



Wiramrudee (Pink) Mokkhavesa
Attorney-at-Law
wiramrudee.m@tilleke.com

The Thai Government's Campaign to Improve IPR Protection and Enforcement

The Office of the United States Trade Representative (USTR) has placed Thailand on its Priority Watch List (PWL) every year since 2007 due to the significant influx of counterfeit goods available both online and in local markets, and the lack of effective and deterrent enforcement measures in the country.

However, the USTR stated in its *Special 301 Report* released in April 2017 that the United States was prepared to review Thailand's PWL status if the Thai government continued taking positive steps and made substantial progress in addressing the USTR's concerns over a number of issues. Possible further actions that the government could take include:

- ▶ introducing an effective legal provision on landlord liability;
- ▶ preventing circumvention of technological protection measures;
- ▶ resolving the backlog of pending patent applications;
- ▶ combating the widespread use of unlicensed software;
- ▶ reducing the lengthy time frames for civil IP enforcement proceedings; and
- ▶ increasing civil damages awards, which have traditionally been quite low.

Encouraged by the possibility of Thailand being removed from the PWL, the Prime Minister of Thailand, H.E. Gen. Prayuth Chan-ocha, took this matter into consideration by the National Council for Peace and Order (NCPO) and ordered all concerned parties to take immediate steps to suppress the circulation of counterfeit goods in Thailand. In turn, the NCPO has assigned the Department of Intellectual Property (DIP) to coordinate and achieve this goal by the end of 2017.

The DIP and Internal Security Operations Command (ISOC) have categorized notorious markets into two categories and projected that counterfeit goods and pirated goods in the first group will completely disappear by the end of September 2017, while those in the second group will be gone by the end of 2017. The markets in these two groups are listed as follows:

First group:

- ◆ Mahboonkrong Center (MBK)
- ◆ Pantip Plaza
- ◆ Pratunam area
- ◆ Rong Kluea Market (on the Thai-Cambodian border in Sa Kaeo province)

Second group:

- ◆ Klong Thom area
- ◆ Ban Mo area
- ◆ Chatuchak Weekend Market

The DIP and ISOC, together with IP owners, are taking this matter very seriously and aggressively enforcing IP rights at the notorious markets mentioned above. For example, the DIP and IP owners (or their representatives) have performed a number of surveillance sweeps at MBK. The DIP has even set up an "IP Enforcement Center" within MBK to pressure illicit sellers in the area, with enforcement actions conducted against numerous stores selling counterfeit goods, resulting in a number of infringers either being shut down by authorities or closing voluntarily to avoid legal action.

In addition to the enforcement schemes that were implemented by the Thai government after the release of *Special*



301 Report, the DIP has supported a number of legislative measures designed to improve the IP situation in Thailand, such as a plan to enact ministerial regulations to support section 32/3 of the amendments to the Copyright Act, amendments to the Computer Crime Act, and amendments to the Trademark Act concerning the protection of sound marks.

Moreover, the Director General of the DIP stated in a DIP consultation meeting with the private sector on July 7, 2017, that accession to the Madrid Protocol should be completed in November 2017 to support international trademark registration in Thailand. At the same time, the DIP is taking all possible steps to clear the current backlog of patent applications and improve the Thai patent and trademark registration system, including by hiring more patent and trademark officers.

The DIP also recently signed a memorandum of understanding with the USTR in July 2017, in order to strengthen the relationship and cooperation between the two agencies. The agreement aims to improve the management and efficiency of Thailand's IP system by promoting information exchange and capacity-building activities between the USTR and the DIP.

In light of the serious steps taken by the Thai government and the DIP over the past few months, if these steps taken by the Thai government are sustained and Thailand follows through on the commitments above to crack down on IP infringement and expand IP rights, the hope of releasing Thailand from the PWL may soon be realized. 🇹🇭