**Law Enforcement Training Helps to Suppress Counterfeit Products in the Thai Market**

by Edward J. Kelly and Wiramrudee Mokkhavesa

The Royal Thai Customs Department has a pro-active policy to protect Thai consumers from illegal goods that damage both the Thai economy and the public’s confidence in consuming imported goods. Brand owners such as Nokia, Levi Strauss, Daimler Chrysler, HP, Casio and Ferrari have dedicated tremendous resources and jointly proposed to provide Customs officers with product identification training to assist them in their profiling and preliminary inspection of suspect shipments. The training demonstrated how to identify and differentiate between genuine and counterfeit products coming into and going out of Thailand, helping to suppress the distribution of imported counterfeit goods in the Thai market.

In 2006, training sessions on product identification were held in many significant ports around the Bangkok province including Klongtoey, Laemchabang, Ladkrabang, Don Muang, and Bangsaotong. Sessions were also organized in well-recognized areas such as transshipment hubs in the northern upcountry, i.e. Chiang Mai, Chiang Rai (the border between Thailand and Myanmar), Nong Khai (the border between Thailand and Lao), and Aranyaprathet (the border between Thailand and Cambodia). The Customs officers in attendance responded with interest and enthusiasm, and most of them provided feedback that it was an excellent opportunity for them to learn about product identification.

Aside from imported counterfeit products, another problem that intellectual property rights owners must face is local manufacturing in Thailand for sale in the Thai market or for export. The Department of Intellectual Property (DIP) enforcement team, including other concerned enforcement officials such as law enforcement officials from the Department of Special Investigation (DSI) and Ministry of Justice, were also invited to join the product identification training that was held in Bangkok at the end of 2006.

In the beginning of 2007, a high ranking police officer responsible for the suppression of IPRs violation for trademarks in the Bangkok area requested a training session for his police team. The police at the Economic Technological Crime Suppression Division (ECOTEC), the

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**Plant Variety Protection in Thailand**

by Prateep Naboriboon

It has long been a tradition of the Thais to collect propagation material, especially seeds, from one cropping season for use as stock to grow the next season’s crops. Exchanging of seeds between families and between communities has long been practiced in farming communities, creating an ideal gene bank and leading to the production of new breeds of crops, which farmers can utilize freely.

With the introduction of intellectual property rights protection, a challenge to this tradition has arisen, as rights in new plant varieties are protected. As a member of the World Trade Organization, Thailand is bound to comply with the standards of protection under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), which requires signatory parties to provide protection for plant varieties. Consequently, Thailand enacted the Plant Varieties Protection Act of 1999 (the Act).

The Act gives the rights-holder of a new plant variety the sole right to produce, sell or distribute, import, export, or possess it for the aforementioned purposes. Consequently, free utilization of registered new plant varieties is no longer possible and the tradition of freely exchanging seeds or propagation material could very well be a thing of the past.

Foreign applicants are eligible to apply for registration of protection of a plant variety under any of the following conditions:

- Applicant is a national of a country which allows Thai nationals or juristic persons with head offices in Thailand to apply for protection in that country.
- Applicant is a national of a country which is a party to an international convention or agreement on the protection of plant varieties to which Thailand is also a party.

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- Applicant is domiciled or conducts a real and effective industry or business in Thailand or in a country which is a party to an international convention or agreement on the protection of plant varieties to which Thailand is also a party.

However, the Plant Variety Protection Office requires the applicant to actually grow the subject plant variety in Thailand for the purpose of examination. In this regard, the foreign applicant will face difficulty in importing the seeds because not only must the subject plant fulfill the requirements under the Act in order to be granted protection, but for a foreign applicant developing or breeding the variety outside Thailand, the subject variety must also meet the requirements of the Plant Variety Act and the Plant Quarantine Act.

The Plant Variety Act lists restricted plant varieties which cannot be imported or exported except for research and development purposes. Imported seeds will also be subject to quarantine under the Plant Quarantine Act. Unfortunately, the importation of seeds for the purpose of registration of a new plant variety is not regarded as research and development. Therefore, a permit is required to bring in the seeds for the growth test and examination. Because of the lack of close cooperation between the authorities concerned and the responsible departments, obtaining the permit will be a major obstacle for the applicant.

Under the Act, the rights-holder of a new plant variety has the exclusive right to produce, sell or distribute in any manner, import, export, or possess for the purpose of any of the said acts, the propagation material of the plant variety except in the following circumstances:

1. An act relating to a protected new plant variety without any intention to use it as propagation material.
2. Education, study, experimentation, or research relating to a protected new plant variety for the purpose of breeding or developing plant varieties.
3. An act relating to a protected new plant variety committed in good faith.
4. The cultivation or propagation by a farmer of a protected plant variety from propagation material he has made, provided that if it is published as a promoted plant variety, its cultivation or propagation may be made in a quantity not exceeding three times the quantity obtained. In that case, the farmer’s right is actually prioritized over the breeder’s right. In addition, the law is silent with respect to the criteria by which the Minister considers one plant variety as a promoted variety, as well as the criteria for approval of the Plant Variety Protection Commission and whether the breeder would have any participation in such process.

Thailand has so far signed Free Trade Agreements (FTAs) with Bahrain, China, India, and Australia and is in the process of negotiating with Japan and the U.S.A., its two largest trading partners. The FTAs, especially the proposed Thai-US version, contain detailed provisions on substance and enforcement of IPR protection which may force Thailand to step up its level of IPR protection. In doing so, Thailand must accede to a number of

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Public Prosecutor’s Office, and the Department of Intellectual Property were also requested to provide knowledge on intellectual property law at this event.

These training sessions encourage law enforcement officers to closely monitor the market for counterfeit products being imported into or sold in the Thai market, and will also help officers realize that the brand owners involved are very serious about protecting their IPRs.

After the training sessions were conducted at the aforementioned Customs ports, the number of seizure cases at the end of 2006 greatly increased, generally four times higher than the number of cases at the beginning of the year. These seizures reflect Customs’ aggressive measures to hold importers liable for importing illegal goods.

Professional Thai law enforcement officials have shown remarkable leadership in their commitment to protecting intellectual property rights. The Thai enforcement authorities’ excellent cooperation-ness and assertiveness stemming from their concern for consumer safety and their desire to prevent consumers from being deceived with regard to the origin and quality of illegal products have impressed the rights owners. Brand owners remain confident that the government authorities’ ongoing suppression actions against sellers and importers/exporters of counterfeit products will be sustained and that continuing support for such enforcement efforts will be provided.

Of utmost concern to the rights-holder would probably be Item 4. Under this item, the farmer has the right to cultivate or propagate the new plant variety from the propagation material which he has made. Consequently, unless the propagation material, especially seed, is sterile or prone to mutation resulting in crops with undesirable characteristics, the farmer can continue to use such propagation material for as long as he likes. In the event of a promoted plant variety, the cultivation and propagation by the farmer does not constitute a violation of the breeder’s right as long as the amount he produces does not exceed three times the quantity obtained. In that case, the farmer’s right is actually prioritized over the breeder’s right. In addition, the law is silent with respect to the criteria by which the Minister considers one plant variety as a promoted variety, as well as the criteria for approval of the Plant Variety Protection Commission and whether the breeder would have any participation in such process.

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Vipa Chuenjaipanich and Edward Kelly have once again been identified by the 2007 Asialaw Leading Lawyers survey as highly-acclaimed legal experts in the Asia-Pacific region in the area of intellectual property.

According to Asia Law, in this year’s survey, over 16,000 law firm clients and legal professionals were invited to nominate lawyers who, in their opinion, have consistently excelled in particular fields of legal practice over the past years. This is the fifth year in a row that Ms. Chuenjaipanich and Mr. Kelly have been honored with such endorsement.

In addition, they have also been nominated for listing in the Guide to the World’s Leading Patent Law Practitioners which was published in June by the Legal Media Group. Nominations to the Guide are based on 4,000 questionnaires sent to senior in-house counsel, partners at pre-eminent law firms, and other specialists in 75 jurisdictions. This is Ms. Chuenjaipanich’s second appearance in the Guide.

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international agreements, including the International Convention for the Protection of New Varieties of Plants, or the UPOV Convention, of which Thailand is not currently a member. It will be interesting to see whether the Thai farmer will actually benefit from the protection provided by the FTA due to its strict protection and enforcement requirements.

The plant variety protection system in Thailand is still in its early stages. Only a small number of applications have been submitted, with none granted protection as yet. As such, there is no record of enforcement of rights in plant varieties and the effectiveness of the system cannot be fully evaluated. It will be interesting to see the developments in the area--how the new system under the FTA regime would benefit the applicant, foreign and local alike, and how the system as a whole will affect the livelihood of farmers around the country.

YET ANOTHER PRESTIGIOUS AWARD FOR T&G

At the Managing Intellectual Property (MIP)’s Awards Dinner 2007 held on March 28 at Claridges Hotel in London, Tilleke & Gibbins International Ltd. was announced the winner of the “Firm of the Year 2007 – Thailand” award (left photo), another addition to its growing collection of trophies. A total of 45 trophies were presented to the IP firms of the year in 35 jurisdictions. The MIP awards follow the publication of the magazine’s survey of the world’s leading IP firms last February for Patent and March for Trademark & Copyright. In the survey, Tilleke & Gibbins was ranked in Tier 1 in all categories: Patent Prosecution (one of two firms), Patent Contentious (the sole firm), Trade Mark Prosecution (one of two firms), and Trade Mark/Copyright Contentious (the sole firm) in Thailand, a ranking it has proudly maintained for many years.

Ms. Hassana Chira-aphakul (left), an enforcement attorney, is shown receiving the award on behalf of Tilleke & Gibbins.

LEADING LAWYERS

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