

Innovative trademark protection strategies

Trademark law in Thailand has been designed as a tool for the protection of brands, logos, or marks used by owners in connection with products and services. Despite this protection, however, successful brands or owners of popular products who have invested heavily in promotion bear the risk of imitation by entrepreneurs trying to cash in on their success.

But rather than copying the brand outright, these newcomers may simply choose to adopt colour schemes or fonts similar to the logo or packaging of the leading brand. Thus, brand owners should keep this in mind and re-evaluate their trademark portfolio to determine whether the current registration provides adequate protection.

The traditional function of trademarks has been to indicate a product's origin, advertise, differentiate or make guarantees about the product. Recently, companies have been establishing a new function for trademarks: to protect their firm's integrity.

Companies have used trademark registration as a way to protect unique aspects of their products that identify the firm in the consumer's mind, whether it be a unique colour or shape or motion. They do this by registering trademarks that are actually simpler components of the mark they use in the market, such as part of the packaging or colour logos without words.

A profound example of this is the trademark registration in Thailand of the green circle of a famous US coffee company's house mark without the word or the device to protect its coffee products. The benefit of such registration is that the blank colour logo will enhance the protection of the green circle of the famous mark. Competitors in the coffee business who are aware of the trademark protection would at least avoid copying the entire logo or applying an identical device, and just copy the overall circular design and the colour scheme.

The famous Japanese producer of steel welding products, Kobe Steel, has six separate trademark registrations to cover its best-selling red-black packages for welding products: the unfolded packaging in black and white, unfolded packaging in colour, the house brand, sub-brand, local brand, and product code. These non-traditional trademarks provide established companies with a new means of protecting themselves from market infringers.

In comparison to other developed

jurisdictions like US trademark and unfair competition laws, Thai laws provide considerably less protection for brand owners to combat the problems of look-alike products and packages. Trademark and unfair competition laws in the US are made up of state and federal laws that deal with unfair competition in advertising and trademarks.

Unfair competition can be described as wrongs that cause appreciable economic damage to businesses. Generally, these laws protect consumers against false advertising, and protect companies from competitors who try to unfairly profit off of the company's good name and reputation.

However, trademark owners have also been attempting to increase protection of their brands in the US by registering non-traditional marks as a backup strategy. For example, Yamaha has registered the characteristic "rooster-tail" shaped spray of water that comes up off the back of the unit when one starts the engine of its popular Wave Runner. This trademark is registered not only for its shape and form, but for its unique motion.

Similarly, Tiffany's jewellery company has a trademark on the colour robin's egg blue, used in its packaging and catalogue. Because robin's egg blue is associated with Tiffany's quality and reputation, the use of that colour by another company might dilute the product's reputation and take away some of its market share.

Some US companies have also decided to capitalise on the goodwill of their product name by creative use of trademark on accessories, or as ingredients for other products.

In Thailand, the scope of trademark strategy available is much more limited than the above examples. First and foremost, registration of a single colour is not yet allowed. Protection for the overall appearance of a product remains very thin. Furthermore, even though the Trademark Act permits registration of a three-dimensional shape, it remains difficult. In light of the foregoing limitations, brand owners in Thailand will need to be more creative when devising new ways to safeguard their marks.

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