

Thesis Title : Problems on the protection of product packages under the intellectual property law of Thailand

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### ABSTRACT

Packaging is one of the most effective marketing tools, often yielding higher returns than advertising. Though packaging of some description has always been used to contain or protect products. Our perception and expectations of products are not formed by the qualities of product alone. In fact, the raw product without packaging would be very difficult to differentiate from other similar products. Packaging design communicates and promotes the brand personality for their consumer can specify the product differentiation. Many manufactures develop their packaging design to be outstanding. Therefore we can say that the creation of packaging design is also manufacturer's intellectual property. However Law of intellectual property was not mentioned the status of the protection of product packages and it also lead to many doubts from packaging design creation which protection they can gain. ( such as copyright, design patent or trade mark)

Practically packaging was protected by its patent that following the regulation of product design under The Patent Act B.E 2542. Furthermore it may protected by the copyright if the packaging design concerned on applied art under the article 6(7) of Copyright Act B.E 2537. Design packaging as product attractive, it can be trade mark. If consumer can specify the goods from those of another undertaking, which is definite on legal terminology as distinctiveness But for

being trademark there was still questioned because it is not follow the definition of mark as mentioned at article 4 of the Trademark Act B.E 2543 that said

Mark means photos, drawing, illustrations, logos, names, words, terms, letters, numerals, signature, Combinations of colors, figurative elements as well as any combination of such signs.

We compared Thai Act with oversea and we found that the oversea specify the status of packaging protection clearly that it is under Intellectual Property Law. Many countries accept that packaging should be protected if it capable of distinguishing the goods of one undertaking from those other takings as well as figurative elements. Then we can make additional correction of Trademark Act under article 4 about the definition of Mark by included the meaning of packaging as trademark.

Moreover the definition of packaging design protection can covered design patent and applied art on copyright. We have to aware of exclusive right in long period because it can gain unlimited protection because the overlaps of those 3 rights. But we cannot terminate any right if it is suitable with standard. The awareness should be prohibit by trademark registration if its packaging has shape as follows

1. Where the shape results from the nature of goods themselves.
2. Where the shape of goods is necessary to achieve a technical result.
3. Where the shape gives substantial value to the goods.

It will help to decrease the monopoly rights, If any packaging creation has been protected more than one laws and following to the Intellectual Property requirements that aim to protected works from people intelligent but no longer exclusively.