

World Trademark Review Daily

Registration of licence agreement to be compulsory if used for franchise Thailand - Tilleke & Gibbins

Ownership changes

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On March 23 2011 the Department of Business Development of the Ministry of Commerce has organised a public hearing on a new act entitled the "Franchise Business Operations Act BE".

In addition to multinational franchises, which are well established in Thailand, there are approximately 500 local franchises in the country, covering all categories of businesses (especially the food and restaurant industry). However, there is no specific law governing franchise businesses in Thailand. Nevertheless, some principles on franchises are set forth in current laws, such as the Civil and Commercial Code, the Trademark Act and the Unfair Contract Terms Act.

According to the draft Franchise Business Operations Act, the new law aims to regulate the operation of franchise businesses in Thailand. The justification behind the enactment of the law was to promote and encourage business franchise operations, and to provide protection to franchisors and franchisees. The law aims to:

- stipulate the criteria for regulating franchise businesses in Thailand;
- appoint a committee composed of representatives from the government and private sectors, as well as academics, which shall be in charge, among other things, of submitting promotion and development plans regarding franchise businesses to the ministry, and of hearing complaints;
- set forth measures to protect franchisors and franchisees (eg, prevent misleading advertisements and ensure that contracts are fair, that business operating manuals are clear, and that sufficient data is being disclosed when purchasing a franchise); and
- set forth the criminal and administrative penalties to be imposed on persons who breach the law.

In addition, according to Chapter 3 of the draft law, franchise agreements must be in writing and specify certain details required by law. Section 25 states that:

"if the provisions of other laws require registration in order to grant third parties the right to use intellectual property rights, the franchisor shall have the duty to duly register the granting of these rights."

Failure to comply with this requirement will render the franchise agreement invalid.

Chapter 4 provides details on the "registration of a franchise business operation" - in order to register such a business, applicants must meet certain requirements, but must not have any of the disqualifications set forth in the law. When considering applications, the registrar must consider:

- the correctness of the application;
- the draft franchise business operation agreement;
- the existence of working manuals; and
- the business plans to be used to promote and control the franchise business operation.

Moreover, Chapter 6 sets forth the types of punishments and sanctions available (both administrative and criminal). The Committee for the Consideration of Administrative Punishment will review acts which require administrative penalties, while the Committee for Offence Settlement will consider acts which are subjected, under the law, to criminal punishments.

The law is currently being drafted and it is difficult to predict when it will become effective. However, trademark owners would be advised to review their trademark portfolio - especially those trademarks that have been used within a franchise business. Although the registration of a trademark licence agreement is only optional under the current Trademark Act, the registration of such an agreement will be deemed to be compulsory if the trademark owner uses the mark at issue in association with a franchise business,

Nuttaphol Arammuang, Tilleke & Gibbins International Ltd, Bangkok

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