

Legal Update

📌 THE NEW DRAFT OF THE THAI TRADE MARK ACT IS AMENDED TO APPROVE FOR REGISTERING SOUND AND SMELL MARKS.

Businesses should be aware of a significant development in Thai trademark law. The latest draft of the Thai Trademark Act contains a number of interesting amendments including one that introduces the ability to register sound and smell marks. The cabinet recently approved the draft bill, and it will now be submitted to parliament and the Senate for final approval.

Trademarks are marketing tools that enable customers to recognise the products or services of a particular company. Traditionally, trademarks have been represented visually such as by photographs, designs, names, combinations of colours, shapes or configurations of objects, or a combination of one or more of these things. The bill extends the meaning of "mark" to include non-visual trademarks such as sounds and smells. This development will bring trademark law in Thailand closer into conformity with international standards.

Sound marks: To successfully register a sound mark, the sound will need to be "distinctive", defined in the bill as "a sound that is not directly descriptive of the character or quality of the goods, a natural sound of the products/services or sound arising from the functionality of the products/services". Like all other forms of marks, sound marks must be capable of distinguishing the products and services with which they are used from those of others.

By requiring the sound mark not be a natural sound of the product, the bill instantly renders a large number of sounds unregistrable. For example, the distinctive sound of bubbles rising in a bottle of soda water in Thai Beverage's soda water commercial or the sound of meat being minced in Thai President Foods' ad for minced pork Mama noodles, though both widely recognisable, may be unregistrable. Other examples of unregistrable sounds may include the well-known jingles of TV Channels 3 and 7, as they contain descriptive lyrics.

The US was the first country to provide registration of sound marks, the first being for the NBC network's chime during its radio broadcast services. The sound was represented by a description of the sound rather than a sound recording. Other examples of successfully registered sound marks in the US include the MGM lion's roar, Homer Simpson's shout of exasperation, the Looney Tunes theme song and the 20th Century Fox introduction jingle.

If the bill passes into law, a number of Thai companies may wish to take advantage of the protection it affords their valuable sound marks such as Total Access Communication's DTAC jingle, Better Way Thailand's Mistine tagline and Easy Buy's Umay Plus tagline.

Smell marks: According to the bill, smell marks will need to meet similar requirements as sound marks to be successfully registered. "Distinctiveness" of a smell mark is defined in the bill as "scent that is not directly descriptive of the character or quality of the goods, a natural scent or scent of goods". Due to the nature of smell, these requirements could prove quite challenging to meet.

Registering smell marks is difficult, as they can be neither perceived visually nor adequately represented graphically like traditional marks or sounds marks. Furthermore, smells may be perceived differently due to factors such as concentration, quality, temperature, carrier material and subjective factors such as memory.

The US was the first country to provide registration of smell marks, the first being for sewing thread and yarn – the smell of the yarn was described as a "high-impact, fresh floral fragrance reminiscent of plumeria blossoms". As the smell was not a natural feature of the thread and yarn, it was capable of distinguishing the product from those of others.

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If the bill passes into law, a number of Thai companies may take advantage of the protection it will afford for their valuable smell marks. Smell is a powerful and effective advertising tool, and the benefits of protecting your unique smell should not be overlooked.

These developments will be most beneficial to businesses that employ non-visual trademarks in their advertising and marketing.

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