

Thesis Title : The Problems on the Determination of Distinctiveness of Trademarks:  
Case Study on the Unusual Combination of Descriptive Terms

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## ABSTRACT

Thai Trademark Law required that the trademark must acquire distinctiveness which is the important condition of trademark registration. The registrar or the competent person who has the power to allow the registration has to decide whether the petitioned trademark is subject to Section 7 of the Trademark Act B.E. 2534 amended by the Trademark Act (Volume Two) B.E. 2543 which acquired distinctiveness and can be registered.

Word mark can be registered as trademark if it is a descriptive or a newly invented word. The problem is that the law is not very specific. It does not clearly define that which type of word is a descriptive or is a newly invented word. Thus, the registrar can use his discretion arbitrarily which lead to the different decision, especially the combination of the words that directly aim to the character or qualification of the goods to be registered as the invented word. The registrar might deny the registration of such combined word on the ground that those combinations are descriptive and do not acquire distinctiveness. From this study, the distinctiveness of the registered trademark is for the concept of consumer protection in general, so the consideration and decision would rather base on the public than personal opinion of the registrar. Moreover the interpretation of law should rely on the same principle and methodology, so that the decision of the registrar, the Committee on trademark and the Court of Justice will be indifferent.

In all, the mythology of interpretation of “distinctiveness” should be the same. Distinctiveness of “word mark” should be interpreted literally together with the true intention of the trademark law. It should not be partially interpreted. The unusual combination of generic terms or the terms that is

invented arbitrarily should be interpreted as the distinct mark, even the separation will lead to the descriptive term.

