

# THAILAND

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## Introduction

Thailand has many attributes that make it attractive to fashion industry professionals. With a history of silk production and a start-to-finish supply chain, the country plays an important part in the global fashion industry (for more information, see the brochures on the "Textile Industry" page of the Thailand Board of Investment website).

In order to strengthen its reputation on the world stage, Thailand has been working hard to ensure that the intellectual property (IP) rights of participants in the fashion industry are protected. The Thai Trademark Act was amended most recently in 2016 and included increased protection for non-traditional trademarks, among other modernizations. Another milestone was achieved in 2017, when Thailand joined the Madrid Protocol. In the near future, amendments to both the Thai Copyright Act and Patent Act are expected. All of these changes demonstrate that the Thai government is dedicated to ensuring that IP owners have confidence in doing business in Thailand.

## 1. What are the main intellectual property legal tools available to protect fashion products in Thailand?

### 1.1 Trademarks and non-traditional trademarks

The Trademark Act B.E. 2534 (1991), as amended by the Trademark Act (No. 3) B.E. 2559 (2016), provides protection for various types of trademarks, and registration lasts 10 years from the application date.

When it comes to traditional trademarks, word and device marks are generally registrable so long as they meet Thailand's (notably strict) distinctiveness standards, with some important caveats.

For example, personal name and surname marks, which are common in the fashion industry, may be refused by Thai Registrars unless presented in a stylized form. In these types of cases, knowledgeable Thai counsel can provide advice on what constitutes sufficient stylization.

Trademark applicants should also be conscious of the fact that the full name of a legal entity cannot be registered under the current practice, nor can many geographical names. If a trademark contains the representation of the applicant or another person, it is necessary to provide proof of the consent of the person or his/her descendants.

Trademarks that are filed in black and white (or grayscale) are conferred with broad protection. Under Section 45 of the Trademark Act, a trademark registered without a color limitation shall be deemed to be registered in all colors.

The rights of unregistered trademarks may be protected in limited circumstances. Under Section 46 of the Trademark Act, an owner of an unregistered trademark is entitled to initiate legal action against a third party that passes off its goods as those of the trademark owner. In addition, a trademark that is not registered in Thailand but is registered outside of Thailand may be protected under Sections 273 to 275 of the Penal Code. Further, in the absence of registered rights, it may be possible to formulate a civil passing-off/unfair competition claim under Sections 420 and 421 of the Civil and Commercial Code.

Summary of additional IPRs		
IPR in Thailand	Duration	Time and modalities for grant
<b>Invention patents</b>	20 years (non-renewable).	Filing an application with the Thai Department of Intellectual Property. Grant in about three to five years from the filing of the application.
<b>Petty patents</b>	6 years (renewable for two two-year periods).	Filing an application with the Thai Department of Intellectual Property. Grant in about one to two years from the filing of the application.
<b>Trade secrets</b>	Unlimited, unless disclosed.	No application requirement. Under the Trade Secret Act B.E. 2545 (2002), certain information can be protected as a trade secret if: <ul style="list-style-type: none"> <li>• it is not publicly known;</li> <li>• it is economically valuable because of its secrecy; and</li> <li>• the controller took appropriate measures to maintain the secrecy.</li> </ul>
<b>Domain names</b>	1 year (renewable without any limits).	To register a Thai country code top level domain (ccTLD) such as .th or .co.th, an application must be filed with the Thailand Net-work Information Center (THNIC). Domains are granted on a first-come, first-served basis. The process of registration typically takes two-three days.
<b>Geographical Indications</b>	Unlimited, unless revoked.	Filing an application with the Thai Department of Intellectual Property. Grant in about two to three years from the filing of the application.

Certain non-traditional marks can also be protected under Thai law. A listing of such marks appears below.

**Color mark.** While single-color marks are not registrable in Thailand, a group of colors is eligible for registration as a trademark so long as the mark is represented in a stylized form.

**Sound mark.** A sound is eligible for registration in Thailand if the sound is not directly descriptive of the characteristics of the goods/services, is not a natural sound associated with the goods/services and is not a sound produced by the operation of the goods/services.

**Three-dimensional mark.** 3-D marks are eligible for registration in Thailand

**Pros and cons in the fashion sector**

**Pros:** long exclusivity period.  
**Cons:** public disclosure of invention is required; costly; long time period from filing to registration.

**Pros:** can protect functional elements of a product; easier and quicker to register than invention patents.  
**Cons:** short period of protection.

**Pros:** no registration requirement.  
**Cons:** owner must take precautions to keep the information secret.

**Pros:** key building block for online brand presence.  
**Cons:** registration of ccTLDs in Thailand can be challenging due to the strict requirements of THNIC; the transfer of a ccTLD is not possible under THNIC's current rules.

**Pros:** particularly suitable to protection of types of textiles.  
**Cons:** a registered GI cannot be registered as a trademark, as per the Thai Trademark Act.

if the mark is not the natural form of the applied goods/services, not necessary to obtain a technical result of the applied goods/services, and does not give value to the applied goods/services.

Given the intricacies of Thai trademark practice, it is strongly recommended that brand owners consult counsel prior to filing an application to avoid unnecessary refusals.

Aside from trademark protection, a product may obtain "Made in Thailand" certification by means of application to the Federation of Thai Industries. To qualify, a product must be made by a factory or business that is registered in Thailand, and the product must consist of no less than 40% Thai raw materials. There is a strong incentive to apply for "Made in Thailand" certification, as government agencies must allocate at least 60% of their procurement budget to products produced in Thailand.

### 1.2 Design as an alternative or addition to TM registration

Section 56 of the Thai Patent Act B.E. 2522 (1979), as amended by the Patent Act (No. 2) B.E. 2535 (1992) and the Patent Act (No. 3) B.E. 2542 (1999) states that a patent may be granted "for a new design for industry, including handicraft". In Thailand, a design patent is granted based on the aesthetics of an article, so long as it meets the novelty requirement. This

includes features such as the design's shape, configuration, or pattern. Design patents may be granted for both three-dimensional designs and designs with a two-dimensional element. Applications for design patents require the claims, a description of the product design (in some cases), and a three-dimensional drawing of the product design patent. Black-and-white pictures or technical drawings that show the front, back, left, right, top, bottom, and perspective views of the product design are required. If the product design is shown in a specific color in the application, protection will be granted for the design in that color only. However if the product design is shown in black and white, the protection will be granted for all colors.

Currently, multiple design applications are not available. Thus, if the IP owner would like to protect designs that are distinct or have different appearances, separate applications must be filed for each design in order to obtain the broadest range of protection. In addition, it is currently not possible to obtain protection for a partial design.

Protection is granted for a period of ten years, and is not renewable. It currently takes approximately two and a half to three years to obtain a design patent in Thailand. This makes it difficult to protect many fashion designs, due to their short lifespan.

### 1.3 Copyright as an alternative or addition to TM registration

The Thai Copyright Act (B.E. 2537 (1994)), as amended, provides protection for artistic works, including but not limited to drawings, sculptures, lithographs, and works of applied arts. Articles of fashion often fall into this last category, which consists of works formed by taking one or the combination of the types of artistic works for any other use apart from an appreciation in the value of the work. Prints on clothes can also be protected as artistic works.

Whether a particular article of fashion would be entitled to copyright protection under Thai law will be an inherently fact-specific determination. Therefore, in many cases, IP owners should plan to rely on other forms of protection for fashion goods rather than relying on copyright protection.

There is no requirement to register works in order for them to be eligible for copyright protection in Thailand. However, it is recommended that copyright owners record their work and relevant information with the Thai Department of Intellectual Property (DIP). In the event of a court action, such recordation may serve as convincing supporting evidence.

Thai copyright protection for most types of artistic works runs throughout the life of the author and for 50 years after the author's death. If the author is a juristic person, copyright subsists for 50 years from the authorship. If the work is published during that period, the copyright continues to subsist for 50 years from the first publication.

However, copyright protection for a work of applied art lasts for 25 years after the creation of the work, but if the work is published during that period, the copyright continues to subsist for 25 years from the first publication.

The following documents are needed to file an application for a copyright registration in Thailand:

- an application form;
- a notarized Power of Attorney;
- a Letter of Proof of Copyright Ownership (in Thai) signed by the copyright owner;
- a Certificate Company Registration certified by the Commercial Registry, to be submitted not more than six months from the issuance date;
- a certified copy of the national ID card/passport of the authorized director(s) of the company; and
- an original or copy of the copyrighted work.

It will take approximately three to five months from the date of filing an application until a Certificate of Copyright Recordation will be issued to the applicant by the DIP.

## 2. Beyond intellectual property: what contractual arrangements are useful in manufacturing, distributing and advertising fashion products in Thailand?

### 2.1 Manufacturing fashion products

**License agreements and non-disclosure agreements (NDAs).** A license agreement should be entered into any time an IP owner contracts with a third party to manufacture fashion goods in Thailand. IP owners should take note that license agreements cannot extend beyond the duration of the registered intellectual property rights. Further, license agreements for registered patents, designs and trademarks must be registered with the Thai DIP. An unregistered license agreement is considered to be invalid and unenforceable, and failure to record a trademark license renders a licensee's use inadmissible when defending a cancellation action for non-use.

Nondisclosure agreements (NDAs) are also vital to doing business in Thailand. IP owners should make sure that the language is clear and that the signing party understands the implications and reasons behind the need for an NDA. A bilingual English/Thai NDA can also be considered, for added certainty that there is mutual understanding between the parties.

**Subcontract agreements / in-house manufacturing.** Apparel retailers often utilize sub-contractors as part of their production cycle. Due care should be taken that such agreements include a license for any and all IP that the subcontractor may use or create. If such a license agreement is not agreed, a general acknowledgement of the relevant IP and its validity and ownership would be useful. The requirement that all licenses for registered Thai patents and trademarks be registered with the Thai DIP applies to sublicense agreements as well as license agreements.

### 2.2 Distributing fashion products

**Agency agreement.** Agency agreements are governed by the Thai Civil and Commercial Code (CCC). Such an agreement is defined by Section 797 of the CCC as "a contract whereby a person, called the agent, has authority to act for another person, called the principal, and agrees so to act". Under Section 820 of the CCC, the principal is bound to third persons by the acts which the agent has done within the scope of his authority.

Businesses, particularly those without a Thai registered company, must be aware that commercial agreements with Thai parties can be subject to the provisions of the Unfair Contract Terms Act B.E. 2540 (1997). This is particularly significant when the agreement is a standard form contract. In addition, foreign businesses must determine whether or not their contractual arrangements with Thai business partners constitute a permanent establishment from a tax law perspective.

An agency agreement should clearly delineate the IP of the principal which the agent has a license to use, and any license for registered Thai patents, designs, and trademarks must be registered with the Thai DIP. The agreement should also be clear in specifying that the principal will own any IP created by the agent during the completion of his/her duties under the agreement.

**Selective distribution online in high-end fashion and trademark protection.**

A selective distribution system is a system in which a supplier sells products to appointed distributors and the distributors undertake not to sell the products to unauthorised distributors. Such systems may be utilized by luxury brands to maintain the reputation of a brand and meet customer expectations.

Thailand's Trade Competition Act B.E. 2560 (2017) (TCA) came into force in October 2017 and enforcement of the TCA in Thailand has been increasing since that time. The TCA has also been active in promulgating notices and regulations.

The TCA does not explicitly address selective distribution systems, but it does preclude business operators from various types of conduct, including but not limited to unfairly fixing or maintaining the level of the purchasing or selling price of a product, unfairly utilizing superior market power or superior bargaining power, and unfairly setting trading conditions that restrict or prevent the business operation of others.

**Co-branding and co-marketing.** Co-branding, or the use of the trademarks of two different entities on a single product, is a popular way for fashion brands to appeal to more consumers. In the past few years, Orla Kiely and Karl Lagerfeld have put their names on collections for the Thai fashion retailer Jaspal, and the international retail chain IKEA teamed up with the Thai clothing brand Greyhound Original on a line of furniture and home accessories. Many more examples of such collaborations abound.

Before entering a co-branding relationship in Thailand, the parties should become knowledgeable of their counterpart's Thai trademark portfolio, given the potential for counterfeit goods to appear on the market. It is also noted again that any license for registered trademarks must be recorded with the Thai DIP in order to be considered valid and enforceable. In addition, a determination on ownership or inurement of the resultant goodwill of the co-brand should be considered. This is usually by way of a "to each his own" clause.

### 2.3 Advertising fashion products

**Employing fashion models.** When working with fashion models and social media influencers in Thailand, agreements should be entered into which reflect the nature of the relationship. While it is not mandatory for such agreements to be in the Thai language, a bilingual agreement can be beneficial in ensuring that the fashion model fully understands his or her obligations and rights.

A model/influencer should also be required to sign a model release form giving explicit consent to use the model's likeness for the intended purposes. Due care should be taken to comply with the requirements of the Thai Personal Data Protection Act B.E. 2562 (2019) with respect to the collection, use, and disclosure of photographs which enable personal identification, as well as any other personal data.

**Social media, influencers and brand ambassadors/celebrities.** Approximately 78% of the Thai population was using the Internet in 2020, according to World Bank statistics. Thai web users have a voracious appetite for content. YouTube,



Facebook, Instagram, TikTok, Twitter and other platforms are popular in the country, and major Thai influencers have thousands, even millions of followers (see <https://starngage.com/app/global/influencer/ranking/thailand>). Fashion retailers have learned to take advantage of this climate by entering into partnerships with influencers to boost awareness of their brands.

Typically, agreements with influencers set out the expectations (platform, number of posts, tags, time period, etc.), the metrics by which compliance will be judged, the payment terms, and other legal obligations. Such contracts also often have a “morality clause” which prohibits the influencer from acting in a manner that goes against public morals or decency. Given the strict defamation laws in Thailand, Thai influencer agreements may include a clause in which the influencer agrees that, when performing his or her obligations under the agreement, he or she will not make any remarks or take any actions that are defamatory of any person or entity.

### **Advertising standards, relevant Authorities and advertising practice.**

The Consumer Protection Board of Thailand is a statutory office under the Consumer Protection Act B.E. 2522 (1979) (CPA) which is responsible for handling consumer complaints in relation to advertising practices, and has the jurisdiction to instigate legal proceedings against wrongdoers when consumer rights are being infringed (S.10(7)). The Board is also responsible for conducting investigations of advertising messages and media advertisements, in order to ensure compliance with the CPA. Under Section 22 of the CPA, an advertisement may not contain a statement which is unfair to consumers or which may cause adverse effect to the society as a whole. Statements that are deemed to be unfair or adverse are:

- false or exaggerative statements; or
- statements causing fundamental misunderstandings as to the goods or services.

Thus, fashion retailers must refrain from creating advertisements which may be perceived as misleading or exaggerated by consumers, particularly in regard to the quality or origin of their goods.

Online fashion vendors must ensure compliance with the Computer-Related Crime Act 2017 (No. 2) and its subordinate regulations when sending advertisements through SMS text messages or emails, as such activity could be regarded as a spam e-message offense.

Lastly, if personal data is collected from consumers for online advertising purposes, such as online behavioral advertising, vendors must comply with the Thai Personal Data Protection Act B.E. 2562 (2019) and obtain valid consent from consumers prior to engaging in such activities.

### **3. What regulations govern online marketing and how are the rules enforced in Thailand?**

In Thailand, e-commerce is regulated pursuant to a variety of laws, as follows:

- Thai Civil and Commercial Code, which states the basic principles of entering into transactions.

- Electronic Transactions Act B.E. 2562 (2020), stating the requirements for transactions and contracts on digital platforms.
- Direct Sales and Direct Marketing Act B.E. 2560 (2017), providing that if the online trading of goods can be completed through an online channel, then the operator is considered a direct marketing operator and must register at the Office of the Consumer Protection Board.
- Foreign Business Act B.E. 2542 (1999), limiting the ability of foreigners to conduct certain businesses and transactions, even if they are e-commerce, without a foreign business license.
- Business Registration Act B.E. 2499 (1956), detailing the requirements for registration of businesses.
- Thai Revenue Code, establishing the taxes that are charged on e-commerce sales.
- The Thai government has also been contemplating the enactment of the Franchising Business Act, which as of 2022 is in draft form.

### 3.1 Consumer protection regulations

The Thai consumer protection laws and regulations with relevance to the fashion industry are as follows:

- Thai Civil and Commercial Code, stating the rights and obligations of the parties.
- Consumer Protection Act B.E. 2522 (1979), covering a wide range of protections granted to consumers in Thailand.
- Unfair Contract Terms Act B.E. 2540 (1997), prohibiting pre-formulated contracts made by professionals which have terms unfair to consumers.
- Trade Competition Act B.E. 2560 (2018), which restricts unfair trade practices, abuse of dominant positions, and market dumping.
- Notification Regarding the Guidelines for the Consideration of Unfair Trade Practices in Franchise Businesses, setting forth the obligations of franchisors to franchisees.
- Personal Data Protection Act B.E. 2562 (2019), stating the general requirements in collecting, using, and disclosing customers' personal data in both physical and digital forms.

### 3.2 Physical store and online store layout

There is no *sui generis* law that specifically provides protection for store layouts. Nevertheless, the Thai Copyright Act provides protection to certain aspects of such layouts.

Under the Act, a work of architecture is defined as "a design of a building or a fixed structure, an interior or exterior design of a building or a fixed structure, as well as a design of an area of a building or a fixed structure, or a creation of a model of a building or a fixed structure". As the layout of a physical store can be deemed an interior design of a building or a fixed structure, it is eligible for copyright protection as an architectural work. The layout of an online store, however, is not likely to be entitled to the same protection because an online store would not be considered a building or fixed structure.

#### **4. What are the most relevant unfair competition rules for fashion businesses and how do the Courts interpret and enforce these rules in Thailand?**

Certain acts of unfair competition are prohibited under Thai laws.

As noted previously, under Section 46 of the Thai Trademark Act, the owner of an unregistered trademark is entitled to initiate legal action against anyone that passes off goods to customers as being those of the trademark owner.

Section 39 of the Patent Act prescribes that in licensing others to use his or her patent, the patent owner cannot impose upon the licensee any condition, restriction or royalty term which is unjustifiably anti-competitive. Otherwise, it will be deemed invalid.

Similarly, Section 15 of the Copyright Act sets forth that in licensing another person to use his or her copyrighted work, the copyright owner is not entitled to impose any condition that unfairly restricts competition. Otherwise, it will also be deemed invalid.

Under the Trade Secrets Act B.E. 2545 (2002), as amended by the Trade Secrets Act (No. 2) B.E. 2558 (2015), any act of disclosure, deprivation, or usage of such information without the consent of the owner in a manner contrary to fair commercial practice (such as breach of contract, infringement or inducement to infringe confidentiality, bribery, coercion, fraud, theft, etc.) constitutes an infringement of trade secret rights, provided that the infringer knows or has reason to know that his or her action is contrary to fair commercial practice. In a case of infringement, the controller of the trade secret (i.e. the owner or possessor, controller, or caretaker of the trade secret) is entitled to civil remedies, which include injunctions and damages. Disclosure of another person's trade secret to the public in a manner that causes the trade secret to cease to be a secret, with malicious intent to cause damage to the business of the controller of the trade secret, whether by publication through documents, audio or video broadcasting, or disclosure by any other means, is deemed a criminal offence.

It is noted that in several Thai trade secret cases, the Supreme Court has not ruled in the plaintiffs' favor because it has found that their trade secrets were not eligible for protection. Therefore, IP owners should take proactive steps to ensure that their trade secrets are adequately secured.

In addition to the above IP laws, Thailand also has trade competition legislation. Section 57 of the Trade Competition Act (TCA) prohibits a business operator from engaging in any action which causes damage to other business operators in any of the following manners:

- restricting business operation of other business operators unfairly;
- using superior market power or bargaining power unfairly;
- setting trade conditions which are a restriction or an impediment to the business operation of other operators unfairly; or
- other actions of the descriptions prescribed by the Commission.

In the future, enforcement of the TCA in Thailand is expected to grow, so IP owners should familiarize themselves with the TCA and stay abreast of developments relating thereto.

## Frequently Asked Questions (FAQs)

### 1. When filing a new trademark application in Thailand for a mark that will cover more than one class, should a multiple-class application be filed, or should separate single-class applications be filed?

A multiple-class application may be administratively more efficient than separate single-class applications, because a multiple-class application will be allotted one application number, registration number, and registration date, which will lead to less administrative work when maintaining the trademark. Similarly, if the trademark owner needs to change its name or address, or assign the application/registration to another party, only one filing will be necessary, rather than separate filings for each class. Thus, a multiple-class application can be an attractive option.

However, there are also significant drawbacks to filing a multiple-class application in Thailand. Under the current practice, the Trademark Registrar does not indicate any specific classes when they issue a refusal or impose a limitation, such as a

disclaimer. Therefore, in the case of a refusal where the trademark owner needs to file an appeal, the trademark owner will need to appeal the refusal of all the classes. In the case where a disclaimer is imposed, it would similarly be applicable to all classes. Finally, divisional applications are not available under the current system.

Given the above, separate single-class applications are the best approach in some circumstances.

### 2. We believe counterfeit goods that infringe our IP rights may be available in Thailand but we are not sure. What steps should we take?

Generally, in such a situation, the IP owner should consider taking the following steps:

- Arrange for an onsite investigation of the appropriate venue(s) (markets, malls, etc.) to search for the infringing goods, in Bangkok or in other provinces. At least one sample of the infringing goods should be purchased to verify that it is counterfeit and to serve as evidence in a legal action.

### 5. Is there any regulation specifically addressing sustainability or ESG (Environmental, social and governance) in the fashion industry in Thailand?

**ESG.** Environmental, social, and governance (ESG) criteria have been gaining momentum in Thailand in recent years. With over 1,000 garment and textile companies and factories located in the vicinity of Bangkok and in eastern Thailand, the fashion industry plays an important part in this development. Although Thailand does not have a specific fashion law addressing ESG issues, several relevant regulations would apply.

**Environmental Concerns.** While Thailand has a complex web of laws and regulations protecting the natural environment, the key legislation for environmental protection is the Enhancement and Conservation of National Environmental Quality Act (No. 2) B.E. 2561 (2018), which has severe civil and criminal penalties for companies and their directors found to have violated the law. Many regulations under this law and others aim

- Arrange for an online investigation including searches of popular online platforms used by the Thai public for buying and selling goods. At least one sample of the infringing goods should be purchased to attempt to obtain information about the seller, to verify that it is counterfeit, and to serve as evidence in a legal action.
- Searching the relevant IP databases in Thailand to see whether any applications for IP rights have been filed by the infringer.
- Auditing the IP owner's Thai IP protection to ascertain whether it is sufficient or whether additional applications should be filed to provide adequate protection in Thailand.

Once these steps are performed, the IP owner should be in a position to determine the appropriate next action to take.

### 3. What franchising laws should a franchisor be cognizant of in Thailand?

A franchisor must be sure to comply with the Notification Regarding the Guidelines for the Consideration of

Unfair Trade Practices in Franchise Businesses which became effective on 4 February, 2020, and which was issued by the Office of the Trade Competition Commission, which is empowered under the Trade Competition Act. The Notification obligates the franchisor to disclose important information relating to the franchise and to notify and offer the right of first refusal to the nearest franchisee, among other obligations. A franchisor should carefully study the details of the Notification to ensure compliance.

Other laws that may affect a franchisor include the Civil and Commercial Code, the Trademark Act, the Patent Act, the Copyright Act, the Trade Secrets Act, the Unfair Contract Terms Act, the Trade Competition Act, the Act Relating to the Price of Merchandise and Services, the Revenue Code, the Direct Sales and Direct Marketing Act, and the Product Liability Act.

Finally, a franchisor should remain on the lookout for the enactment of the Franchising Business Act, which is currently in draft form.

to protect the country's natural resources. One major rule for industrial and property developers is the requirement to conduct an environmental impact assessment (EIA) for most new developments. Various government bodies have also incorporated environmental protection into their policies. Any company considering action that might affect the environment (positively or negatively) should seek outside advice on the relevant regulations, prohibitions, or incentives.

**Labour Issues.** Thailand has faced allegations of human trafficking, modern slavery, low wages, child labour, and forced labour. However, Thailand's labour laws (e.g., the Labour Protection Act 1998 and the Occupational Safety, Health and Environment Act 2011) are very strict, with the aim of guaranteeing fair wages and safe and healthy working conditions. The relevant laws and regulations give employers the duty to prevent any inequality, harassment, human rights violations, discrimination, and other unfair treatment against employees in the workplace. The Department of

Labour Protection and Welfare under the Ministry of Labour also oversees the rights and benefits of both employers and employees. Moreover, Thailand's overall labour policy is designed to protect workers. This policy extends from the Ministry of Labour to the Labour Courts.

Thailand's Labour Relations Act 2000 allows employees in the fashion industry to form representative groups – including employee committees, labour unions, labour federations, and employee organization councils – to negotiate for more favorable working conditions or other benefits and to discuss workplace issues, such as wages, schedules, training, health and safety, and treatment.

**Corporate Governance.** Corporate governance, the relationship between a company's board of directors, its management team, and its shareholders, is regulated by (depending on the type of company) by the Thai Civil and Commercial Code, the Public Limited Companies Act B.E. 2535 (1992), and the Securities and Exchange Act B.E. 2535 (1992), as well as notifications of the Stock Exchange of Thailand and the Securities and Exchange Commission for listed companies. These regulations encourage transparent working environments and company rules and procedures that protect the rights of shareholders.

**Sustainability.** There are no Thai regulations specifically addressing sustainability in the fashion industry. However, certifications and labels may be obtained by manufacturers. These include the Worldwide Global Responsible Accredited Production (WRAP) certification, Global Organic Textile Standard (GOTS) certification, Bluesign certification, and OEKO-TEX certification.

Another certification of note is the Thai Green Label, which is a voluntary environmental certification given to products that are shown to have minimal detrimental impact on the environment, in comparison to products in the same category.

**ISO certification.** No ISO certifications are mandatory in Thailand, but incentives are provided to some businesses for obtaining ISO certification. For example, some factories may be eligible for waiver of the annual fee for a factory license if they have an appropriate ISO certification.

### **6. Customs monitoring in Thailand: do any special import and export rules apply to fashion products?**

The DIP is the government agency responsible for customs recordation in Thailand. In this role, the DIP maintains a customs registry for trademarks.

To file for customs recordation of a trademark in Thailand, rights holders should submit the following:

- an application form;
- a notarized Power of Attorney;
- the Certificate(s) of Registration of the trademark;
- a juristic person certificate (if the owner is a juristic person);
- a Letter of Consent to Bear Liability for damages that may arise due to the application; and
- documentation such as photos or product samples that can be used to assist the Customs officers in distinguishing counterfeit and genuine goods.

The entire process of recordation usually takes approximately twenty to thirty days to complete. Once successfully recorded, the information is stored in a database which is accessible to Customs officers throughout Thailand. If Customs officers find suspected counterfeit goods that have been recorded with the DIP, they will reference the database and contact the appointed representative of the rights holder. Upon being notified by Customs, the rights holder should submit an affidavit to detain the suspected counterfeit goods within 24 hours from the time of notification. After that, the rights holder should submit an affidavit confirming whether or not the goods are genuine or counterfeit within 10 days. While failure to respond within this timeline can lead to the release of detained goods back to the importer or exporter, Customs is known to cooperate with rights holders who intend to take action.

After the goods are determined to be counterfeit, the Court or an appropriate official will order the destruction of the seized goods. The government covers the cost of destruction and does not donate or distribute pirated goods.

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Michelle Ray-Jones is a partner in the Intellectual Property Department of Tilleke & Gibbins with extensive experience in both complex intellectual property litigation and prosecution, as well as licensing matters related to trademarks, copyrights, and trade secrets. Michelle is President of the Licensing Executives Society of Thailand and a frequent speaker on intellectual property rights and franchising law.



### **Piyawat Kayasit**

Piyawat Kayasit is an intellectual property litigator at Tilleke & Gibbins specializing in IP enforcement and dispute resolution. He handles a wide range of IP and commercial litigation matters, advises on high-level strategies to protect his clients' valuable IP rights, and protects the IP portfolios of many well-known companies.