

THAILAND



The question of standing to bring an action before Thailand's Administrative Court

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Background

This article examines the ability of industry associations to seek legal remedies standing from the Administrative Court in relation to the lawfulness of an exercise of executive authority by a government Ministry or Agency. For example, could an industry association representing pharmaceutical companies (known in Thailand as PReMA) bring an action to challenge the authority underlying the Thai Ministry of Public Health's (MoPH) policy in purporting to issue compulsory licenses to break the patents of research-based pharmaceutical companies?

Analysis – Administrative Court Action

There is much controversy in Thailand concerning whether the MoPH had purported to issue the compulsory licenses without following the procedure prescribed by the Patent Act (Sections 50 and 51 as interpreted in light of TRIPS). If an action could be brought by PReMA in the Administrative Court seeking judicial review of MoPH's policy, the question of standing must first be resolved. According to the statute establishing the Administrative Court, the Court has jurisdiction over "a dispute in relation to an unlawful act by an administrative agency or State official, whether in connection with the issuance of a by-law or order or in connection with another act, by reason of acting without or beyond the scope of the powers and duties or inconsistently with the law or the form, process or procedure which is the material requirement for such act or in bad faith or in a manner indicating unfair discrimination or causing unnecessary process or excessive burden to the public or amounting to undue exercise of discretion.

An administrative action may be brought by any person who is aggrieved or injured, or who may inevitably be aggrieved or injured, as a result of an act or omission by State agency or State official. As an organisation representing a number of research-based pharmaceutical companies, PReMA would likely still be considered an aggrieved party or an "inevitably aggrieved or injured" party within the meaning of the Act since the issuance of the compulsory licenses undoubtedly affects all of PReMA's members, not just the ones currently subject to the compulsory

licenses. MoPH's action effectively threatened the business of these companies as they rely primarily on patent protection to maintain their market positions and to keep up their investments in research and development.

There is Supreme Administrative Court precedent providing considerable support for this position. In *Professional Tour Guides Association of Thailand v. Tourism Authority of Thailand*, the Supreme Administrative Court considered the issue of standing of an organisation representing an injured party and found that the Professional Tour Guides Association of Thailand, a labour union, had standing to bring an action on behalf of its members who incurred damages as a consequence of a ministerial regulation adopted by the government. In summary, this case involved a ministerial regulation adopted by the government which required licensed professional tour guides to attend training courses as prescribed by the tourism committee. Any person who violates the regulation is subject to suspension and revocation of his professional license and/or a fine. The union filed an administrative action challenging the ministerial regulation and was found to have standing to bring the action even though the regulation did not directly affect the union itself. The Supreme Administrative Court reasoned that the union was a juristic person established under the law with a clear objective to protect the interest of its members with regard to their employment conditions and since the action brought was well within that objective, the union was regarded as an "inevitably aggrieved or injured" party under Section 42 of the Admin Court Act.

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