

Independent study title : Legal Problem on Registration of Moving Image Mark
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ABSTRACT

This independent study has an objective to study on the problems in determining distinctiveness of a moving image mark under the Trademark Act B.E. 2534 (1991), proof of its distinctive character, and burdens as well as difficulties in its registration, with main focuses on its rationale, principles in granting protection to both conventional and non-conventional trademarks, and the specification of its distinctive character. To substantially rely on international treaties, agreements, related non-conventional trademark provisions of other developed nations' laws, i.e. Germany and the United States, and the Trademark Act B.E. 2534 (amended B.E. 2543) as bases of our study, the research is aimed to provide some possible applicabilities that can likely adopt in Thailand.

Based on our research, the study found that Thai trademark law does not have a clear regulation on the registration of a moving image mark. Neither its definition under Section 4 of the Trademark Act, as the result, these cause; i) uncertainty that causes lack of trust for business industry in Thai current trademark system, ii) inadequate protection of non-conventional trademark, and iii) obsolescence that delays development of the country's intellectual property provisions that should have been in touch with technology and social changes comparing to the trademark laws of the US and Germany. Because of such loophole, the discussion on granting protection of a moving image mark is yet on the proof of its distinctiveness that remains problematic.

According to our study, the result shows that the aforementioned problems can eventually be solved by revising and modernizing the trademark law. It is hereby suggested that Thailand shall i) broaden the scope of its trademark protection to cover non-conventional (or non-traditional) trademark, ii) specifically define distinctive characters, and iii) regulate any necessary

rules to conveniently and efficiently prove distinctiveness of a moving image mark to be independent and diverse from others. By taking German trademark law as the model of our study, this comparative research shall be able to reveal some possibilities for Thailand's future application.

