

Refilling genuine packaging with unauthorised products

Published: 17/04/2015 at 06:00 AM

Newspaper section: [Business](#)

Counterfeiters in Thailand often refill genuine packaging and containers with unauthorised products, thus passing off the goods as genuine commodities. This problem is widespread. Refilled goods don't pass through regulatory standards or quality control and so they can have harmful effects on consumers.

In Thailand, refilled products generally fall into two categories:

products for consumption, such as fish sauce and liquor;

commodities, such as shampoos, toner and ink cartridges and lubricants.

One common practice involves refilling genuine liquor bottles with methanol instead of ethanol. Methanol, a non-drinkable type of industrial alcohol, is less expensive than ethanol but produces the same effect of intoxication. A consumer may be blinded — or perhaps even killed — if he or she consumes more than 60-250 millilitres of methanol. On Nov 9, 2009, more than 30 prisoners at Thanyaburi prison were admitted to hospital after consuming methanol. Four prisoners died as a result.

Refilled toner cartridges also pose a significant danger to consumers. The materials that constitute unauthorised toner powder in refilled cartridges are unknown to consumers and may contain harmful chemicals that can accumulate in the body and cause the onset of deadly diseases over long periods of time. For example, office staff who work in proximity to a printer that uses refilled toner cartridges may breathe in harmful fumes from the printer on a daily basis.

In Thailand, Section 272(1) of the Penal Code allows for legal action to be taken against an offender who commits an act of refilling that uses names, pictures, marks or any terms used in other people's business without the proper authorisation. Violators face up to one year imprisonment and/or a fine of up to 2,000 baht. The offence is compoundable, meaning that the legal action can be settled between the parties.

In some countries, courts have held that refilling is a form of trademark infringement. In Thailand, however, this is not yet the case. Many contend that Thailand should consider refilling as a form of trademark infringement, as the penalties for trademark infringement are more severe than those in Section 272(1) of the Penal Code. The maximum punishment for trademark infringement under the Thai Trademark Act is up to four years in jail and/or a fine of up to 400,000 baht.

In 2012, the Subcommittee of Law Development on Trademarks proposed amending the Trademark Act with the addition of Section 110/1, which would clearly state that "refilling" is an offence under the Thai Trademark Act.

The amendment would state that it is an offence to refill packaging or containers bearing registered trademarks to mislead people into believing that such goods are the products of such registered trademark owners.

The punishment for a refilling offence would be the same as for forgery of another person's registered trademark, as found in Section 108 of the Trademark Act — up to four years in prison and/or a fine of up to 400,000 baht. The amendment is pending review by the Counsel of State.

If this proposed amendment goes ahead, the new law would serve as a greater deterrent against refilling and also provide more protection to consumers. Also, if this provision is enacted, an act of illegal refilling would become a non-compoundable offence, meaning that offenders would not be able to settle a case with an intellectual property owner. This would act as a further deterrent, as the offender would be subject to the full prosecution process.

The dangers of refilling are no different from those of other forms of trademark infringement. In fact, the dangers are arguably more pronounced, as genuine packaging and containers that have been refilled with substandard products are more difficult to differentiate from authentic products, creating even more confusion.

The law should therefore be amended to include more severe punishments for counterfeiters who refill genuine packaging and containers with unauthorised products in order to provide a greater source of deterrence and to safeguard public health and safety.