

Independent Study Title : Protection of Moving Image Marks
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ABSTRACT

Trademarks are marks which are able to indicate their sources and to distinguish one undertaking's product from another. Generally, marks can be a word, symbol, text, letter, name, number, logo, phrase, slogan, and group of color or any combination of these elements which have a distinctive character. Those marks are called conventional trademarks. However, there are some marks that are not included in the definition of conventional trademarks which are so-called non-conventional trademarks. Non-conventional trademarks are included smell mark, sound mark, scent mark, shape mark, single color, hologram, and moving image mark. At the moment, moving image marks are come to have a role for the trademarks' owners in the market place. Trademarks' owners are usually tricking the consumers for consuming their products. Moving image marks are one popular trick to persuade the consumers' attention. As a result of moving image marks' characteristics that are clearly and accessible to consumers so, they are easily to be recognized in the consumers' mind. Thus, it is necessary to give moving image marks' protection.

Presently, Thailand applies the Trademark Act B.E. 2534 (A.D. 1991) which is amended by Trademark Act B.E. 2543 (A.D. 2000) due to Thailand became member of the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) in B.E. 2538 (A.D. 1995). Therefore, Thai obligated to amend the trademark law in line with the TRIPS's standard which sets down the minimum standard for members to comply with its rule.

As researched, after the amendment of the Trademark Act B.E. 2534 (A.D. 1991), nevertheless, moving image marks are not protected under the amended Act yet. Researcher found that there is unclear in the definition of mark under section 4.

Subject to section 4, a ‘mark’ means a photograph, drawing, ..., or any combination of these items so that there is a problem whether other marks include moving image marks are mark according to the definition of section 4 or not. Besides, there are problems of registration and using moving image marks due to the characteristic of moving image marks that are movable signs. However, in the European Union, United Kingdom, Germany, the United States and Singapore, moving image marks are protected under their legislations. Consequently, Thai trademark law is out of date unlike these countries that accept moving image as trademark under their trademark laws. Hence, giving moving image marks’ protection under Thai trademark law is very importance for their owners because moving image marks’ owners will be confident that their marks will be legally protected and prevented from unauthorized uses under Thai Trademark law.

To modernize the trademark law to reach the development of the modern business, the Kingdom should protect moving image marks by amending the Trademark Act B.E. 2534 (A.D. 1991).

