

# World Trademark Review *Daily*

**SC provides standard for determining distinctiveness of colour combinations**

**Thailand - Tilleke & Gibbins International Ltd**

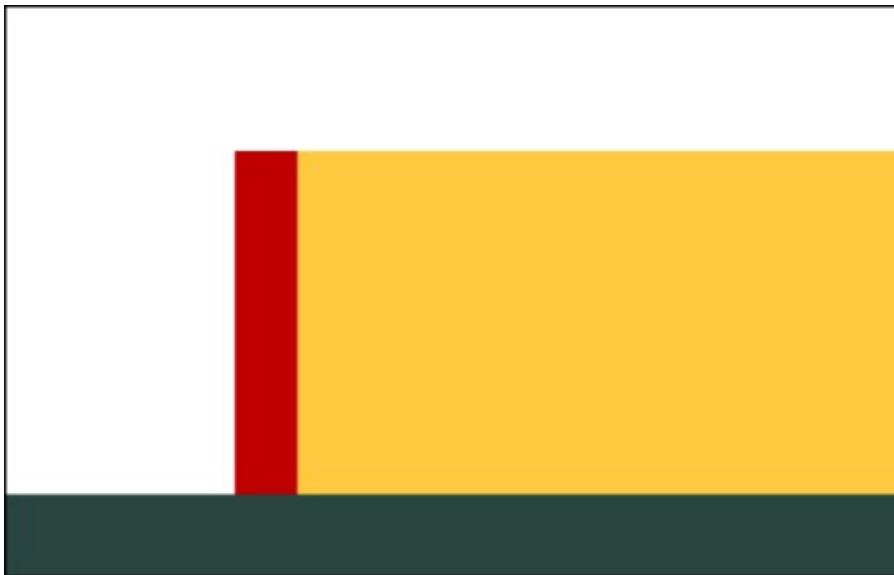
**Examination/opposition  
National procedures**

November 26 2010

The Supreme Court of Thailand has held that a combination of colours used by [Shell Brands International AG](#) was distinctive (Decision 2183-2184/2553, July 22 2010).

A combination of two or more colours can be registered under the [Thai Trademark Act](#). However, there are currently few examples of combinations of colours registered as trademarks in Thailand: the owners of such marks rarely seek registration, and a number of applications have been rejected by the Trademark Registrar on the grounds of lack of distinctiveness. However, the decision of the Supreme Court in the present case may offer encouragement to prospective registrants, as it provides a guide for determining the distinctiveness of a combination of colours.

Shell applied for the registration of a combination of colours as a trademark for use with "grease; lubricants; engine oil; gasoline; diesel; industrial oil for the automobile industry; industrial oil for industrial manufacture" in Class 4 of the [Nice Classification](#) (Application 595727):



The registrar rejected the application on the grounds that the mark lacked distinctiveness.

Shell appealed to the Board of Trademarks. The board upheld the decision, ruling that the combination of colours at issue was not represented in a special manner, as the combination of the red, yellow and grey strips was common. Shell appealed to the International Property and International Trade (IP & IT) Court, which ruled in its favour. The case was then appealed to the Supreme Court.

The Supreme Court agreed with the IP & IT Court's reasoning that the combination of colours was inherently distinctive because the application expressly showed Shell's intention to place the longer, grey rectangular strip at the base of the mark, and to place the shorter, red strip vertically on the grey base to the left of the centre.

In particular, the Supreme Court held that the strips of colours were combined in a special manner. The mark did not consist merely of a common combination that the general public would perceive as the kind of lines and geometric frames that typically accompany pictures, are used as a frame for text, or are used as part of a picture or text on packaging. The court found that the contrasting colours gave special characteristics to the mark and allowed the public to recognise the combination of colours as a trademark distinguishing Shell's goods from those of others.

The Supreme Court's decision provides useful guidance for determining the distinctiveness of a combination of colours. It suggests that a combination of colours will be found to lack distinctiveness if it consists of a common combination of strips, lines and/or geometric frames that the public is accustomed to seeing. Although the IP & IT Court did not analyse the mark's acquired distinctiveness through use, Shell provided

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evidence that it had used the red, yellow and grey colour combination for a long period of time. There is little doubt that such evidence was persuasive.

It is hoped that registrars will use the decision as a standard when considering the distinctiveness of a combination of colours. Moreover, the decision provides applicants and trademark practitioners with a useful guide for drafting a description of their marks.

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