109 shall be liable to imprisonment not exceeding 1 year or a fine not exceeding two hundred thousand baht or both (<http://www.miracleconsultant.co.th/en/node/-31174>). The primary intention is to punish the buyer or those supported the merchandises bearing counterfeit trademarks, but the draft act was

rejected and pending for revisions, giving the general public and those who wanted to own fashion goods purchased merchandises bearing counterfeit trademarks with cheaper prices.

### **1.1.2 Obstacles from Consumers**

Majority of consumers, especially in Thailand earned moderate incomes. Because brand name merchandises are quite expensive, only few could afford them. Besides reasonable prices, these brand name merchandises are stylish and sometimes represented the status of owners. With alternative, customers decided to purchase cheaper merchandises, mainly counterfeited products.

Counterfeit merchandises are quite popular among teenagers and working people at middle to lower levels because these merchandises are affordable, much cheaper than real merchandises which served the demand and supply theories and boosted the production. As long as society still demands these merchandises, the trademarks fraud will be carried on as usual. According to consumer behavior survey by Bangkok University Research Center (Bangkok Post, B.E.2009) on Trademarks Fraud among Bangkok residents 18 years or older to relay the message to the concerned parties. Total population selected were 1,104 persons that comprised of 48.8 percent of males and 51.2 percent of females on July 27-29, 2009. It was found that samples 79.9 percent used to buy or rent duplicated or counterfeited merchandises. In another words, 20.7 percent bought bags, shoes, glasses and watches, whereas 17.2 percent spent money on clothes. While purchasing counterfeit merchandises, 92.7 percent of samples were all aware of copyright violations and 48.6 percent bought those merchandises because of affordable prices. Furthermore, 52.0 percent of buyer had not realized that they violated the laws because the real merchandises were too expensive to buy.

### **1.1.3 Social Values**

As mentioned earlier, the society has placed strong values on materials which made brand name merchandises quite popular among teenagers who preferred luxury lifestyles and would like to show off their social statuses or follow the fashion

trend. Since these teenagers had limited incomes, they chose to buy counterfeit merchandises with similar features but lots cheaper.

Selling counterfeit merchandises has been practiced widespread which made it rather difficult to eliminate as being shown in the following apprehension statistic on Intellectual Property Rights violation within the past 3 years.

**Table 1.1:** Statistical Apprehension Record on Intellectual Properties Violation  
(Copyright/Trademarks/Patent / Tape and Television Control and Custom Tariff)

Laws	B.E.2550		B.E.2551		B.E.2552		Total	
	Cases (No.)	Evidence (Piece/Roll)	Cases (No.)	Evidence (Piece/Roll)	Cases (No.)	Evidence (Piece/Roll)	Cases (No.)	Evidence (Piece/Roll)
1) Copyright Act B.E.2537	4,614	2,228,348	3,215	2,465,679	3,781	3,099,592	11,610	7,793,619
2) Trademarks Act B.E.2534 Amended Trademarks Act (No.2 ) B.E. 2543	2,465	1,472,813	2,697	946,262	3,826	2,168,887	8,988	4,587,962
3) Patent Act B.E.2522 amended Patent Act (No.2) B.E 2535 and amended Patent Act (No. 3) B.E.2542	4	10,045	1	1	5	46,461	10	56,507
4) Tape and Television Control Act B.E and Movies and VCD Act B.E. 2551	35	34,830	10	4,374	1	3,595	46	42,799
5) Custom Tariff Decree B.E 2469	628	1,332,319	540	1,328,975	667	473,858	1,835	3,135,152
<b>Total</b>	<b>7,746</b>	<b>5,033,355</b>	<b>6,463</b>	<b>4,745,291</b>	<b>8,280</b>	<b>5,792,393</b>	<b>22,489</b>	<b>15,616,039</b>

**Source:** Intellectual Property Department, Bureau of Intellectual Property Crime, 31 December 2009  
and Royal Thai Police, Department of Special Investigation , Ministry of Justice,  
Customs Department, Ministry of Finance

Such statistic revealed the intensity of trademarks fraud, resulting from stream of manufacturing counterfeiting merchandises due to light civil and criminal punishment in comparison with high return. Besides, consumers who preferred brand name merchandises still demand these merchandises which coincided with the principles of demand and supplies so the local manufactured merchandises even with comparable or lower prices than counterfeit trademarks became unpopular. This incident has damaged overall Thai economy in term Tangible Damage or Intangible Damage, sending great impacts toward the owner of real trademark and reducing the confidence and acceptance from foreign countries. This also damages the business confidence and social moral as well as creating the negative economic image from believing that the country is the place to manufacture counterfeit merchandises. The countries affected by counterfeit merchandises may invent retaliated measures through trade barrier such as U.S.A. Under the specific section 301 of U.S laws which is considered the unilateral measure required evaluating and arranging status of trade partner countries that never protected Intellectual Property Rights of U.S. effectively. U.S has assigned the US Trade Representative (USTR) ([http://www.ipthailand.go.th/ipthailand/images/Editttt/inter/ftalaw% 28301% 29 facsheet.pdf](http://www.ipthailand.go.th/ipthailand/images/Editttt/inter/ftalaw%28301%29facsheet.pdf)) to identify the trade partner countries that failed to cooperate in the protection of Intellectual Property Rights through the public hearing on every April before announcing the list of countries that violated Intellectual Property Law.

The countries that violated Intellectual Property rights are classified into 2 categories (1) Priority Watch list or PWL is the country most violated Intellectual Property rights and (2) Watch List or WL. For certain countries that appeared to violate Intellectual Property rights, but no apparent evidence, then, the U.S.A would place them under Monitoring List or ML. Thailand used to be in PFB category in the year 1991- 1993, but she had rectified the situation until U.S.A upgraded Thailand to PWL in 1994 and moved to WL level from 1995-1996 and maintained that level since. Unfortunately, in 2007, Thailand had been informed that her status was moved back to PWL again.

In general, the suppression of Intellectual Property Crime is difficult to conduct because the arrested officers had inadequate knowledge on such issue, so they were unable to differentiate between intellectual property and non-intellectual property, including the hidden manufacturers who use agents to sell these merchandises. It was rather difficult to apprehend the main manufacturer along with the suspect agent. Because of high return, as high as 85.0 percent that tempted the seller or manufacturer to bribe the officers to avoid being arrested or confiscated merchandises when hearing the news about the search from the reliable sources.

Therefore, the researcher decided to study the wrong doing under Intellectual Property Laws: A case of Trademarks Fraud because the widespread problems could become complicated matters until difficult to solve. Then the study of patterns and methods of wrong doing was conducted to find guidelines for prevention, suppression or close the loopholes on Trademarks Fraud and quickly eliminate them from Thai society.

## **1.2 Research Objectives**

1.2.1 To study patterns of wrong doing under Intellectual Property Laws: A Case of Trademarks Fraud.

1.2.2 To study problems, obstacles and solutions for wrong doing under Intellectual Property Laws: A Case of Trademarks Fraud.

1.2.3 To study causes and needs for consuming Trademarks Fraud Merchandises.

1.2.4 To study patterns and methods of wrong doing under Intellectual Property Laws: A Case of Trademarks Fraud.

### **1.3 Research Scope**

This study was conducted with Mixed Methodology (1) Qualitative Research and (2) Quantitative Research with the following study scope:

1.3.1 Content: The documents on patterns of wrong doing under Intellectual Property Laws: A Case of Trademarks Fraud were used for this study as to review and compare cases occurred in Thailand with foreign cases such as France, Japan and Switzerland, including the study of problems and obstacles in prosecuting Trademarks Fraud cases.

1.3.2 Population and samples: Population for the study comprised of (1) Investigated Officers the Crime Suppression Unit, Economic Crime Division, Central Investigation Bureau, Royal Thai Police (2) Special Investigated Officers, Department of Special Investigation (3) Wrongdoers on Intellectual Property Crime: A case of Trademarks fraud (4) Consumers of counterfeit merchandises selected by Purposive Sampling.

1.3.3 The research started from January 2010 to May 2011, for entire 17 months.

### **1.4 Expected Benefits**

1.4.1 To be informed of current Intellectual Property Rights violation: A case of Trademarks Fraud in order to analyze situation trends to prevent wrong doings and future events.

1.4.2 To be informed of current Intellectual Property Rights violation: A case of Trademarks Fraud in order to close the legal loophole, including tightening all loose ended measures.

1.4.3 To learn about patterns and methods of Intellectual Property Rights violation: A case of Trademarks Fraud so the measures and procedures in the arrest could be improved for more concrete results.

1.4.4 To learn about consumers' reasons and demand for counterfeit merchandises in order to find solution for problems as well as building awareness not violate Intellectual Property rights

1.4.5 To know guidelines and preventive measures in the suppression of Intellectual Property Rights violation: A case of Trademarks Fraud.

## **1.5 Glossary**

1.5.1 Economic crime refers to the violation of laws which could impact the nation economy and security and not necessary limited to breaking criminal laws or individual with high social status or education or good title

1.5.2 Intellectual Property refers to legal rights which have been identified and created from human ingenuity and incorporated into Trademarks Act B.E. 2534.

1.5.3 Intellectual Property Rights Violation refers wrong doings relating to Trade Act B.E 2534 which had been created from human ingenuity.

1.5.4 Trademark refers to marking or symbol represented product to identify true owner of such product that must be different from others based on the rules of Trade Act B.E 2534.

1.5.5 Wrong doing situation refers to the current condition and situation that enhance wrongdoer, including the tendency for future situation.

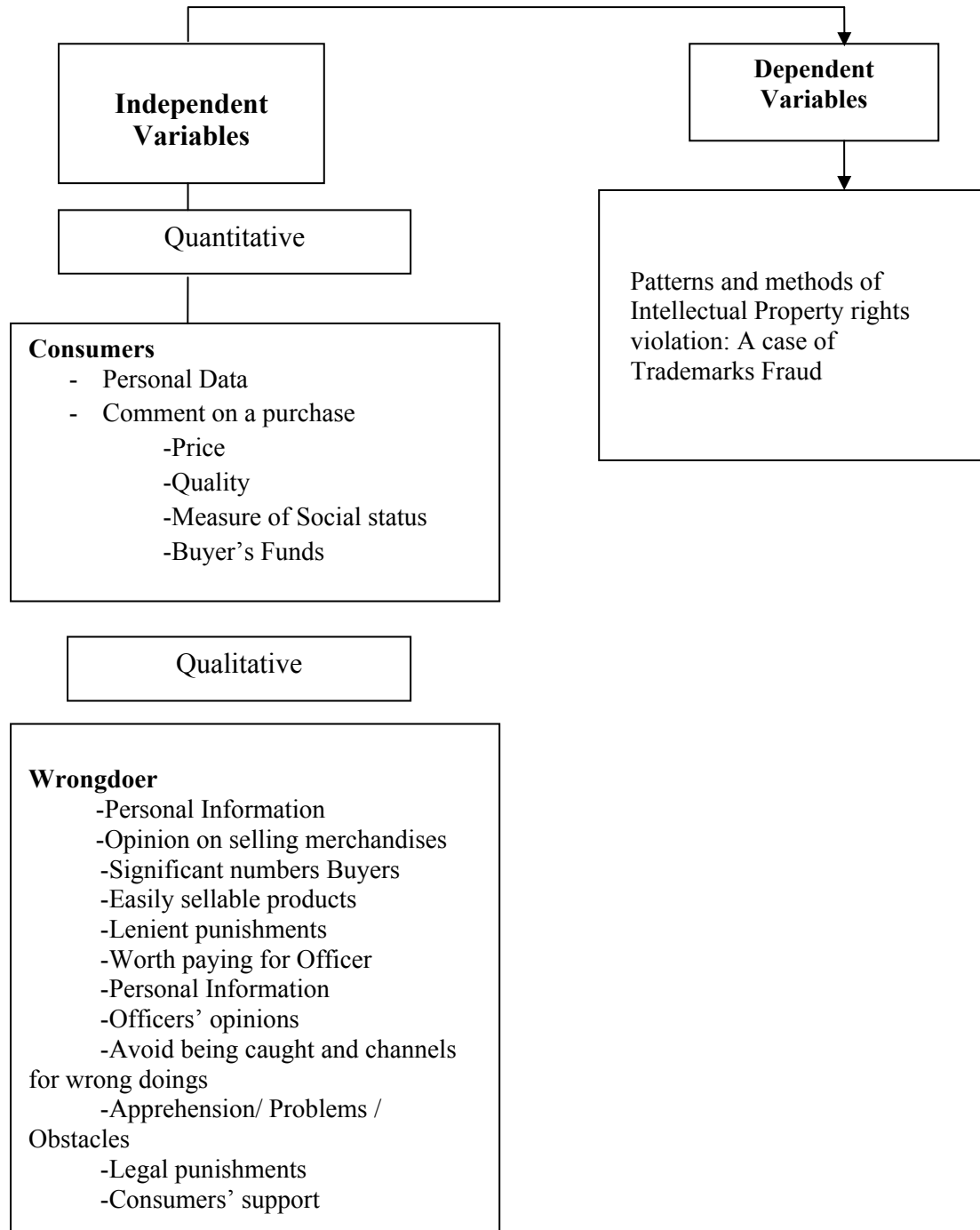
1.5.6 Patterns and Methods of wrong doing under Intellectual Property Laws: A Case of Trademarks Fraud refers to various processes and procedures that wrongdoers engaged in trademarks fraud, including patterns, avoid being caught or other illegal means as specified in the Trade Act B.E 2534.

1.5.7 Fashion Goods refers to merchandises constantly changing throughout time and fashion trend as well as one could purchase in much cheaper price.

1.5.8 Reasons and needs to consume goods refer to factors stimulated consumers' demand to consume the product.

1.5.9 Problems and obstacles in prosecution against intellectual property violation refer to various factors that obstructed the officers in proceeding with the trials against Intellectual Property rights.

### 1.6 Research Conceptual Framework



**Figure 1.1:** Research Conceptual Framework

## **CHAPTER II**

### **LITERATURES REVIEW**

The research entitled “Patterns of Wrongdoing under Intellectual Property Laws: A Case of Trademarks Fraud” employed relevant literatures in the following areas:

#### 2.1 Fundamental Knowledge on Economic Crime

2.1.1 Definition of “Economic Crime”

2.1.2 Nature of Economic Crime

2.1.3 Economic Crime Offender

2.1.4 Reasons for Committing Economic Crime

#### 2.2 History of Trademark

2.2.1 History of International Trademark

2.2.2 History of Domestic Trademark

2.2.3 General Characteristics of Trademarks

2.2.4 Trademarks Acquisitions

#### 2.3 Nature of Intellectual Property

2.3.1 Definition of Intellectual Property

2.3.2 Concepts on Protecting Intellectual Property Rights

2.3.3 Type of Intellectual Property

#### 2.4 Relevant Theories

2.4.1 Rational Choice Theory

2.4.2 Social Disorganization Theory

2.4.3 Social Learning Theory

2.4.4 Differential Association Reinforcement Theory

#### 2.5 Relevant Laws on Trademarks Fraud in Thailand

2.5.1 Trademarks Act B.E. 2534

2.5.2 Penal Code

## 2.6 International Trademarks Fraud Laws

2.6.1 France

2.6.2 Japan

2.6.3 Switzerland

## 2.7 Justice Agencies to enforce laws on Intellectual Property Rights Violation

2.7.1 Economic Crime Division

2.7.2 Department of Special Investigation (DSI)

## 2.8 Relevant Researches

# 2.1 Fundamental Knowledge on Economic Crime

## 2.1.1 Definition of “Economic Crime”

Economic wrongdoings have been called differently such as, White collar crime, Business crime, Commercial crime, Corporate crime, Organized crime, and Occupation crime which aimed for profits or economic benefits. The wrongdoings which are directly done against economic and commercial laws affected the nation economy and security. Therefore, naming Economic crime is coincided with the nature of such crime as well as covered the entire economic wrongdoings.

Economic crime involved sophisticated technique, committed by individual with expertise in familiar occupation apart from having the following qualifications:

1) Having been brought up in a much better environment than ordinary criminals, with adequate intelligence, good personality and well-accepted by the general public.

2) Engaging advance and effective techniques, which rather difficult to investigate and apprehend

3) Conducting non-hideous crime that at first seems to impose serious threat to the public or cause resentment to the injured parties.

4) Using the genius plan to destroy evidences or leaving no trace to track him down.

5) It is considered lucrative business and normally these criminals living their lives among good citizen.

Economic crime is either one time or multiple acts. In either case, it involved breaking the laws extensively under different circumstances and often without bodily harm or using force. It is rather hidden crime that attempt to deceive others as to gain own wealth or business advantages. Then, the definition of White Collar Crime is also known as Economic Crime.

Economic wrongdoing is considered another type of Business Crime when the individual wrongdoer or a group of wrongdoers, operating legal businesses intentionally committed offences that punishable by laws in order to gain business or personal benefits.

This is another type of Organized crime because it is considered illegal or omission of duty, resulting in physical or economic destruction that strongly sent impacts towards employees, staffs, clients, consumers or general public.

The Committee of Lawyer Association gave the definition of Economic Crime as non-violence behavior, and forbidden by laws and mostly cases with fraud and concealment, transferred merchandises, omission of duty or invented strategies for wrongdoings.

As for Thailand, various definitions for Economic Crime were given by many scholars. Because of the thin line between legal and illegal business operations, the nature of wrongdoings must be clearly separated. The meanings of Economic Crime are defined in 2 aspects:

### **1) Legal-based Consideration**

One may look at Economic Crime as the violation of laws same other crimes, only different in individual characteristics or extensive impacts.

Crimes are not limited to the criminal offense, but may have been other offenses as well as long as such crimes creating severe impacts on the nation economy and security.

In the researcher's opinion, economic crime is intentionally wrongdoings, which created severe impacts to the nation economy and security, not limiting to civil offense. Normally, the wrongdoer maintained prominent social status in highly regarded position and very well educated.

Economic crime may be hidden underneath the registered businesses and done by powerful individual of high social status who could create social disharmony and inflict harm to the general public.

In the narrowed perspective, economic crime may limit only to the offenses on economy and commercial such as Banking, Financial, Securities and Credit Foncier . Nonetheless, the broaden perspective of economic crime included all wrongdoings involving in all economy and commercial offenses such as, corruption, deforestation, narcotics trading, illegal mining and shipping aboard, illegal lottery, trading weapons, forbidden construction, including unauthorized buying the government properties, counterfeit importing products such as rice, or plants, cheating on weight of merchandises , tax evasions, taking advantages on farmers and commercial wrongdoings.

According to the laws, by nature any businesses should maximize profit provided that such operation does not violate any laws. In that case, it is not considered as economic crime even it caused irreversible damages to others from one's exploitation.

## **2) Economic-based Consideration**

Solution to the problem focused on the economic imbalance or unjust as related to Marxist in excess value, viewing the racking from excess production considered economic crime regardless how it was done.

Apichai Junsaeen, Ph.D. refers to economic crime as “Whoever attempts to gain economic profits unrighteous for own benefit, using bad but powerful influence, intelligence and economic advantages, stronger laws, military or political influences is considered committing economic as well as those taking parts in such crime.

Kanin Boonsuwan defines economic crime as any act that causes serious and Pyramid schemes are all public offenses.

Item 2 damage or undermine the national economy, whether intentionally or unintentionally breaking the laws.

Even non-bias or amended rules could not always lead to social justice. The lawyers must exercise their judgment with extreme cautious by focusing on economic and social justice (Veerapong Boonyopas, 2009: 46-48).

### **2.1.2 Nature of Economic Crime**

Economic crime is the slow but direct violence against society that may occur unexpectedly anywhere with individual who hardly realized that he has been victimized even being tricked until all their monies gone.

The nature of economic crime is not only limited to a violation of laws or government regulations and civil laws, but also intentionally put society members in great danger.

Most of times, the offender has financial incentive and expected unlimited returns. Some offenders are quite wealthy, well-known and received public trust.

Economic crime would undermine the financial stability of individual, general public and private enterprises. Therefore, the spreading of such crime could impose a serious threat to society as well as leading to illegal activities such as money laundering.

Features of Economic crime:

**Item 1:** Having violated laws or potential violation concealing in the authorized operation which could be carried out in various ways such as smuggling operations, and opened operation with illegal activities underneath. For example, deforestation, smuggling goods, illegal operation in finance, banking, Stock Exchange, pyramid schemes are categorized as illegal offenses according to the Act.

**Item 2:** There is an attempt to conceal the offense and destroy evidences to avoid tracing to him. Because economic crime is rather complex and proceeded gradually. The damages would not surface until later which made the search for evidence rather difficult and unable to keep up with the current incident. Moreover, this is the open invitation for criminal to hide evidences besides gagging the witness, bribing the police officer and government official, including hiring others to confess for him, which rather difficult to eradicate the source.

**Item 3:** It is the concealment or hidden behavior which rather difficult to detect. Sometimes, the injured parties are hardly aware of being victimized until the impacts apparently surface. Because there had not been any shocking images. People were unaware of the damage done; only thinking the disadvantages resulted from the normal course of business. Therefore, the attitudes and values of injured parties are not too fiery in these crimes as oppose to general crimes that caused resentment among the general public.

**Item 4:** Having skills in applying modern technology, not only managing, but also setting the scenes such as using computer, trading documents and well-planned. These wrongdoings are being done systematically from studying information, planning and arranging other incidents difficult to investigate and apprehend and prosecute.

**Item 5:** Having act by individual or a group of individual with social status or power, especially the political influence with full knowledge of

laws. For the layman, this is rather frightful act, but the fact is the political circle displayed some economic crimes incidents. These individuals maintained 2 prominent statuses: Appointing by the people out of trust and the robber in a suit (Verapong Boonyopas, 1994: 174).

**Item 6:** Economic wrongdoings that rather difficult to commit alone must be done by the whole group, including the public without awareness of the incident until becoming the local and national organize crime local, leading to transnational crime .

**Item 7:** Having greater impacts on public happiness and welfare, than those from ordinary crime with vast numbers of injured parties occurring each time, Besides having impacts on the general public, the government is also affected as well because the economic crime usually obstruct investment, social growth and security, sending affects to the nation moral, customs and tradition as well.

Due to non-violence nature of economic crime without using force, weapons and threats or confrontation as robbing and killing, most of economic crime resulted from the violation of trust directly and indirectly, whether distorting values of assets such as stealing, swindle, fraud, concealing and hiding, illegal set-up, dishonest in operating duties, blackmail, and unrighteous transferring others' assets, including employers' assets, incorporation, State enterprise and Government sector or omission of duties that may be doing together.

The intention of the economic wrongdoer is to sin others' assets mainly. In case of physical injury, perhaps accidentally injured other, offhand event or force majeure, it was unintentionally done during the act of crime. For example, the guilty of setting up mafia ring, criminal nest, taking possession or carrying weapons and ammunition without the permit, assault, or kill others. Therefore, these wrongdoings are not targeted economic crime. The reason to act is partly because of convenience in committing crime or escaping.

Generally, these wrongdoings may be done out of desire for security in doing business, trades and livelihoods. The business operation that affected the public security are usually involved the government officials and created immense annual cost in suppressing and monitoring their activities (Banyat Visuthimark, 1990: 14)

### **2.1.3 Economic Crime Offender**

A person who tries to compete unjustifiably for economic interest due to the advantages from having power, ingenuity, economic status, vitality, or political, legal, and military influence is considered committing economic criminal committing economic crime. However, the constitution of the Kingdom of Thailand B.E. 2550 states that a person is innocent until proven guilty. Therefore, even a person has done something wrong, he would not be named criminal until the court processed the case and passed the judgment that he is guilty of wrongdoings

Since the laws has not exactly labeled a person as the criminal until there is the final judgment so society could not incriminate against individual or organization suddenly, but the public should be able to separate between economic criminal and ordinary man based on the economic criminal features. The economic criminal is not only committing distinct crime, but also choosing case completely different from ordinary cases which served as criteria for passing judgment on prosecuting economic criminal.

Economic Crime features:

- 1) A person has better background and superior intelligence, with grace and courtesy than a regular criminal that made him the public trust and given him a credit. With his good image, he could wrongfully exploit the general public without anyone suspect his intention. Because economic crime is a lucrative business, an economic criminal could maintain luxury living among well-known celebrities. Poverty is rarely associated with this type of crime. On the contrary, the secure economic status, social and political support, or powerful figure protection are the support factors for the wrongdoers to commit his criminal acts.

2) A person is a mastermind in committing crime and often an expert such profession with career experiences and relevant techniques, highly effective in committing the offense. He would plan systematically to hide the information or evidence that could trace to his operation. Then, it is rather difficult to apprehend the wrongdoer.

3) A person is a systematic planner who could minimize information or evidence relating to the offense which made it rather difficult to investigate and apprehend the suspect.

4) Having motivation to commit the offenses which had not caused by the desire for vengeance or feud or moral consciousness. On the contrary, the wrongdoer may not realize that he was about to do something immoral, he thought of it as skillful or challenging, using his own expertise to accomplish the job and get big reward.

5) An economic criminal does not have to be cruel at all. Quite often, he had not perceived the situation and the impacts caused by his own actions. Such person completely disregards of social responsibilities.

6) A person usually committed crimes together with others or for the organization acting as juristic person. It is rather difficult for a person to successfully commit crime alone. The higher the number of dispute capital, the greater number of offenders. If there is a party to such crime in the organization or work as organize crime. Then, it may not be possible to investigate to the root of such crime because it is the multi-level conspiracy (Verapong Boonyopas, 2009: 53- 54).

#### **2.1.4 Reasons for Committing Economic Crime**

Economic crime is driven by the desire to gain huge compensation (Walter Bromberg, 1977: 74) based on psychological concept that human passion is the main caused of greed and insatiable habits which made most human the takers who disregarded damages done to the public. Moreover, many contributed factors to wrongdoings caused repeating actions, leading to economic crimes.

### **1) Chances of Wrongdoings**

Most crimes originated from the organizations or agencies under the authority of powerful figures. For individual, the higher the positions, the greater chances for committing economic crime. Corporate executives wouldn't be hesitated to commit the economic crime if it could advance their career. The government agencies with inadequate manpower were unable to exercise full control and find proof of existing economic crime. Moreover, the ineffectiveness in the criminal justice system opens for extensive economic crimes.

### **2) Decision for wrongdoings**

Even though profits-making is the main incentive for operating business, the uncertainty of individual surrounding may lead to business failure. In order to make the business survive, the companies and other business operators engaged various unrighteous approaches with no concern of consequences such as violation of laws, tax evasion and intentionally breaking the laws.

### **3) Mastery Skill in Wrongdoings**

Economic crime is usually done by a connoisseur who has specific knowledge in the operation very well. For example, a person must know the bank system to embezzle the bank or if someone wants to cheat with the logistic system, he must understand logistic and the whole complex banking system which rather complex to find the weakness of the system for him to bring the entire system down, including the logistic .Generally, it is common for ordinary people lacking knowledge of fraud to misunderstand the process. Those who understood the process could gain the access and destroy evidence which would be detrimental to him.

### **4) Economic system and structure**

Economic structure and economic problems play important roles in determining the direction and the intensity of economic crime. The appropriate economic system could maintain the crime rate at satisfactory level. This is including the scope and control as related to the economic structure, financial taxes and financial system.

### **Monopolize Economy**

For both countries, one with “Free Economy” while other relied on “Monopoly System”, the numbers of cases and intensity of economic crime are differed. In the Monopoly System, the expertise and technological advancement are limited for the organization, corporations, juristic person to aid them in wrongdoings, and less circulated assets as compared to those of Free Economy system.

Whether being the individual, capital, technology and expertise for engaging in economic crime, the closed economy produced the mechanism to control business more closely, and brought less wealth than the government who owned most of current assets. It is rather difficult for an ordinary people to commit economic crime unless he worked for the government. Therefore, problems occurred from economic crime are not quite serious as those countries with open economy or free trade.

### **Free Economy**

The country engaging free economy has more extensive economic damages because of its open system. The public and private sectors could fully operate businesses in every parts of society by focusing on the product which is more tempting and worth the risk.

## **2.2 History of Trademark**

According to the founded evidence, trademark had been used the first time by the potter in Transylvania about 700 B.C when the Roman and Greek marked their weapons. The use of these markings was extended to another product such as wines, and name of markers or picture such as Dolphins or Harps which indicated who is the maker. Besides, the marking is found on the container or wine bottle bearing the marking Thasos to indicate the manufacture place at Thasos on one of the handle. This is the symbol of product being shipped to the foreign land.

With commercial progress, the trademarks for identifying the manufacturer or product developed further, especially on Juneval period. The poet in that period had explicitly described wines and trademark. After the fall of Roman Empire, the world entered Dark Age and the use of symbol to identify the merchandise is not so popular. Not until the medieval period, the trademarks to identify goods or products are widely known at the turn of the 5-15 century. They are classified into two broad categories as follows:

### **2.2.1 History of International Trademark**

2.2.1.1 Propriety Mark is the mark of ownership that owner often used on the product to assist the illegible clerk or laborer to identify the product accurately in case of shipwreck or being plundered by the pirates. These marks were used more by merchants than artisans, and no obligation to inform anyone about the manufactured site.

2.2.1.2 The government or the regulations of Merchants Association intended for consumers to trace back to the producer if the defected product entered the market or the foreign goods were smuggled into the area that certain association owned the legal right to sell. In that case such merchandises would be seized. The trademark then represented the origin of goods.

Trademarks are invented to protect consumer from being swindle and deceived about the products' quality and origin as well as protecting the manufacturer in terms of competing with the local trade. Until changes occurred in the industrial era (16-18 Century), the laws started to play substantial roles in trademark, especially in Europe where there is the record in Germany to confirm the use of trademark during 16<sup>th</sup> century as being stated, "No one must take another's mark, even if he artificially disguises it by some addition but keeps the principal part unchanged"

As for England, perhaps due to non-adjacent land with the main continent, trademark utilization was done later. However, the use of trademark at the earlier stage reflected the merchandises' quality which represented the Hall Mark as stated in the earlier record, "Prohibiting any silversmiths in London to sell silverware that had

not made from Sterling Fineness and that silverware should not be sold until it is properly bearing the Leonard's Head" Ever since the trademarks have been widely used, the fiery trade competition obstructed fair trade through the use of trademark. So there was the need for Trademark Act to protect and prevent the exploitation of trademarks from the dishonest merchants who used trademark to gain his own wealth.

England Trade Law is the prime model for Thai Trademark laws and the commercial name had developed from the public swindle by offering to sell certain kind of merchandise and referring to ownership. In reality, that person may not relate or know the true owner of such trademark. Such action is deemed to be an offense and the person who committed such offense must be responsible for the fraud. The case of Southern V How in A.D. 1511, during the reign of King James 1 served as one example when Doderidge J, the weavers of Gloucestershire had produced good quality fabrics to sell bearing his own trademark. So if the people in London saw the fabric with his trademark, they would know that he guaranteed his product without inspecting the fabric prior to buying. Therefore, all fabric makers had no rights to mark their own fabrics with Doderidge J, marking if their businesses were not related to his business. Otherwise it may seem that he tries to fool the public to buy the imitate product and such merchant could face the lawsuit from the true owner. The case of Blanchard V. Hill 17/42 was the case of merchandise bearing imitated trademarks "Great Mogul" on the playing card. Lord Hardwicke refused to forbid the business operators to imitate others' trademark, except such trademark was made to sell inferior goods or distracted customers from buying real merchandise. In other words, one could imitate the trademark, but if such action confused the customers, it is considered as fraud.

Lord Eldon was another person extended the scope for judgment in trademark case, based on the trademark fraudulent case Cruttwell V. Lye as well as considering another case in similar events or trademark.

As being seen, the earlier English law on trademarks was slightly different from what it is today. The plaintiff who brought the case to court was usually the

consumer, which considered the complaint was filed by the customer instead of the owner of such trademark. The case of James LJ (the Singer Manufacturing Co. V. Loog) proved that no one can claim that their products are the products of others. There is the idea that no one could refer to the others' mark or symbol to display on his own merchandises or no one should be allowed to use others' marks. By doing so, it is considered as consumers' fraud with intention to fool the public of buying his bogus product. However, the concerned parties agreed that the lawsuit on trademark fraud should be done by the owner of the trademark. If the plaintiff is the buyer, the lawsuit would be considered as typical case of swindle. Nonetheless, this concept is the stepping stone for the Trademarks laws which revealed the origin of merchandises and the buyer could be guaranteed the quality of product without inspecting merchandises. The person without the stake in this matter had no right to use trademarks that belong to other on his own product.

However, the traditional court had provided more protection and become more involved in trading. Later in A.D. 1824, Sykes V. Sykes, the defendant who was the manufacturer and seller of ammunition belt and gunpowder container used the label "Sykes Patent" on his products which quite identical to the plaintiff products, but well-known and better quality than the one manufactured by the defendant.

Such action caused damages to the plaintiff's reputation and reduction in numbers of clients. The Judge Bayley J. asked the jury if the defendant's action was considered as the use of others' trademark just to make the public believed that such merchandise was others when the defendant did not sell products directly to the public, instead selling to the small retailers who knew that the product belong to the defendant, not the plaintiff. The panel of jury after long discussions agreed that no evidence to prove the defendant intention to deceive the buyers because they knew about it all along. But Abbot C. J. had given certain diagnosis that the defendant used the mark that belongs to other to show the public that his manufactured merchandises were those of plaintiff. Even though the defendant may not sell merchandise to the public, but passing merchandises to the other merchants is considered swindle and the

crime had been done completely so this case was to lay the ground principle for wrongdoings.

The case of *Blofeld V. Payne* in A.D. 1833, the court at King's Bench stated the unnecessary for the plaintiff to prove that such action had caused him damages or proof the difficulties caused by the actions of the defendant. Only take into account the principles of justice and the rights of the plaintiff's trademark is. Later this principle became the criterion for the court judgment.

In the year A.D. 1838, the important step in the prosecution of trademarks fraud took place from the decision of Lord Cottenham in *Millington V. Fox* case, which ruled that "To protect the trademark violation even if the action had taken place without any intention of fraud or deception, it is still an offense. The recognition of property rights is raised from the use of this trademark". Somehow the nature of the right was a topic of discussion and the judge gave them a different meaning in each case regardless. But the main issue should focus on the trademark protection and the judgment of such case. However, the court in common law fails to act consistently in the same way. Sometimes, fraudulent remains a key element of the offense of trademark infringement, not until the law had been enacted.

In addition, the interest in trademarks laws had been motivated with the beginning of the Industrial Revolution. The expansion of transportation such as the trademark for the water wheels in *Cornwell* and use the same mark for the *Water Wheel* in *Lancashier* confused the public who bought the product. Even with some efforts, no one could make either side stop using such mark and the legal movement on this legislation is quite slow.

In 1865, the case of *Seixo V. Provezende* had laid the legal foundation as "Symbol which has been used by the business operator as if being his trademark shall be protected by the court and he has the right to use the mark on his products before any one else so the public could identify his products in the market from his different

marking until becoming well-known among the public as the sole owner with the exclusive rights in the trademark.

Such proof is rather difficult and costly. Even the trademarks law was enacted, the context still incomplete, pushing the merchants and manufacturers to demand for better law.

Finally, the continuation of one's trademark right was confirmed by the registration in accordance to the Trademarks Registration Act of 1875 as the foundation of the Trademarks Act as follows as follows:

- 1) Set up the system for registering the Trademark
- 2) Having specific features quite essential for registered trademark

- 3) Registration of Trademarks Act is considered completed evidence for the trademark owners to confirm his sole ownership of such trademark. As a result, dealer or manufacturer registering as a trademark sole owner would show the proof ownership of such trademark rights without showing any other evidence needed to the court, which made the law enforcement much easier.

In addition, the trade competitor should find out if the trademark he was planning to use identical with other's trademark or violate the others' rights, Later the Patent, Design and Trade Marks Act A.D. 1883 was enacted to replace the Act of A.D. 1875. The Trade Marks Act A.D. 1905, which developed later, is still accepted registered trademarks as the right to trade quite similar to the trademark Act A.D. 1875, with the exception of adding the clause on the cancellation of unused registered trademarks or trademarks lacking transparency.

The Trademark Act of A.D 1905 was amended by the Trade Marks Act A.D. 1919, which separated trademarks A and B for appropriate registration. Section A contains characteristics more unique than those of section B with higher privileges as compared to section B in previous trademarks laws to make it more effective in the Trademarks Act of B.E. 1938 and more amendment was done with the trademarks

Act of A.D. 1984, to make it available for use with service trademarks and still using until now (Orathip Tunprasart, 1987: 14-22).

### **2.2.2 History of Domestic Trademarks**

As for the protection of trademark rights under the provisions of Thailand laws, it had started in the year 1809 with the provisions concerning the forgery and counterfeit trademarks, including the importing and selling of pirated and counterfeit goods that use the trademark under the criminal law in the Rs 127. Later in the year 1810, the Registrar Hall was established to register the trademark. In the year 1814, the Trademarks Act of B.E 2547 was enacted to establish rules concerning the registration of trade mark rights. As a result, the Registration Department was established to operate under the Trademark Act in 1923. However, the enactment of subsequent Trademarks Act of B.E. 2474 to replace the Trademarks Act of B.E 2457 equipped with better criteria and had continued its use until the year 1991 and was announced as the Trademark Act of B.E 2534 and still using it up to now.

The fact is the Trademark Act of B.E 2474 had been in operation for sometimes, the content is rather out of date and unable to properly protect the right of trademark owners. In addition, the punishment on trademarks crimes is still enacted in the provisions of trade in the penal code of B.E 2499 and to replace the obsolete laws Rs 127 up to now.

The provisions of the Trademark Act B.E. 2534 give the criteria for the registering trademark and the rights of trademark owner, including the authority of the Registrar and the Trademark Committee clearly established. It has expanded its coverage to the service, certified marks and joint marks. Furthermore, it has added more provisions on the permit of trademarks use to make Thailand trademarks laws more universal, enabled Thailand to support growing trade demand domestic and overseas.

Not until the 27<sup>th</sup> of December, 1994, Thailand has become a party to sign the agreement on intellectual property rights relating to trade. (Trade-Related Aspects

of Intellectual Property Rights, including Trade in Counterfeit Goods or Trips) The influence of the Trips Agreement began to pressure the country to develop intellectual property laws of those countries, including Thailand to improve intellectual property laws that are applicable to the rule of law must be based on the same principles outlined in the Trips Agreement. As one of the allies, Thailand must comply with the rules, so the Trademark Act (No. 2) of B.E 2543 (Government Gazette, Volume 117, 29 and April 1, 2000) was issued to amend certain provisions of the Trademark Act B.E.2534 such on the definition of the trademark, distinct trademarks, unfit merchandises for registering, qualifications of a trademark, and rules of application for registration as trademarks (Chaiyot Hemratchta, 2008: 295-296).

### **2.2.3 General characteristics of Trademarks**

#### 2.2.3.1 Definition of Trademark

Trademark is used for identifying products of one business operator from another. These include any product which he sells to his customers. For this reason, customers need something to identify such product to make the decision to buy. Trademark that listed on the product play a significant role as the symbol to facilitate customers in identifying products of these various traders.

Trademark Act of B.E. 2534, Section 4, gives the definition of a trademark as a sign used or to be used to relate to products in order to show that the product used such trademark owner is different from another. Considering the meaning of the word trademark, it must contain the following criteria:

1) Trademark features: According to TRIPs Agreement, the provision for protection with respect to commercial law in section 15 (1) stated that as a marker or a combination of any markers that could distinguish the goods or services of one business operator from another is suitable for registering as a trademark, including the names, letters, numbers and combinations of colors as well as any combination thereof. These shall be entitled to be registered as trademarks. In case of a symbol that could not be used for identifying the goods or concerned services. Members may request a symbol to be registered, based on the clarity of its

use. Members may also require them to be transparent as a condition of registration that universally accepted, even in Thailand.

Trademarks entitled to the protection under this Trademarks Act must bear the distinct mark. As for the provision in the Trademark Act (No. 2) Act B.E. 2543, Section 4, amended the definition of the word. "Mark" to expand the scope of what could be a marker to support the principles of the TRIPs by identifying a "marker" to mean "brand name, photograph, drawing made for the signature of the message text color, shape or the shape of the object. In comparison with previous definition of the "mark" which means a photograph, drawing or signature made the brand name for the text of any of these or a combination. The products do not include a patent under the law. It can be seen that the definition of the new provisions. "Mark" extending to the scope of what is a group of color and shape or the shape of the object. In the past, Thailand Trademark laws had never accepted as a marker. It shows the progress in the concept of law as a standard measures beyond the legal guideline as agreed by TRIPs Article 15 (1). Perhaps, it received the influence from the definition of the word. "Markers", which stated by the World Intellectual Property Organization (WIPO) that the "mark" is a symbol which may contain letters, numbers, drawings or symbols cross brand's signature colors, or elements of different colors, or one or a combination. Under the provisions of laws in some countries, this may include pattern or unique feature of container or containers or packaging for the product. However, considering the provisions of the trademark laws of many countries, Trademark Act and Trademark Act BE 2534 BE 2534 had limited scope of the definition of the word. "Trademark" by using of the word "Trademark" instead. Meantime, the trademark laws of England (The Trade Marks Act 1938, S.68 (1)) and trademark laws of Australia (The Trade Marks Act 1955, S 6 (. 1)) broadly defined the terms to allow various interpretations of the scope of definition. Not the definition of. "Mark" (Marks) that means something specific. Instead the word "mark means (including) ...." which exactly what is required. This is just an example of what can only be used as a marker and the opportunity to accept the things for future use.

2) To be used for identifying product. Beside certain feature to identify "Mark" such marking must be related to the product or describe it well. The marks must be shown to the public that the owner intended to use or intended to be used on to show monopoly of the trade mark and discourage others from using identical or similar mark. With this reason, the owner of such mark must use it as a means or in connection with their products with good faith. This can be seen that from the Trademark Act of B.E. 2534, Section 63 that stated an interested person or the Registrar may request the Commission to revoke the registration of a trademark provided that proof must be made that the patent owner does not have a bona fide intention to use the registered trademark for the goods, and the fact had no intention to use the trademark in good faith.

However, in the related cases to the use of the trademark. The owner of such mark must exercise his ownership rights, but the problem may rise if the owner had never used the mark himself and allowed the other to use it all along. This must be considered whether or not the owner had actually used such mark. In this case, should not be considered as using a trademark because it was not intended to be used in a good faith, especially in when the owner had registered the trademark just only to transfer that trademark right to other. This would not be considered that the owner acting in good faith. But if the fact proved that the owner had not actually manufactured any products bearing such trademark, the owner could either control the use his trademark or the assigned product or the quality of the product

This is another alternative for the use of trademark on the product. Without the control, the trademark would be a waste, no differences from the owner's loss his ownership rights to the trademark

The TRIPs agreement has listed such principle statement in Article 19 (2) that "If the trademark is still under the control of the rightful owner, the use of such trademark by another person would be recognized as an intention to maintain a trademark registration".

In order to display differences between merchandises, the Final criterion is to show the public that his trademark contains different features unlike other products that use the trademark of another person. Then, it is considered as such trademarks stayed within the definition limit of the term " Trademark" under Section 4 of this is because the main purpose of the trademark is to show consumers where the products came from and if consumers ever bought same product somewhere earlier, even if the origin had to be revealed .

However, the use of a trademark to indicate the source of this product should be clearly displayed and recognizable so the passerby could remember the product well.

### 2.2.3.2 Concepts on Trademarks Law

Trademark is the mark used for commercial purpose by the business operator whereas the economic function of the trademarks is to maintain benefit for business operator, including the fame from trading, so-called, "goodwill" of the owner. This is depending on the ability of his trademark to different his product from the trade competitors. With these reasons, the trademarks has more direct commercial duties than protecting the creation or design of the product from he patent law. Besides trademark provides protection on owners' benefits, trademark is another approach to protect consumers as well. The display of merchandise indicated the origin of merchandises and also the source. This is the most basic functions. It has been clearly defined by law. We say that a legal duty (legal function) to show that the use of the trademark owner. This can prevent confusion with the products of others. The trademark will distinguish one trader's goods from goods of other traders as competitors. It can be observed from the mark affixed to the product rather than to remember the purpose of purchasing goods at a time. This can be seen from the trademark laws of many countries, including in demark Act of 2534, Section 4, as mentioned above, the definition of that trademark. Used as markers. Or be used as a definition or related products. To show that the use of the trademark owner. Unlike products that use the trademark of others. In addition, in cases relating to the registration of the trademark. Trademark Act of 2534, Section 13 (2) provided support

for this principle. If the Registrar that the trademark application is so similar to trademarks of others who have already registered. The public may be confused or misled by the owner or origin of goods. a result of a trademark to indicate the source of such products. It is important to protect the interests of the trader, the owner of the trademark.

1) It is the responsible for the quality. The second function of the display of these trademarks. Including the quality of the product trademark. As a result of the trade mark affixed to a product that can tell the buyer that the product is sold in the market from any manufacturer or vendor. To display this quality means that the trademark is not responsible for the quality of the product as directed. But the quality of the product is displayed by default, which is based in Nashville, TN, and the reputation of the trademark. a sense of the quality of consumer goods is unchanged over the period of disposal, such as some brands of detergent available. And has been popular among the people for many years. Or a new product from the operation of any well-known in the trade as a manufacturer of soft drinks, which are already well known to the public. But later in the production and sale of fruit juices by using the trademark. As a result of the mark in providing quality products is essential to protect the consumer can buy the products they need.

It responsible for public relations. The effect that the trademark can be used as the display quality of the product, including the owner of the trademark. Cause is responsible for advertising products, including the owner of the trademark. The public's familiarity with the trademark owners is to stimulate and sustain the needs of consumers. While various details relating to the proposed product to the market. This can be seen that when a customer entered the store to see products listed on the product. If the trademark is famous and is in memory of the people he is supporting the customer makes a purchase.

Chaiyot Hemratchata, 2005: 281-286) of the trade mark. It is shown that the quality of the product. As well as promote the reputation of the owner of the trademark, trade widely from national to international level as a result of a

trademark affixed to the goods sold, which would cause an economic value to the trademark. Today. All of the famous trade can be an asset to those households. Thus, this law grants Chaiyot Hemratchata, 2005: 281-286).

#### **2.2.4 Trademarks Acquisitions**

The provisions and principles of law relating to the protection of marks. Used in the trade of various countries and the acquisition of trade mark rights are derived in two ways, namely.

2.2.4.1 To obtain rights to use. The acquisition of trademark rights by using the authors bring their trademark to use with their products before anyone else as the person using the trademark shall have the right than anyone else who uses a trademark that is identical or similar after the block. it is a violation of their rights. In some countries, especially the Common Law legal system. To maintain and the United States. I have the legal rights to unregistered marks of their respective owners. Under the condition that the efficiency of the real. It proved to be a famous product. The cause of Good, SC, in the name of the owner attached to the item, however, virtually every country in the world to rights in trademarks and registered it as a basis.

To protect the trademark owner has not registered, but their products are used. The second choice for the prevention of fraudulent and deceptive acts like a source of consumer goods. The consequential damage to the cargo owner to such trademarks.

It 2534 Act defines the rights of trademark owners from using their trademark to the goods offered in the market, even if not registered trademarks of their respective labels in the second paragraph of Section 46 of the Constitution. non-registered owners. In order to prosecute the case any person who is selling their products to deceive the trademark owner's goods.

In addition, the use of their trademark, which may give rise to a right to a trademark registration for the waiting time. Trademark Act of 2534, Section 27, as defined in that case. If a person is using their trademark in good faith. And later a trademark application for registration of their trademarks under the law. However, the same as or similar to trademarks of their respective trademark was registered by someone else. Or trademarks of their identical or similar trademarks registered by another person. For the same class or different class found by the Registrar to be the same. The Registrar may see fit to register them. The conditions and restrictions on use and the use of trademarks or other conditions and restrictions as determined by the Registrar considers appropriate.

To applicant arising from the use of this trademark. Has set the standard in the TRIPs Agreement Article 15 (1) that "..... in a manner that is not possible to distinguish the goods or services concerned. Those members may be required to be registered. It is clear that the use of ..... "and in Article 15 (3) that" members may be registered trademarks. However, based on the use of a trademark based on fact. Is not a condition for filing an application for registration. Application will be rejected. The only reason that has not been used as intended. Before the end of three years from the date of submission of application for registration".

2.2.4.2 A the acquisition by the registrant. To have a registered trade mark rights by any person who is brought to its trademark registered with the government agencies. Upon receipt of the registered trademark. The trademark owner shall have the exclusive right to use the trademarks of their rights under the law. If any person to use such trademarks. It is considered an infringement of such rights. Trademark laws of most countries, the protection of trademarks registered in accordance with the rules prescribed in the provisions of the law.

Advantages of trademark registration. Including the first. The basic assumption is registered as the owner of the certificate of trademark registration, the second shall be entitled to the protection of the trademark shall be registered under the law. Despite not using it at the third transfer can be achieved without a well-

known trademarks, trade or transfer of the Nashville, TN. Finally. Is a registered trademark rights in the property. It is a useful property of their respective owners in the development of trade.

The Trademark Act of 2534, Section 44, Act to acquire the rights to the trademark was registered. When I registered trademark. Who is registered as a trademark? As the exclusive rights (exclusive rights) in order to use the trademark for a product that is listed, and Section 46 paragraph provides that a trademark owner to sue or claim damages from the infringement of the trademark is registered it. in addition, Section 49 requires the transfer of a registered trade mark rights and Section 68 provides that a trademark owner has the right to license the trademark to be registered as well. (Chaiyot Hemratchta, 2005: 296-299)

- 1) Definition of Intellectual Property
- 2) Concepts on Protecting Intellectual Property Rights
- 3) Type of Intellectual Property

## **2.3 Nature of Intellectual Property**

### **2.3.1 Definition of Intellectual Property**

Chaiyot Hemratchta, (2005: 7) tellectual property refers to the shape due to the act of creating something different from the ideas and wisdom meet in the brains of humans, such as concepts, inventions, poetry, literature, design, microcomputer, drawings and cartoons. Batman, however, by definition, in terms of the law. IPR (Intellectual Property) shall include the rights arising from the production of ideas, rather than referring to a product that has been created in relation with the production of intelligence of the human rights of the author to stop that. out of print, distribute or in any form without permission. Rights of record companies to prohibit any person who produces a false record. And the rights of the inventor of television antennas, which have received the patent law in the prosecution of any person to produce the simulated antenna. The products, which made it available to the public.

### **2.3.2 Relevant Concepts on Intellectual Property**

In general, what are most important assets? That the ownership of the property in question is able to use their property as it wishes. And no one will come to the property without the consent of the owner of that property. But there are some limitations, according to the provisions of the laws or regulations of the Government to restrict the exercise of the ownership of the property of their example; the ownership of the land is not free always to be. Building in a different size or shape, as they want on their land. It is subject to the regulations that were enacted by the local government in which the land is situated. One type is the intellectual property rights under the rules as well.

Firstly, movable things in the determine the type of property into 3 categories. Firstly, movable things which the property was in motion, like watches or cars. Which owns the property, these are the only one who has the right to utilize the property is rightfully called the exclusive right (exclusive right) the owner has the power to authorize others to use the property. Their own. If any person uses the property without the consent or permission from the owner of the property. To do so would violate the law. However, the right to use the property that Still limited by certain laws, such as the use of cars on the road would have to follow traffic rules, etc.

Secondly, immovable property land or anything attached to land in a permanent manner. This may not be moving to. Rights as well as in those with The use of the property would be limited by certain provisions of laws such as the buildings on the land to be planted as mentioned earlier.

Lastly, intellectual property caused the creation of the human mind and intelligence, said that the intellectual property of the data with which to engage in the creation of an unlimited number of shapes. The property, which are derived from those objects are not in the object created. However, the information or ideas that cause the making, however, the scope of intellectual property rights are the same as the rights to movable and immovable property. This would require some restrictions on the use of law as set forth in the protection source of intellectual property created

by the human mind and intelligence, be it literary, artistic and musical Dance with respect to copyright. Invention and design of industrial products with respect to the patent. Trademark and service of copy protection, commercial spoofs. It has to be creative to make it visible to the human race to take advantage of the promotion of civilization and science. Creative people think, or will be used to the idea. Effort, perseverance, skills and resources which are to take action to ensure the success of the initiative for the people that may be required to invest at the highest intellectual and financial, such as discovering a cure for AIDS so. The owner of the property types they wish to take advantage and get paid as much value as possible. However, the problem appears to be the owner of the property. Often a selfish person who has copied an invention or creative work. Trade mark. And all other intellectual creations for commercial purposes without permission or compensation to the owners of the property that will not damage the reputation of economic or commercial value of their respective owners. And when the industrial revolution. The significance of the acts that cause damage to the property owner even more. Therefore, the concept and the claims for the protection of intellectual property rights by using legal measures up. The basic reason is that the property is considered property of the same type.

Traditional method of protecting intellectual property. Is to keep what they create a product a producer is in the brain of the woman or the person as a result, it is not at risk for others to see or find what they are until you find the property. will continue to be retained in the ownership of intellectual property, as long as it is decided that the creation or innovation. But if innovation is concerned with a process or method of producing anything. Such innovation will remain a secret. If the owner or operator of the way people think by any person. The way the food is delicious and unlike the other popular clients. The mixing process to produce soft drinks, according to their particular issue, however, this protection method has the disadvantage that the property owner when he died down, it means that the secret of creation to the death. And how this can be achieved only with respect to the innovation process or processes that lead to the production only. As if innovation is to ensure that product. When the owner of the product innovation has led to the creation and dissemination to the public. The acquisition of such products would be able to discover the details of the

analysis of product innovation. Chronically known as "reverse engineering" as the invention of new gear for the bike. When any person to buy a used bike gear that I can find the details of the invention is by splitting up the gears to be analyzed. This approach is similar. To keep things as he found them in a sealed storage in the safe. However, this method has the disadvantage that it is important that the property will be less likely to be used for commercial purposes. As a result of that has not kept up to date and publicly available. Moreover, the owner is not making any argument on it in case someone else has discovered that something in the nature of the same individual and that person has something they invented to public demand. This may be because he thought something happened in the same or similar from person to person, it is because they have the freedom to think what he was alone.

Furthermore, e property does not appear to be some way to keep it a secret, private, especially of their respective owners. Because the shape of the expression of ideas, such as in the book, which can be copied easily by different methods or tapes and video cassettes. Which can be compressed into a tape recorder with roll or image. The computer program may not be copied. We see that the intellectual property of these expressions is a task which is difficult to prevent the unauthorized release of proprietary applications. Spite the progress in science. I have no idea how to find any technical or scientific procedures to be created because of copy protection is generally different than that. How to protect intellectual property that is most appropriate. Legal measures, including the presence of law rules and the scope of rights to protect them. The law relating to the protection of intellectual property that may be caused by the Act or the rules made by the court as the legal system of each country.

Recently, many developed countries such as U.S.A have focused on the laws that protected citizens intellectual property right as well as set up regulations for patent, copyright, trade marks and unfair competition under the federal law which considered passed by the congress. Moreover, the trade secrets involved the undeveloped ideas and right of publicity, including other unrighteous competition had been arranged under the state law even with overlapping between the federal and state

laws. As for England, she had arranged the patent, copyright, design of industrial products, trademarks and services, including plants varieties under the written laws enacted by the Congress to be enforced the whole nation. Meantime, other intellectual property protection beyond previously regulated laws are controlled by the Common Law such as passing off which considered as unrighteous competition and breach of confidence.

However, that the monopoly will lead to positive effects that the first will result in any lack of incentives for creative innovation, whatever the extra effort, perseverance, the physical and the amount of creativity and innovation, nothing. Was another important contribution to Chubmaepib or exploitation without any compensation that is to come? The person creates what he thought the investment would not want to bring their produce to the public because it was hurting the other person is not worth the investment. The disadvantage is that the public has no opportunity to take advantage of it. The solution of the monopoly were not justified. tie-in agreement ) gal measures to prevent acts which affect the public interest does not justify the exercise of power to control prices. In the event that ownership of a monopoly to price increases have come from the property without good reason, as well as to force the owner of the exclusive agreement to allow people to use the (compulsory Licensing) in cases where the owner refused. People to take advantage of what the innovation. Including through the provisions relating to unfair competition. The anti-monopoly. Under the domestic law of countries such as the prohibition . Competition Law) antitrust laws (Anti - Trust Law) of the United States. And competition law (Competition Law) over specified.

Addition, each country recognizes the importance of protecting intellectual property have different intellectual property laws are enforced in each country, as already mentioned the matter. However, when dealing with international economic, social and political developments that have occurred. And more and more until you said that. Each country in the world could be linked to the same parts. Because of the telecommunications which has been developed unceasingly. As a result of the spread of innovation, creativity and intelligence that is faster and more

convenient intellectual property rights of owners of work would affect what people think as well. So the idea that each country should respect each other's creativity and research. The exchange of knowledge should be without prejudice to the interests of the owners of the property that each should receive. Protection of intellectual property rights in the country was becoming increasingly important. This can be seen from the fact that countries such as economic powers have raised the issue of intellectual property protection internationally as a major topic in the negotiations on the General Agreement on tax and customs and trade (the General Agreement Tariffs and Trade), also known as the negotiations GATT. Uruguay round (the Uruguay Round negotiations), which was to end in April of 1994 by focusing on issues in international intellectual property violations. The standard of protection and enforcement of standards is enough to have been forged, and selling products which are sourced from the intellectual property of the developed countries is rapidly increasing in many countries. In particular, countries in East Asia. As a result, the developed countries, whose contribution to the massive loss of revenue for the owners of sound recordings and audiovisual materials from the United States and Britain. This end, developed countries have adopted the standards of intellectual property protection in other countries is a bargain in the arena of world trade negotiations. The pressure by threatening to withdraw aid, trade, economic, or cutting benefits for some. Without the cooperation of the governments of countries with such violations.

This reason, after the organization and rules of international trade by the WTO (World Organization, or WTO) under the General Agreement of Tariffs and Trade (General Agreement on Tariffs and Trade. or GATT) in 1994, it has negotiated the trade. Relating to the protection of intellectual property rights relating to trade and counterfeiting. In an international agreement. The cause of "Agreement on the Rights of the intellectual property relating to the trade" (Trade - Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods, known as TRIPS) to set rules and new regulations. related to the basic principles of GATT 1994, the standards and principles relating to the scope and use of intellectual property rights related to trade. Establish an effective and appropriate. For the enforcement of

intellectual property rights relating to trade. As well as the procedure is effective. To prevent and resolve disputes between governments, multilateral framework.

In addition, there is a common opinion that it can to protect the country during the work that there should be a model for the norms of the law to provide coverage to the extent that similar. The results were international treaties relating to intellectual property laws. The action in the form of a bilateral treaty between the countries in the protection of the Convention or in the form of sharing between countries are parties to the Convention. It is clear that the countries agreed in the Paris Convention, the Convention on the Protection of Industrial Property since 1883 (Paris Convention, of March 20, 1883, for the Protection of Industrial Property) The purpose of this Convention in order to determine the legal standards relating to the protection of industrial property such as patents, trademarks. Product design and the prevention of unfair actions. The agreement for the protection of industrial property as well. (Berne Convention, of September 9, 1886 , for the Protection of Literary and Artistic Works) Convention is vital to the country because most of the conventions related to intellectual property protection to which Thailand is one of the Contracting Parties to the present. Bern Convention on the Protection of Literary and Artistic Works since 1886 (Berne Convention, of September 9, 1886, for the Protection of Literary and Artistic Works), or can be said that the Convention relating to the protection of international copyright. The standard set of copyright laws in those countries that are Parties to this Convention.

Agreement Concerning the International Registration of Marks) are also several copies of the Convention on the protection of intellectual property such as the Convention on the Protection of the show. Executive producer of sound recordings. And the reproduction (Rome Conventions, of October 26, 1961, for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations), the Convention concerning the protection of the rights to the audio (Neighboring Rights), including. Rights relating to the use of sound recordings. Audiovisual works. And reproduction. In these works are derivative works (Derivative Works) of the Basic (Original Work) the copyright, including the literary arts Dance and musical as well

as with international agreements relating to intellectual property which not made in the Convention as an international agreement governing the registration of trademarks Agreement Concerning the International Deposit of Industrial Designs.

However, there is another convention that is not about the law on the protection of intellectual property directly. The Convention is intended to support the protection of intellectual property to countries around the world through cooperation among States. And cooperation with other international organizations, as well as to confirm with the Union over the administration of intellectual property rights established by the Convention. Thailand has joined as an associate member of the. The Convention is called. "Convention on the Establishment of the World Intellectual Property Organization" (Convention Establishing the World Intellectual Property Organization) by the World Intellectual Property Organization. Or a letter to the WIPO (World Intellectual Property Organization) has as one of the special unit of the United Nations. And today an important role in the center of international cooperation in respect of the New York intellectual property protection.

To protect the intellectual property rights in trade between the countries, including the "Agreement on intellectual property rights relating to trade" or TRIPS TRops agreement between the countries in which this has influenced the principles concerning the protection of intellectual property rights, especially those that affect trade, both within and between countries in the Agreement. That the participating countries are parties to this Agreement on 28 December 2537 as a result of this Agreement to the flock. Influencing policy on the protection of intellectual property rights are. Under the law, with different types of intellectual property to date (I do Chaiyos Rajata, 2551: 8 - 16).

### **2.3.3 Types of Intellectual Property**

Classification of intellectual property rights which are the World Intellectual Property under the provisions of Section 2, Clause 8 of the Convention on the Establishment of a World Intellectual Property (the Convention Establishing the

World Intellectual Property Organization, Article 2 (vii)) is. has been signed by member countries in Stockholm on 14 July 1967 which states that.

Intellectual Property also including the following rights:

- 1) Literature, Fine Arts and Science
- 2) Recording Artistic Exhibition and displaying
- 3) All invention derived from human efforts
- 4) Scientific Discovery
- 5) Design of Industrial Products
- 6) Trademark, Service Trademark, names or markings related to products
- 7) Protection for unfair competition

## **2.4 Relevant Theories**

### **2.4.1 Rational Choice Theory**

Pornchai Kuntee, (2543: 24-26) his theory has its roots in the popular cult exploitation (Utilitarian Philosophy) individuals believe that the decision to commit crimes as a reason. Based on the principle that it is human nature to want to profit as much as possible. And minimize losses. And those criminals are thought to have planned ahead. In theory it is believed that the perpetrators are two ways that one person believes that there is freedom to choose to act illegally. The second approach to the illegal behavior is that people will be satisfied or the benefit itself. The satisfaction or benefit that is not limited only in terms of assets. But also to the benefit or satisfaction with life. In addition to the effect that a person has to come after the crime. The benefits to be gained. The possibility of being arrested. If a penalty to get arrested. Through alternative means that are legal.

### **2.4.2 Social Disorganization Theory**

Pornchai Kuntee, (2543: 109–110) resenting them in a book entitled "Criminology" (Criminology) in order to amend the third time in the year 1939, by

proposing that. Process and the specific crime of human behavior is to associate with people who are different in a criminal and a good citizen. By emphasizing that The cause of the association is different from a lawless society and social conflict. They noted that people have become criminals. Must be learned from everyday life. Or occupation as the attitudes, values and motivation to make that law is not respected by. The interpretation of the situation facing the way that the law ought to be done by Sutherland is that such behavior is not innate. The inheritance of genetic genealogy. The offender does not start with the idea of economic crimes. He started life as a common API for a stable. The high income and advancement opportunities with a warm In a good environment. But when it comes into the business to be competitive. All and all, but the exploitation of the work to get the most benefit. Dealing with both direct and indirect association with those who already have a criminal behavior. Of learning behavior and methods to commit crimes and are absorbed into the behavior of the system.

### **2.4.3 Social learning Theory**

The development of the theory of differential association. (Differential Association Theory) in a book called "crimes" to the Fourth Amendment in 1947 was presented. "Learning Theory" full can be said that the person was involved in criminal behavior. There are nine principles.

2.4.3.1 Criminal Acts caused by learning

2.4.3.2 Criminal Acts caused by learning 2.3.3.2 criminal behavior is learned in association with others. The communication process.

2.3.3.3 The principles of criminal behavior, learning takes place in close proximity to people.

2.4.3.4 When criminal behavior is learned. Learning this process will include 1) technology in an offense which is sometimes simple, sometimes complex, but 2) the direction of the impulse force of reasoning, as well as their attitude to the offense.

2.4.3.5 Selection of impulse and momentum. Be learned from the agreed or disagreed with the law. In some societies, people are people who agree to abide by the law. While others in the group of people who agree with the law.

#### 2.4.3.6 Principle of fellowship with people who are different.

This person will be guilty. Agree to a violation of law has to agree to not violate the law.

2.4.3.7 The theory of Association with the difference may be different in terms of frequency, duration and significance and concentration. This means that the difference of the association. Between crime and anti-criminal behavior.

2.3.3.8 The process of learning criminal behavior. By association with the theme of crime and anti-crime is involved in the same general learning.

2.4.3.9 Criminal behavior, while the expression of general needs and values. But it need not be explained by the needs and values. Against criminal behavior because they have the same needs and values. I want to steal personal financial security as well as laborers who work hard to secure the financing. An attempt to explain criminal behavior is driven by values such as happiness and striving for social status. Motivated by money. Or frustrated, etc. I have met with no success.

Nine principles of the theory of Sutherland Island to criminal behavior that is not directly caused by genetics or social environment. But the process of learning criminal behavior by close communication is verbal or gestures. However, learning theory, it does not mean that it is a learning process that occurs as a learning behavior is evident from the principles of Article 6, which stated explicitly that "people will become criminals. I agree to a violation of law has to agree to not violate the law. It means that only just learning criminal behavior will not be enough to cause people to commit crimes. Such persons will be decided in accordance with the law rather than the behavior of the frog's behavior with legal behavior. And what makes a person has to agree to a behavior that violates the law. Culture and values that accompany the process of learning behavior that is illegal. This means that the impulse and the impulse to justify the attitude of the crime. Furthermore, the principle of Article 7 also provides details about the nature of the association is different, that depends on the frequency (Frequency) duration (Duration) to give

priority (Priority) and concentration (Intensity) for frequency means. The experience with all types of criminal behavior often. The term refers to the experience illegal behavior. The significance is that Sutherland learned behavior in childhood has had on them. The concentration Sutherland has the meaning that is the case with respect to the origin of the famous acts of illegal behavior, or to love and respect the people who live or have an example of behavior.

#### **2.4.4 Differential Association Reinforcement Theory**

The new association to create a theory about the learning process by using a Differential Association Reinforcement. This has brought the ideas of Skinner (1953) describes the behavior and the conditions (Operant Conditioning) Reinforcement (Reinforcement), which is the theoretical behavior (Behavior Theory) is described by the general theory. And a behavior that can explain the mechanism of learning is clear.

The concept on stimulus - response learning about the action. Which shows the behavior in time. (Response time), the yield was affected by the environment. Or as a consequence (stimulus) affecting the same or similar in the future.

Akers mentioned the terms of the environment in shaping human behavior and the concept of Central Sutherland. This suggests that the primary source of reinforcement that is involved with the process of social learning. But not limited to particular social environment (Social Environment), but also to reinforce the non-social (Nonsocial Reinforcement) and learn from interacting directly with other parties as a source of behavioral tests.

The principles of learning deviant behavior have a simple relationship. Used to explain human behavior. Behavior of the human emotional body is said to be a part of or controlled by the output that occurs after a certain action. To yield the following (a) and the human experience has been positive. The satisfaction or desirable. These actions are deemed to be reinforced. And the behavior again in

similar circumstances around the incident are likely to occur when there is positive reinforcement (Positive Reinforcement) refers to the behavior one also occurs as a result. in a positive way, such as the award-winning social and not social. Another way is the Negative Reinforcement as a result of their behavior to avoid something undesirable. The reprimand was for me as a potential punishment in the form of positive (Positive Punishment) of the act is something that is not good. Something that is not good to blame the media. Physical punishment. Punishment or negative (Negative Punishment) The award has been revoked. Or insignificant person was denied a sense of the worth of such a behavior is repeated the yield strength in the past. And they ran out of habit, a product of the penalties that apply to learn deviant behavior. Theory, learning behavior is interpreted in terms of the concept of the association. As a result of pressure from society and the experience gained in the past. The question of whether these are the things that have a relationship with a person before the students. Make the meaning of the concept and why it is biased toward the mean. Semantics of the implementation of the norms of society, Akers and Burgess argues, is because: 1.) Deviant behavior have been reinforced in the past, and 2.) Of Article 1. It becomes a relationship. the stimuli that will identify actions at a later time.

Therefore, Seigal stated (Larry J. Siegel, 229) the theory of social learning theory, the association is completely different to the concept of integration by reinforcing different. (Differential Reinforcement) The study should focus on its strength, coupled with the association. We will call this theory, the theory of reinforcement learning, social (Social Learning Theory) can be used to this theory, another theory that reinforcement of the association. (Differential Association Reinforcement) and the theory of Sutherland Island. Describes the behavior of offenders and their criminal behavior. I have created this new theory is used to describe any form of deviant behavior.

In conclusion, it can be explained by several theories. The only theory I can not explain it, do not cover. The offense was caused by a person considers that what they do to save money rather than the results obtained. The penalty for violation

of intellectual property is not a penalty or punishment is severe. While the rewards are worth it to have a very high fee. The offender can choose to take action. In addition, the offenders have been the return value in no time the behavior of others and learn to imitate the behavior. The behavior of an epidemic in our society at large and difficult to suppress.

Meantime, a growing number of consumers. As a result of the same value. Consumers considered that the product license will be invaluable. Difficult to sell because most people's income is not very high. Moreover, when consumers are still buying it difficult to act against them by the fall of demand and supply. Therefore, research on the subject of form and method of making the wrong thing to do is study. For the practical implementation to the next solution.

## **2.5 Relevant Laws on Trademarks Fraud in Thailand**

There are 2 major trademarks laws.

**2.5.1 Trademarks Act B.E. 2534 amended B.E 2543 with relevant sections as follows** (Technocrat /The Justice Group, 182,190-194):

**Section 44:** In relations to section 27 and 68, by registering a trademark, an individual shall become a sole owner with full rights to use that registered trademark on the registered product.

**Section 46:** No person shall be allowed to proceed with legal action against unregistered trademark in order to recover damages from the infringement.

This provision would not interfere with the right of unregistered trademark owner to file the lawsuit against other person who wrongfully falsifies merchandises as his.

**Section 53:** A registration trademark over 10 years counting from the registration date in accordance with section 42 is eligible for extension as specified by section 54.

The registration period based on paragraph 1 disregarded the time during the court trial as specified by section 38.

**Section 95:** The Committee, so-called “Trademark Committee” must be appointed by the Minister which comprised of Director General of Intellectual Property as the President, Secretary of a group of Committee or representative, and legal or commercial experts who fully experienced on Intellectual Property or trademarks with minimum 8 persons and maximum 12 persons.

The appointment of scholars as stated in paragraph 1 must be selected from the private sector one third of the committee.

The Committee would appoint anyone as the secretary and assistant secretary.

**Section 108:** Anyone falsify trademark or service mark or joint mark of other that had been registered in the Kingdom of Thailand shall be liable for imprisonment not be exceeding four years or a fine not exceeding four hundred thousand Baht or both.

**Section 109:** Anyone imitate trademark or service mark or joint mark of other that had been registered in the Kingdom of Thailand with intention to deceive the public shall be liable for imprisonment not be exceeding two years or a fine not exceeding two hundred thousand Baht or both.

**Section 110:** Punishment for

(1) Any individual brought merchandises bearing counterfeit trademarks, certified mark or marks as stated in section 108 or as imitating service trademark as stated in section 109.

(2) Any individual offers services using counterfeit trademarks as stated in section 108 or imitating service trademark, certified mark or marks as stated in section 109 shall be liable for specified punishment.

**Section 111:** Mentioned the following:

(1) Trademarks, Service marks, certified marks registered outside the Kingdom could be considered as registering within the country.

(2) Selling or possessing merchandises with trademarks, service marks, certified marks with the intention to sell or fully aware of the merchandise counterfeit nature.

(3) Offering services by displaying merchandises with trademarks, service marks, certified marks with the intention to sell or fully aware of the counterfeit nature.

Imprisonment shall not be exceeding one year or a fine not exceeding twenty thousand Bath or both.

**Section 112:** Anyone violates section 90 shall be liable to fine not exceeding twenty thousand Baht

**Section 113:** Anyone violates laws as states in this Act, committing more offenses after releasing less than 5 years shall be liable for punishment double the initial sentence.

**Section 114:** If the offender is the juristic person, managing director, manager or agent of juristic person shall be liable for such offense, except being able to prove his innocent or giving his consent to such offense.

**Section 115:** Merchandises brought into the Kingdom for sale, with intention to sale against what states in the Act shall be expropriated with or without the offender being punished.

**Section 116:** In the case with clear evidence of violation by the offender according to Section 108 Section 109 or Section 110 regarding the owner of trademark, service trademark or joint owner, the court could order such person to stop the action

**2.5.2 Penal Code related to the following issues** (Board of Education, The Justice Group, 120-121):

**Section 272:** Anyone is punishable for committing the following act.

(1) Use other person name or picture or imprint or any statements to appear on the packaging, container, product cover, announcement, price list, commercial letter or other similar articles to make the public believe that he is the owner of such product.

(2) Display the copied billboard or similar objects to make the public think that he own such business establishment even though it belongs to another.

(3) Disperse false information to damage other business credit, product name to gain own benefit.

Imprisonment shall not be exceeding one year or a fine not exceeding two thousand Baht or both.

The offense per this section is could be compromised.

**Section 273:** Anyone imitates registered trademark of other, whether being registered domestic or overseas shall be liable for punishment not exceeding there years or a fine not exceeding six thousand Baht, or both.

In conclusion, from the study of various countries. These results showed that all but the penalties are quite severe. Whether it is criminal. Or civil matter. In some countries, such as France the penalties for those found guilty of possession with The people are not keen on the idea that crime is not worth the benefits when

compared with a penalty. Unlike Thailand, which the penalties for offenses of this type are also low. The culprit is thought to be worth the risk of offense. Therefore, it is also a violation of intellectual property. Especially in the case of counterfeit trademark. There were also continued. And will be expanded indefinitely.

## **2.6 International Trademarks Fraud Laws**

Trademarks fraud aboard is considered critical matters and their governments put it on the top priority list because it involves intellectual property rights. Because the European countries, such as France and Switzerland recently imposed rather severe punishment that had never been done before on consumers who possessed merchandises bearing counterfeit trademarks and Japan followed similar trend, so all three countries are selected to make comparison with the trademark laws of Thailand (<http://www.ipthailand.org/ipthailand/index.php?lang=th>).

### **2.6.1 France**

France has defined the violations of rights as follows:

2.6.1.1 Duplicate or use of duplicate trademark on merchandises or services with same features.

2.6.1.2 Destroy or change trademark attached to the merchandises

2.6.1.3 Duplicate or use of duplicate mark for similar merchandises or services until a person becoming so confused.

2.6.1.4 Duplicate or use of duplicate mark for similar merchandises or services until a person becoming so confused.

Furthermore, anyone committing those violations with dishonest mind is considered trademark laws violation as well.

2.6.1.5 Taking possession of merchandises bearing counterfeit trademark with intention to sell, acquire or arrange such merchandise without unreasonable reasons.

2.6.1.6 Delivering merchandises bearing counterfeit trademarks' although knowing that the trademark had already been registered.

2.4.1.7 Using the certified or joint marks different from ordinary approaches.

2.4.1.8 Selling or offering to sell the merchandises bearing the certified trademark in non-traditional approach.

2.4.1.9 Using the duplicate, certified or joint marks that expired about 10 years, or offering to supply goods or services bearing the counterfeit trademark with full awareness.

Owners can be healed by a criminal penalty, seizure or destruction of infringing products. Of the tools used to commit violations. The publication of a final judgment. To close any factories. Delivery of any goods to the owner of the trademark without the trademark owner the right to claim damages under normal

For the civil remedies owners can request a civil remedy to damages. Destruction of infringing goods. Publication of court judgments in various newspapers and magazines, professional (Professional Magazines) No person shall do any act in violation of the following. Payment of legal and other expenses.

France has no law on the measurement and calculation of damages, the court is empowered to determine the amount of damages. The court has a duty to consider the actual damages for breach of the victim. This may include damages that occur (Lost - expectation Damages), the French law has no provisions for compensation from the profits. Any law (Statutory Damages) in damages and penalties (Punitive Damages).

Damages for the infringement of intellectual property can be calculated from the number of sales decreased. The revenue decline. And damages that occur. Which is calculated from the sales is expected to be sold without any violations. And damage to the reputation and popularity of the property.

Damages are intended to redress the damage of their respective owners. I have to punish the guilty. The law does not define the minimum compensation or damages. The plaintiff has the burden of proof to the court that the damage incurred.

All violations will be given three years imprisonment and a fine of 300,000 euros in the case of repeat offenders. The penalty is two times the increase under the new law dated March 9, 2547 to increase the offender is sentenced to four years and a fine of 400,000 euros.

### **2.6.2 Japan**

Japan constitutes a violation of trademark rights in the trademark application is similar to a trademark registered with a similar product or service. The goods those are similar to those that have registered and have a trademark on goods similar to such distribution, sale or transfer. The cover material used to make the mark on such goods. Production or import of materials used to make marks on the product as such.

As for remedial measures, The rightful owner of trademarks may ask the violator to stop the violation and proceed with both civil and criminal lawsuits.

The rightful owner of trademarks shall have the exclusive rights to use his trademark and may order the counterfeit merchandises or move the facilities or use other counter measures to stop further violations.

The rightful owner of trademarks shall have the exclusive rights to use his trademark and file the lawsuit on the infringement whether the violator action intentionally or negligently done.

The penalty runs from a fine not exceeding 5,000,000 yens and imprisonment not exceeding five years.

### **2.6.3 Switzerland**

Switzerland considers the violation of right if one used the other registered trademarks for the following purposes:

2.6.3.1 Displaying the other registered trademark on merchandise or packaging

2.6.3.2 Presenting merchandise under the other registered trademark in the market or possess such merchandise with intention to sell.

2.6.3.3 Presenting services or giving services under the registered trademark

2.6.3.4 Importing or exporting merchandises under the registered trademark

2.6.3.5 Using the other registered trademarks on the advertisement or commercial purposes.

The rightful owner of the trademark whose rights has been violated could ask for the remedies through the following measures:

- 1) Requesting temporary protection
- 2) Requesting compensation money
- 3) Impounding the counterfeit merchandises

As for criminal measures, the violator shall be liable for imprisonment or a fine not exceeding 100,000 Swiss France.

In conclusion, these results showed that all but the penalties are quite severe. Whether it is criminal. Or civil matter. In some countries, such as France The penalties for those found guilty of possession with The people are not keen on the idea that crime is not worth the benefits when compared with a penalty. Unlike Thailand, which the penalties for offenses of this type are also low. The culprit is thought to be worth the risk of offense. Therefore, it is also a violation of intellectual property. Especially in the case of counterfeit trademark. There were also continued. And will be expanded indefinitely.

## **2.7 Justice Agencies to enforce laws on Intellectual Property Rights Violation**

The accompanied evolution of the economy, so government needs to have the authority of the various organizations involved in economic crime prevention and full. The mission of the organization that serves to locate the offender. Screening that the case (Prima Facie Case) in order to strengthen the security of life and property to the public. When it comes to organizations involved in combating economic crime. The organization is involved in the crime as follows.

### **2.7.1 Economic Crime Division**

Previously, it was known as the Investigation Division or land Ssk. Which was founded in 2508 as a unit, reporting to the police department in the early stages. Military commanders have the Division 1 and 2, with most work on the alien registration and taxation throughout the United Kingdom.

The modern world filled with technology and the expansion of government. Business crime. It is made by any person or group. Or both at home and abroad to increase domestic and foreign. Thailand is one of the victims in several countries that have been damaged. Police are aware of the policy of the Thai government. To be protected against all forms of crime, economic crime. The name is one that "The bandit's crimes. Shirt collar or white collar crime "and defamation of the country and the investment climate.

Therefore, the suppression of it. As well as closer cooperation between law enforcement officers is necessary to accelerate the process. To cope with the economic progress of crime. Whether committed by individuals or groups of people both at home and abroad.

On 25 July 2530 the Thai government has approved the restructuring of the proposed restructuring of the Police Department and the Foreign Tax Division.

With the transfer of the registration of all aliens to the Immigration Division. Since then they have to recruit a person with knowledge of the criminal investigation into the Economic Division and the economy. It was known from time to time. (<http://www.ecdpolice.com/?name=aboutus>) on 30 December 2534 Cabinet approved the restructuring of the economy and a new division within the Department's Central Investigation Bureau. Until March 20, 2535, under the Organization Department. Ministry of Interior (No. 20) Act 2535 has effect according to the Gazette.

#### The authority of Economic Crime Division

- 1) To provide security for the king's heir, the queen regent. Royalty Royal representative the royal visitor.
- 2) To maintain order. Preventing and combating crime. Throughout the penalty for economic Kingdom.
- 3) To perform under the Code of Criminal Procedure. And other laws, the criminal crimes, and computer crime, other technologies. Criminal acts or other laws relating to such matters
- 4) To collaborate work with and support the work of other agencies involved.

#### The empowerment to investigate legal cases related to the following Acts.

- 1) Finance
- 2) Securities and stock exchange
- 3) Loan to defraud public
- 4) Offensive act of Registered Partnership, Company, Association and Foundation
- 5) Public Company
- 6) Currency Exchange
- 7) Copyrights
- 8) Trademarks
- 9) Patents
- 10) Navigation in Thai Waters
- 11) Fuels

### **2.7.2 Department of Special Investigation or DSI**

DSI is the special agency in charge of investigation, inquiry and suppression of wrongdoings through the system development, patterns and special measures to protect and control crime with the skilled and expert personnel in all disciplines to develop the ability in effective investigation system.

The main mission of the Department of Special Investigation is to encounter the pattern and method of wrongdoings in the systematic approach and network of knowledge until developing into the organization with complex, intrigue and delicate structure. Therefore, it is important to empower DSI as well as giving the DSI investigate officers full authority

Police needs to empower police officers in full by the Department of Special Investigation, the same officer under the Code of Criminal Procedure in an investigation or other action.

It does not determine how the investigation is over, then the officer was in compliance with the Code of Criminal Procedure, the Basic Law, and the Law on the investigation, however, to proceed with the investigation of special cases must not be contrary to the Constitution. Or violation of the Constitution did not authorize it.

DSI has the following authorities:

1) To prevent, suppress and control the crimes that could create severe impacts on economy, social, the nation security and international relations.

2) Improve the laws, rules, regulations, patterns and measures to prevent, suppress and control crimes that could create severe impacts on economy, social, the nation security and international relations.

3) Develop organization project and administration

4) Increase personnel potential through knowledge, ability, moral and ethic and support

5) Support the network to suppress and control crime with the domestic and foreign countries.

DSI Act B.E. 2547 stated the provisions on DSI Act as follows:

**Section 3:** in this Act refers to:

“Special Case” is the offense as specified in section

“Special Case Officers” refer to the, Director General / Deputy Director-General who had been appointed and authorized to act and investigated the special case based on this Act.

“Special Case Assistant Officers ” refer to those who had been appointed to assist the special case officers in the investigation as specified by this Act.

“Director General” Is the Director General of DSI

“Deputy Director-General” Is the Deputy Director-General of DSI

“Minister” Is the keeper of this Act?

**Section 4:** The Minister of Justice to shall have the power to pass the Ministry rules to proceed under such rules

Ministry rules and regulation shall take effect as soon as the announcement is made in the Government gazettes.

**Section 5:** Appoint a Director-General and a secretary and the Director-General authorized to appoint minimum 2 DSI to be an assistant secretary.

**Section 10:** empowers DSI Committee to conduct the following duties:

(1) Propose to the Minister on the announcement of Special Case regulations in accordance to Section 21, paragraph 1

(2) Determine details of offenses based on Section 21, paragraph 1

(3) Having resolution on criminal offenses based on Section 21, paragraph 2

(4) Determine the criteria based on the provision should be given to DSI Committee.

(5) Follow-up and assess results of performances in accordance with this Act.

(6) Give special accord to the Special Crime Curriculum

(7) Perform other duties as specified by the Act or the Committee DSI. The details of offenses specified in paragraph 1 (2), paragraph 1(3) and paragraph 1 (4) that announced in the Royal Gazette.

**Section 21:** Special cases that must be investigated and trailed as follows:

(1) Criminal case as specified in the appendix of this Act and by the Ministry regulations through the recommendations of the DSI Committee. The natures of criminal cases are as follows:

(A) Complicated criminal cases that required special investigation and evidences

(B) Criminal offenses

(C) Criminal offenses

(D) Criminal offenses

(E) Criminal offenses

The details of offense's nature as defined by the Committee of DSI

(2) Other criminal cases besides those stated in (1) according to the committee resolutions

Considering cases where the law acts as a single action. This chapter and the one to be taken by the competent court under this Act. Or an offense against or

related to the subject. And if any one will be taken by the officer under this Act. Aside from the official investigation for an offense related or other. The case shall be considered as special cases.

Any cases that had completed the investigation by the DSI investigated officers is considers as such cases had been through the special investigation in accordance to this Act.

This provision is used to enforce the culprit, users or sponsors of the offenses.

In the case of dispute or doubt if the offenses fall in to the special case categorized by paragraph (1) or not listening to the Special Case Committee advice.

Nature of Criminal Offenses as stated in the Appendix of DSI Act B.E. 2547 is related to the following areas:

1. Public fraud
2. Trade Competition
3. Banking
4. Stock Exchanges and Credit Foncier
5. Pyramid Schemes
6. Currency Exchange
7. Bidding Government Project
8. Complete Circle of Protection
9. Consumers' Protection
10. Trademarks
11. Currency
12. Compensation for taxes on import goods domestically produced
13. Loan Interest of Financial Institute
14. Bank of Thailand Regulations
15. Public Limited Company

16. Money Launderings
17. Industrial Standards
18. Copyrights
19. Investment promotion
20. Environmental Quality enhancement and maintenance
21. Patents
22. Securities Exchange
23. Revenue Code
24. Tariffs
25. Excise Taxes
26. Liquor
27. Tobacco
28. Alien Businesses
29. Property Insurance
30. Life Insurance
31. Commodity Future Trading
32. Computer
33. Land Code
34. Forestry
35. National Parks
36. National Forest
37. Wild Life Preservation and Protection

The Declaration of Special Case Committee (No. 3) B.E. 2548 on the details the nature of special crime in accordance with Section 21 Paragraph 1 of DSI Act B.E. 2547

No.4. To substitute the statement in section 10. On trademarks cases state on the appendix of the Special Case Committee on the details the nature of special crime in accordance with Section 21 Paragraph 1 of DSI Act B.E. 2547 by the appendix on the new declaration. 10 Trademark Violation based on the Trademark Laws.

The violation as stated in Section 108 Section 109 Section 110 and Section 114 of Trademarks Act B.E. 2534 or with the reason to belief that such action whether establishing the manufacturing site, place to buy or store merchandises, or bringing merchandises into the Kingdom or taking possession of merchandises with intention to violate the law shall be liable for a fine from five hundred thousand Baht.

The recent Appendix of Special Investigation Committee Declaration (No. 4) B.E. 2547 and the additional laws authorized more power to the Ministry in the investigation of special case in B.E. 2547, either case.

According to Section 21, paragraph (1) (A) (B) (C) (D) or (E) of DSI Act B.E. 2547 which had been amended by the DSI Act (No. 2) B.E.2551 described in details the nature of special crime and the Director General of DSI must order investigation of the special case in accordance to the DSI Act B.E. 2547.

Offenses in accordance to the Trademarks Act. The violation defined the punishment based on section 108, 109, 110 and section 114 of the Trademark Act B.E 2543 and those amended.

The work division in DSI in accordance with Ministry of Justice regulations B.E 2551 is divided as follows:

1. Bureau

- 1.1 Bureau of Center Operation

- 1) Human Resources Administration Group
    - 2) Department Secretary Group
    - 3) Special Crime Cost Group
    - 4) Special Crime Operation Center

- 1.2 Bureau of Strategy and Policy Planning

- 1.3 Bureau of Special Crime 1

- 1.4 Bureau of Special Crime 2

- 1.5 Bureau of Special Crime 3

- 1.6 Bureau of Security Crime

- 1.7 Bureau of Taxation Crime
  - 1.8 Bureau of Financial and Banking Crime
  - 1.9 Bureau of Technology and Cyber Crime
  - 1.10 Bureau of Intellectual Property Crime
  - 1.11 Bureau of Foreign Affairs and Transnational  
Crime
  - 1.12 Bureau of Technology and Information  
Inspection Center
  - 1.13 Bureau of Consumer Protection and  
Environment Crime
  - 1.14 Office of Special Case Experts
  - 1.15 Bureau of Regional Operation Center
  - 1.16 Bureau of Special Crime
- 2. Group
    - 2.1 Internal Audit Group
    - 2.2 Administrative System Development Group
- 3. Legal Affairs Division
    - 3.1 Legal Advisors Group
    - 3.2 Litigations Resolution Group

## **2.8 Relevant Researches**

Orathip Tantaprasart (1987) studied trademarks fraud with the intention to analyze and search for solutions, as well as identifying causes and effects of problems that should benefit solutions in enforcing laws on elimination or reduction of trademarks fraud. Data were collected from documents and interviewing officials of state enterprises, lawyers and experts. The findings reveal the problems on trademarks in relations to the context of laws, enforcement on organizations, trademarks, attitude of consumers and public policy issues.

Dujkae Kumchoo (2006) studied the civil compulsory measures on Intellectual property Rights: Trademarks and Copyrights Violations with intention to find remedies for damages done to the injured parties in the most appropriate and righteous way. The findings reveal that the civil measures are the main barrier to prove that the damage had been done, including the court trial and even stop the violation so the rightful owner could exercise stronger civil measures instead of civil lawsuit. This way the offenders would be afraid of repeating the same offense. So the laws must be revised on some civil rights measure. For examples, the definite damages must be determined and appraised based on the Central Administration rules, including damages from violations. Fines should be in terms of heavy punishments, control measures of Intellectual Property, forbidden guidelines or initial considerations on wrongdoings, and prohibiting the movement of personal property before the court case, including dealing with unlawful goods and informing the third parties involved, if any, the consequences from violation and impounding the property of offenders.

Chanchai Sirajaru (1987) studied Trademark and Public Deception by focusing on the approach of Thai laws having against public deception and how to amend the provisions of laws so the public could receive full protection. Findings suggested the following:

- 1) Certain measures are out-of-date and unable to guard the public against fraud effectively.
- 2) Other measures are being allowed to comply with certain fraud cases even with the disagreement in the legal applications.
- 3) There are no definite provisions to enforce laws on public fraud that existing in many forms.
- 4) The law under Section 29 of the first paragraph is unfavorable in preventing fraud against the public.
- 5) There are some barriers to the practice and law enforcement from lacking the endorse laws or support legislation.

Recommendations are made from the study 1) to consider amending and updating the existing laws for effectively guarding the general public against fraud 2) to set up the explicit provisions to execute fraud case that the law allowed other provisions 3) to add more provisions of the laws that could execute all types of fraud cases 4) to amend the law on first paragraph of section 29 as intended by the trademarks laws to protect the public from fraud by granting the unregistered trademark owner the legal rights over the offender 5) to determine guideline for practicing Thai laws in the same international standard measures with the main focus on public fraud.

## **CHAPTER III**

### **METHODOLOGY**

The research entitled “Patterns of Wrong Doing under Intellectual Property Laws: A Case of Trademarks Fraud” aims to investigate situations, patterns and tendency of wrong doing under intellectual property laws, mainly on trademarks fraud with intention to study problems and obstacles in the trials against trademarks fraud through gathering both qualitative and quantitative data. The research was done with the following methods:

### **3.1 Population**

#### **3.1.1 Quantitative Research**

The targeted populations for this study were the consumers of counterfeit merchandises.

#### **3.1.2 Qualitative Research**

The research had classified targeted populations into 3 groups

- (1) Investigated officers from Economic Crime Division, Central Division Bureau, Royal Thai Police
- (2) Special case investigated officers, Intellectual Property Bureau, Special Department of Investigation
- (3) Wrongdoers of Intellectual Property Crime: A case of Trademarks Fraud

## **3.2 Sample size and Sampling Methods**

In this study, samples were identified as follows:

3.2.1 For the quantitative study, a group of consumers purchasing merchandises bearing counterfeit trademarks had been selected to fill in questionnaires. Nonetheless, consumers were large in numbers made it rather difficult to pinpoint the exact sample size. Therefore, the researcher had to rely on Quota system to initially select 300 samples and later using Purposing Sample to screen out some samples and maintain those samples once used merchandises bearing counterfeit trademarks. Data were collected in front of the shopping mall near Ratprasong and at MBK Mall.

3.2.2 For the qualitative study, samples selected were classified into the following 3 groups 1) Investigated officers from Economic Crime Division, Central Police Bureau, Royal Thai Police 2) Experience special investigated officers from Intellectual Property Bureau, Department of Special Investigation 3) Wrongdoers on Intellectual Property Crime: A Case of Trademarks Fraud.

The research had chosen sample group as the representative of population, using Purposive Sampling 1) Five investigated officers from Economic Crime Division, Central Police Bureau, Royal Thai Police 2) Five experienced special investigation officers from Intellectual Property Bureau, Department of Special Investigation 3) Ten wrongdoers on Intellectual Property Crime: A Case of Trademarks Fraud. Total 20 samples were used.

## **3.3 Research Tools**

3.3.1 The questionnaires were constructed to gather quantitative data from samples that had purchased counterfeit merchandises bearing trademarks fraud. Questions included the following aspects:

3.3.1.1 General data consisted of gender, age, marital status, education, earning and occupation.

3.3.1.2 Data related to reasons and demands for consuming merchandises bearing counterfeit trademarks were collected among samples by asking their opinions on the following areas: Inexpensive merchandises, similar merchandises' features, measured social status, fair quality, low buyer's fund, easily purchased product, no great loss, and fashionable merchandises (constantly changing styles so costly if one keeps following the fashion trend)

Upon completion, questionnaires were tried out to find its Reliability with Cranach's Alpha Coefficient among 50 consumers of copyright merchandises at Klong Thom market who had similar characteristics as a group of true samples. The Reliability was 0.8023.

3.3.2 Quantitative data for the study was collected by interviewing samples with the constructed interviewed form from the following 3 groups of samples:

3.3.2.1 A group of Economic Crime Suppression officers, Central Police Bureau, Royal Thai Police were questioned in the following areas:

1) General Information on gender, age, marital status, education, income, position and tenure

2) Patterns and methods on Intellectual Property wrong doings: A Case of Trademarks Fraud, including problems and obstacles in the prosecution of Intellectual Property Crime. Questions were related to the following areas: Patterns and methods on wrongdoings, evading laws, legal punishment imposed light sentences, reasons for unable to eliminate the manufactured source, buyers preferred buying counterfeit merchandises, buyers' penalties for purchasing counterfeit merchandises, wrongdoers' channel for committing crimes, buyers' ignorance to find out if the merchandises bear counterfeit trademarks, inexpensive production cost, sizable profits for manufacturers, government official conspiracy, solutions to policies problems, solutions to policies problems, apprehended methods, and results of litigation.

3.3.2.2 A group of Special Investigated Officers, Intellectual Property Bureau, and Department of Special Investigation were questioned in the following areas.

1) General data consisted of gender age, marital status, education, earning, position and tenure.

2) Data related to patterns and methods of wrongdoings under Intellectual Property Laws: A Case of Trademarks Fraud, including problems and obstacles in the prosecution of Intellectual Property Crime. Questions were related to the following areas: Patterns and methods on wrongdoings, evading laws, legal punishment imposed light sentences, reasons for unable to eliminate the manufactured source, buyers preferred buying counterfeit merchandises, buyers' penalties for purchasing counterfeit merchandises, wrongdoers' channel for committing crimes, buyers' ignorance to find out if the merchandises bear counterfeit trademarks, inexpensive Production Cost, Sizable profits for manufacturers, government official conspiracy, solutions to policies problems, solutions to policies problems, apprehended methods, and results of litigation.

3.3.2.3 Wrongdoers on Intellectual Property Crime on Trademarks Fraud were questioned in the following areas:

1) General data consisted of gender age, marital status, education, earning and occupation.

2) Patterns and methods of wrongdoings under Intellectual Property Laws: A Case of Trademarks Fraud Questions mainly the opinions on merchandises as follows : Significant numbers (Buyers) of targeted group, easily sellable products, majority of people earn fair incomes (unable to buy real merchandises), legal punishments are too lenient, low product cost, able to display merchandises on different locations (no need to display on definite location or department store, worth paying for, constantly improved the products to be in the current trend, society disregards as wrongdoing or committing crime, society pays less attention to trademarks fraud. More questions on the following statements: Patterns and methods of wrongdoings, afraid of breaking laws, chances of repeating trademarks fraud, manufacturing locations, delivered merchandises conveniently, conveniently contacting the government officials.

As soon as the preparation ended, all constructed questionnaires were taken to the Thesis Advisors and Scholars for final revision before actual testing with the research samples.

### **3.4 Data Collection**

Both qualitative and quantitative data were gathered after getting the permission letter from the Faculty of Social Sciences and Humanities, Mahidol University to collect data based on the following procedures.

#### **Quantitative Data Collection**

The researcher selected 300 consumers who had purchased merchandises bearing counterfeit trademarks to collect quantitative data, using Purposive Sampling. Samples were asked if they had ever been used counterfeit merchandises to obtain accurate information on reasons and demands for such products. Data were collected in front of the shopping mall near Ratprasong and at MBK Mall.

#### **Qualitative Data Collection**

Three groups of samples were selected based on their qualifications to match the criteria of the study. First, the investigated officers from Economic Crime Division, Central Government Bureau, Royal Thai Police and Intellectual Property Bureau, Department of Special Investigation, Ministry of Justice were chosen because of their expert knowledge in laws, rules and regulations, including experiences in handling Intellectual Property violation cases, especially on Trademarks Fraud. As for a group of wrongdoers, they were those who had infringed Intellectual Property rights and been arrested on trademarks fraud charges. All 3 groups of samples were chosen by Purposive Sampling.

### **3.5 Results Compilation, Data Collection and Synthesis**

#### **Quantitative Data**

Acquired data from interviewing samples were compiled to find the connection between questions through Content Analysis. Analysis topics were determined to extract data and find differences for in-dept analysis and conclusions.

#### **Qualitative Data**

Data were compiled for results with the computerized program SPSS, using Percentage, Means and Standard Deviation for statistical analysis.

A set of questionnaire was designed with 5 levels of measurement, giving scores in each level as follows:

0–1.50	=	highly disagreed/least
1.51–2.50	=	hardly agreed/low
2.51–3.50	=	uncertainty/moderate
3.51–4.50	=	agreed/more
4.51–5.00	=	highly agreed/ most

### **3.6 Research Results**

Research results were presented as the Descriptive Statistics with integrated data to match research objectives.

#### **Research Ethic Approval**

This research had been verified and approved by the Research Ethics Committee.

## **CHAPTER IV**

### **RESULTS**

Data Collection for the research entitled “Patterns of Wrongdoing under Intellectual Property Laws: A Case of Trademarks Fraud” were done in 2 parts: Quantitative and Qualitative data. Quantitative data collected from 300 counterfeit merchandises consumers and qualitative data gathered through In-depth Interview with 5 inquiry officers of Economic Crime Division, Central Investigation Bureau, Royal Thai Police and 5 special inquiry officers of Intellectual Property Office, Department of Special Investigation, and Ministry of Justice together with 10 counterfeit products manufacturers. Therefore, all data were collected from total 320 informants. With the following details:

#### **4.1 Analysis documents related to pattern of wrongdoings under Intellectual Property Laws: A Case of Trademarks Fraud**

Regarding the pattern of wrongdoings under Intellectual Property Laws: A Case of Trademarks Fraud, the apprehended statistic dated back 3 years (B.E. 2007-2009) revealed the tendency of increasing intensity in apprehending intellectual property crimes. This record shows only the arrested cases, not counting other merchandises that the officer had not apprehended and found in the common market. The wrongdoings under Intellectual Property Laws are not only damaged the economy, but also affect the country’s image and thus reducing the confidence foreign business partners as well and business. As mentioned earlier, the countries that had been affected by the trademarks fraud may retaliate through trade barrier which could sent tremendous impact on the nation economy. U.S. under the special section 301 by US Trade Representative (USTR) reviewed the name of trade partners that had not effectively cooperated enough to protect Intellectual Property Rights on

annual basis by arranging the public hearing until April before announcing the list of countries violated Intellectual Property rights and how. Thailand has been in the Priority Watch List (PWL) since 2007 which under the close observation up to now from having high rate of Intellectual Property rights violation. In the year 2011, there were only 12 countries namely, China, Russia, Algeria, Argentina, Canada, Chili, India, Indonesia, Israel, Pakistan, Venezuela and Thailand as a country among those countries. Even in the report of 2011 stated that Thai government expressed strong determination to curb the violation in Intellectual Property right, such report had never mentioned the progress on Intellectual Property Laws. Moreover, the law enforcement is still weak and encountered some barriers which made Thailand remained in PWL and caused U.S to withheld tax privilege on Thai import to U.S up to now.

## **4.2 Quantitative outcomes gathered by questioning 300 consumers of counterfeit bearing trademarks fraud**

### **4.2.1 Sample Personal Information**

Total 8.3 percent of samples aged 30 years on average. Majority were 151 females or 50.3 percent whereas 149 or 49.7 percent males, having 161 singles or 53.7 percent, followed by 123 married or 41.0 percent. Meantime, 153 samples or 51.0 percent graduated with Bachelor's degree, followed by 101 samples or 33.7 percent completed High School. Total 72 samples or 24.0 percent earned 5,001-8,000 monthly, followed by 62 samples or 20.7 percent earned 11,001-14,000 baht. There were 71 samples or 23.7 percent worked as hired helpers, 62 samples or 20.7 percent were corporate employees, 32 samples or 10.7 percent worked for the government, 12 vendors or 4.0 percent whereas 10 samples or 3.3 percent owned businesses. Outcomes of the study were presented as follows:

**Table 4.1:** Number and Percentage of Sample Personal Information Individual

<b>Personal Information</b>	<b>Number</b>	<b>Percentage</b>
Gender		
-Males	149	49.7
-Females	151	50.3
Status		
-Single	161	53.7
-Married	123	41.0
-Divorced	9	3.0
-Widow	5	1.7
-Separated	2	0.7
Education		
-Elementary	15	5.0
-High School	101	33.7
-Bachelor's degree/Equivalence	153	51.0
-Higher than Bachelor's degree	30	10.0
-Other (not specify)	1	0.3
Monthly Income		
-Lower than 5,000 baht	11	3.7
-5,001-8,000 baht	72	24.0
-8,001-11,000 baht	60	20.0
-11,001-14,000 baht	62	20.7
-14,001-17,000 baht	41	13.7
-Higher than 17,000 baht	46	15.3
-Other (not specify)	8	2.7
Occupation		
-Own business	10	3.3
-Vending	12	4.0
-High School/University Students	20	6.6
-Hired Helper	71	23.7
-Government employees	32	10.7
-Corporate employees	62	20.7

#### 4.2.2 Number and Percentage of samples on purchasing trademarks fraud merchandises

**Table 4.2:** Number, Percentage, Mean and Standard Deviation of samples on purchasing trademarks fraud merchandises

Statement	Level of Opinions					S.D.	$\bar{x}$	Explanation
	Highly disagreed	Hardly agreed	Uncertain	Agreed	Highly agreed			
1. Inexpensive Merchandises	1.3 (4)	0.7 (2)	8.3 (25)	47.7 (143)	42.0 (126)	0.75	4.28	High
2. Similar merchandises features	0.3 (1)	4.3 (13)	16.7 (50)	45.7 (137)	33.0 (99)	0.83	4.07	High
3. Measured social status	3.0 (9)	6.0 (18)	28.0 (84)	34.3 (103)	28.7 (86)	1.01	3.80	High
4. Fair quality	1.3 (4)	5.7 (17)	23.3 (70)	43.0 (129)	26.7 (80)	0.91	3.88	High
5. Low Buyer's Fund	0.3 (1)	2.7 (8)	21.0 (63)	48.0 (144)	28.0 (84)	0.79	4.01	High
6. Easily purchased product	0.7 (2)	3.3 (10)	17.3 (52)	46.3 (139)	32.3 (97)	0.83	4.06	High
7. No great loss	1.0 (3)	3.7 (11)	17.0 (51)	46.3 (139)	32.0 (96)	0.85	4.05	High
8. Fashionable merchandises	1.3 (4)	5.3 (16)	16.7 (50)	42.7 (120)	34.0 (102)	0.91	4.03	High

Table 4.2 revealed that majority of samples gave high opinions on the following issues: Inexpensive Merchandises ( $\bar{X} = 4.28$ ), followed by similar merchandises features ( $\bar{X} = 4.07$ ), easily purchased product ( $\bar{X} = 4.06$ ), no great loss ( $\bar{X} = 4.05$ ), fashionable merchandises ( $\bar{X} = 4.03$ ), low buyer's fund ( $\bar{X} = 4.01$ ), fair quality ( $\bar{X} = 3.88$ ) and measured social status ( $\bar{X} = 3.80$ ).

### **4.3 Qualitative Research Results**

The interview was conducted on 5 inquiry officers from Economic Crime Division, Central Police Bureau and 5 inquiry officers from Department of Special Investigation, Intellectual Property Bureau, including 10 wrongdoers under Intellectual Property Laws: A Case of Trademarks Fraud to find patterns, methods of wrong doings and problems and obstacles on trademarks fraud prosecution. Interview outcomes are analyzed and classified based on the issues and group of informants as follows:

#### **4.3.1 Interviewing Outcomes of 5 Inquiry officers from Economic Crime Division, Central Police Bureau, Royal Police Department**

In-depth interview was used to acquire extensive data, both spatial and perspectives of inquiry officers, Division 3 responsible for Bangkok metropolitan area and Division 4 responsible for rural areas. Inquiry officers were Sub- Inspector, Inspector and Deputy Superintendent because they were responsible for interrogation and gather all evidences from the arresting officer, suspect or specialist, including the representative of injured party which display the overall procedures for trademarks fraud , distribution of counterfeit merchandises, search and arrest . Interview results are summarized as follows:

##### **Interviewing Inquiry officer No.1:**

A male inquiry officer of Economic Crime Division (level 3) responsible for Bangkok area for 15 years

### **Patterns and methods of wrongdoings**

The wrongdoers imported most counterfeit merchandises from aboard, especially from China. Then, counterfeit merchandises were distributed to the vendors in the fresh market, department store or displayed through Internet. Counterfeit merchandises found are handbags, clothes in good and poor qualities. As for buying-selling patterns, they are done either face-to-face or transferred funds first before delivering merchandises. Prices are set from 5% to 20% of real merchandise prices.

For legal evasion, the wrong doers never stay put at one place. He would alternate his business location or sell in temporary private fresh market to avoid being arrested or using the legal loopholes, using children as the peddlers.

Besides, counterfeit merchandises were mixed and displayed together with real merchandises to avoid being arrested. Lately, the seller used Internet to sell those merchandises and constantly changing contact channel.

### **Apprehension**

Police apprehension techniques are: lure suspect (intention to sell), commit crime openly (propose selling) or warrant to search (intention to sell), having confirm counterfeit merchandise by the rightful owner of such trademark. Most of times, few manufacturers were apprehended because majority of them stayed aboard. Problems occurred during apprehension were the disappearance of suspect, only found counterfeit merchandises or underage seller or children guarding merchandises. For requesting bail, all cases of trademarks fraud were allowed bail. Regarding the trial, the inquiry officer and attorney would bring all cases to trail. At the court, there had never been any cases dismissed, only imposed fines and impounded the evidence, except on the repeated offenses which received heavier fines and parole, never imprison the offender.

### **Degree of penalty**

The punishment is formidable because it defined the penalties for trademarks fraud, distribution, offer to sale, possess counterfeit goods for selling in the Trademarks Act which both imprisonment and fines. In real practice, the courts hardly imprisoned the wrongdoers, only imposed fine and parole. In the case of repeated offenses, when the seller knew that he was caught so many times and may be imprisoned soon, he would switch place with others.

As the legal loophole, young children are being employed to peddle these counterfeit merchandises because the penalties for children are light sentences. For questions on arresting the manufacturing sources, the place under arrest produced about 1,000 counterfeit jeans bearing LEVI trademarks together with the sewing machines, but the place was only assembling line and attaching labels. This is the rare case which occurred not often. The officer were unable to reach the origin because most counterfeit merchandises produced in China, instead only small seller get caught. However, the ring leaders are usually powerful figures, hard to reach or investigate and many sellers when being apprehended would admit their own guilt which made it rather difficult to reach the real culprits. Many times, the wrongdoers did it to repay the favor or for high compensation. For questions on the government officials signaling the wrongdoers, many informants admitted some favor as to convenience the seller or neglect the duty whereas some officer though of inadequate manpower.

### **Consumers' support**

Almost all consumers knew when they bought the counterfeit merchandises because of the prices and qualities clearly different from real merchandises, except the case when a buyer was deceived by the vendor. Buyer with less income purchased the counterfeit merchandises to serve their needs for brand name merchandises. At present, Thailand has never imposed any punishments on the buyer, but some suggestions on buyer' paying fines because punishing the buyer is only correcting at the end results because the direct cause came from the officer' negligence allowing the counterfeit merchandises into the country.

### **Production Cost**

The officer thought of low cost because of cheap labor in the China where most merchandise was imported. Because of low production cost, both manufacturer and seller made good profits as the incentive for wrongdoings. Generally, the return is as high as 200 percent.

### **Policy-related solution**

For solution to policy-related problems, one must look at the cause of problem, mainly social values, from materialism to law enforcement. If he thought the cause came from current materialism, the new values must be imbedded among children and youth, not too over spent on brand name and merchandises. If the cause of wrongdoings came from weak law enforcement, the context of laws must be adapted to match the current situation. For the solution to problems, the government officials must be stricter when enforcing the laws.

### **Interviewing Inquiry officer No. 2:**

A female inquiry officer (level 3) of Economic Crime Division responsible for Bangkok area for 7 years

### **Patterns and methods of wrongdoings**

Counterfeit merchandises were found displayed at regular stalls in the market and sold through internet. They are handbags, clothes in similar qualities as the real merchandises, hardly differentiated counterfeit merchandises from real merchandises. As for buying-selling patterns, counterfeit merchandises are sold directly and delivered through mail, having someone or market keeper watched the entrance. Prices were set at hundred to thousand baht. For tax evasion, the wrong doer employed the market keeper to look out if the officers invading others stores so he could escape on time or display only the brochure, not the merchandises.

### **Apprehension**

Police apprehension techniques are: lure suspect (intention to sell), commit crime openly (propose selling) or warrant to search (intention to sell) which considered the offenses as stated in the Trademarks Act. Problems occurred

during apprehension were the officer lacking skills to differentiate between real and fake merchandises. In the case where impounded merchandises unmatched the label or description, the case must be dismissed. Regarding the trial, most inquiry officer would bring all cases to trail, except cases where the registrar confirmed that merchandises were not counterfeit such as the registration on the neck collar, but the arrest is on the collar which may not be counterfeit products, instead it is the imprint which considered as violation in Penal Code that required the complaint prior to the case otherwise the suspect could not be put on trial. Most prosecutors put up only petition because the case is lacking intention and eligible for bail if one asked for and most cases paid fines. If the wrongdoer repeated the offense twice, the fines would be doubled and given parole for third offenses whereas the merchandises were impounded for all cases.

#### **Degree of penalty**

The current penalties were too light. For the intention or offer to sell, the penalty was only imposed fines, hardly any parole. The repeat offender 2-3 times usually paid higher fines. The search and arrest of manufacturing source of sport outfits, estimated 1,000 pieces used the place as the screening label office. So the charges were counterfeit and possession with intention to sell. This type of arrest must have the property in dispute at least one shirt to show that the harm had been done completely. Besides, the search warrant on the packing sport outfits about 2,000-3000 pieces stated the charge as intention to sell. For problems on some officer signaling the wrongdoers, many informants raised the question on how these import merchandises passed the customs inspection. For domestic counterfeit merchandises, the officer may pretend not seeing them.

#### **Consumers' support**

Even though consumers knew that they have bought the counterfeit merchandises because of the prices and qualities clearly different from real merchandises, they still preferred buying them. For the punishment on buyer, Thailand has never imposed any punishments on buyer, and some suggested

withholding the fines to avoid correcting problems at end results. Some consumers had no ideas that they had purchased counterfeit merchandises.

### **Production Cost**

Production cost for merchandises bearing trademarks fraud is low due to the use of low quality materials so that the returns would be sizable. Major manufacturers should receive 200 percent in estimate; the small buyer may earn less.

### **Policy-related solutions**

The government should promote products with Thai Brand. For solutions to the problems, there should be stricter controlled than before.

### **Interviewing Inquiry officer No. 3:**

A male inquiry officer (level 2) of Economic Crime Division 4 (provincial area) for 9 years

### **Patterns and methods of wrongdoings**

In the responsible rural areas, counterfeit merchandises were edible goods found displayed at the fresh market such as seasoned sauces, fish sauces with lower quality than real merchandises. Most of times, the real owner of trademark would not press charge on minor seller, instead luring him to ring leader or manufacturing place not the whole production process. Production was done in the rented place such as Town House or abandoned factory to avoid being caught. For example, in making fish sauce, fish sauces and bottle came separately. The bottles would be brought from junk yard; perhaps the bottles of same brand or different brand or empty case of toner bought from the company, filled in the ink and label and sold to buyer who placed the order how many cases of toner wanted. The most number of edible goods were imitated sauce estimated 3000 bottles. Works were sharing among members of wrongdoers group who had know each other quite well .When they were caught, they would say they no intention to commit the crime. As for edible goods sold at the market place, they were all counterfeit merchandises such as a bottle of fish sauce is 5 baht cheaper than real one and toner is about 100-200 baht cheaper

than the real one. Some sellers sold at the same price as real merchandise when they could. For legal evasion, the wrong doers employed someone to look out. When the officer came to inspect the place, the seller would hide the displayed merchandises whereas some used children to peddle the merchandises, and not squealing others.

### **Apprehension**

Police used various apprehension techniques as follows: searching warrant to search the warehouse. Charges were numerous such as counterfeiting, distributing, offering to sell or possessing for sale based on the Trade Act. However, the charge on imprinting is considered the offense under the criminal law.

Regarding the trial, the inquiry officer brought all cases to the trial whereas attorney elected only the case and intentionally done such as the employees had no idea of what is doing on. In the case of manufacturing products, some are waiting for parole or received imprisonment terms. Those with the imprisonment terms were usually petitioned and received parole, and the court ended up imposed fines, even on the repeated offenders. Problems occurred during apprehension due to inadequate manpower or the pressure from local politician, including the politician requesting and receiving bail.

### **Degree of Penalty**

The punishment is formidable because most counterfeit trails were on trademarks fraud. For the distribution, the wrongdoers were usually charged with distribution, or offer to sell. In case where the counterfeit merchandises found, the seller were charged with possession with intention to sell which imposed the imprisonment terms not exceeding 4 years or fines not exceeding 400,000 baht or both , except the case using with non-registered merchandises. Then, the guilty charge would be on imprinting other trade ideas which imposed fines not exceeding 1 year or fine not exceeding 2,000 baht or both. For the counterfeit merchandise s with intention to sell, the court may imposed imprisonment or parole or fines only. In the case of repeated offenses, the seller may be imprisoned. There was some arrest on the

manufacturing source, but only part of the operation such as labeling or OEM. The ring leader who operated behind the scene was the one controlling the whole operation which made it rather difficult to reach him. As for the investigation, the inquiry officer tried to make it short to make the case easy to handle. For problems on some officer signaling the wrongdoers, many informants agreed that they were some officer assisting the wrongdoers for some benefits. In order to boost up the officer's performance record, some wrongdoers allowed the officer to arrest them with small impounded merchandises.

### **Consumers' Support**

Two items to be considered, edible goods such as, foods, most buyer had no ideas and unable to differentiate between fake or real merchandises because counterfeit merchandises were sold at much cheaper prices. For brand name merchandises, most of them knew, but preferred buying them anyhow. For the punishment on buyer, Thailand has never imposed any punishments on buyer, and some suggested only imposed fines which may not eliminate problems, but at least counterfeit merchandises would be more costly and bring down demands.

### **Production Cost**

Production cost is low as compared to extremely high return, 50-60 percent estimated.

### **Policy-related solutions**

The government should promote products with Thai Brand and raise the public awareness on the impact from consuming counterfeit merchandises on trade balance and declining economy. As for solutions to the problems, stronger punishment should be imposed on the producers and seller as well as welcoming the public to participate in the process, including enhancing production and Thai Brand with the public sector collaboration.

**Interviewing Inquiry officer No. 4:**

A male inquiry officer (level 2) of Economic Crime Division 4 (provincial area) for 9 years

**Patterns and methods of wrongdoings**

Counterfeit merchandises were found displayed at regular stalls in the market and sold in the Department store, internet. They are handbags, watches in fair quality. For those merchandises displayed at the Department store, they are in better quality with the estimated price 15-30 percent of real merchandise. Another popular trend was purchasing through Internet. For tax evasion, the wrong doers display only the brochure, not the merchandises so when the buyer wanted to purchase, he would take it out from the storage.

For the search and arrest at the manufacturing source, the place was used for screening label. Estimated 20,000 pieces of sports wears were impounded. In this case the wrongdoer was fined 40,000 baht. Then, he was charged for making counterfeit merchandises and possession with intention to sell. This type of arrest required the presence of property in dispute at least one shirt to show that the harm had been completely done. The counterfeit handbags, watches were shopped mostly from the border near Klong Luk, Sakaew Province or through the custom.

**Apprehension**

The police used various apprehension techniques as follows: searching warrant to search the warehouse. Charges were listed in accordance with the Trade Act. However, the charge on imprinting is considered the offense under the criminal law. There were no problems during the apprehension. Regarding the trial, the inquiry officer brought all cases to trial, except cases on copied merchandises which created the conflict between the officer and registrar. The registrar either agreed or disagreed to the term. The attorney brought most cases to and the court imposed the punishment with possible bail. Most cases were imposed fines. For second time offenders the fines may be double and parole for the third time offender.

### **Degree of Penalty**

The punishment is not strong enough to make wrongdoer afraid. The charges on distribution or offering imposed only fines, no paroles, except being the second or third offender, and then he would be eligible for parole. Consumers are still buying the counterfeit merchandises because of their preferences even with full awareness and Thailand has never established the penalty for buyer. Some suggested that there should not be any penalties on the buyer because it is the correction at the end. Then, the agencies under Ministry of Justice should be ready to enforce this law. Regarding conspiracy issue, there was no trace of conspiracy between the government officials and seller, only the case where the police officer were hesitated to apprehend the accused because they were unable to proof if the merchandises actually fake and risk being sued by the accused.

### **Production Cost**

The production cost for merchandises bearing trademarks fraud is low due to the use of low quality materials so that the returns would be significant. Major manufacturers should receive estimated 200 percent; the small buyer may earn less.

### **Policy-related solutions**

The government should promote Thai Brand merchandises and find solutions to the problems and increase the punishment terms to suppress wrongdoings.

### **Interviewing Inquiry officer No. 5:**

A female inquiry officer (level 1) of Economic Crime Division 3 (Bangkok area) for 1 year

### **Patterns and methods of wrongdoings**

Counterfeit merchandises such as handbags and watches are displayed in the Shopping Mall such as Maboonkong, Union Mall, and Panthip Plaza and counterfeit medicines sold through Internet. These counterfeit merchandises are

in standard quality. Buyer rarely found premium merchandises. Selling were done directly with transferred funds before delivering merchandises or make set the date to received merchandises or sent by mail. Price was estimated 10 percent of real merchandise. The new selling channel is to use children to peddle the merchandises, and not squealing others. To avoid being arrested, the wrongdoers preferred to bribe the officer or the officer pretended not knowing about the incident. The arrest only done at the place for labeling brand name and care takers such as arresting the manufacturer of counterfeit Lois Vitton handbags who had been assigned to look after the operation, not the real ringleader. Sometimes, the producer had no ideas what the product looked like, they were assembled per instruction. The manufacturer mostly in China or smuggled through the border such as Rongklae Market.

### **Apprehension**

The police used various apprehension techniques as follows: lure the consumers, arresting on distribution, on the spot crime (offering). These charges are all violation according to the Trademark Act. For imprinting charge, the violation is on the Penal Code.

There were no problems during the apprehension. Regarding the trial, the inquiry officer brought almost all cases to trial, except the one checking the impounded evidence with aboard and it turned out to be real merchandise. The attorney brought most cases to trial and the court imposed the punishment. The wrongdoers requesting parole would be released on bail in all cases and impounded for evidence.

### **Degree of Penalty**

The punishment was not strong enough to make wrongdoer afraid. The charges on distribution, intention and offering to sell all imposed only fines. Even repeated offenders 2-3 times, the fine is in the rained of thousand baht. The heaviest penalty imposed estimated 10,000 baht. There were no paroles, except being the second or third offender, until then he would be eligible. In the case of

10,000 counterfeit Sportswear were caught, the court imposed fines and the accused for 1 year.

Consumers are still buying the counterfeit merchandises because of their preferences even with full awareness and Thailand has never established the penalty for buyer. Some suggested that there should not be any penalties on the buyer because it is the correction at the end. Then, the agencies under Ministry of Justice should be ready to enforce this law. Regarding conspiracy issue, there was no trace of conspiracy between the government officials and seller, only the case where the police officer were hesitated to apprehend the accused because they were unable to proof if the merchandises actually fake and risk being sued by the accused. Nonetheless, some offenders offered to pay the arresting officer to look away or reduce the number of evidence.

#### **Consumers' support**

Although consumers knew that the merchandises they bought were counterfeit, they still preferred using brand name merchandises which made seller risk selling, even seller who had sold regular merchandises earlier turn selling counterfeit merchandise instead. For the punishment, some suggested focusing on apprehension of manufacturers instead of punishing buyer because it seems like correcting problems at the end results.

#### **Production Cost**

The production cost for merchandises bearing trademarks fraud is low due to the use of different materials such as the making of Louis Vitton used both imitation leather and PVC so that the returns would be substantial. The seller should receive estimated 50 percent.

#### **Policy-related solutions**

The government should raise the public awareness on using real merchandise or merchandise with good quality without focusing on brand name.

As for solutions to the problems, apprehension the wrongdoers must be actively done and continued the investigation to find the ring leaders.

### **Interviewing Results Analysis:**

Interview data from the sample inquiry officer Division 3 and Division 4 of Economic Crime Division were compiled and linked each questions through the Content Analysis that are concluded as follows:

1) Patterns and methods of Intellectual Property Rights violation: A case of Trademarks Fraud

The merchandises bearing counterfeit trademarks are both consumer goods and edible goods such as clothes, handbags, shoes and watches whereas fish sauces, seasoned sauces or medicines listed as edible goods.

1.1) Most of consumers goods were manufactured aboard and brought into the country through various channels, land, sea or air to the warehouses before distributing to the sellers. These merchandises came in different qualities, good, medium and low depending on prices of merchandises and locations which usually sold at fair prices at the fresh market stalls. Normally, the counterfeit merchandises were at medium or low qualities, but those displayed at the department stores could be sold at higher prices depending on the merchandise's quality. The officer of Economic Crime Division was only able to apprehend small sellers. Counterfeit merchandises were usually sold directly, but avoid being arrested by hiring someone to look out for the arresting officers, include unscheduled sale in different locations or using private area to sell the merchandises, including mixing real and counterfeit merchandises together to make it difficult for the officers to arrest. For those buyers who took extra precautions, they only showed merchandises on the catalogue and brought the counterfeit merchandises to the seller when he decided to buy merchandises.

Recently, the application of IT made the selling of counterfeit online possible by the buyer transferred money to the seller and the seller delivered merchandises through mail. It is rather difficult for the officers to apprehend the sellers online. Besides, there is the legal loophole for the officer to take bribes helping sellers facing the arrest.

1.2) Consumer goods sold at the rural fresh market are usually cheaper than real merchandises such as a bottle of imitation fish sauce may be sold at 5 baht cheaper than a bottle of real fish sauce. The manufacturing process in the country was done in a renting place such as a townhouse or an abandoned warehouse. The wrongdoers were a group of acquaintances who took orders on amount of merchandises needed from the buyers. The work was divided between them and carried out in different locations to avoid being caught. For example, in making the bottles of fish sauces, the sauce was packed in the bottles bought from the junk yard, same or different brands and labeled with another inferior brand. If the arrest was made after the manufacturing completed, for example, the merchandises had been done with the labels, the sellers would appeal to the arrested officer that he had no intention of wrongdoings. As for the returns, from the interview, all inquiry officers agreed that the buyers received more than 50 percent returns. There were 3 inquiry officers who agreed of returns over 200 percent which considered as extremely high return as compared to other type of merchandises even narcotics.

## 2) Problems in Intellectual Property Rights violation: A case of Trademarks fraud

Problems in Intellectual Property Rights violation:  
A case of Trademarks fraud are analyzed and presented as follows:

2.1) Even the trademarks fraud laws had imposed imprisonment not exceeding 4 years or 400,000 baht or both. In reality, the imposed penalty was paying fine, even with some imprisonment but eventually they received parole. Interview outcomes from each inquiry officer confirm that not single one of cases received imprisonment term without the possibility of parole, even with the repeat offenders. Interview outcomes from 5 inquiry officers also revealed the maximum penalty 40,000 baht which was the arrest at the manufacturing site with the impounded sports wear about 20,000 sets. Moreover, the penalty received was paying fines from 1,000 baht to 10,000 baht. Even for the repeated offenders, there was no imprisonment and the wrongdoers would be released on bail every times. Besides, Thailand had never set the definite laws to reprimand the buyers or users of

counterfeit merchandises as those in France. Most of inquiry officers unanimously agreed that Thailand is not ready to impose penalty for buyer or users because it is solving problem at the end of cause, the imposed penalty should be on fines only otherwise it may create another problem on enforcing laws.

2.2) Problems in apprehension is finding the manufacturers or seller adapted to the patterns of wrongdoings to avoid the apprehension.

2.2.1 If the counterfeit merchandises were manufactured in Thailand, the manufacturing process would be divided and done in different locations to avoid getting caught. If the seller happened to get caught, he would appeal to the arrested officer that had no intention. For example, in making jeans bearing counterfeit trademarks, a pair of jeans was sew at one place and moved to another location for labeling.

2.2.2 Quite often, when the arrest happened, the seller was eliminated to avoid officers tracing to the real ring leader. But the real ring leader usually contacts the small seller or employee directly, through telephone, so the small seller would know who is the real manufacturer. When being caught, the owner would ask the employer to admit being store to which obstructed the arrest. It is rather difficult for the officers to conduct investigation, leading to the production or main culprit

2.2.3 The various sales patterns adapted to avoid the officers' arrest or escape the arrest such as employing children to peddle merchandises. The inquiry process for children is difficult and complicated which made the arresting officers disliked arresting minors and may become big hassle for them. Most of times the penalty on children were too weak as compared to the penalty adult received.

2.2.4 The arresting officers failed to differentiate real merchandises from merchandises bearing counterfeit merchandises. Quite often, merchandise was made with quality as good as the real merchandise. If the arrested officer does not have enough skills to differentiate between the real and counterfeit products, he may have to wait for the authorized agent of the actual trademark to proof the authenticity which may take time until the seller or

manufacturer could escape the arrest or the officer may not receive the cooperation when he wanted to make inquiry on the authorized agent of the actual trademark.

2.2.5 Government officials. Findings from interviewing majority of inquiry officer confirmed that occasionally they were asked by the suspect to help with the case such as released or refrained from apprehension. During the arrest, they were asked to reduce numbers of impounded merchandises as the evidence or switching wrongdoers, apprehending the employee instead of the owner, including offering bribes to the officer when he had smuggled merchandises into different channels through the border.

### 2.3) Consumers' support

All inquiry officers confirmed that majority of buyer knew about counterfeit merchandises and still buying them because of their preferences in fashion goods, prices or limited incomes. Moreover, there has not any punishment imposed on the buyer or users so the consumers continue to purchase counterfeit merchandise with full awareness of its nature, except the case of edible goods where consumers had no idea if they were imitation so price is the only incentive for buying.

## 3) Solutions and measures in the suppression of Intellectual Property Rights: A Case of Trademarks Fraud

3.1) Policy-related guidelines and measures. All inquiry officer agreed that problems should be solved at the cause not end results. On social values, there should be a campaign to raise awareness on not using merchandises with trademarks fraud as well as building popularity on Thai Brand which may be difficult to achieve, but should be actively and seriously done by enlisting the cooperation of experts in private sector.

3.2) Operation-related guidelines and measures. Most of the inquiry officer agreed that Thailand is not ready to impose penalties on buyer or users of merchandise bearing counterfeit trademarks. Therefore, law enforcement should be focused on the manufacturers and buyer mainly, especially during the search and arrest, while some officer suggested additional penalties for the manufacturers and seller so they would not repeat the offense again.

#### **4.3.2 Interviewing Outcomes of 5 Special Inquiry officer from Intellectual Property Bureau, DSI, Ministry of Justice**

In-depth interview was used to acquire extensive data, both spatial and perspectives of inquiry officer, as specialists from DSI. Then, findings from the in-depth interview revealed crime patterns discovered by the Intellectual Property Bureau, DSI quite different from the patterns of Police Bureau in according to the Special Investigation Act B.E. 2547. This Act stated that the violations on Intellectual Property rights must meet requirement on section 21 of Special Investigation Act B.E. 2547 as follows:

(1) Criminal wrong doings as specified in the appendix of this Act and the Ministerial Regulations recommended by the DSI Committees for bring cases to trail if they fall under the following Provisions:

(A) The complicated crimes required special tactics on investigation and collecting evidences.

(B) The criminal wrong doings might create tremendous impacts on the public harmony and moral, the nation security and relationships between countries or national economy or finance.

(C) The criminal wrong doings as the significant transnational crimes or done by organize crime.

(D) The criminal wrong doings were done by influence figure as the main culprit, user or supporter.

(E) The criminal wrong doings where suspects based on the evidences available were senior police officer or administrators who had no part in the investigation with the possibility of being accused as the suspect.

The details of violation in the appendix of declaration of Committee of DSI, formerly the Committee Declaration (no.3), on B.E. 2548 defined the nature of illegal wrong doings for all cases to be prosecuted in court must meet the violation terms in section 108, 109, 110, and 114 of Trade Act B.E 2534 or believed that it was being done as the manufacturing, distributing, buying, storing places or

importing into the Kingdom. The value of merchandises under possession for wrong doings must be over 500,000 baht.

Later in B.E. 2554, the declaration of Committee of Department of Special Investigation (No. 4) B.E. 2554 had determined the penalty for violating the Trademarks Right only the case could produce a manufacturing place, distribution place, buying site, warehouses or importing into the Kingdom. The said merchandises in the possession acquired during the wrong doings or valued from 500,000 baht. The Director General then ordered the investigation without listing the price of impounded merchandises as earlier. Then, the enacted laws had given DSI officer different authority from the police so the patterns of trial of DSI were different from those of the police as well. Interview outcomes were summarized and presented as follows:

**Department of Special Investigation Officer No.1:**

A male officer, working for DSI, Intellectual Property Investigation Bureau, Ministry of Justice for 6 years

**Patterns and Methods of Wrong doings**

Counterfeit merchandises were found displayed at regular stalls in the market to the specific places where customers could park and walk-in with someone to watch entrance and signal if the buyer looks suspicious. Then, the seller could put away the counterfeit on time. Furthermore, selling was through Internet if the buyer became member so seller could screen buyer first. The transaction limited the amount of merchandises, but they could be sold in large volume without the real store to display merchandises, only the storage which rather difficult to apprehend. For counterfeit cosmetics, they were less harm to consumer, but having inferior quality than real cosmetics. For example, the counterfeit perfumes using similar fragrance as the real perfumes only dilute with more alcohol. When the product produced no effects, there would be no complaint or informing the media about the symptoms from using the counterfeit merchandises. Therefore, prices are the buying incentives for consumers. As for law evasion, most current counterfeit

merchandises were shoes, and handbags that brought in through the border adjacent to the neighboring countries, having the warehouses along the border such as the one across Romgklae market to hoard the merchandises. The seller would make the order from the seller to pick up or buyer delivery merchandises which rather difficult to apprehend because most the place to store merchandises located in the neighboring countries.

### **Apprehension**

Arresting method of DSI was different from Inquiry officer who had made the arrest in the manufacturing site, leading to the merchandises warehouse or storage. DSI conducted the investigation until found the storage warehouse or the manufacturing site (in Thailand) before finding the culprit or ring leader to connect the distribution site, storage or manufacturing places based on the proximity of people and places and requesting the court for search warrant and arrest the culprit at the distribution places. The arrest was focused more at the apprehension of culprit than merchandises. The suggestion is to embed the electronic chip on the culprit even with small evidences. The apprehension of culprit was considered as more successful than apprehending merchandises, because the culprit could still commit crime, even with less profit. The problems of non-professional agents were separated into 2 types.

Type 1: Minor problems from agents of private companies focusing on the search for the culprits.

Type 2: Legal advisors who responsible for registering the trademarks, but never focusing on the suppression.

When the officer making the arrest, the agents would report to headquarter aboard as the authorized agents, attached the copy of arresting report and lists of impounded evidences so they could cite with headquarter and claim rewards. The agents often refused to act as the witnesses when being asked until the registrar, arresting officer and witnesses who could confirm that merchandises were counterfeited to support the trial. Regarding the trial, the inquiry officer and the

prosecutor brought all cases to trial, and the court imposed the punishment or heavy fines or imprisonment with possible bail. Most cases were imposed fines.

### **Degree of penalty**

The wrongdoings on trademarks fraud were considered as the legal violation, but most of wrongdoers received the fines and some imprisonments with the possible of paroles even with repeating offense. The court may look at the case as if most of the wrongdoers on trial were only the employees and they should be trailed separately, especially when they gave their testimonial that could benefit the trial. In the case where the culprit was the manufacturer or ring leader, the punishment should be heavier than regular sentencing. The officer was unable to apprehend the manufacturing site because most of them located and store aboard. The seller who was apprehended only sold counterfeit merchandises manufacturing in the country.

As for official conspiracy, the site officer may received some returns, but not among DSI officer because they were working as a team that could monitor each other performances.

### **Consumers' Support**

In Bangkok, majority of consumers knew that the merchandises they bought were counterfeit, except those rural buyers who really had no ideas because of their features and prices. Although the consumers still prefer buying the counterfeit merchandises, there should not be any penalties on the buyer, only recording the case.

### **Production Cost**

With low production cost and high return over 50 percent, the manufacturer thought the risk worth taking.

### **Policies-related solutions**

The superior should focus on the existing problems, mainly, those result from the officer' performance such as expenses in the arrest.

**Department of Special Investigation Officer No.2:**

A male officer, holding a position as a case specialist, working for Intellectual Property Investigation Bureau, Ministry of Justice for 2 years

**Patterns and Methods of wrongdoings**

Counterfeit merchandises were found displayed at regular stalls in the market or sold through internet. They were clothes, handbags and watches, including edible goods such as fish sauces, motorcycle oil. Most of times, the wrongdoers knew that the case would be trailed as special cases, depending on the amount of merchandises. Then, they would try to separate the storage from the distribution. The seller was employee at the store, but assigned him to be the owner with full responsibilities and installed CCTV so that the operation could be controlled by the owner behind the camera. The focus was on selling to foreigners and some merchandises leaving the brand out. When customers placed the order, the label would be placed on the merchandises to avoid having evidences during the arrest.

**Apprehension**

Normally, the DSI officers would not conduct the arrest on regular stores, especially the influential area, such as, Pa Thong. Then, the investigation must be thoroughly checking, from the distribution channels, lodgings or manufacturing places, culprit or wrongdoers residents before requesting the search warrant for arresting the suspect which required team work. Problems occurred when the officer wanted the court to issue search warrant, he must proof to the court that he had the reason to support his findings, perhaps the photographs of merchandises which sometimes involved different techniques in the investigation.

Regarding the trial, the inquiry officer and the prosecutor brought all cases to trial, and the court imposed the punishment or heavy fines or imprisonment with possible bail. Maximum fines were not exceeding 200,000 baht.

### **Degree of Penalty**

The wrongdoings on trademarks fraud were considered as the legal violation, but most of wrongdoers received the fines and some imprisonments with the possible of paroles even with repeating offense. The court may look at the case as if most of the wrongdoers on trial were only the employees and they should be trailed separately, especially when they gave their testimonial that could benefit the trial. In the case where the culprit was the manufacturer or ring leader, the punishment should be heavier than regular sentencing. The officer was unable to apprehend the manufacturing site because most of them located and store aboard. The seller was apprehended on the sold counterfeit merchandises manufacturing in the country. As for official conspiracy, the site officer may received some returns, but not among DSI officer because they were working as a team that could monitor each other performances.

The laws already imposed the appropriated penalties, but cases under the court consideration, the penalties should be stronger as compared to the damages or the government's budget spent on the arrest. For apprehending at the manufacturing site, some merchandise, such as, handbags, clothes and watches manufactured aboard, the DSI officer were unable to apprehend at the manufacturing site. Therefore, the focus should be on the custom process, except those consumers and edible goods that manufactured in Thailand could be apprehended easily. In addition, the local influential figures may obstruct the officer while arresting the suspects such as when the officer conducting the search in the area across Rongklae market which considered as economic zone with many influence figures support activities in the area, the locals looked at the incident as damaging the overall economy. For official conspiracy, there may be some cases because when the locals were apprehended, they had been asked to reduce the numbers of impounded of evidences or switch wrong doers or cited the name of officer' superior. Later, the solutions to such problems were to set up the specific mission teams. When one team was unable to make the arrest, the remaining teams may take its place.

### **Consumers' support**

Because these merchandises even though counterfeit indicated social and status of users, majority of buyer knew that the merchandises they bought were counterfeit, except the edible goods because of the prices. As for penalties on the buyer, there should not be any penalties on the buyer because it may create problems on DEMAND SUPPLY, but the officer may exploit the situation.

### **Production Cost and Return**

Low production cost as compared to high return as much as 1.5 times, depending on the selling location.

### **Policies-related Solutions**

The government should focus on raising public awareness on not using counterfeit merchandises and impose stronger laws as well as training the officer to actively enforcing the laws. Besides, the public sector should be asked to collaborate in finding solutions to the problems.

### **Department of Special Investigation Officer No.3**

A male officer, holding a position as a case specialist, working for Intellectual Property Investigation Bureau, Ministry of Justice for 6 years

### **Patterns and Methods of Wrong doings**

Counterfeit merchandises were found displayed at regular stalls in the market, but kept those merchandises in the separated storage. Recently, they were sold through internet because no need for real store to display counterfeit merchandises, enable the seller to deliver merchandises and rather difficult for the officer to arrest. They were clothes, handbags and watches, including edible goods and consumers' goods. Most of times, DSI officer focused on the manufacturers and merchandises hazardous to the consumers' health such as vegetable oils, fish sauces and seasoned sauce.

### **Apprehension**

At first, the DSI officer would trace from an agent of injured party. Later, he would find his own informant, starting from investigation and becoming consumer to buy such merchandise. Then, he would blend among the suspect to find evidences and search for information, including checking the traffic on telephone. DSI would focus on apprehending the culprit instead of merchandises. When the merchandises were impounded even in large volume, the arrest was only making the seller lost his profit. The arrest of wrongdoer or culprit even with small amount of merchandises is to put him on the black list so he would be afraid to repeat the same offense. Problems were the influential people asking the officer's to help ease the case. Then the officer would tell such person to talk to his superior, but there had never been any requests or commands from his superior. Regarding the trial, the inquiry officer and the prosecutor brought all cases to trial because these cases had apparent fault depending on the arresting degree which could receive heavy fines at the court consideration and imprisonment with the possibility of paroles even on the repeated offenses.

### **Degree of Penalty**

The laws already imposed the appropriated penalties, but cases under the court consideration, the penalties may be too weak as compared to the damages to the real trademark owners which made them unafraid of the laws if the penalties were only fines, with the possibility of parole, no imprisonment. For apprehending at the manufacturing site, the DSI officer should investigate until discovering the site of manufacturing domestic counterfeit merchandises before making the arrest. For official conspiracy, there may be some cases because such cases were not real crimes. Because of high return, the government officials may conspire with the wrongdoers for some bribes.

### **Consumers' support**

Majority of consumers who bought clothes, handbags, and shoes bearing counterfeit labels knew well that they bought counterfeit merchandises, but still buying them from lower prices. As for the penalties on buyer it may be proper

to impose the buyer of handbags, shoes and watches, but problems may occur on practicing. Then, the law makers must draft the law that actually working.

### **Production cost and return**

In general, the production cost was low as compared to high return, as much as 2.5times, for ring leader. For counterfeit cosmetics, the production cost may be slightly higher, but still making good profit. Therefore, the wrongdoers thought of it as worth taking risk.

### **Policy-related Solutions**

The government should focus on integration of problems, not letting them piling and becoming solely the burden of agencies under Ministry of Justice. The officer of concerned agencies, such as Ministry of Commerce, Court, Non-government agencies, Office of the Anti-Corruption Commission and Office of Public Sector Anti-Corruption Commission must collaborate with each other to monitor the government's performances.

### **Department of Special investigation Officer No.4:**

A male officer, holding a position as a case specialist, working for Intellectual Property Investigation Bureau, DSI, Ministry of Justice for 7 years

### **Patterns and Methods of wrongdoings**

Counterfeit merchandises were found displayed at regular stalls or at some commercial buildings where the first floor opened as the office and the upper floor designed for selling counterfeit merchandises or selling through Catalog as the direct sale to foreign customers only. They were clothes, shoes, handbags and watches, recently, they were sold through internet because no need for real store to display counterfeit merchandises, enable the seller to deliver merchandises and rather difficult for the officer to arrest.

### **Apprehension**

The DSI officer would investigate for the distribution channels, warehouses or manufacturing sites before the whole team conduct the search and arrest. As teamwork, the officers could monitor each other performances which make it rather difficult for an officer to take bribes. Problems were the influential people asking the officer's to help ease the case. Regarding the trial, the inquiry officer and the prosecutor brought all cases to trial, and the court imposed the fines or imprisonment with possible bail.

### **Degree of Penalty**

The laws already imposed the appropriated penalties. They were both fines and imprisonment even parole but should increase section on impounding property at the manufacturing site to apprehend the manufacturer. As for manufacturing site, the officer was able to apprehend the manufacturing site of clothes. For consumers' goods, such as, handbags, watches, they were manufactured aboard. For official conspiracy, the site officer may become unofficial partners in exchange for neglecting the duty or even the agent of the real trademark received under the table money from the illegitimated buyer.

### **Consumers' support**

Majority of consumers continue buying the counterfeit merchandises because of their preferences in Brand Name, limited funds and merchandises' quality as compared to prices. As for penalties for buyer, some made the suggestions that Thailand has not prepared to impose the penalties or enforce laws on buyer due to inferior quality of investigated officer. If they were unable to make the arrest, it may be their negligence for omission of duty.

### **Production Cost**

Because of low production cost, the buyer made about 200 percent which was worthwhile to risk apprehension.

### **Policies-related Solutions**

The penalties and law enforcements should be stronger by making recommendations to the court to compare amount of fines with the real damages. In the case of repeated offenses, the court should impose imprisonment terms. Moreover, the manufacturer's assets should be impounded as well.

### **Department of Special Investigation Officer No.5:**

A female officer, holding a position as a case specialist, working for Intellectual Property Investigation Office, Ministry of Justice for 7 years

### **Patterns and Methods of wrongdoings**

Counterfeit merchandises were found displayed at regular stalls or at some places where the first floor opened as the office and the upper floor designed for selling counterfeit merchandises to foreign customers only. Recently, they were sold through internet because no need for real store to display counterfeit merchandises, enable the seller to deliver merchandises and rather difficult for the officer to arrest. They were clothes, shoes, handbags, watches, cosmetics and even medicines and lubricators. At present, the potential seller were extra careful not to display counterfeit merchandises openly, only showing Catalog to the buyer and having the helper getting the merchandises later. This way, the officer may not be able to apprehend at the manufacturing site if they were not prepared. Sometimes, the seller hired someone to look out to signal the seller.

### **Apprehension**

DSI officer conducted the field survey to buy merchandises and test if the merchandises were real or fake before making further investigation until finding the manufacturing sites or warehouses. As for selling through internet, the officer went over the transaction in the bank statement to observe the seller's cash flow until certain and check the address of suspect. He would make long-term observation to confirm the manufacturing site or warehouses, including the investigation for the distribution channel or address of the suspect before getting search warrant to arrest the suspect by the whole team to prevent the seller moving the

counterfeit merchandises. Problems were information leaking before the arrest or search, perhaps the authorized agent of injured parties may leak information in exchange of bribes. Besides, problems occurred from the authorized agent of injured parties used the falsified documents to ask for bribes from the seller. Regarding the trial, the inquiry officer and the prosecutor brought all cases to trial, and the court imposed only the fines or imprisonment with possible bail.

### **Degree of Penalty**

The laws already imposed the appropriated penalties because it was not serious crimes. They were both fines and imprisonment even parole. In case of hazardous merchandises, such as hefty fines over 100,000 baht. As for manufacturing site, the officer was able to apprehend the manufacturing site of over 1,000 sport outfits at Nakorn Pathom province. For consumers' goods, such as, handbags, watches were manufactured aboard. As for official conspiracy, the site officer may receive some returns in exchange for neglecting the duty or reducing the amount of impounded evidences. However, DSI brought all cases to trail because they were working as a team.

### **Consumers' support**

Most merchandises bearing counterfeit trademark were handbags, shoes, and watches. Majority of consumers knew that the merchandises they bought were counterfeit, except the buyer claimed the merchandises they sold as authentic secondhand merchandises. As for edible goods, consumers may not know if they were real or counterfeit merchandises. On the cosmetics, consumers should know from much cheaper prices than the real products. But certain counterfeit brands were in good quality, almost as good as the real ones. Despite all these violations, this is not the right time to impose the penalties on buyer because it is not the priority issue and may increase unnecessary burden from enforcing laws. At this time, the focus should be on apprehension of the manufacturers or seller.

**Production Cost**

- Low production cost as compared to 50 percent return
- Policy-related solution
- Thai Brand merchandises should be promoted among consumers and imposed higher penalties.

**Interviewing Results Analysis:** In-depth interview was used to acquire extensive data, both spatial and perspectives of special inquiry officers, specialist, and special inquiry officers, expert to link each issues of questionnaire. Results from the Content Analysis are concluded as follows:

**1) Patterns and methods of Trademarks fraud had been evolved to avoid being arrested.** The merchandises in this case were consumers' goods such as shoes handbags, and watches. They were manufactured outside the country, especially in China, and shipped through the border of neighboring country. The merchandises were stored in the warehouse along the order, such as, one across Rong Klse Market, and the seller would instruct the buyer to pick up the merchandise or deliver merchandises to the buyer's address which make it rather difficult to apprehend the suspect at the manufacturing site because it was located in the neighboring countries

**The selling of merchandises:**

A specific zone was arranged for the buyer to park his car and walk inside. Someone stood at the entrance to look out if he was the real buyer. If the buyer looked suspicious, the look out person would signal the seller right away to hide the merchandises.

Another seller had set up the selling place in the commercial building where the first floor was an office or a store selling regular merchandises, but upstairs the counterfeit merchandises were sold through the display catalog of trademarks which only doing business with foreigners. Moreover, the owner appointed one of the staffs to act and operate as owner to avoid being arrested

and the real operation was done by the owner behind the installed CCTV, giving orders through telephone.

This is including the application of IT in the distribution of merchandises by opening website for online transactions that required the buyer to become member first before ordering the merchandise which considered screening the customer first and limiting the numbers of merchandises ordered without having the real store. The customer was asked to transfer payment through the Bank and the order merchandise delivered to the buyer's address later.

At present, some counterfeit merchandise present less harm to consumers, only inferior quality, such as perfumes may use the same ingredient with similar fragrances, but the imitation perfumes add more alcohol than real perfumes. Without apparent harm, most consumers would not bother to register the complaint and the cheaper prices seem to be big incentive for those consumers. All officers agreed that the seller earned more than 50 percent to 250 percent.

## **2) Problems and obstacles in prosecuting trademarks fraud cases are presented as follows:**

2.1) Legal Punishment: The inquiry officers from DSI and Economic Crime Division agreed that penalties for these legal violations were appropriate, except the court may enter his judgment lightly because the sentences imposed on the wrongdoers were similar to the officers' charges. Most of times, the court imposed only fines, even with some imprisonment terms, allowing the parole which may be too weak as compared to the damages done to the trademark owners. The maximum penalty ever imposed on the ring leader or manufacturer was 200,000 baht fines because the court looked at the apprehended suspect as only a caretaker or an employee.

2.2) Apprehension: The DSI arresting method was different from inquiry officers who had made the arrest in the manufacturing site, leading to the merchandises warehouse or storage. DSI conducted the investigation until found the storage warehouse or the manufacturing site (in Thailand) before

finding the culprit or ring leader to connect the distribution site, storage or manufacturing places based on the proximity of people and places and requesting the court for search warrant and arrest the culprit at the distribution places. The suggestion is to embed the electronic chip on the culprit even with small evidences. The apprehension of culprit was considered as more successful than apprehending merchandises, because the culprit could still commit crime, even with less profit. Common problems occurred during the process are as follows:

2.2.1) Problems came from non-professional agent who worked for the trademark owner. They are 2 types: First, agents of private company to suppress the counterfeit activities who would focus on arresting to boost their performance records. However, this group presented no threats. The second group worked as legal advisors of the trademark owners, including registering trademarks and paid no attention to the suppression. As soon as the officers making the arrest, they would immediately report to the overseas headquarter, asking for the power of attorney which sometimes, citing the arrest record and list of impounded evidences to collect the reward and claim that they took part in the arrest. But when the inquiry officer asked them to be witness, they refused to collaborate. Instead, the inquiry must be done with the registrar, the arresting officers, and individual who could confirm that the merchandises bearing counterfeit trademarks.

2.2.2) Custom: The officers were unable to apprehend the counterfeit merchandises manufactured aboard because they had been stored in the border warehouse across Rongklae Market which considered as risky area and created impacts on the country and overall economy.

2.2.3) Search Warrant: Without proper proofs for counterfeit merchandises, the court would not issue the search warrant so the suspect could move the merchandises and get away.

2.2.4) Information Leaking: The wrongdoers could escape the apprehension by being informed about the search in advance.

2.2.5) Bad Influence: Having numbers of influential figures commanding or requesting assistance with the case, such as asking

to be released, reducing impounded evidence or switching wrongdoers. As for the conspiracy problems, the inquiry officers from both governmental agencies strongly confirmed that none ever happened. The DSI offices were working together as a team so they could monitor each other activities. However, some police officers admitted that perhaps few officers in the area may accept some benefits from the wrongdoers by viewing such cases as non-criminal cases, only the laws stated the nature of offenses. With substantial offers, the officials may tempt to assist the suspect by omission of duty, or reducing the amount of impounded evidences, numbers of arrested suspects or even switching the wrongdoer.

2.3) Consumers' support: The inquiry officers agreed with the inquiry officer at the Economic Crime Division that most consumers knew that the merchandises bearing counterfeit trademarks , but they preferred to buy one , perhaps from social values, prices or limited funds as well as no punishment imposed on the buyers or users. So they continued purchasing those merchandises with the exception of edible goods where it is difficult for consumers to different between real and counterfeit products. Then, prices are the main incentive for buying the products.

### **3) Guidelines and measures for suppression in Intellectual Property Right Violation: A Case of Trademarks Fraud**

3.1) Policy-related guidelines and measures: The inquiry officers had similar opinions with the police officers, not only to promote the use of merchandises, but also support Thai Brand merchandises. The government should integrate the activities and collaborate between parties, not to burden only an agency in the justice system. These agencies are Ministry of Justice, court, non-governmental organization and the agency superintendent should pay more attention to the problems from officers' performances such as expenses from the apprehensions.

3.2) Operation-related guidelines and measures: The inquiry officers agreed that the law enforcement must be stronger with higher rate of fines. The new rate of fines should be proposed to the court to make it comparable to the damages done, not only to the trademark owners, but also the expenses in

investigation, leading to apprehension, including heavier imprisonment terms for the repeated offenders and impounding assets of the manufacturer or ring leader.

#### **4.3.3 Interviewing Outcomes from 10 wrongdoers under Intellectual Property Laws: A Case of Trademarks Fraud**

In order to cover all information from interviewing wrong doers under Intellectual Property Laws: A case of Trademark Fraud as the manufacturers and seller, either being employees or owners. Because of the limitations in acquiring due to lacking collaboration from the manufacturers, data were obtained from the owners and employees only. Results from 10 sets of distributed survey questionnaire are summarized as follows:

**Table 4.3:** Sample Personal Information

<b>Personal Information</b>	<b>Number</b>	<b>Percentage</b>
Gender		
-Male	4	40.0
-Female	6	60.0
Status		
- Single	6	60.0
-Married	3	30.0
-Divorced	1	10.0
Education		
-High School	4	40.0
-Bachelor's degree/equivalence	4	40.0
-Others	1	20.0
Monthly Income		
-5,001-8,000 baht	3	30.0
-8,001-11,000 baht	-	-
-14,001-17,000 baht	-	-
-Higher than 17,000 baht	7	70.0
Occupation		
-Own business	1	10.0
-Vending	6	60.0
-No answer	2	20.0
-Government employees	1	10.0

Table 4.3 findings revealed the followings details: Majority or 60.0 percent were females and 40.0 percent or 4 males. There were 60.0 percent or 6 singles, followed by 30.0 percent or 3 married persons whereas 40.0 percent or 4 persons completed High School or Bachelor's degree. Total 70.0 percent or 7 persons earned incomes higher than 17,000 baht, followed by 30.0 percent or 3 persons with earnings from 5,001-8,000 baht. There were 6 vendors or 60.0 percent followed by 2 persons or 20.0 percent with no answers.

**Table 4.4:** Number and Percentage of Sample expressing opinions on selling counterfeit merchandise

Statement	Level of Opinions					S.D.	x̄	Explanation
	Highly disagreed	Hardly agreed	Uncertain	Agreed	Highly agreed			
1. Significant numbers (Buyer) of targeted group	10 (1)	-	40 (4)	30 (3)	20 (2)	0.96	3.60	High
2. Easily sellable products	20 (2)	-	30 (3)	20 (2)	30 (3)	2.04	4.20	High
3. Majority of people earn fair incomes (unable to buy real merchandises)	-	-	10 (1)	50 (5)	40 (4)	0.67	4.30	High
4. Legal punishments are too lenient	-	10 (1)	60 (6)	20 (2)	10 (1)	0.82	3.30	Uncertain
5. low product cost	-	10 (1)	30 (3)	40 (4)	20 (2)	0.94	3.70	High
6. Able to display merchandises on different locations (no need to display on definite location or department store)	-	-	20 (2)	50 (5)	30 (3)	0.73	4.10	High

**Table 4.4:** Number and Percentage of Sample expressing opinions on selling counterfeit merchandise (Continued)

Statement	Level of Opinions					S.D.	$\bar{x}$	Explanation
	Highly disagreed	Hardly agreed	Uncertain	Agreed	Highly agreed			
7. Worth paying for	-	-	30 (3)	40 (4)	30 (3)	0.81	4.00	High
8. Constantly improved the products to be in the current trend	-	-	30 (3)	40 (4)	30 (3)	0.81	3.90	High
9. Society disregards as wrongdoing or committing crime	-	-	30 (3)	50 (5)	20 (2)	0.73	3.90	High
10. Society pays less attention to trademarks fraud	-	-	20 (2)	40 (4)	40 (4)	0.78	4.20	High

Findings from Table 4.4 indicated that majority of people had fair incomes which made it rather difficult for them to buy real merchandises ( $\bar{X}=4.30$ ), followed by same weight in the issue of society pays less attention to trademarks fraud and easily sellable products ( $\bar{X}=4.20$ ), able to display merchandises on different locations (no need to display on definite location or department store) ( $\bar{X} = 4.10$ ), worth paying for ( $\bar{X}= 4.00$ ). Meantime, the issues of constantly improved the products to be in the current trend and society disregards as wrongdoing or committing crime both carried the same weight ( $\bar{X}= 3.90$ ), followed by low product cost ( $\bar{X} =3.70$ ) and significant

numbers (Buyer) of targeted group ( $\bar{X} = 3.60$ ), Legal punishments are too lenient ( $\bar{X} = 3.30$ )

In addition, 10 wrongdoers of trademarks frauds were interviewed to study patterns and methods of wrongdoings. Interviewing results were summarized and presented as follows:

**Interviewing Wrongdoer No. 1:**

A female 20 years old, single, completed High School, earned monthly income of 8,000 baht

On Patterns and Methods of wrong doings, the merchandises in a store at Baiyok 1 were 32 T-shirts bearing counterfeit Burberry trademarks mixed with regular clothes. The seller was asked to sell and he accepted the job because he needed a job. She earned 8,000 baht per month. Counterfeit merchandises were bought and resold for reasonable price.

For the counterfeit process, the wrongdoer had no idea about entire process, where to get merchandises or who sent it. She was only the seller and she would inform the owner to bring more merchandise. If she was caught, she would phone the owner to bail her out.

When asking if she was afraid of the laws, she admitted that she did, but she had no choice. The owner told her to admit that he was the owner because the penalty was only paying fines. She had no idea whether the return worthwhile. It is very likely that she would sell them again because she needed a job and it was easy to do.

On the manufacturing location, she had no idea neither the process nor shipment because she would phone the owner for more merchandises. She mentioned

that she had never asked any assistance from the officer because she was only the seller.

**Interviewing Wrongdoer No. 2:**

A female 34 year old, single, completed High School

On patterns and methods of wrong doings, the merchandises in a store at MBK Mall were sport T-shirt Michelin with counterfeit trademarks mixing with regular clothes mainly under Thailand brand. She was employed for 5,000 baht with 1 baht commission for every 100 shirt sold. She sold only at one location because she needed a job.

For the counterfeit process, the wrongdoer had no idea who supplied the merchandises and how, only knew that they were bought at the store nears Kaosan Rd., Silom or Pratunam. Being only a seller, she would phone the owner when the merchandises sold out and the owner would deliver 20-30 shirts.

When asking if she was afraid of the laws, she admitted that he did, because she was caught once already on 10 counterfeit Harley Davidson hats, 10 jackets and 10 Polo shirts and the court imposed 4,000 baht fines. The real owner told her to admit that she was the owner because she would be asking to pay fine only. She had no idea if the return was worthwhile. It is very likely that he would sell them again because it was only livelihood he knew how to do.

On the manufacturing location, she had no idea about the process or shipment because she would phone the owner for more merchandises. She mentioned that he had never asked any assistance from the officer because she was only the seller.

**Interviewing Wrongdoer No. 3:**

A 35 years old male, single, graduated Bachelor's degree

On patterns and methods of wrong doings, the merchandises in a store at Jatujuk Mall were Jeans with counterfeit trademarks because they sold well. It generated incomes for him to support his family about 40,000 baht per month.

For the counterfeit process, the wrongdoer had no idea about entire process, only bought the counterfeit merchandises were bought from SraKaew, Aranyaprathet in cash.

When asking if he was afraid of the laws, he admitted that he did, because he was caught 8 times already and the court imposed only fines. But the return was worthwhile over 50 percent. It is very likely that he would sell them again because it is his livelihood.

On the manufacturing location, he knew that it was made outside the country, but he kept the merchandises at Jatujuk store. He would transport merchandise by his truck from the store at Sra Keaw and he had never been arrested during the shipment. He admitted that he used to ask assistance from the officer to facilitate the case.

**Interviewing Wrongdoer No. 4:**

A 28 years old male, single, no education

On patterns and methods of wrong doings, the merchandises in a store at Sukhumvit Road were clothes with Lacoste counterfeit trademarks. It generated incomes about 5,000-8,000 baht per month.

For the counterfeit process, the wrongdoer had no idea about the process. Counterfeit merchandises were bought from wholesale store at Pratunam market.

When asking if he was afraid of the laws, he admitted that he did, because he was caught 5 times already and the court imposed only fines with parole. But the return was worthwhile almost 100 percent. He was the owner and it is very likely that

he would sell them again because he had no education to make other livelihoods. He admitted that he used to ask assistance from the officer to facilitate the shipment.

On the manufacturing location, he had no idea, but he kept the merchandises at the storage. He only bought merchandises in the country and he had never been arrested during the shipment. He mentioned that he had never contact the officer to facilitate the case.

**Interviewing Wrongdoer No. 5:**

A 52 years old female, divorced graduated Bachelor's degree

On Patterns and Methods of wrong doings, the merchandises in a store at Max Value, Sukapiban 1, Bangkok were handbags, watches, clothes and shoes because they sold very well. . It generated incomes him to about 20,000-50,000 baht per month.

For the counterfeit process, the wrongdoer had no idea about entire process. Counterfeit merchandises were bought from wholesale store behind Thai International Airway Headquarter, Vibhavadee Rangsit Road.

When asking if she was afraid of the laws, she admitted that she did, because she was caught twice already and the court imposed only fines. But the return was worthwhile about 40-50 percent. Se was the owner and it is very likely that she would sell them again because it was her livelihood.

On the manufacturing location, she only knew they were made in Korea. She kept only small amount of merchandises at the store, as buying and reselling. She would drive to pick up the merchandises and she had never been arrested during the shipment. She mentioned that she had never contact the officer to facilitate the case.

**Interviewing Wrongdoer No. 6:**

A 26 years old female, single completed High School

On patterns and methods of wrong doings, the merchandises in a store at Sampeng Market were accessories with counterfeit trademarks because the product sold quite well. It generated incomes about 17,000 baht per month.

For the counterfeit process, the wrongdoer only knew about counterfeit trademarks when she bought from the peddler in the area.

When asking if she was afraid of the laws, she admitted that she did, even for the first time arrested. She was the store owner and the return was only 10 percent, not worth being on trial so she would not want to sell them again.

On the manufacturing location, she had no idea where they were made. She kept the merchandises at the store. She only walked to the wholesaler in the same area to get the merchandises and she had never been arrested during the shipment. She mentioned that she had never contact the officer to facilitate the case.

#### **Interviewing Wrongdoer No.7:**

A 37 years old female, married graduated Bachelor's degree

On Patterns and Methods of wrong doings, the merchandises in a store at Grand Plaza Mall were handbags and shoes because the lower market wanted them. It generated incomes about 150,000 baht per month.

For the counterfeit process, she only knew certain steps, not the entire process, only certain steps. Counterfeit merchandises were bought through phone order and they would be delivered to the store.

When asking if she was afraid of the laws, she admitted that she did, because she would lose all merchandises that had already paid for. She was caught twice and the court imposed only fines, but the return was worthwhile about 70 percent. It is very likely that she would sell them again because that is the only way she knew how to make her livelihood.

On the manufacturing location, she knew that they were made in China. The merchandises were delivered after paying for and had never been arrested during the shipment. She mentioned that she had contact the officer asking them to help reducing sentences.

**Interviewing Wrongdoer No. 8:**

A 31 years old female, single, graduated Bachelor's degree

On patterns and methods of wrong doings, the merchandises in a store at Grand Plaza Mall were handbags with counterfeit trademarks. It generated incomes for her to support her family about 70,000 baht per month.

For the counterfeit process, the wrongdoer had no idea about entire process, only certain steps. Counterfeit merchandises were bought from wholesale store and paid cash.

When asking if she was afraid of the laws, she admitted that she did, because she was caught 3 times already and the court imposed only fines. But the return was worthwhile about 70-80 percent.

On the manufacturing location, she had no idea. She kept the merchandises at the store and she had never been arrested during the shipment. She admitted that she had contact the officer asking him to mediate the case.

**Interviewing Wrongdoer No. 9:**

A 48 years old male, married, completed High School

On patterns and methods of wrong doings, the merchandises in a store at Silom Soi 8 are clothes with counterfeit trademarks. It generated more incomes than regular work, about 10,000 – 20,000 baht per month.

For the counterfeit process, the wrongdoer was not the manufacture of the product. Counterfeit merchandises were bought from Pratunam area.

When asking if he was afraid of the laws, he admitted that he did, because he was caught once and the court imposed fines based on the number of merchandises. But the return was worthwhile about 50 percent. He was asked if he would go back and sell the counterfeit merchandises again, he admitted that he would because they could sell faster than no-name merchandises with legitimated trademarks.

On the manufacturing location, he had no idea. The merchandises were picked up from the wholesale store which he had never been arrested during the shipment. He confirmed that he had not made any contacts with the officer asking them to facilitate the shipment.

**Interviewing Wrongdoer No. 10:**

A 36 years old male, single, completed High School

On patterns and methods of wrong doings, most counterfeit merchandises in a store at Sampeng Market are accessories. It was done out of customers' demand and generated monthly income about 30,000- 40,000 baht.

For the counterfeit process, only the labels were counterfeit and made in China where he went, inspected the merchandises and paid for the shipment.

When asking if he was afraid of the laws, he admitted that he did, because he was caught 3-4 times within 12 years and the court imposed fines based on the number of merchandises. But the return was worthwhile about 30-40 percent. He was asked if he would go back and sell the counterfeit merchandises again, he would but selling different type of merchandises to avoid being arrested. He could find the merchandise if the customer asked for it.

On the manufacturing location, he only knew that it was made in China. Merchandises were kept at the store. As for the shipment, merchandise sent by cargo containers, both land and sea which had never been arrested during the shipment. He confirmed that there had not made any contacts with the officer asking them to facilitate the shipment.

### **Interviewing Results Analysis:**

Results from interviewing wrongdoers were compiled and summarized as follows:

1) Samples as consumers: Because large numbers of targeted samples were buyers of merchandises bearing counterfeit trade marks , the research findings indicated the samples mostly agreed on majority of people in the country hardly earned high incomes so they we unable to buy real merchandises

2) Regarding rather high return, the researching findings from the questionnaire indicted low production cost as compared to over 50 percent returns. Even small sellers, some sellers mentioned monthly income estimated 150,000 baht which considered quite high as compared to incomes from selling other merchandises.

3) With the imposed punishments, even the mean derived from questionnaire indicated the sellers' uncertainty about the penalty if it was light or heavy. Findings from the interview indicated that all sellers who had been arrested mentioned the penalty received only paying fines. One seller who was arrested about 9 times confirmed the imposed penalty was paying fines. The interview among 10 sellers on their intention whether to sell counterfeit merchandises or not indicated that 9 out of 10 sellers insisted of going to sell the same merchandises. Only 1 seller refused to repeat the offense because it was his first time getting caught, he had no ideas how the court make the decision and fear of lawsuit.

4) Some sellers mentioned that they had never sold merchandises bearing counterfeit trademarks before, only regular fashion, but they did not sell that well as compared to his friends who opened the store selling this type of merchandises, Moreover, research findings indicated that such products could be sold in different places and changed through fashion trend. Then, the sellers who could

benefit from this information decided to sell fashion goods that generated better incomes, including selling counterfeit merchandises.

5) As for social point of view, the research findings from questionnaires indicated that sellers viewed society paid no attention to trademarks fraud, including the social values that disregarded trademark fraud as a crime. This has made the seller unaware of selling merchandises bearing trademarks fraud as committing a crime.

6) Patterns and methods of wrongdoings under Intellectual Property Laws: A Case of Trademarks fraud

The limitation from interviewing 10 wrongdoers could not pinpoint any manufacturers of Counterfeit merchandises. Some wrongdoers who had committed such crime were reluctant to give out the interview, but the acquired information was given by the seller as owners or employees. As for merchandises sold, they were domestic and international manufactured. Shipments of goods were done either by traveling to inspect merchandises aboard and making order.

The merchandises were sent by cargo containers, airplanes or ships, including the merchandises ordered from large operators , either from the border such as SaHaew District, Prajinburi province or other wholesale places within Bangkok , including pick up own merchandises or delivery at the store. As for distributing merchandises they were sold in various places such as Grand Plaza, at general fresh market at Silom Road or Jatujuk Mall. Some sellers identified the distribution places as open or discreet selling. The merchandises are handbags, shoes, watches, clothes and accessories and. The expenses beyond the ordinary expenses are rent for store or stall and staffs wages. Sometimes, the seller paid hush money to the government officials such as to the police officers or Municipal Officials and some payments were made to the authorized agent of the trademark owner which is coincided with the data from the inquiry officers of DSI on the agent taking bribes from the wrongdoers. The sellers who gave information about hush money to the police officers mostly sold merchandises in the public places such as the Department Store.

Furthermore, the distribution places that the seller or wrongdoers named as the places to buy merchandises are opened to the public. Even though some wrongdoers confirmed that they had never given any favors to the officers, it may be falsified information and not to the officers' benefits or the wrongdoers may actually give favor to the officers, but afraid of telling the truth that may lead to the officers' retaliation. These are some confirmations on the favor given to officers that considered common practice until now.

## **CHAPTER V**

### **DISCUSSIONS**

The findings from both quantitative and qualitative data on the research entitled “Patterns of Wrong Doing under Intellectual Property Laws: A Case of Trademarks Fraud” aims to investigate situations, patterns and methods of wrong doings under intellectual property laws, mainly on trademarks fraud, including the study of problems and obstacles in the trials against trademarks fraud. The findings are being discussed based on the research objectives as follows:

#### **5.1 Wrongdoings Situations**

The apprehension statistic dated back years (B.E. 2007-2009) revealed the tendency of increasing intensity in apprehending intellectual property crimes and the destruction costs until US Trade Representative ( USTR) had listed Thailand on Priority Watch List (PWL) since the year 2007. With this high degree of Intellectual Property rights violation, U.S had cut off Thailand Tax privileges on importing to U.S. Without transparent measures or solutions to problems, Thailand may be barred from the world trade market which would affect the country’s image and thus reducing the confidence of trade partners, as well as lower assistance in many areas from other countries.

#### **5.2 Patterns and Methods of Wrong doings**

##### **5.2.1 Patterns and Methods of Wrong doings from the Law Enforcers’ perspectives**

The interview findings among investigated officers from Economic Crime Division and Intellectual Property Bureau, Department of Special Investigation (DSI)

indicated differences in each case which evolved from the patterns of wrongdoings to avoid apprehension.

On the trademarks fraud issue, interview findings indicated that sellers received over 50% in return which is considered extremely high as compared to the other type of merchandises or narcotics. The penalties for making counterfeit trademarks, distributing or offering to sell the trademarks illegally have been set up for imprisonment not exceeding 4 years and fines not exceeding 400,000 baht or both. In actual practice, only fines are imposed or parole, even with repeated offenses.

When the wrongdoers applied for bail, he usually received permission to be release on bail which coincided with Rational Choice Theory, having foundation from Utilitarian Philosophy that believed individual would make decision to commit crime rationally on the principles of maximize profits and minimum losses.

This is including the Differential Association Theory of Edwin H. Sutherland who suggested the specific and important process leading to individual criminal behavior is peer association by emphasizing differences on association came from disorder and conflict in the society. People turn criminals by learning from daily living or livelihoods until they begin to change their values and attitudes to disrespect or violate the laws.

According to Sutherland, individual was not born with criminal behavior or inherited it. Criminal started his early life as normal intelligence people with the desire for life essentials such as stable job with high incomes and advancement, including warmth and loving families in good environment. Being in the highly competitive business environment made all people aiming for maximum return looking for ways to make profits even it means directly and indirectly contacting criminals and following criminals' patterns.

Social Learning Theory of Edwin H. Sutherland had been adapted from Differential Association Theory that mentioned the process in which individual get

involve with crime depending on 9 major principles, whether committing crimes from learning or associating with close acquaintances . This is including learning the technique of wrongdoings which sometimes complicated, and other times easy, also the direction, persuasion, reasoning, including attitudes on wrongdoings.

Such theories support the concept that patterns and wrongdoings resulted from decision- process that involved the patterns and methods of wrongdoings that had been developed from association with bad crowds until such association created learning process that combined patterns and methods of wrongdoings mentioned earlier.

### **5.2.2 Patterns and Methods of Wrong doings from the Wrongdoers' perspectives**

Wrongdoer's perspectives are the same as the law enforcers. Because of high return, the wrong doers see the return higher than 50% as monthly income, generating from 10,000 baht to 100,000 baht worth taking the risk as compared to the punishment which only paying fines, even with repeated offenders. This concept is coincided with the principles of Rational Choice Theory based on the foundation of Utilitarian Philosophy that believed individual made his decision to commit crime rationally based on human nature to maximize profits and minimize loses.

Social Learning Theory of Edwin H. Sutherland adapted from Differential Association Theory as well. In this theory, it is the process in which individual get involve with crime depending on 9 major principles, whether committing crimes from learning or associating with close. This process is also including the learning of wrong doings technique which may be complicated sometimes and other times easy to handle, and direction, motivation, persuasion, reasoning and attitudes regarding wrong doings.

Furthermore, it could be explained with Differential Association Theory of Edwin H. Sutherland who suggested that the specific and important process leading to individual criminal behavior is peer association by emphasizing differences on

association came from disorder and conflict in the society. People turn criminals by learning from daily living or livelihoods until they begin to change their values and attitudes to disrespect or violate the laws or interpret the violation of law as acceptable action.

According to Sutherland, individual was not born with criminal behavior or inherited it. Criminal started his early life as normal intelligence people with the desire for life essentials such as stable job with high incomes and advancement, including warmth and loving families in good environment. Being in the highly competitive business environment made all people aiming for maximum return looking for ways to make profits even it means directly and indirectly contacting criminals and following criminals' patterns.

The reasons for some sellers of regular merchandises turned to selling merchandise bearing counterfeit trademarks could be clearly seen from individual learning and associating with criminals. These people usually view social perspectives as nothing wrong for committing such offense and the returns worth the risk. At first, a person could not act by himself; he had to learn from others until it became part of his habits and eventually wandering into the system. Therefore, it is not surprising when 9 out of 10 offenders repeating the offense.

### **5.3 Reasons and Needs for Consuming Merchandises bearing Counterfeit Label**

The issues on inexpensive prices, similar features to real merchandises, easily bought, not to worry if they are loss, being fashionable merchandises adapting styles with fashion trend, limited buyers' funds with fair quality merchandises and measured one's social status help to explain Rational Choice that convinced that individual based their criminal decisions rationally on the principles of maximize profits and minimum losses.

The buyer made his own decision to obtain products that benefit them the most. It is the same in the case where the buyer used his judgment to make final decision before buying the merchandise that benefits him the most which could be concluded as the need to consume merchandises bearing counterfeit trademarks.

## **5.4 Problems and Obstacles on Intellectual Property Crimes Prosecution: A Case of Trademarks Fraud**

The analysis of opinions among investigated officers from Economic Crime Division, Central Police Bureau, Royal Thai Police and special investigated officers of DSI, Ministry of Justice regarding problems and obstacles are divided into 3 main issues:

### **5.4.1 Legal Issues**

Both police officers and Investigated officers do not find major problems in the prosecution process, at investigation or attorney levels, only minor ones and mainly on the context of law. According to the officers, the laws mentioned both imprisonment and fines, but on the actual practice, only fines imposed on the wrongdoers even with the repeat offenders.

As for the officers from DSI, they thought of context of laws as appropriately done, but the court judgment may be too lenient. The punishment on the wrongdoers may be too weak as compared to the damages done to the rightful owner of such trademark.

As for the penalties on the buyers, both group of samples agreed that there should not be any because of economic reasons or officers' readiness in enforcing the laws at this time. If they are unable to carry on assigned duty, they may be seen as neglecting their duty. They suggested that only recording the incident should be enough to suppress those consumers of merchandises bearing trademarks fraud.

Because Thailand has not prepared herself for this type of law, if it ever passed, there may be a loophole for the government officials to exploit the situation.

In comparison with international laws, as being seen, France has imposed penalties on those own counterfeit merchandises. As being seen, foreign countries had imposed stronger penalties than Thailand. For examples, Japan has imposed severe penalty with fines not exceeding 5,000,000 yen and imprisonment not exceeding 5 years, compared to Thai currency almost 2,000,000 baht. Switzerland gives the legal owner of trademark that had been violated the right to proceed with civil suit to retrieve his loss such as temporary protection or compensation for damages.

According to Orathip Tunprasart (1987), the impounding merchandises created problems on law enforcement. Many times the enforcement of criminal laws on intellectual property rights violation caused problems because the contexts of laws are ambiguous, making the interpretation of laws differed from the intention of laws whereas certain section of laws were obsolete, This had made law enforcement disagreed with current economic and social conditions . Moreover, certain type of wrong doings had not imposed any legal punishment for wrongdoers. Therefore, Thailand could not amend the laws to be as intense as the other countries motioned earlier.

Nonetheless, the improvement on the context of laws should limit the minimum level for punishment. The case that already had proof for ring leaders or big seller should be focused and handled separately. In the case of selling or manufacturing merchandises that could danger public health, the punishment must be stronger than the current penalties. The impounding of wrongdoers' assets should be considered as the stronger measure for handling the manufacturers.

#### **5.4.2 Apprehension Issues**

Regarding the apprehension issues, the police officers concern about adapting patterns of wrong doings, the use of legal loopholes to avoid being arrested or released from the trail, either eliminating the witnesses to eradicate the connection

and adapting distribution patterns such as using children to sell products, including the arrested officers' lacking knowledge and skill of differentiating between real and fake merchandises. The most important issue is the police officers accepting bribery.

This finding is coincided with the work of Orapin Tunprasart (1987) on problems of law enforcement on trademarks fraud. She found that problems on law enforcement in intellectual property violation came from the organization itself, and the law enforcers. In the organization, problems caused by organization's staffs lacking knowledge and understanding this law, police offers had no skill and experience in investigate wrong doings under intellectual property Laws, mainly on trademarks fraud.

Moreover, the budget was inadequate, not enough to acquire better equipments, specialists or increasing manpower. Besides, majority of staffs in these government organizations had tendency to favor wrongdoers since the nature of this crime was economic crime without transparent effects even the impacts would caused tremendous affects to the general public and nation future economic conditions. Lastly, more collaboration between all concerned agencies, both public and private sectors is needed to better the operation.

As for the perspectives of DIS officers and special investigated officers, they saw it differently from the police officers. Most of them found the problems cause by non-professional agent of owner trademark, such as failure to cooperate with the investigation or apprehension, instead the agent focused only his performance and rewards from the owner of trademark or even accepting bribery.

The finding is coincided with the work of Orathip Tunprasart (1987) who found that the problems on law enforcement on intellectual property rights violation caused the agent of trademark owner. Some owners had collaborated with the wrongdoer for hefty returns whereas few paid no attention to impacts from own trademarks fraud. They were unaware of time and money spent in searching for

production location which rather difficult to find because it involved many complex movements.

As for problems in getting search warrant from the court, without proofs that the crime had been committed, the court may not approve the search so that the suspect may know and escape. There was no evidence of officers taking bribes from the wrongdoers because officers worked as a team so they could monitor each other performances.

In this case, the police officers may apply the pattern of preventive bribery of DSI by working as a team or group which proves to be quite effective measure. As for problems from adapting patterns of wrongdoings, problems resulted for officers' uneasiness to handle the case which required proper training, either from the concerned agencies with experts, or own police department to increase effectiveness in performances and keep up with the crime patterns that constantly changing.

As for problems at DS, they were problems caused by unqualified agent of owner trademark who may signal the owner openly or discretely to stop the fraud and obtaining the search warrant which should be agreed between concerned agencies to find better solution.

#### **5.4.3 Counterfeit Merchandises Consumers**

Both the Police Officers and DSI Officers agreed that majority of consumers well aware that the purchased merchandises were counterfeit, but still purchasing due to low prices and limited buyers' funds, including no transparent punishment on buyers which made them still support counterfeit merchandises, except the edible goods that buyer had no awareness of the situation. Their only reason to buy such merchandises is cheaper price.

This finding is coincided with the work of Orathip Tunprasart (1987) on enforcing Trademarks laws regarding consumers' attitudes on Trademarks Law enforcement. It was found that consumers failed to recognize the intense affect from

such crimes as a result from lacking understanding on the content of laws, including their inability to see the trademarks as valuable asset. On the contrary, they took side of the wrongdoers instead of acting as the police's informants or witnesses to the crimes.

## **CHAPTER VI**

### **CONCLUSIONS AND RECOMMENDATIONS**

#### **6.1 Conclusions**

The research entitled “Patterns of Wrong Doing under Intellectual Property Laws: A Case of Trademarks Fraud” aims to investigate situations, patterns and tendency of wrong doing under intellectual property laws, mainly on trademarks fraud, reasons and needs for consuming merchandises bearing trademarks fraud, including problems and obstacles in prosecuting wrongdoers under Intellectual Property Laws, mainly on Trademarks Fraud.

This quantitative study engaged In-depth Interview among 5 investigated officers from Economic Crime Division , Central Police Bureau, Royal Thai Police and 5 special investigated officers from DSI, also 10 wrongdoers under Intellectual Property Laws, and 300 consumers of merchandises bearing counterfeit trademarks. Total selected samples were 320 persons. Research findings are summarized as follows:

#### **Objective No 1:**

To study patterns of wrongdoings under Intellectual Property Laws: a Case of Trademarks Fraud.

The statistical comparison of apprehension records from 2007 to 2009 and the amount of impounded evidence during the arrest indicated rapid increasing of arresting cases, not counting other merchandises displaying in the market that had been escaped the officers’ arrest, creating untold damages. The continue increasing of intellectual property rights violation would lead to destruction, not to mention damaging reputation and undermining confidence of foreign investor without

solutions to the problems. Eventually, foreign countries may cut off their assistance to Thailand as previously mentioned.

**Objective No. 2:**

To study problems and obstacles in prosecuting wrongdoers under Intellectual Property Laws: A Case of Trademarks Fraud.

Findings indicated the following problems during the operation:

1. Legal: The laws have imposed the term of imprisonment and amount of fines, but in reality, only fines are enforced even a person repeated the offense. Besides, the court's judgment seems too lenient because paying fines may be light sentence in comparison with the damages on the trademarks owners.

2. Apprehension: The police officers mentioned the wrongdoers using legal loopholes to avoid being arrested or escaped the prosecution. Many problems resulted from numbers of officers lacking knowledge and expertise in apprehending suspects as well as ability to differentiate between the authentic and counterfeit merchandises. Most important, problems created by corrupted officers accepting bribes.

As for Department of Special Investigation, the problems ranged from dealing with non-professional agents of trademarks owners to officers' accepting bribes, including the smuggling of merchandises bearing counterfeit trademarks through custom and getting the court warrant to search the premises. Nonetheless, there were no problems regarding the department's officers accepting bribes from wrongdoers due to the nature of operation which required officers working as a team so they are able to monitor each other during field operation.

3. On buyers' support, most buyers well aware that merchandises bought were counterfeit, but hard to resist because of prices and outstanding features, Moreover, there has not been any laws to impose fine or

punishment on the buyers or users. On the consumption goods, the incentive is only on prices.

**Objective No.3:**

To study reasons and needs in consuming merchandises bearing Trademarks Fraud.

Buyers tempted to buy counterfeit merchandises due to their inexpensive prices, similar features to real merchandises, easily bought, not to worry if they are loss, being fashionable merchandises adapting styles with fashion trend, limited buyers' funds with fair quality merchandises and measured one's social status.

Besides the buyers' consciousness also affect their habits. Buyers preferred buying brand name products just to show off their social statuses. Besides, they have no awareness of breaking the laws or never thought of consequence as long as it does not impose any threats to their well-beings, and they are getting merchandises that they wanted at the moderate price. Then, it is obvious why they are reluctant to cooperate with the officers to eliminate these counterfeit merchandises. Buyers' preferences or failure to inform the officers is called Mala Prohibita.

**Objective No. 4:**

To study patterns of wrongdoings under Intellectual Property Laws: A Case of Trademarks Fraud in the following 2 groups:

**Manufacturer**

Manufacturing merchandises bearing trademarks fraud is done both ways:

1) Domestic counterfeit merchandises mostly are consumer goods such as clothes and edible goods such as season sauce and fish sauce.

Manufacturing are done in the remote area such as abandoned warehouse or commercial buildings in not so busy section.

For methods of manufacturing consumer goods, parts are assembled together and labeled with trademark. The processes are separated into different steps and done in different locations to avoid being arrested. For examples, in making counterfeit jeans, pants may be sewn in one place and sent to another place to label trademarks. If the merchandises are without label, the suspect may argue he had no intention to do that.

For edible goods, the container may be the used container of that merchandise or others. Most of them were used containers because of low cost. The used containers were cleaned first and then packed with ingredients of real merchandises mixed with other diluted ingredients or ingredient with low quality.

Most of times, the ingredients used were harmless to consumers to void being arrested such as fish sauce adding water to increase volume and reduce cost. Labeling is done at different places.

2) Foreign counterfeit merchandises are mostly consumer goods such as, clothes, handbags and shoes because they have already gain popularity and been well-known among buyers. These counterfeit merchandises are divided into different grade and quality depending on the production locations. Most of them came from China because of cheap labor cost. Counterfeit merchandises are currently smuggled into the country through airplane and sea vessels to avoid custom processes of Thailand.

### **Seller**

Selling pattern had been adapted to avoid being arrested such as showing merchandises on the catalog or selling at specific place so that seller could screen the buyer with someone to guard the entrance, using IT to open website and selling online without opening store or transferring funds though ATM and delivering merchandises through mail. Quite often the wrongdoing paid others to use opening account to avoid officers' arrest which made the investigation rather difficult.

## **6.2 Recommendations**

Research findings from In-depth Interview among 5 investigated officers of Economic Crime Division, Central Police Bureau, Royal Thai Office and 5 special investigated officers from DSI, also 10 wrongdoers under Intellectual Property Laws, and 300 consumers of merchandises bearing counterfeit trademarks. Total selected samples were 320 persons.

This is the way to be informed of situations, patterns and methods of wrong doings, leading to intellectual property crimes on trademarks fraud, including the reasons and needs for consuming merchandises bearing counterfeit trademarks, including problems, obstacles and preventive measures for intellectual property crimes. These findings were analyzed to recommend solutions for effective control on intellectual property rights violation in the following aspects:

### **6.2.1 Policies**

6.2.1.1 There should be regular amendment on certain illegal issues, especially on the penalties, determining the minimum and maximum penalties both fines and imprisonment which had never been done before. This may be the solution to judgment problems whereas the penalty on fines should be done relatively. In other words, the fines should not have maximum limit m but based on the benefit the wrongdoer received from conducting such offense or consider the damages incurred to make the wrongdoer aware of consequences. However, fines should not be too heavy for the poor, whereas the imprisonment should be imposed on the ring leaders if the product created health hazard to consumers or the wrongdoer is the repeated offenders. The imprisonment should be immediately upon the end of sentencing, not waiting to be executed, in clung seriously impounding the property of wrongdoer.

For buyers, the laws should not impose any penalties on them due to the country's economy conditions and the readiness n enforcing laws.

6.2.1.2 The government should focus on imposing laws on the legal process, making the trails quickly done based on the philosophy of Classical Scholl.

6.2.1.3 There should be integration between concerned agencies, namely, Royal Thai Police, DSI, Custom Department, and Intellectual Property Bureau, including FDA to prepare MOU on Intellectual Property Crimes. Moreover, other agencies besides those key agencies could get involve to balance the operations as well as eliminating bribery from the system.

6.2.1.4 Raising awareness among consumers not to support merchandises bearing counterfeit trademarks so that consumers avoid committing crimes. Consumers should be informed of short-term and long-term impacts to the nation's economy. These values must be embedded among youths, more concrete and continuously done. Thailand must build her own popular merchandise brand. Thai government should focus on integration and share burden with the justice agencies such as Ministry of Justice, Courts and Non-government Organizations.

Thailand has planned to enter Asian Economic Community (AEC) in 2015, but if Thailand is still on the PWL list of Intellectual Property based on U.S. Trade Act, Special Section 301 placed by USTR since 2007, surely, U.S.A would cut off Thailand trade privilege which could create huge impact to Thailand. Therefore, Thailand's operation under the Nation Policies for Intellectual Property Rights proposed on then National Agenda to establish the specific Center for Intellectual Property Crimes Suppression. One of the duties of this center is to liaise between other concerned agencies m such as Royal Thai Police, DSI, Excise Department, and in enforcing the relevant laws.

Furthermore, Bilateral Memorandum of Agreement was signed between USPTO to share knowledge, personnel and develop intellectual property issues, including the suppression of Intellectual Property Right violation with more campaigns on passing laws and planning strategies. These activities are to show

Thailand sincerity and effort in protecting Intellectual Property Rights which should help Thailand release from PWL (Priority Watch List) eventually.

### **6.2.2 Performances**

6.2.2.1 Officers should be encouraged to improve their performances through incentives as giving rewards or fair compensation so they could turn down offers from wrongdoers while the penalty should be increased for those officers accepting bribes.

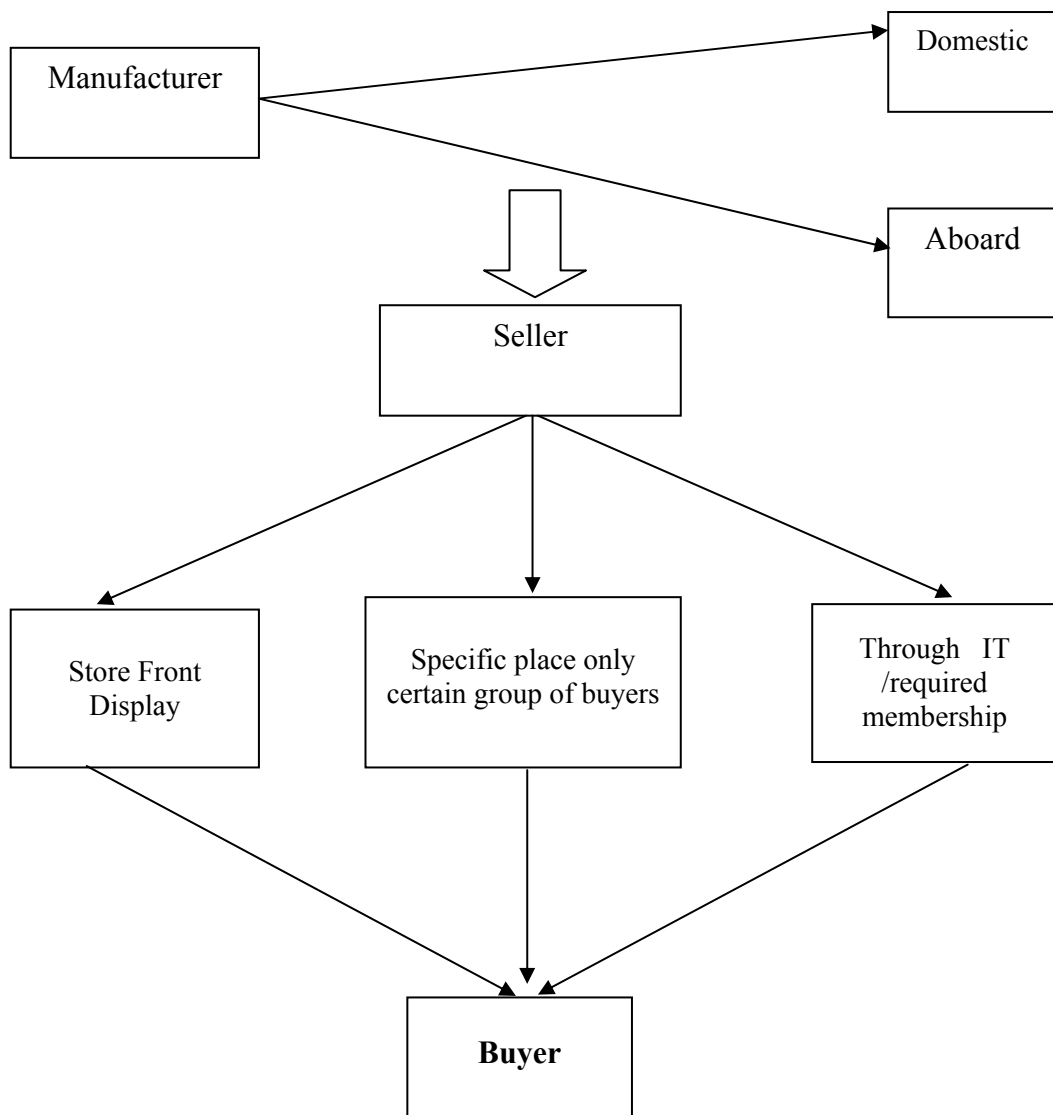
6.2.2.2 Agencies directly responsible for law enforcement such as Economic Crime Division must enforce appropriated laws during the search and urgently eliminate the spreading of merchandises bearing counterfeit trademarks by focusing not only on merchandises but also the ring leader as well. This way both small operator and ring leader would be out of business at the same time and it should be done together with broadcasting so the public could learn the impact on the nation from using these merchandises bearing counterfeit trademarks.

6.2.2.3 Seminar should be arranged to brainstorm among agencies responsible for suppression Intellectual Property crimes. For examples, agencies under Ministry of Justice such as police officers, attorneys, courts. Department of Special Investigation and Intellectual Property Bureau, including agents from public and private sectors such as agents from trademarks companies should be enlisted for problems-solving. At the same time, legal loopholes should be eliminated to prevent wrong doing such as imposed penalty on both underage sellers and parents or guardians so that they could watch their children closely, not to violate the laws.

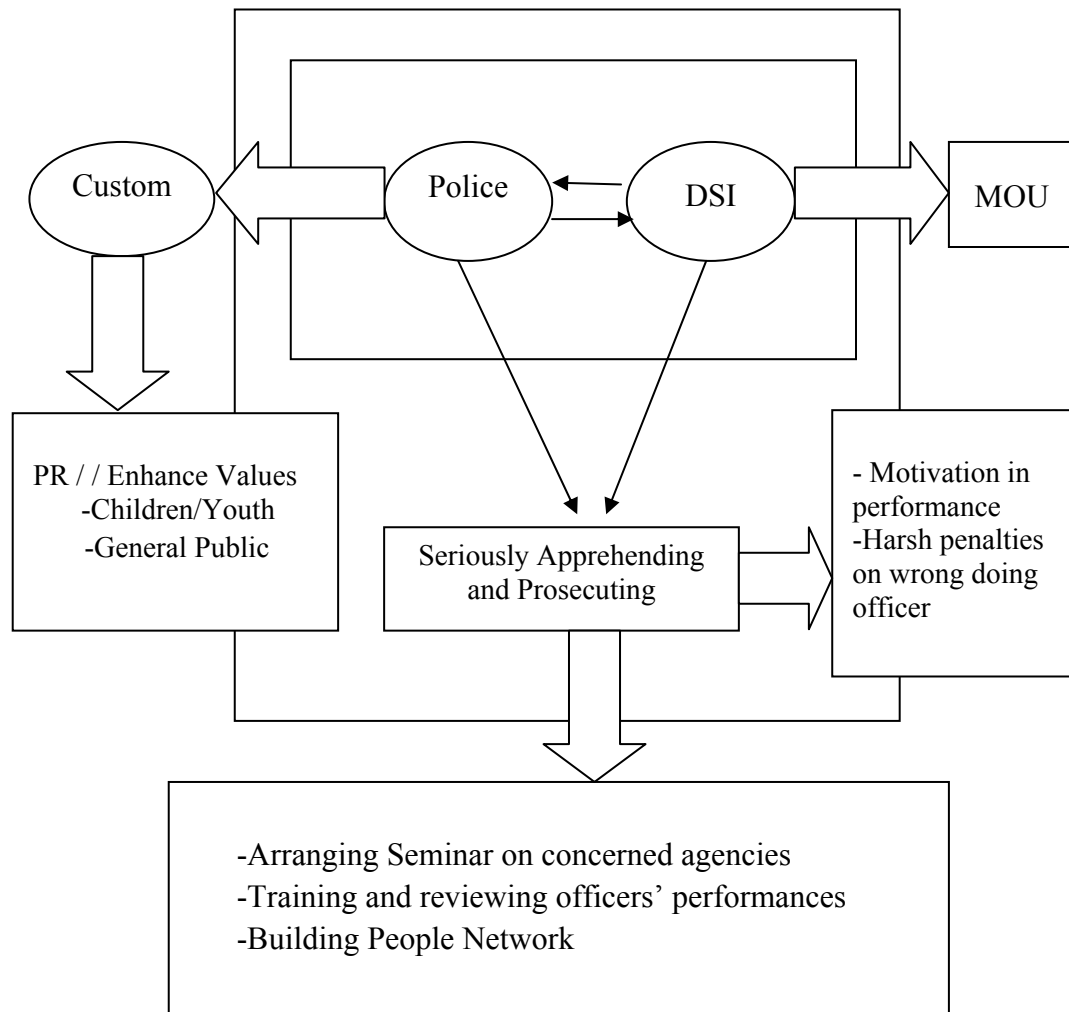
6.2.2.4 Arrange training to review performances of the officers and responsible parties on regular basis as well as appointing the agency specialist with some incentives as compensation for specific duties.

6.2.2.5 Arrange the training of public network in community and school to gain local assistance in monitoring areas for potential wrongdoings with some incentives as rewards or other favors.

The model for preventing wrong doings under the Intellectual Property Rights Laws: A case of Trademarks Fraud is being presented in the figures below:



**Figure 6.1:** Patterns and Methods of Wrong Doings under Intellectual Property Laws: A Case of Trademark Fraud



**Figure 6.2:** Recommendations on Preventive measures for Intellectual Property Crimes: A Case of Trademarks Fraud

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## **APPENDICES**

**APPENDIX A**  
**QUESTIONNAIRES ON TRADEMARKS FRAUD (BUYERS)**

The research entitled “Patterns of Wrongdoing under Intellectual Property Laws: A Case of Trademarks Fraud” aims to investigate situations , patterns, methods including, study the cause and desire to consume trademarks fraud merchandises , problems and barriers in litigation, guidelines and preventive measures as well as suppressing an offense against intellectual property crimes, mainly trademarks fraud.

**Part 1: Personal information**

**Instruction:** Please mark ✓ in front of appropriated statement

**1. Gender**

- 1. Male
- 2. Female

**2. Age** ..... year

**3. Marriage Status**

- 1. Single
- 2. Married
- 3. Divorced
- 4. Widow
- 5. Separated
- 6. Others please specify.....

**4. Education**

- 1. Elementary
- 2. High School or equivalent
- 3. Bachelor's degree or equivalent
- 4. Higher than Bachelor's degree
- 5. Others please specify.....

**5. Monthly income**

- 1. Less than 5,000 baht
- 2. 5,001 – 8,000 baht
- 3. 8,001 – 11,000 baht
- 4. 11,001 – 14,000 baht
- 5. 14,001 – 17,000 baht
- 6. More than 17,000 baht
- 7. Specify.....

**6. Occupation.....**

**Part 2: Opinions on purchasing merchandises**

Statements	Opinion Levels				
	Highly Disagreed	Least Agreed	Uncertain	Agreed	Highly Agreed
1. Inexpensive Merchandises					
2. Similar merchandises features					
3. Measured social status					
4. Fair quality					
5. Low Buyer's Fund					
6. Easily purchased product					
7. No great loss					
8. Fashionable merchandises					

### **Interview Wrongdoer Form**

The research entitled “Patterns of Wrongdoing under Intellectual Property Laws: A Case of Trademarks Fraud” aims to investigate situations , patterns, methods including, study the cause and desire to consume trademarks fraud merchandises, problems and barriers in litigation, guidelines and preventive measures as well as suppressing an offense against intellectual property crimes, mainly trademarks fraud.

### **Part 1: Personal Information**

**Instruction:** Please mark ✓ in front of appropriated statement

#### **1. Gender**

- 1. Male
- 2. Female

**2. Age** ..... Years

#### **3. Marriage Status**

- 1. Single
- 2. Married
- 3. Divorced
- 4. Widow
- 5. Separate
- 6. Others Identify

#### **4. Education**

- 1. Primary
- 2. High School
- 3. Bachelor Degree or Equivalence
- 4. Post Bachelor
- 5. Others Identify.....

**5. Monthly Income**

- 1. Less than 5,000 baht
- 2. 5,001 – 8,000 baht
- 3. 8,001 – 11,000 baht
- 4. 11,001 – 14,000 baht
- 5. 14,001 – 17,000 baht
- 6. More than 17,000 baht
- 7. Identify.....

**6. Occupation.....**

**Part 2: Opinions on Merchandises**

Questions	Level of Opinions				
	Highly disagreed	Slightly Agreed	Uncertain	Agreed	Highly agreed
1. Significant numbers (Buyers) of targeted group					
2. Easily sellable products					
3. Majority of people earn fair incomes (unable to buy real merchandises)					
4. Legal punishments are too lenient					
5. low product cost					
6. Able to display merchandises on different locations (no need to display on definite location or department store)					
7. Worth paying for					
8. Constantly improved the products to be in the current trend					
9. Society disregards as wrongdoing or committing crime.					
10. Society pays less attention to trademarks fraud.					

## **Statements/Questions on Interviewing Wrongdoers**

### **1. Patterns and methods of wrongdoings**

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### **2. Afraid of braking laws**

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### **3. Chances of repeating trademarks fraud**

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### **4. Manufacturing locations**

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### **5. Delivered merchandises conveniently**

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### **6. Conveniently contacting the government officials**

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## Interview Officer Form

Division.....

### Interview Wrongdoer Form

The research entitled “Patterns of Wrongdoing under Intellectual Property Laws: A Case of Trademarks Fraud” aims to investigate situations , patterns, methods including, study the cause and desire to consume trademarks fraud merchandises, problems and barriers in litigation, guidelines and preventive measures as well as suppressing an offense against intellectual property crimes, mainly trademarks fraud.

### Part 1: Personal Information

**Instruction:** Please mark ✓ in front of appropriated statement

#### 1. Gender

- 1. Male
- 2. Female

2. Age..... Year

#### 3. Marital Status

- 1. Single \
- 2. Married
- 3. Divorced
- 4. Widow
- 5. Separated
- 6. Others please specify.....

**4. Education**

- 1. Primary
- 2. High School or equivalent
- 3. Bachelors' degree or equivalent
- 4. Higher than Bachelors' degree
- 5. Others please specify .....

**5. Monthly income**

- 1. Less than 5,000 baht
- 2. 5,001 – 8,000 baht
- 3. 8,001 – 11,000 baht
- 4. 11,001 – 14,000 baht
- 5. 14,001 – 17,000 baht
- 6. Higher than 17,000 baht
- 7. Please specify.....

**6. Current positions.....**

**7. Tenure..... years**

## **Interview Questions for the officers on duties**

### **1. Patterns and methods on wrongdoings**

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### **2. Evading Laws**

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### **3. Legal punishment imposed light sentences**

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### **4. Reasons for unable to eliminate the manufactured source**

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### **5. Buyers preferred buying counterfeit merchandises**

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### **6. Buyers' penalties for purchasing counterfeit merchandises**

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**7. Wrongdoers' channel for committing crimes**

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**8. Buyers' ignorance to find out if the merchandises bear counterfeit trademarks**

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**9. Inexpensive Production Cost**

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**10. Sizable profits for manufacturers**

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**11. Government official conspiracy**

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**12. Solutions to policies problems**

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**13. Solutions to operational problems**

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**14. Apprehended methods**

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**15. Results of litigation**

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**APPENDIX B**  
**MOU DRAFT**

**Memorandum of Understanding on Preventive Measures for Intellectual  
Property Crime: A Case of Trademarks Fraud between Intellectual Property  
Bureau, Customs Department, Royal Thai Police, Department of Investigation,  
Exercise Department, Foods and Drugs Administration**

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A memorandum of understanding on multilateral agreement to prevent wrong doings under Intellectual Property Laws: A Case of Trademarks Fraud between Intellectual Property Bureau, represented by the Director General of the Bureau, named ..... and Custom Department, represented by the Director General of Custom Department, named, .....and Royal Thai Police, represented by Police General, named ....., and Department of Special Investigation represented by the Director General, named, Mr. ....and Exercise Tax represented by the Director General, named, Mrs.....and Foods and Drugs Administration, represented by.....M.D. is done with the concern in.....

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Therefore, all parties unanimously agreed to find preventive measures on wrong doings under Intellectual Property Laws: A Case of Trademarks Fraud with the following major scopes:

**1. Glossary**

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**2. Preventing Intellectual Property Crime: A Case of Trademarks Fraud**

*2.1 Public Relations*

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*2.2 Promoting Values*

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**3. Seriously apprehending Intellectual Property Crimes: Trademarks Fraud Cases**

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**4. Enhancing Performance**

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**5. Increasing Punishment on wrong doing officers**

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**6. Arranging Seminar between Government Agencies**

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**7. Reviewing Officers' Performance**

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**8. Building People Network**

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The authorized liaison (s) in charge of recording the details of Memorandum of Understanding are named as follows:.....

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The collaboration in preventive measures on wrong doings under Intellectual Property Laws: A Case of Trademarks Fraud is limited to 5 years, starting from B.E. 2555(2012) to B.E. 2560 (2017) with the option to extend period as appropriated and all parties agreed to it. Altering any parts of this agreement or entire agreement is permissible provided that the concerned parties notify others in writing in advance at least 15 days and all 6 authorized parties giving their full consents.

This Memorandum of Understanding on Preventive Measures for Intellectual Property Crimes: a Case of Trademarks Fraud has been prepared in 6 master copies with the same contents. All 6 master copies need to be signed by the senior executives or authorized officers of 6 agencies as specified above. By signify all 6 master copies, Memorandum of Understanding on Preventive Measures for Intellectual Property Crime: a Case of Trademarks Fraud will take effect on the sign date.

SIGNED AT: Date.....Month ..... B.E. 2012

**Intellectual Property Bureau**  
**Custom Department**  
**Royal Thai Police**  
**Department of Special Investigation**  
**Exercise Tax**  
**Foods and Drugs Administration**

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