

Thai Government's Efforts Yield Positive Outcome in US Priority Watch List

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The notable steps taken by the government to improve the intellectual property (IP) landscape in Thailand have resulted in the nation being removed from the Office of the United States Trade Representative's (USTR) Priority Watch List of countries deemed to have deficient intellectual property (IP) practices. Instead, Thailand has now been placed on the Watch List of countries exhibiting fewer IP issues. The USTR's announcement of Thailand's upgraded status on December 15, 2017, marks an important milestone for the country, as it had been on the Priority Watch List every year since 2007.

Designations in the Special 301 Report

In its annual Special 301 report, the USTR designates countries according to an assessment of whether their IP policies are harmful to U.S. commercial interests:

- *Priority Foreign Countries:* countries that the USTR believes have the most onerous or egregious policies with the greatest adverse impact on US right holders or products. These countries are subject to accelerated investigations and possible sanctions.
- *Priority Watch List:* countries which do not provide adequate IP protection and enforcement or market access for US creators.
- *Watch List:* countries that the USTR believes merit bilateral attention to address the underlying IPR problems.

Progress in Improving Thailand's IP Landscape

Over the past decade, the Thai government has exerted significant effort to improve IP infringement and protection in the country, which appeared to pay off in April 2017 when the United States announced that they would proceed with an Out-of-Cycle Review (OCR) of Thailand's placement on the Priority Watch List if the Thai government continued to take positive steps in addressing the USTR's concerns on a number of issues. OCRs are conducted when a country has made significant efforts to strengthen IP protections within its jurisdiction,

and such reviews are designed to encourage countries on the Priority Watch List to continue driving progress in resolving high-priority IP issues.

In light of the influence that OCRs can have on whether a country remains on the Priority Watch List, Prime Minister Prayuth Chan-ocha took the matter under serious consideration by instructing all concerned parties to take immediate steps to suppress the circulation of counterfeit goods in Thailand, supporting a number of legislative changes designed to improve the nation's IP situation, and encouraging Thailand's prompt accession to the Madrid Protocol. Further, in cooperation with all relevant stakeholders, the government took aggressive action to remove counterfeit goods from notorious markets throughout Thailand.

The USTR has recognized Thailand's efforts as a genuine desire to improve its IP regime in numerous areas of concern. In its statement, the USTR highlighted several notable steps taken by Thailand to address IP protection and enforcement, including:

- Creating the National Committee on Intellectual Property Policy, headed by Prime Minister Prayuth Chan-ocha;
- Setting up the Suppression of Intellectual Property Infringement Subcommittee, headed by Deputy Prime Minister Prawit Wongsuwan, and including additional agencies which had not been included in previous incarnations of such committees (such as the Thai Food and Drug Administration);
- Significantly increasing the number of examiners at the Department of Intellectual Property (DIP) to address the backlog of patent and trademark applications;
- Recently acceding to the Madrid Protocol, which allows for an international trademark registration pathway;
- Enacting new amendments to the Copyright Act and Computer Crime Act to address online IP infringement and ISP liability; and
- Involving pharmaceutical stakeholders in amending the Drug Act, and allowing regular consultation with the Thai Food and Drug Administration.

Many of these efforts address criticisms the USTR had made against Thailand in previous versions of its Special 301 Report. In particular, the USTR highlighted the issues of copyright piracy, counterfeiting, and deficiencies in Thailand's patent system for each year that Thailand had been on the Priority Watch List. In recent years, owing to changes in the way IP-infringing products are sold, the USTR had made note of several issues related to the online context, such as the lack of reliable notice-and-takedown procedures, and legal provisions prohibiting circumvention of technical protection measures and deletion of rights management information.

From the enforcement side, by introducing amendments to its Copyright Act and Computer Crime Act, the government has provided additional legal approaches for IP owners seeking to enforce their rights online. From the protection side, increasing the Thai DIP's capacity to process patent and trademark applications will reduce the current backlog and encourage

companies in IP-intensive industries, such as entertainment, pharmaceuticals, and technology, to do business in Thailand. Similarly, Thailand's recent accession to the Madrid Protocol will also make it easier for foreign companies choosing to use this international application pathway to protect their valuable trademarks in Thailand, further demonstrating to foreign companies that the country is a safe place to do business.

Moving Forward

Thailand's upgraded status is an acknowledgment by the USTR that the nation's efforts to update its IP legislation for the 21st century is proceeding in the right direction. Now that Thailand has been removed from the Priority Watch List, the government is in a strong position to continue driving efforts to achieve the goals of Thailand 4.0 and the economic prosperity of a value-based economy by providing strong and effective IP protection for all rights holders. The time is right for IP owners to take advantage of the current legal climate by taking steps to fully protect and enforce their IP rights in Thailand.

This summary is designed to provide general information only and is not offered as specific advice on any particular matter.

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