

Thesis Title : Measures Against Unfair Competition and the Protection of Distinctive Character in Trademark Law

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## ABSTRACT

This Thesis is to study the problems on using preventive measures against unfair competition in the form of distinctive character of the well - known trademarks as a result of the action taken by seeking undue benefits from the reputation of trademarks, which may cause injury to the distinctive character of the trademarks under the Trademark Act B.E. 2534 as amended by the Trademark Act (No.2) B.E. 2543 and the Civil and Commercial Code, in comparison with the provisions contained in international agreements which one party there to is Thailand, inclusive of foreign laws on trademark. This Research is a documentary research based upon the primary documents, namely, the relevant laws, rules, and notifications; and based upon the secondary documents, namely, textbooks, books, and articles.

According to this Study, it is found that Section 8(10) of the Trademark Act is prohibit the registrar to accept the registration of the trademarks which identical or confusingly similar to the well-known trademarks and paragraph two of Section 46 of the Trademark Act, the owner the non-registered trademarks is prohibited from passing - off, provide that the trademark owner shall be protected only when such action causes public to be confused of the ownership of the goods or sources of origin. According to the provisions which protect the rights of the persons under Sections 5, 18, and 421 of the Civil and Commercial Code, the court will apply it to protect the rights of the trademark owner only when such trademark owner loses the economic benefits. Therefore, it can be

seen that the provisions and constructions of laws mentioned above are unable to protect the rights of the well - known trademarks owners who are affected by unfairly using by other persons.

It is recommend that the Trademark Act B.E. 2534 as amended by the Trademark Act (No.2) B.E. 2543 should be revised by prohibiting the registrar from accepting the registration of the trademarks which identical or similar to the well – known trademarks despite the different category of goods or services which shall not cause confusion or misunderstanding in accordance with TRIPs, and Trademark law of England, United States of America, and India. Moreover, the court ought to construe Sections 5, 18, and 421 of the Civil and Commercial Code, inclusive of using trademarks of other persons which is likely to cause the well - known trademarks owners to lose other benefits in addition to the economic benefits which are regarded as trademark right infringements.

