

## Protecting your brands and trademarks in the AEC

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The Asean Economic Community (AEC) officially came into being on Dec 31, ushering in promises of change that businesses should adequately prepare for. Among these preparations is the resolute need to protect your intellectual property and be aware of any potential pitfalls. In this article, we discuss brand protection in the AEC and other issues important to brand owners.

Registering a trademark: To protect your brand or trademark throughout Asean fully, you must register it in every AEC member. For your brand to be registrable as a trademark, all the following main criteria must be met, but they may differ slightly from country to country:

The mark must be sufficiently distinctive. A distinctive mark is one that is not descriptive of the goods or services bearing the mark -- for example, if you plan to use a mark in a restaurant or food business, your trademark should not directly refer to the characteristics or qualities of restaurants or food. Terms such as "delicious", "great" and "food" are not registrable.

The mark must not be forbidden under the trademark law of the designated countries -- for example, a geographical name such as Siam or Bangkok is not registrable in Thailand.

The mark cannot be identical or similar to marks registered by others. You can conduct a trademark search to determine whether the applied-for mark is identical or similar to a prior-registered mark.

Once these criteria are fulfilled and you file a trademark application, it can take anywhere from two to 24 months for a trademark registration certificate to be issued, depending on the country. In Brunei, Indonesia, Malaysia, the Philippines, Thailand and Vietnam, it takes 18-24 months to complete the trademark registration process, while in Cambodia, Laos and Singapore it takes eight to 12 months. In Myanmar, there is no concrete law on trademark registration, and so trademark protection is obtained through registering a declaration of ownership, which takes two to four months.

Territorial considerations: The protection of a trademark is territorial -- the rights of a trademark are enforceable only in the countries where your mark is registered. Once a trademark is registered, the protection will last for 10 years, and you can renew it indefinitely. In Myanmar, registering a declaration of ownership will grant protection for three years.

First come, first served: Legal protection in AEC member countries is generally granted to the first person filing a trademark application for registration. Therefore, if you would like to obtain full trademark protection for your marks and avoid possible obstacles such as similarities to previously registered marks, you should be the first to file a trademark application for registration in the designated countries.

Unauthorised use: Most international disputes over trademarks are caused by an unauthorised trademark registration by a trademark owner's potential foreign business partner, former foreign distributor or supplier. A dispute often arises when the trademark owner files an application in its own name and finds out the applied-for trademark cannot be registered because it is identical or confusingly similar to a previously registered trademark.

If you are a trademark owner faced with this situation, you may be able to negotiate with the infringing party to assign the trademark registration to your name. Where a settlement cannot be reached, you can file a lawsuit against the owner of the unauthorised registration. In any event, neither scenario is desirable, as you would need to waste both time and money to secure your trademark.

To lessen the possibilities of unauthorised trademark registration and disputes, you should immediately file applications to register your trademarks in your own name in the countries where you may potentially conduct business or establish a manufacturing base. This should be done even if you are just in the preliminary stage of ongoing business discussions with your potential partners, distributors or suppliers. An ounce of prevention is worth a pound of cure.