

PROPOSED LEGAL AMENDMENTS TO STRENGTHEN IP ENFORCEMENT

by Darani Vachanavuttivong

In another attempt to cope with the ongoing problems caused by counterfeiting and piracy, Deputy Minister of Commerce Alongkorn Pollabut has been persistent in pushing forward amendments of the Trademark Act and the Copyright Act to cover offenses for any person who buys or possesses counterfeit goods and pirated products in Thailand. In addition, the proposed amendments would allow for actions to be taken against landlords who provide rental of commercial spaces where the sale of counterfeit and pirated products takes place. The motivation underlying these amendments is to bring about a change in attitude among Thai consumers, making them more aware of the importance of IP rights and the criminal implications of counterfeiting and piracy.

To move forward with this objective,

the Department of Intellectual Property has appointed a Committee of Development of Intellectual Property Laws to consider and proceed with the proposed amendments. The latest updated amendments (as of June 15, 2009) to the Trademark Act and the Copyright Act include the key proposals detailed below.

Trademark Act

The current draft sets forth offenses for buying counterfeit goods: *“Whoever, without appropriate reasons, buys goods, while knowing or reasonably should have known that such goods have used forged trademarks, service marks, or collective marks according to Section 108, shall be punishable by a fine not exceeding THB 1,000.”*

Rental of commercial spaces or



Darani Vachanavuttivong, Co-Managing Partner & Managing Director, Intellectual Property

places for selling counterfeit goods would also be deemed an offense: *“Whoever provides rental of spaces or places, including the owner or occupier of any building or space, while knowing or reasonably should have known that the user of the building or spaces or places therein sells, offers for sale, or possesses for sale goods which have used forged trademarks, service marks, or collective marks according to Section 108, or imitated trademarks, service marks, or collective marks according to Section 109, shall be punishable by imprisonment not exceeding one year or a fine not exceeding THB 200,000 or both.”*

Continued on page 8

PROPOSED AMENDMENTS *(from page 6)*

Copyright Act

It is likely that the copyrighted works to be covered by this amendment would be limited to only music, film, and software (made available as CDs, DVDs, or other electronic formats, but not including such works accessed through the Internet).

Buying pirated products would constitute a violation of the amended Act: *“Whoever, without appropriate reasons, buys goods, while knowing or reasonably should have known that*

such goods have been made by pirating any others’ copyrights, shall be deemed to violate the Copyright Act.

“Whoever violates the Copyright Act as mentioned above shall be punishable by a fine not exceeding THB 1,000.”

Similar to the proposed amendment to the Trademark Act, landlords could be held liable for renting their premises to tenants who sell pirated products: *“Whoever provides rental of spaces or places, including the owner or occupier of any building or space, while knowing or reasonably should have known that the user of the building or spaces or places therein performs any action in*

violation of the Copyright Act, shall be deemed to violate the Copyright Act.

“Any person who violates the Copyright Act as mentioned above shall be punishable by imprisonment not exceeding one year or a fine not exceeding THB 200,000 or both.”

These amendments have not yet been finalized and are subject to change as they move further along in the legislative process. Any updates on further revisions to these amendments will be presented in the next issue of *Thailand: IP Developments*. ❖