

## Thailand's new alcohol labelling and message requirements

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On Jan 22, the government issued a new notification, published in the Royal Gazette, setting out controversial labelling and message restrictions for alcoholic beverages that could result in major losses for the alcohol industry. It is being challenged before the Administrative Court, but pending the outcome of that case it has been in effect since April 22.

The Notification of Alcoholic Beverages Control Re: Rules, Procedures and Conditions for Labels of Alcoholic Beverages as it is formally known is based on the Alcoholic Beverage Control Act of 2008 and its subsequent 2010 Ministerial Regulation, under which alcoholic beverages cannot be advertised in any way that boasts of efficacies, benefits or qualities or induces one to drink.

In January 2014, the Public Health Ministry notified the World Trade Organization (WTO) Committee on Sanitary and Phytosanitary Measures of proposed labelling requirements for alcoholic beverages. The draft notification prohibited the use of various types of messages on alcoholic beverage labels and packages including any message "which misleads consumers on the content of products" and any message "using the picture of a cartoon".

The ministry issued a revised draft notification in August 2014 that combined the labelling restrictions with measures mandating graphic health warnings on alcoholic beverage packaging. Thailand would be the first country in the world to do so. It had earlier introduced the concept of graphic health warnings on alcoholic beverage packaging in 2010, but after details of the proposal reached the WTO Technical Barriers to Trade Committee, no more was heard of the proposal.

Last December, the ministry signed the final version of the notification without the graphic health warning provisions but with revised versions of the labelling and message restrictions. They include prohibitions on "a message which materially misleads consumers on the content of products" and "a message using cartoon images except images which are trademarks of alcoholic beverages which have been legitimately registered prior to enforcement of this Notification".

Alcoholic beverages have long been branded and marketed with labels, containers and packaging containing important messages depicted graphically that have been registered as trademarks and/or service marks. The ministry is likely to argue that many such future trademarks unregistered before April 22 violate the requirements in the notification, and therefore operators would be prohibited from displaying such trademarks on their products in Thailand. This would prevent rights holders from using their trademarks in accordance with their registration and put those marks at risk of cancellation based on non-use.

With the notification now in effect, the ministry appears to be moving once more towards reintroducing requirements for graphic health warnings on alcoholic beverage packaging. In 2010 and last year, the ministry proposed the introduction of graphic health warnings akin to those already in place for tobacco products.

In a novel move, the ministry staged a public competition to design new graphic health warnings for alcoholic beverage packaging. The competition requires that entries:

may use any graphic design technique including painting and photography;

must warn the public of the harms and consequences of alcoholic beverage consumption;

must aim at deterring children, teenagers and the public to refrain from consuming alcoholic beverages;

must also contain "warning phrases"; and

must comply with all relevant intellectual property (IP) laws and be new and not previously submitted in any other contest or published in any magazine or website.

Contest participants must agree to transfer all IP rights related to the submission to the Thai Alcohol Control Committee. Prizes of 2,000 to 50,000 baht were offered for the winning designs, and the deadline for submissions was Aug 31. The competition is a clear attempt to drum up support for the imposition of graphic health warnings and raise significant awareness of the issue.

However, the delegation of this part of the regulatory process to the general public is bound to raise questions about whether any notification or regulation is based on internationally recognised principles of evidence-based policymaking. As such, can it be demonstrated to be an effective and proportionate measure to tackle genuine public health and social harms associated with alcoholic beverages?

The blanket imposition of large graphic health warnings on all alcoholic beverage products is also likely to meet opposition from manufacturers and importers on the basis it unreasonably restricts their right to use their lawfully registered trademarks to market their legal products to adult consumers.

Ministerial notifications are, however, subject to legal challenge in the Administrative Court, which has the power to overturn or amend unlawful acts by administrative agencies or state officials. The court may issue an injunctive order suspending execution of the measure pending the outcome of the challenge.