

SEPTEMBER 2009 Thailand: Government considers landlord liability

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For the past few months, the Thai government has been taking aggressive actions against counterfeiting and piracy. Partly as an attempt to reclassify Thailand from the USTR's Priority Watch List to the Watch List and partly in response to concerns expressed by trade mark owners and the film and music industries, government authorities have been formulating new policies and strategies on IP and implementing them in a cohesive fashion. This has included a wave of seizures during the first three months of this year, a new programme encouraging informants to lead authorities to major counterfeiters and public education campaigns.

In addition to these activities, the government's main initiative is an attempt to amend the Trade Mark Act and the Copyright Act in order to facilitate the prevention and suppression of counterfeiting and piracy. Proposed amendments to the legislation would hold landlords of commercial buildings liable for turning a blind eye to tenants who sell counterfeit, imitative, and pirated goods. This would allow authorities to target shopping malls and commercial buildings that are notorious for hosting sellers of counterfeit and pirated products.

The Department of Intellectual Property appointed a Committee of Development of Intellectual Property Laws with the urgent agenda of drafting these provisions concerning landlord liability, amongst others. The Committee has now completed its draft of the provision to be included in the Trade Mark Act, which includes criminal liability for an owner and/or an occupier of buildings and/or land who rents such property and who knows or reasonably should know that the user of that property sells, offers for sale, or possesses for sale imitative and counterfeit goods. A similar provision has been drafted for inclusion in the Copyright Act. It is interesting to note that the owner of the premises is liable even when he or she does not have direct control over the lessee but only benefits from the rental fee. These proposed amendments have been well received by the private sector, in particular by copyright owners and brand owners who see these provisions as helping to create more social responsibility for landlords.

The proposed amendment of the law is being reviewed by the Committee and will soon be submitted to the Cabinet for further consideration.



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