

# REGISTRATION OF VOWEL-REDUCED TRADEMARKS

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I'm sur u cn read this messge. Rather than being a misspelling, it is immediately recognizable as the shorthand style of the instant-messaging generation. How are these missing vowels related to trademark law?

Product manufacturers and service providers consistently seek to create cool and modernized images to identify both themselves and the attributes of their goods and services. To this end, the elimination of vowels from trademarks has become an increasingly common trend. Yet, not all marks with vowel ellipsis have been successfully registered in Thailand. Obstacles in registering a mark with omitted vowels may arise because these marks may be deemed contrary to Section 7 paragraph 2 (3) of the Trademark Act, which states that a mark will be considered distinctive if it

possesses or consists of "a combination of colors represented in a special manner, stylized letters, numerals or invented word."

One telecommunications company in particular has been a pioneer in the cell phone industry for trademarks that exclude certain vowels. It began to employ this type of mark to match with specific concepts of its individual mobile phone models: RAZR (short for Razor) is thin like a blade; ROKR (short for Rocker) is designed to cater to music lovers via its iTunes function; and PEBL (short for Pebble) is a round, smooth metal phone that allows users to operate and open it with one hand. Each of these marks has been successfully registered in Classes 9 and 38 for the goods "cellular telephones, headsets, computer game software for mobile handsets, other

communications apparatus, etc." and services "wireless telephone services and electronic transmission of data and documents via computer terminals, etc." A possible reason behind these successful registrations is that the remaining vowels still enable the final consonant of each mark to be vocalized. The Registrar may have interpreted that the absence of certain vowels did not affect the distinct features of the word marks because there is only one way to pronounce them and they are still presented within the familiar structure of a word.

*Continued on page 7*

## REGISTRATION (from page 2)

Conversely, the same company has faced significant difficulties in gaining protection for the marks SLVR (short for Silver), KRZR (short for Crazer), SLDR (short for Slider), and SCPL (short for Scalpel) for products and services in Classes 9 and 38. Each of these trademarks was denied by the Registrar as being composed of nonstylized letters. Although most of these marks were allowed to lapse at the Registrar's examination stage, Appeals were filed for the marks SLVR and KRZR in Class 38 with the Board of Trademarks. The Appeals sought to refute the examiner's objections by focusing on the availability of the products bearing the marks in Thailand for an extended period of time and the origins of the marks in the words silver and crazer.

In its respective rulings, the Board upheld the Registrar's rejection by reasoning that the marks were composed of plain block letters and were not graphically represented in stylized manners, which made them contrary to Section 7 paragraph 2 (3). The Board further found that the evidence submitted, including supporting documents from Web sites, promotional materials, and brochures bearing the marks, was insufficient to demonstrate

the extensive use of the marks in Thailand. Clearly, the Board did not give credence to the applicant's argument that the marks had backgrounds as defined words. These vowel-dropping marks were treated in the same manner as other marks consisting of letters that cannot be read as a word. For instance, a disclaimer was required for the letters "FX" included in the mark spaFX.

What conclusion can be drawn from the different treatment of these marks? The above examples indicate the crucial findings that removing all of the vowels in a mark seems to have a very negative effect on its registrability. When an applicant seeks registration of an entirely vowel-free mark, the Registrar and the Board are likely to perceive it as a lettering mark, not a word mark, due to the fact that there is no clear pronunciation for the mark. Marks with at least one vowel remaining, on the other hand, are likely to remain pronounceable, and thus the chances of success in registering such marks increases substantially. In sum, dropping one vowel can make all the difference.

Other examples substantiate these observations. The mark ALTRX was successfully registered in Class 10 with the disclaimer for "X" owing to the fact

that the applicant was able to prove that the mark is read as a disyllabic word /altr-x/ based on the actual use. Similarly, the mark BIMATRIX was smoothly registered for golf clubs in Class 28, despite the absence of the "l."

From this, the conclusion can be drawn that trademarks are likely to be registrable if some, but not all, vowels are removed. The exclusion of all vowels negatively affects the registrability of a mark because the Registrar and the Board perceive the mark to be an unpronounceable collection of nonstylized letters, rather than a coined word.

The trend of vowel-reduced trademarks continues to be on the rise among businesses hoping to create fanciful, modern, and fun brands that appeal to a mass audience. By remaining mindful of the distinction between vowel-reduced and vowel-free marks, brand owners will be able to ensure that they can enjoy full protection of their marks under the trademark law. Try registrng a trademrk missng a vowel and u may b succssfl. ❖