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IP ENFORCEMENT

What should I do when I recognise that my IP rights have been violated?

When suspected infringement is found, an IP owner may conduct an investigation to learn more about the alleged infringer and the infringement, and to collect evidence. After that, the IP owner would be able to evaluate the situation and decide what legal actions to proceed with against the alleged infringer.

What enforcement agencies are responsible to protect IP rights in Thailand?

- Department of Intellectual Property (DIP)
- Department of Special Investigation (DSI)
- Customs Department
- Royal Thai Police
- Economic Crime Suppression Division
- Department of Intellectual Property and International Trade Litigation, Office of the Attorney General (Public Prosecutor)
- Central Intellectual Property & International Trade Court (IP&IT Court)

What enforcement measures can be taken to prevent or stop IP infringement?

The available general enforcement measures for IP owners for trade mark, design and GI infringements in Thailand are:

- **Criminal action:** criminal complaint filed by a public prosecutor and IP owners (for GI infringement, consumers can also file a complaint).
- **Civil action** IP owners can pursue civil remedies, including an injunction against the infringers, and are entitled to demonstrate all the potential causes of losses suffered in order to claim monetary damages.
- **Border measures** (the customs cases are related to **trade mark and copyright infringement**) When a customs officer finds suspected counterfeit goods while monitoring the border, those goods may be seized temporarily. Upon seizure, a request letter will be sent to the IP owner or its representative, asking it to inspect the detained products. In addition, an IP owner may lodge a petition with Customs requesting the inspection of a specific shipment and/or suspension of the release or delivery of imported/exported goods suspected to be infringing its trade mark and/or copyright.
- **Alternative dispute resolution:**
 - mediation at the DIP;
 - mediation at the IP&IT Court;
 - negotiations.
- **Other options** Sending cease-and-desist letters and follow-up negotiations, filing notice-and-takedown complaints through online platforms (if counterfeits are found online), etc.

What legal remedies are available to IP holders whose rights have been infringed?

Besides bringing criminal charges against an infringer, an IP owner can also pursue civil remedies, such as injunctions, against infringers, as well as compensation for actual damages.

What procedures must be followed to request handling of IP infringement?

An IP owner may bring criminal charges against an infringer by either

- submitting a complaint directly to the court, or
- more commonly, by lodging a complaint with the police authorities or the Department of Special Investigation (DSI). In addition, a civil complaint can be filed before the IP&IT Court by the IP owner or its representative.

What evidence is needed to demonstrate IP infringement?

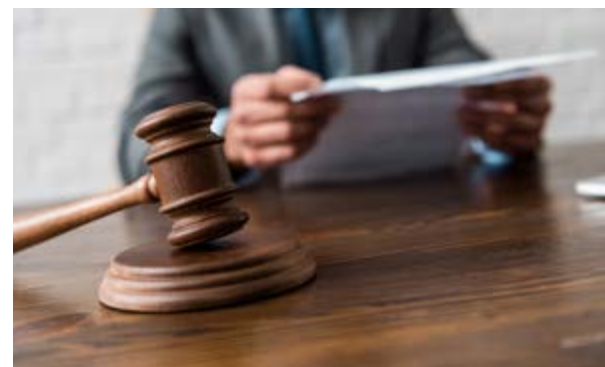
- Proof of an IP owner's rights
- Evidence to prove actual IP infringement and damages

What legal remedies are available to IP holders whose rights have been infringed?

The DIP has established a mediation unit within its legal affairs office, which provides mediation services to settle IP disputes between IP owners and interested parties – either of whom may seek assistance to file a petition to settle its IP dispute through the DIP's mediation process.

In addition, mediation can be conducted at the IP&IT Court after a complaint is filed, as the IP&IT Court provides mediation services before initiating legal proceedings.

Online dispute resolution, or Talk DD, is now available free of charge since January 2021. A request for online mediation can be made at Talk DD or <http://odr.thac.or.th>, or at the website of DIP, www.ipthailand.go.th, under 'Online Dispute Resolution'.



TRADE MARKS

What is a trade mark?

A trade mark is a mark used on or in connection with goods or services in order to distinguish those goods or services from the goods or services bearing the trade marks of others.



How can you protect your trade mark in Thailand, and what rights are conferred on the owner of a registered trade mark?

An application for trade mark registration can be filed through the e-filing service of the Department of Intellectual Property (DIP) or at the receiving office of the DIP. The person registered as the trade mark owner will have the exclusive right to use the trade mark for the goods or services for which it is registered. The Thai Penal Code and the Thai Trade Mark Act also recognise the rights of unregistered trade marks against the act of 'passing off'.

A trade mark must be distinctive and must not be prohibited under the Trade Mark Act (for example, a mark that is identical or confusingly similar to a well-known trade mark or any prior registered marks, or a mark that consists of a royal name, a national flag, or a geographical indication protected under the GI law).

What types of contracts exist for the use of trade marks?

Trade mark licensing agreement

This must be made in writing and registered with the DIP. According to the Trade Mark Act, a trade mark licence agreement must contain, at the very least, the following:

- the terms and conditions of the agreement between the owner of the registered mark and the authorised licensee, under which conditions the former must actually be able to control the quality of the goods manufactured or services rendered by the latter; and
- the goods or services for which the licensed marks are used.

Distributorship agreement

There is no requirement or process to register the distributorship agreement, except in the case where trade mark rights are licensed to the distributors under the distributorship agreement (see trade mark licensing agreement above).

Franchising agreement

At present, there is no statutory formality under the Act when signing a franchising agreement in Thailand, except in the case where trade mark rights are licensed to franchisers under the franchising agreement (see trade mark licensing agreement above).

What acts are considered trade mark infringements?

A trade mark infringement is the unauthorised use of a trade mark on or in connection with goods or services in a manner that is likely to cause confusion, deception, or mistakes about the source of the goods or services.

The owner of a registered trade mark can bring criminal charges against anyone who forges or imitates the trade mark or who imports, sells, offers or possesses for sale products that bear forged or imitated marks.

Infringers are subject to penalties including a fine of up to THB 200,000 and imprisonment of up to two years for imitation offenses. For forgery of a trade mark, the penalties increase to fines of up to THB 400,000 and imprisonment of up to four years.

In addition, a person who reuses packaging or containers bearing another's registered trade mark to mislead the public into believing that the goods are produced by the trade mark owner will be liable to imprisonment of up to four years and/or a fine of not more than THB 400,000.

A trade mark owner can also pursue civil remedies, including an injunction against the infringers, as well as compensation for actual damages.

With regard to unregistered trade marks, an owner of an unregistered trade mark is entitled to initiate civil action to prevent use and/or to recover damages for infringement on the grounds of passing off. In addition, under the Thai Penal Code, even if a mark has not yet been registered in Thailand, whoever uses a name, figure, artificial mark or any wording in carrying on trade of another person, or causes the same to appear on goods, packings, coverings, advertisements, price lists, business letters or the like in order to make the public believe that it is the goods or trade of such other person, the offense shall be punishable by imprisonment not exceeding two years or a fine not exceeding THB 20,000, or both.

What constitutes 'use' of a trade mark?

'Use' of a trade mark means the actual use of a trade mark associated with the goods or services for which it was registered during the normal course of trade. Registered trade marks are liable to non-use cancellation if they have not been used within three years of their registration date.



INDUSTRIAL DESIGNS

What is an industrial design?

A design refers to a form or composition of lines or colours of a product, which gives a special appearance to a product, and can serve as a pattern for industrial products, including handicrafts.

How can you protect your industrial design in Thailand?

An application for registration of a design patent can be filed via the e-filing service or at the receiving office of the Department of Intellectual Property.

An owner of a registered design patent has the exclusive right to use the patented design on a product. The owner also has the right to sell, possess for sale, offer for sale, or import into Thailand items incorporating the patented design.

Which objects can and cannot be registered as industrial designs?

A patentable design must be composed of lines or colours, which give a special appearance to a product; must be novel; and must be capable of industrial application.

A design will not be deemed novel if it has been widely used or if its image, substantial part or detailed description has been disclosed to the public before the filing date.

What acts are considered industrial design infringements?

An industrial design infringement is the unauthorised use of a patented design in manufacturing, selling, having in possession for sale, offering for sale, or importing a product embodying the patented design, except where the use of the design is for the purpose of study or research. Any person who commits the act of infringement will be punished with imprisonment not exceeding two years or a fine not exceeding THB 400,000 or both.



GEOGRAPHICAL INDICATIONS

What is a geographical indication?

A geographical indication (GI) is a sign used on products that have a specific geographical origin and possess a particular quality of reputation due to the origin of the products.

What conditions should be met to obtain the right to apply for a geographical indication?

The goods bearing a GI must originate in the specific geographic location that is called or represented by the GI, and must also possess the reputation, characteristics and qualities of the product essentially relating to the place of origin.

What constitutes 'use' of a geographical indication?

Use of a GI includes:

- the manufacture of the goods registered as a GI is within the geographical origin of such goods;
- The use by persons engaging in trade related to the goods registered as a GI.

What kinds of GIs cannot be registered?

- GIs must not be or include a generic name, which is a name that is commonly understood by the general public to refer to this type of product.
- GIs which are contrary to public order or good morality or public policy cannot be registered.

What acts are considered geographical indication infringements?

The following actions will be deemed unlawful:

- the use of a GI to show or mislead other persons into believing that goods that have not originated from the geographical origin specified in the application for registration are goods originating from that geographical origin;
- the use of a GI in any manner that causes confusion or misunderstanding as to the geographical origin of the goods, and the quality, reputation or any other characteristics of the goods, so as to cause damage to other traders.

In addition, when there is an announcement of any type of goods being specific goods, the use of a GI with other goods that do not originate from the geographical origin specified in the application for registration will be unlawful, even if the user also indicates the true origin of the specific goods.

Any person who commits any of the abovementioned acts will be liable to a fine not exceeding THB 200,000.

