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**-GARUDA EMBLEM-**

**Ministerial Regulations**

**Re: Registration of Marks under the Madrid Protocol B.E. 2560 (2017)**

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By virtue of Section 5 Paragraph 1, Section 79/6, Section 79/10, Section 79/11, Section 79/12, Section 79/13, and Section 79/15 of the Trademark Act B.E. 2534 (1991) as amended by the Trademark Act (No.3) B.E. 2559 (2016), the Minister of Commerce hereby issues the Ministerial Regulations as follows:

**Clause 1.** These Ministerial Regulations shall become effective as from 7 November B.E. 2560 (2017).

**CHAPTER 1**  
**General Provisions**

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**Clause 2.** In this Regulation:

“international registration” means an international registration for a mark maintained by the International Bureau including official data in relation thereto;

“basic application” means an application for a mark in Thailand used as a basis to apply for an international registration under the Madrid Protocol;

“basic registration” means a registration of a mark in Thailand used as a basis to apply for an international registration under the Madrid Protocol;

“applicant” means an applicant for an international registration including its agent.

**Clause 3.** An international application, other applications and relevant information to be presented to the International Bureau through the Department of Intellectual Property, Ministry of Commerce shall be in English.

Communications between an applicant and the Department of Intellectual Property shall be in Thai except that the International Bureau’s notification to the applicant in Thailand for protection in other contracting parties shall be in English.

## CHAPTER 2

### International Application Filed in Thailand for Protection in the Other Contracting Parties of the Madrid Protocol

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#### PART 1

#### Filing of International Applications

**Clause 4** The international application under the Madrid Protocol shall be in the form as notified by the Director General.

The application under the first paragraph shall be filed with the Registrar at the Department of Intellectual Property, Ministry of Commerce or by other means as notified by the Director General.

**Clause 5.** The applicant shall completely fill out an international application in English as per form notified by the Director General under Clause 4, which shall indicate at least the following information.

(1) the name and the address of the applicant, which shall be the same as indicated in the basic application or the basic registration;

(2) the reproduction of the mark in the international application, which shall be the same as in the basic application or the basic registration;

(3) the terms of the goods indicated in the international application, which shall be in line with and covered by those in the basic application or the basic registration;

(4) the contracting parties to be designated for protection.

Where a contracting party that is designated by the applicant for protection under the Madrid Protocol requires a second working language in addition to English, the applicant shall indicate that second language.

Where a contracting party that is designated by the applicant for protection under the Madrid Protocol requires a declaration of intention to use the mark, the applicant shall submit the declaration as per form notified by the Director General.

**Clause 6.** The applicant shall pay the official fees as follows:-

(1) the official fees for preparing and handling an international application under the Madrid Protocol.

(2) the official fees for international registration as required by the International Bureau.

**Clause 7.** The applicant shall specify in writing the means of communicating with the Registrar which can be one of the following.

- (1) registered mail with return receipt,
- (2) electronic mail,
- (3) facsimile,
- (4) any other means as notified by the Director General.

## PART 2

### Examination of the International Application by the Registrar as the Office of Origin

**Clause 8.** When the Registrar has received an international application, supporting documents and payment of the official fees for preparing and handling the international application under the Madrid Protocol, the Registrar shall indicate the receipt date of the application and issue the application number for reference.

**Clause 9.** When the Registrar has indicated the receipt date of the application and issued the application number for reference, the Registrar shall examine accuracy and completeness of the information indicated in the international application form and supporting documents submitted along therewith as stipulated under Clause 5 within twenty-five days from the receipt date of the application.

In case that the information indicated in the international application form and supporting documents is found incorrect or incomplete, the Registrar shall notify the applicant and provide suggestion on remedy which shall be attended to within fifteen days from the receipt date of notification. If the remedy is completed and notified to the Registrar

within the prescribed period, the Registrar shall complete the examination within fifteen days from the date of being notified of such remedy.

In case that the information indicated in the international application form and the supporting documents is found correct and complete or case that the applicant has completed the remedy within the period as prescribed under Paragraph two, the Registrar shall notify the applicant to transmit the official fees as required by the International Bureau to the International Bureau within three days upon receipt of such notification. When the payment has been made, the applicant shall notify the Registrar of the transmission reference number and the Registrar shall certify correctness and completeness of the information in the international application form and supporting documents and forwards them to the International Bureau.

In case the Registrar forwards the international application in accordance with Paragraph three to the International Bureau within two months from the receipt date of the application, the receipt date of the Department of Intellectual Property shall be regarded as the filing date of the international application. In case that the Registrar fails to take the said action within the prescribed period, the date of the International Bureau's receiving the application shall be regarded as the filing date of the international application.

In case the applicant does not remedy incorrectness and incompleteness in the documents in accordance with Paragraph two or does not pay the official fees in accordance with Paragraph three, as the case may be, within one hundred and twenty days from the receipt date of the notification, it shall be deemed that the applicant does not intend to pursue the application and the Registrar shall dismiss the application from the register.

**Clause 10.** While the Registrar has not yet forwarded the international application and supporting documents to the International Bureau, the applicant may request amendment thereof by informing the Registrar in writing with details intended for amendment.

In case that the Registrar has already forwarded the international application and supporting documents to the International Bureau, the applicant shall directly notify the International Bureau of request for amendment of the international application.

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### PART 3

#### Remedy of Irregularities as Notified by the International Bureau

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**Clause 11.** In case the International Bureau notifies the Department of Intellectual Property that the international application forwarded contains irregularities, the Registrar shall remedy such irregularities within the period prescribed by the International Bureau.

In case of the International Bureau's notification for the applicant to make payment of the additional official fees and the International Bureau's proposal for amendment of the terms of goods or reclassification of the goods, the applicant shall pay the additional official fees, consider the said proposal and inform the Registrar to communicate to the International Bureau within the period prescribed.

In case the International Bureau notifies the applicant to remedy irregularities, the applicant shall remedy such irregularities within the period as prescribed by the International Bureau.

In case the applicant does not amend the terms of goods or reclassify the goods as per the International Bureau's proposal within the period as prescribed under Paragraph two, the International Bureau shall consider the terms or reclassify the goods as deemed appropriate.

If the applicant does not pay the additional official fees in accordance with Paragraph two or remedy the irregularities in accordance with Paragraph three, the applicant shall be deemed to abandon the application as stipulated in the Madrid Protocol.

**Clause 12.** In case the International Bureau notifies the applicant of any notice of the Office of the designated contracting party requiring the applicant to take an action within the prescribed period, the applicant shall proceed within the said period.

In case of the applicant's failure to proceed within the period prescribed under Paragraph one, the international application shall be subject to the rules on examination of application of the contracting party of the Madrid Protocol.

#### PART 4

##### Filing of Other Applications

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**Clause 13.** In filing an application for subsequent designation, the applicant shall fill out the application in English as per form notified by the Director General and submit it to the Registrar at the Department of Intellectual Property, Ministry of Commerce, or by any other means as prescribed by the Director General, or to the International Bureau.

As for filing of the application for subsequent designation, examination by the Registrar as the Office of Origin, payment of the official fees and remedy of irregularities as notified by the International Bureau, the provisions of Chapter 2 Parts 1, 2 and 3 shall apply *mutatis mutandis*.

**Clause 14.** Other applications under the Madrid Protocol apart from those in Clause 13 shall be in the forms as prescribed by the Director General.

In filing other applications under Paragraph one, the applicant shall fill out the forms in English and submit them to the Registrar at the Department of Intellectual Property, Ministry of Commerce, or by any other means as notified by the Director General, or to the International Bureau.

In case of filing the application with the Department of Intellectual Property, Ministry of Commerce or by any other means as notified by the Director General, the applicant shall pay the official fees for preparing and handling the application to the Department of Intellectual Property and other official fees as levied by the International Bureau. The Registrar shall handle such application and supporting documents to the International Bureau after the applicant pays official fees for preparing and handling the application.

In case of filing the application directly with the International Bureau, the applicant shall pay the fees to the International Bureau.

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## PART 5

### Effect of Invalidity of the Basic Application or the Basic Registration and Restriction of Rights under the International Registration

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**Clause 15.** In case the basic application or basic registration is withdrawn, abandoned, refused or cancelled for any reason within five years from the date of the international registration or an opposition, an appeal, a petition or a litigation which may later result in withdrawal, abandonment, refusal or cancellation is filed within that period, the Registrar shall notify the International Bureau of the fact with an order, a decision or a judgement and request the International Bureau to cancel the international registration for either all or some goods affected.

**Clause 16.** In case it appears to the Registrar that the right under the international registration is restricted in relation to assignment or license or other aspects, either wholly or partially, by a juristic act or order by the Registrar, the Board or the Court, the Registrar shall promptly notify the International Bureau accordingly.

## CHAPTER 3

### International Application from the International Bureau Designating Thailand for Protection

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**Clause 17.** When the Department of Intellectual Property receives an international application from the International Bureau designating or subsequently designating Thailand for protection, the Registrar shall translate the necessary parts of the international

application into Thai language and issue the national application number to proceed with registration procedures accordingly.

**Clause 18.** As for examination of an international application, the same rules and procedures as those of a national application shall apply unless stipulated otherwise in this Ministerial Regulation.

**Clause 19.** Subject to Clause 20, Clause 23 and Clause 24, in examination of an international application, the Registrar shall examine the international application and proceed to accept it for registration within eighteen months from the date of the International Bureau's notification of designation of Thailand. Upon registration, the Registrar shall notify the International Bureau of the grant of protection.

In case the Registrar fails to proceed within the time period as prescribed in Paragraph one, it shall be deemed that the application is accepted for registration.

**Clause 20.** If that the Registrar considers that the mark applied for protection in Thailand is not registrable or that the application for registration does not conform with the provisions of the trademark law, the Registrar shall issue a notice of refusal and inform the International Bureau thereof before the expiry of the period of eighteen months from the date of the International Bureau's notification of designation of Thailand.

To amend the application or comply with the Registrar's notice, appeal or take any action as per the Registrar's notice under Paragraph one, the applicant shall appoint an agent in Thailand and proceed as aforementioned within sixty days from the date of the applicant's deemed receipt of the Registrar's notice under Clause 33.

**Clause 21.** When the applicant has duly amended the application as instructed by the Registrar, the Registrar shall order publication of the application.

**Clause 22.** Subject to Clause 24, when the Registrar orders publication of the application and the application is opposed, the Registrar shall issue a notice of refusal based on the opposition and notify the International Bureau of the aforesaid notice with details of the opposition before the expiry of the period of eighteen months from the date of the International Bureau's notification of designation of Thailand. The applicant shall be required to appoint the agent in Thailand to file a counterstatement within sixty days from the date of the applicant's deemed receipt of the Registrar's notice under Clause 33.

The notification of opposition shall contain at least the following particulars.

- (1) the international application number;
- (2) the name and the address of the opposer;
- (3) the opposition grounds;
- (4) the provisions of law cited as grounds for the opposition;
- (5) Mark, application number and registration number (if any) of the opposer's mark in case of opposition on grounds of similarity or identity.

After the opposition has been examined, the Registrar shall notify the International Bureau and the opposer of the decision.

**Clause 23.** In case the opposition period expires within thirty days before the expiry of the eighteen months period under Clause 19, the Registrar shall notify the International Bureau of the number and the applicant's name of the application which may be opposed. In case of the opposition filed, the Registrar shall notify the opposition against that application to the International Bureau within one month from date of such opposition filed.

In case of no opposition under Paragraph one, the Registrar shall issue a notice of grant of protection to the International Bureau.

**Clause 24.** In case the period for opposition expires after the expiry of the eighteen months period under Clause 19, the Registrar shall notify the International Bureau that there may be an opposition after the said period, except for the application to which the Registrar earlier issued a notice of refusal.

In case of the opposition under paragraph one, the Registrar shall notify the International Bureau thereof with the particulars as per Clause 22 Paragraph two within one month from the expiry date of the opposition period but no later than seven months from the date on which the opposition period begins.

In case of no opposition, the registrar shall proceed with the registration and issue a notice of grant of protection to the International Bureau and the applicant.

**Clause 25.** In case that the applicant does not comply with the Registrar's notice and does not appeal against such order within the prescribed period or that the applicant does not comply with the Registrar's notice in full, the Registrar shall further proceed as per the documents as available and may issue any of the following notices:

- (1) In case of the application containing some terms of goods in relation to which the mark is registrable, the Registrar shall order publication of the application for such registrable terms.
- (2) In case of the application not registrable, the Registrar shall order refusal of the said application and shall notify it to the International Bureau as well as the

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applicant's agent in Thailand, as the case may be. The Registrar shall also dismiss the application from the register.

**Clause 26.** After the Registrar has already issued a notice of grant of protection, if there is any order, decision or judgement which affects protection granted, the Registrar shall notify the International Bureau of the result thereof.

**Clause 27.** In case of the Registrar's final order, the board's final decision or the court's final judgement effecting cancellation of the international registration in Thailand, the Registrar shall notify the International Bureau accordingly.

**Clause 28.** Any amendment, assignment, renewal or recordal effected against the international registration shall be deemed as amendment of the particulars of the registration in Thailand as well, and upon receipt of the International Bureau's notice thereon, the Registrar shall proceed with amendment, assignment, renewal or recordal as notified.

In case amendment or assignment is contrary to the law, public order, public morality or public policy or it may cause public confusion as to the ownership or origin of the goods, the Registrar shall refuse such amendment or assignment and notify the International Bureau accordingly.

**Clause 29.** In case of receiving the International Bureau's notice requesting recordal of a license agreement, the Registrar shall refuse such recordal and notify the International Bureau accordingly in order that the mark owner or the licensee shall proceed to record the agreement in Thailand.

**Clause 30.** In case the mark applied for protection in Thailand is a certification mark or a collective mark, the applicant shall submit to the Registrar the rules on use of the certification mark, or a list of persons qualified to use the collective mark, all in Thai.

In case the applicant has not submitted the documents as required under Paragraph one, the Registrar shall issue an order refusing registration and notify the International Bureau thereof requesting the owner of the mark to submit such documents within sixty

days from the date of the applicant's deemed receipt of the Registrar's notice of order under Clause 33.

In case the applicant fails to submit the documents by the deadline as prescribed under Paragraph two, the international application shall be deemed abandoned.

**Clause 31.** In case the owner of the mark requests replacement of a national registration by an international registration for all or some goods which are identical, the owner shall fill out an application for replacement of the national registration by the international registration as prescribed by the Director General and submit it to the Registrar at the Department of Intellectual Property, Ministry of Commerce or by any other means as notified by the Director General and pay the official fee for such replacement.

When the Registrar receives the application for replacement of the national registration by the international registration, the Registrar shall proceed with such replacement and notify it to the International Bureau with the following details.

- (1) the number of the international registration concerned;
- (2) the terms of goods, only in case of the terms requested for replacement of the International Registration;
- (3) the filing date and the application number of the mark previously registered in Thailand;
- (4) the registration date and the registration number of the mark previously registered in Thailand;
- (5) the priority date as specified in the registration of the mark in Thailand (if any);
- (6) other information related to rights obtained from the registration in Thailand.

Replacement by the international registration under Paragraph two shall not result in cancellation of the registration in Thailand.

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**Clause 32.** In case within five years from the international registration date the international registration designating Thailand is requested to be cancelled by the International Bureau for all or some goods indicated in the international registration, the holder of the international registration may file a national application for registering the mark in relation to the same goods as specified in the international registration designating Thailand. The application shall be filed with the Department of Intellectual Property, Ministry of Commerce, within three months from the date of cancellation of the international registration. The provisions regarding applying for registration of marks in Thailand shall apply *mutatis mutandis*.

The application under paragraph one shall be in the form as notified by the Director General and shall contain, at least, the following particulars.

(1) specifying the filing of the application as being transformed from the international registration;

(2) the cancelled international registration number;

(3) the date of the International Registration or the date of the application with subsequent designation of Thailand, as the case may be;

(4) the date of the International Registration cancellation;

(5) the priority date claimed as specified in the international application and as recorded in the International Registration (if any).

For the international mark already protected in Thailand before or on the date of the international registration cancellation, if the national application transformed from the international registration in accordance with the rules specified under Paragraph one, the Registrar shall accept the said mark for registration. The date of the international registration designating Thailand or the date of the subsequent designation of Thailand shall be deemed as the registration date in Thailand and the priority claim for the cancelled international registration shall be effective in the registration in Thailand.

For the international registration not yet protected in Thailand before or on the date of the international registration cancellation, any proceedings prior to or on the date of the application transformed from the international registration shall be deemed the proceedings for the purpose of filing the application transformed from the international registration and the date of international registration designating Thailand or the date of the subsequent designation of Thailand shall be deemed the application date.

**Clause 33.** The notification of grant of protection, the notification of opposition, the notification of refusal, the notification of opposition decision, the notification of order, the notification of decision or the notification of court judgement, the certificate of registration, the notification of summons or any other notifications to the International Bureau, the applicant or the trademark owner shall be in the forms as notified in the Director General.

When the notification is issued in accordance with Paragraph one and the period of thirty days expires, the applicant or the trademark owner shall be deemed to have received such notification.

In case the International Bureau notifies that there are irregularities and such irregularities are caused by the Department of Intellectual Property, Ministry of Commerce, the Registrar shall cancel previous notifications and orders (if any) and issue new notifications and orders. The period of time under Paragraph two shall be counted from the date of sending new notifications.

Notified on the 14<sup>th</sup> December B.E. 2560 (2017)

Sontirat Sontijirawong  
Minister of Commerce

**Remark:** The reason of issuing this Ministerial Regulations is that Section 79/13 and Section 79/14 of the Trademark Act B.E. 2534 (1991) as amended by the Trademark Act (No.3) B.E. 2559 (2016) provide that application and registration, replacement of a national registration with an international registration, application for protection, amendment of particulars in a registration, appeal against the Registrar's order and renewal of a registration including other proceedings under the Madrid Protocol shall conform to rules, procedures and terms as

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stipulated in the Ministerial Regulations which shall be in line with the Madrid Protocol. It is therefore necessary to issue this Ministerial Regulations.