

Abstract

Nowadays, the revolution of the international trade has stimulated the increase of world citizens' opportunities to the international recognition of well-known marks resulting from the development of technology in cable industry and in the mass media. Moreover, spill-over advertisements and new marketing systems have also caused the marks to reach customers in various countries rapidly, before the products bearing the marks would physically be presented outside the country of manufacture. This circumstance, in turn, creates opportunities for usurpation in countries where the true owner initially used the mark has not yet registered his trademark. Consequently, the arising of the so-called problem as trademark trafficking, which means that the true owners are forced to pay a lot of money in order to use his own trademark registered by the unauthorized local, has been increased continually. The aforementioned reasons led to the negotiation rounds of international trade regarding the problem of trademark trafficking, especially, Paris Convention for the Protection of Industrial Property (1967) and Agreement on Trade-Related Aspects of Intellectual Property Rights, Annex 1C of WTO Agreement.

Thailand, a party to Paris convention and TRIPS Agreement, has an obligation to protect well-known marks in compliance with the provisions of Article 6bis of Paris Convention and Article 16 (2) of TRIPS Agreement as to the protection of unregistered well-known marks against unauthorized use on competing goods creating confusion. Moreover, the Article 16 (3) of TRIPS demands Member States to protect registered well-known marks against use on non-competing causing dilution.

Hence, this thesis will confine to study whether the Trademark Act B.E. 2534, amended by the Trademark Act (No.2) B.E. 2543, protect well-known marks in compliance with Paris Convention and TRIPS Agreement. The result of the study indicates that Thailand provides the protection of well-known marks, whether registered or not, against registration by conflicting marks under Section 8 (10) of the Trademark Act B.E. 2534. Besides, the prohibition of use of marks in conflict with unregistered well-

known marks may be afforded under the passing off doctrine regulated in Section 46, paragraph two, provided that the passing off doctrine is improper to apply for protection of well-known marks in two circumstances;(1) the well-known mark owner has to prove the act of defendant construed passing off and (2) the passing off doctrine declines reputation-without-use cases. Moreover, the dilution doctrine, Article 16 (3) of TRIPS Agreement, is not especially incorporated in the Trademark Act B.E. 2534.

In absence of the protection as to the well-known marks under the Trademark Act B.E. 2534, the provisions of the Civil and Commercial Code and the Penal Code would be applied. Nevertheless, there could be some limitations in applying those provisions to the case. Hence, the Trademark Act B.E. 2534 should be revised in compliance with the obligation of Thailand to protect well-known marks under International Law.