

**TRADEMARK ACT B.E. 2534**

**As Amended by the Trademark Act (No.2) B.E. 2543**

**H.M KING BHUMIBOL ADULYADEJ**

**Given on the 28<sup>th</sup> day of October B.E. 2534**

**being the 46<sup>th</sup> year of the present Reign**

By royal command of His Majesty King Bhumibol Adulyadej it is hereby proclaimed that:

Whereas it is proper to amend the law on trademarks;

IT IS HEREBY ENACTED by the King's Most Excellent Majesty with the advice and consent of the National Legislature as follows:

Section 1 This Act shall be called as the "Trademark Act B.E. 2534."

Section 2 This Act shall come into force after the expiration of ninety days from the date of its publication in the Government Gazette.<sup>(1)</sup>

Section 3 The following shall be repealed:

(1) Trademark Act B.E. 2474

(2) Trademark Act (No.3) B.E. 2504.

All laws, regulations and other rules insofar as they are provided for herein or are contrary to or consistent with the provisions hereof shall be superseded by this Act.

Section 4<sup>(2)</sup> In this Act:-

"mark" means a photograph, drawing, device, brand, name, word, letter, manual, signature, combinations of colors, shape or configuration of an object or any one or combination thereof;

"trademark" means a mark used or proposed to be used on or in connection with goods to distinguish the goods with which the trademark of the owner of such trademark is used from goods under another person's trademark;

“service mark” means a mark used or proposed to be used on or in connection with services to distinguish the services using the service mark of the owner of such service mark from services under another person’s service mark;

“certification mark” means a mark used or proposed to be used by the owner thereof on or in connection with goods or services of another person to certify the origin, composition, method of production, quality or other characteristics of such goods or to certify as to the nature, quality, type or other characteristics of such services;

“collective mark” means a trademark or service mark used or proposed to be used by companies or enterprises of the same group or by members of an association, cooperative, union, confederation, group of persons or any other state or private organization;

“licensee” means a person licensed under this Act by the owner of a registered trademark or service mark to use such trademark or service mark;

“competent officer” means the person appointed by the Minister to act under this Act;

“Registrar” means the person appointed by the Minister to be registrar to act under this Act;

“Director General” means the Director-General of the Department of Intellectual Property;

“Board” means the Trademark Board;

“Minister” means the Minister having charge and control of the execution of this Act.

Section 5<sup>(1)</sup> The Minister of Commerce shall have the charge and control of the execution of this Act and shall have the power to appoint the Registrar and competent officers, issue ministerial regulations prescribing fees no higher than those given in the schedule annexed hereto and prescribing other matters and issue notifications in order to carry out the provisions of this Act.

## **CHAPTER I TRADEMARKS**

### **Part 1 Trademark Applications**

Section 6 To be registrable, a trademark must

- (1) be distinctive;
- (2) not be prohibited under this Act;
- (3) not be the same as or similar to a trademark registered by another person.

Section 7<sup>(1)</sup> A distinctive trademark is one which enables the public or users to distinguish the goods with which the trademark is used from other goods.

A trademark having or consisting of any one of the following essential characteristics shall be deemed distinctive:-

- (1) a personal name, a surname not being such according to its ordinary signification, a name of juristic person or tradename represented in a special manner;
- (2) a word or words having no direct reference to the character or quality of the goods and not being a geographical name prescribed by the Minister in the Ministerial Notifications;
- (3) a combination of colors represented in a special manner, stylized letters, numerals or invented word;
- (4) the signature of the applicant for registration or some predecessor in his business or the signature of another person with his or her permission;
- (5) a representation of the applicant or of another person with his or her permission or of a dead person with the permission of his or her ascendants, descendants and spouse, if any;
- (6) an invented device.

Names and words not having the characteristics under (1) or (2) if used as trademarks with goods which have been widely sold or advertised in accordance with the rules prescribed by the Minister by notification and if it is proved that the rules have been duly met shall be deemed distinctive.

Section 8<sup>(1)</sup> Trademarks having or consisting of any of the following characteristics shall not be registrable:-

- (1) state arms or crests, royal seals, official seals, Chakkri emblems, emblems and insignia of the royal orders and decorations, seals of office, seals of ministries, bureaus, departments or provinces;
- (2) national flags of Thailand, royal standard flags or official flags;
- (3) royal names, royal monograms, abbreviations of royal names or royal monograms, or
- (4) representations of the King, Queen or Heir to the Throne;
- (5) names, words, terms or emblems signifying the King, Queen or Heir to the Throne or members of the royal family;

(6) national emblems and flags of foreign states, emblems and flags of international organizations, emblems of head of foreign states, official emblems and quality control and certification of foreign states or international organizations, names and monograms of foreign states or international organizations, unless permission is given by the competent officer of the foreign state or international organization;

(7) official emblems and emblems of the Red Cross or appellations “Red Cross” or “Geneva Cross”;

(8) a mark identical with or similar to a medal, diploma or certificate or any other mark awarded at a trade exhibition or competition held by the Thai government or a Thai government agency for public enterprise or any other government organ of Thailand, a foreign government or international organization unless such medal, diploma, certificate or mark has been actually awarded to the applicant for goods and is used in combination with the trademark;

(9) any mark which is contrary to public order, morality or public policy;

(10) a mark registered or not, which is identical with a well-known mark as prescribed by the Ministerial Notifications, or so similar thereto that the public might be confused as to the owner or origin of the goods;

(11) trademarks similar to those under (1) (2) (3) (5) (6) or (7);

(12) geographical indications protected under the law on geographical indications;

(13) other trademarks prescribed by the Ministerial Notifications.

Section 9 An application for registration of a trademark may be made for specific goods in one class or in different classes but the particular kinds of goods for which protection is sought shall be clearly specified.

An application may not cover goods of different classes.

The classification of goods shall be as prescribed by the Ministerial Notifications.

Section 10 For a trademark to be registrable, the applicant or his agent shall have an office or address for communication by the Registrar in Thailand.

Section 11<sup>(1)</sup> Applications for trademark registration shall comply with the rules and procedures prescribed in the Ministerial Regulations.

In cases where Thailand acceded to an international convention or agreement concerning trademark protection, the trademark application which is in compliance with the requirement of such international convention or agreement shall be deemed to be a trademark application under this Act.

Section 12 In considering trademark applications, the Registrar shall have the following powers:-

(1) ask by a letter or summon the applicant to give an oral statement or submit a written statement or submit any document or evidence concerning the application for examination or consideration;

(2) require the applicant to translate any document or evidence in a foreign language into Thai within such period or time as he may deem appropriate;

(3) invite any person to give information, explanations, advice or opinions.

If the applicant does not, without sufficient reason, comply with an order of the Registrar under (1) or (2), the application shall be deemed to be abandoned.

Section 13 Subject to Section 27, where the Registrar finds that the trademark for which an application for registration is filed:

(1) is identical with a trademark already registered by another person; or

(2) is so similar to a registered trademark of another person that the public might be confused or misled as to the owner or origin of the goods, and such application is for goods of the same class or for goods of a different class found by the Registrar to be of the same character, he shall not register such trademark.

Section 14 In the event registered or pending trademarks of the same owner covering goods of the same class or different classes but the same character so similar to one another that the public might be confused or misled as to the owner or origin of the goods of used by different persons, the Registrar shall require the trademarks to be registered as associated trademarks and shall in writing notify the applicant without delay.

Section 15 If, in the opinion of the Registrar,

(1) any unessential part of a trademark applied for is not registrable under Section 6, or

(2) any application for registration is contrary to Section 9 or Section 10 or is not in accordance with the rules and procedures prescribed in the Ministerial Regulations issued under Section 11,

The Registrar shall require and, without delay, in writing notify the applicant to amend the application within ninety days from the date of receipt of the order.

Section 16 If, in the opinion of the Registrar, the entire trademark or any essential part thereof is not registrable under Section 6, the Registrar shall refuse registration and shall, without delay, in writing notify the applicant of the order giving the grounds therefor.

Section 17 If, in the opinion of the Registrar, a trademark considered as a whole is registrable under Section 6 but contains one or more parts which are common to the trade for some types or classes of goods such that no applicant should have exclusive right thereto or which are not distinctive, the Registrar shall make either of the following:

(1) order the applicant, within ninety days from receipt of the order, to disclaim exclusive right to use of such part of the trademark;

(2) order the applicant, within ninety days from receipt of the order, to make such other disclaimer as the Registrar may consider necessary for the purpose of defining the rights of the owner under such registrations.

For the purpose of implementing the provisions of the first paragraph, the Registrar shall have the power to declare by notification what is common to the trade with respect to certain types or classes of goods.

The Registrar shall, without delay, in writing notify the applicant of any order under the first paragraph giving the grounds therefor.

Section 18 The applicant may appeal against the Registrar under Sections 14, 15, 16 and 17 to the Trademark Board within ninety days from receipt thereof. Decisions of the Trademark Board shall be final.

If the Board has decided that an order of the Registrar under Section 14 is correct, the Registrar shall proceed to process such application.

If the Board has decided that an order of the Registrar under Section 15 or 17 is correct, the applicant shall comply with the order of the Registrar within ninety days from receipt of the decision of the Board.

If the Board has decided that an order of the Registrar under Section 14, 15, 16 and 17 is incorrect, the Registrar shall proceed to process such application.

Section 19 If the applicant does not appeal under the first paragraph Section 18, and does not comply with an order of the Registrar under Section 15 or 17, as the case may be, or if the applicant files an appeal under the first paragraph of Section 18, but does not comply with Section 18, paragraph three, the application shall be deemed abandoned.

Section 20 Subject to Sections 21, 22, 23, 24, 25, 26, 35 and 41, where several applicants file applications for registration of trademarks which in the opinion of the Registrar are identical or so similar that the public might be confused or misled as to the owner or origin of the goods and the applications cover goods in the same class or goods in different classes having, in the opinion of the Registrar, the same character, the prior applicant shall be entitled to be registered as the owner.

Section 21 If, in the opinion of the Registrar, the identical or similar trademarks under Section 20 are all registrable under Section 6 and the applications are in conformity with the provisions of this Act, the Registrar shall order the applicants to comply with Section 24 and shall inform the applicants in writing without delay.

An applicant who does not agree that his trademark is identical with or similar to other trademarks under Section 20, may appeal against the order of the Registrar under the first paragraph to the Board within ninety days from receipt of the order. In such case, Section 18 and 19 shall apply *mutatis mutandis*.

Section 22 If, in the opinion of Registrar, one or more of identical or similar trademarks under Section 20 fall under Section 15 (1) or (2) or Section 17 but others are registrable under Section 6 and the applications are in compliance with the provisions of this Act, the Registrar shall order the applicants of the trademarks which fall under Section 15 (1) or (2) or Section 17 to comply with Section 15 or 17, as the case may be, and shall delay the registration of the registrable trademarks and the processing of the duly filed applications. The Registrar shall, without delay, notify the applicants in writing. In such a case, the provisions of Section 21 paragraph two shall apply *mutatis mutandis*.

If it appears that an applicant whose trademark is found by the Registrar to fall under Section 15 (1) or (2) or Section 17 has complied with the order of the Registrar under Section 15 or has filed an appeal under Section 18 paragraph one and the Board has decided that the order of the Registrar is incorrect, the Registrar shall order the applicant and the applicants whose applications have been delayed under the first paragraph to comply with Section 24 and shall without delay notify the applicants thereof in writing.

If it appears that all of the applicants whose trademarks found by the Registrar to fall under Section 15 (1) or (2) or Section 17 have abandoned their applications under Section 19:-

(1) In the case where there are several applications which have been delayed under the first paragraph, the Registrar shall order the applicants to comply with Section 24 and shall without delay notify the applicants in writing;

(2) If there is only one application which has been delayed under the first paragraph, the Registrar shall order the publication of that application under Section 29.

Section 23 If the Registrar finds that all of the applications for identical or similar trademarks under Section 20 fall under Section 15 (1) or (2) or Section 17, the Registrar shall order the applicants to comply with Section 15 or Section 17, as the case may be, and shall without delay notify the applicants in writing and Section 21 paragraph two shall apply *mutatis mutandis*.

If it appears that two or more applicants have complied with the order of the Registrar under Section 15 or 17 or have appealed under Section 18 paragraph one and the Board has decided that the order of the Registrar is not correct, the Registrar shall order the applicants to comply with Section 24 and shall without delay notify the applicants in writing. But if it appears that only one of the said applicants has complied with the order of the Registrar under Section 15 or 17 or has appealed under Section 18 paragraph one and the Board has decided that the order of the Registrar is not correct, the Registrar shall order the publication of that trademark application under Section 29.

Section 24 Within ninety days from the date of receipt of the order of the Registrar under Section 21 paragraph one, Section 22 paragraphs two or three (1) or Section 23, the applicant shall agree as to which one shall be the sole of the trademark and any one of them shall inform the Registrar in writing within such period whether or not agreement has been reached.

Section 25 In the case where the Registrar has been informed within the period specified in Section 24 as to which applicant is allowed by agreement to register, the Registrar shall order the application of such applicant to be published under Section 29.

In the case where the Registrar has been informed within the period prescribed in Section 24 that no agreement has been reached or has not been informed within the said period, the Registrar, under Section 29, shall order the publication of the first applicant or of the first among those who have not abandoned their applications, as the case may be.

Section 26 In the case where Registrar has already notified the applicants in writing to comply with Section 24 and another applicant files an application for a trademark which the Registrar finds to be identical with those of the other applicants or so similar thereto that the public might be confused or misled as to the owner or origin of the goods, the goods being of the same class or of the same character in a different class, the Registrar shall refuse registration and shall, without delay, inform the applicant in writing. In such a case, the provisions of Section 21 paragraph two shall apply *mutatis mutandis*.

Section 27 If the Registrar is of the opinion that there has been honest concurrent users to special circumstances which make it proper to do so, the Registrar may allow the registration by more than one owner of a trademark which is identical with or similar to a registered trademark under Section 13 or to trademarks applied for under pending applications under Section 20 in respect of goods of the same class or goods of a different class but found by the Registrar to be of the same character subject to such conditions and limitations as to the mode or place of user or such other conditions and limitations as the Registrar may think fit to impose. The Registrar shall without delay notify the applicants and registered trademark owner in writing giving the grounds thereof.

The applicant or registered trademark owner may appeal an order of the Registrar under the first paragraph to the Board within ninety days from the date of receipt thereof.

Decisions of the Board under paragraph two shall be final.

Section 28<sup>(1)</sup> A person who has filed a trademark application in a foreign country and files an application for the registration of the trademark in Thailand within six months from the first foreign application, he may claim the first foreign filing date as the filing date in Thailand if he possesses one of the following qualifications:

(1) being a Thai national or a juristic person having its headquarters located in Thailand;

(2) being a national of a country party to a convention or international agreement on trademark protection to which Thailand is also a party;

(3) being a national of a country which accords the same rights to Thai nationals or juristic persons having their headquarters located in Thailand;

(4) being domiciled or having a real and effective industrial or commercial establishment in Thailand or a country party to a convention or international agreement on trademark protection to which Thailand is also a party.

In the case where the first foreign application has been refused, or withdrawn or abandoned by the applicant, he may not claim the rights under the first paragraph.

In the case where a trademark application is filed in a foreign country for the same trademark which a previous application has been refused, or withdrawn or abandoned by the applicant within six months from the date of the first foreign application, the applicant may claim the rights under the first paragraph provided that:

(1) no claim for the right of priority under the first paragraph has been made for the trademark application under paragraph three; and

(2) the application under paragraph three may not be processed under the trademark law of the country where the application was filed; and

(3) the refuse, withdrawal or abandonment of the application has not been disclosed to the public.

Section 28 bis<sup>(1)</sup> In the case where goods bearing a trademark are exhibited at an international exhibition held in Thailand or a country party to a convention or an international agreement on trademark protection to which Thailand is also a party and organized by a government agency, public enterprise or any other government unit of Thailand or the member country or recognized by the government of Thailand, the trademark owner may claim

the rights under the first paragraph of Section 28 provided that he files a trademark application for the goods exhibited in such exhibition within six months from the date of introduction of the goods into the exhibition or the first foreign filing date, whichever is earlier. In such a case, the application shall not be used to extend the time period prescribed in Section 28.

The organization of exhibitions of goods to be regarded as international exhibitions and the application under the first paragraph shall comply with the rules, conditions and procedures as prescribed in the Ministerial Regulations.

## **PART 2 TRADEMARK REGISTRATION AND THE EFFECT OF REGISTRATION**

Section 29<sup>(2)</sup> When an application for registration of a trademark is considered acceptable, the Registrar shall be order the application to be published.

The publication of applications shall be in accordance with the procedures prescribed in the Ministerial Regulations.

Section 30 If, after the trademark application has been ordered published under Section 29 paragraph one, it appears to the Registrar that the trademark is not registrable under Section 6 or the application does not comply with the provisions of this Act making necessary to cancel the order and if the trademark has not been registered, the Registrar shall cancel such order and shall without delay notify the applicant in writing stating the grounds of such cancellation.

In the case where a cancellation order is made after the publication under Section 29, the cancellation order shall be published in the manner prescribed in the Ministerial Regulations.

Section 31<sup>(1)</sup> The applicant shall be entitled to appeal a cancellation order under Section 30 paragraph one to the Board within ninety days from the receipt of the notification.

In the case where the applicant does not appeal under the first paragraph or where the applicant has appealed the order under the first paragraph and it is decided by the Board that the order of the Registrar is correct, the Registrar shall proceed to process the application.

If the Board decides that the cancellation order of the Registrar is nor correct, the Registrar shall:-

(1) proceed with the publication of such application if the Registrar has made the cancellation order under Section 3 paragraph one before the publication of the application under Section 29;

(2) republish the application if the cancellation of the order of the Registrar has been published under Section 30 paragraph two. Decisions of the Board under paragraphs two and three shall be final.

Section 32 If the Registrar's cancellation order under Section 30 is given after an opposition is filed under Section 35, the Registrar shall notify the opposer in writing without delay.

Section 33<sup>(1)</sup> In cases under Section 32, if the Registrar has not made a decision on the opposition, the decision shall be delayed until the expiration of the period for appeal under Section 31 paragraph one or, until a decision of the Board is given under Section 31 paragraph two or three, as the case may be.

If the Board decides that the cancellation order of the Registrar under Section 30 is correct, the Registrar shall dismiss the opposition and shall inform the opposer in writing without delay. Such order shall be final.

If the Board decides that the cancellation order of the Registrar under Section 30 is not correct, the Registrar shall proceed to make a decision on the opposition.

Section 34 In cases under Section 32, if the Registrar has made a decision on the opposition and an appeal is made against the Registrar's decision under Section 37, the Registrar shall inform the Board and Section 33 shall apply *mutatis mutandis*.

Section 35 After the publication of a trademark application under Section 29, any person who thinks that he has better right in the trademark than the applicant or that the trademark is not registrable under Section 6 or that the application is not in conformity with the provisions of this Act may, within ninety days from the date of publication under Section 29, file a notice of opposition with the Registrar stating the grounds of the opposition.

Oppositions under the first paragraph shall comply with the rules and procedures prescribed in the Ministerial Regulations.

Section 36<sup>(2)</sup> If an opposition is filed under Section 35, the Registrar shall send a copy thereof to the applicant without delay.

The applicant shall, within ninety days from the date of receipt of the copy of the opposition, file a counterstatement, in the form prescribed by the Director-General, stating the grounds on which he relies in support of his application. The Registrar shall send a copy of the counterstatement to the opposer without delay. If the applicant fails to comply with the requirement under paragraph two, he shall be deemed to have abandoned his application. In considering and determining the opposition, the Registrar may order the opposer and applicant to give additional statements, written explanations or evidence. If the applicant or opposer fails to comply with

the order of the Registrar within ninety days from the date of receipt of the order, the Registrar shall proceed to consider and decide on the opposition on the basis of the existing evidence.

Section 37 The Registrar shall in writing notify the applicant and opposer of his decision with the grounds thereof without delay.

The applicant or opposer may appeal the decision of the Registrar to the Board within ninety days from the date of receipt of the notification. The Board shall decide the appeal without delay.

Section 38 When the Board has given its decision, the decision and the grounds thereof shall, without delay, in writing be notified to the applicant and opposer.

The applicant or opposer may appeal the decision of the Board to the court within ninety days from the date of receipt of the decision.

A case may be filed under paragraph two after the procedures prescribed in Section 37 paragraph two have been taken.

Section 39 In the case where no appeal against the decision of the Registrar is taken within the period prescribed in Section 37 paragraph two or no appeal has been taken against the decision of the Board within the period prescribed in Section 38 paragraph two, the decision of the Registrar or of the Board, as the case may be, shall be final.

Section 40 In the case where there is no opposition under Section 35 or there is an opposition under Section 35 leading to a final decision or judgement that the applicant is entitled to registration, the Registrar shall order the registration of the trademark.

When an order to register a trademark has been made under the first paragraph, the Registrar shall notify the applicant in writing and the registration fee shall be paid within thirty days of receipt of the notification. If the applicant fails to pay the fee within the prescribed period, the application shall be deemed abandoned.

The registration of trademarks shall be in accordance with the procedures prescribed in Ministerial Regulations.

Section 41 In the case where the opposer under Section 35 has also applied registration of a trademark which is identical with or similar to the trademark opposed and a final decision or judgement has been made to the effect that the opposer has better rights than the opposed applicant and if the opposer's trademark is registrable under Section 6 and the application conforms to the provisions of this Act, the Registrar shall register such trademark in accordance with the procedures prescribed in the Ministerial Regulations without need to publish the application of the opposer again.

Section 42<sup>(1)</sup> A trademark when registered shall be deemed registered as of the date of application for registration. For the case under Section 28 or 28 bis, the date of application in Thailand shall be deemed to be the date of registration of such trademark.

Section 43 Upon registration of a trademark, the Registrar shall issue to the applicant a certificate of registration in the form prescribed in the Ministerial Regulations.

If a registration certificate is materially damaged or lost, the trademark may apply to the Registrar for a substitute thereof.

The issue of a substitute of a registration certificate shall be in accordance with the rules and in the form prescribed in the Ministerial Regulations.

Section 44 Subject to Sections 27 and 68, a person who is registered as the owner of a trademark shall have the exclusive right to use it for the goods for which it is registered.

Section 45 A trademark registered without limitation of color shall be deemed to be registered for all colors.

Section 46 No person shall be entitled to bring legal proceedings to prevent or to recover damages for the infringement of an unregistered trademark.

The provisions of this Section shall not affect the right of the owner of an unregistered trademark to bring legal proceedings against any person for passing off goods as those of the owner of the trademark.

Section 47 No registration under this Act shall interfere with any bona fide use by a person of his own personal name or surname or the name of his place of business or that of any of his predecessors in business or the use by any person of any bona fide description of the character or quality of his goods.

### **PART 3 CHANGES IN REGISTRATION OF TRADEMARKS**

Section 48 The right to a pending trademark application may be assigned or transferred by succession.

The assignment of the right to an application under the first paragraph shall be notified to the Registrar prior to registration by the assignor or assignee.

In the event of the death of the application, any heir of the administrator of the estate shall, prior to registration, notify the Registrar in order to give effect to the right to inherit the application.

The transfer or inheritance of rights to trademark applications under paragraph one shall be in accordance with the rules and procedures prescribed in the Ministerial Regulations.

Section 49 The right to registered trademark may be assigned or transferred by succession with or without the business concerned in the goods for which the trademark is registered.

Section 50 Associated trademarks may be assigned or transferred by succession only when all of them are assigned or transferred together.

Section 51 The assignment or transfer by succession of a registered trademark shall be registered with the Registrar.

Applications to register the assignment or transfer by succession of trademark under the first paragraph shall be in accordance with the rules and procedures prescribed in the Ministerial Regulations.

Section 52 The owner of a registered trademark may request the Registrar to amend any of the following particulars of registration:

- (1) the specification of goods by way of canceling some items;
- (2) the name, nationality, address and occupation of the owner of the trademark and his agent, if any;
- (3) the office or address for communication by the Registrar;
- (4) other particulars as may be prescribed in the Ministerial Regulations.

Applications to amend the particulars of registration under the first paragraph shall be in accordance with the rules and procedures prescribed in the Ministerial Regulations.

#### **PART 4 RENEWAL AND CANCELLATION OF TRADEMARK REGISTRATION**

Section 53 The registration of a trademark shall have a term of ten years from the date of registration under Section 42 and may be renewed under Section 54.

The term of a trademark registration under the first paragraph shall not include the period during which court proceedings are taken under Section 38.

Section 54 The owner of a trademark who wants to renew the term of his trademark registration shall apply to the Registrar within ninety days before the expiration of the term. When an application for renewal is filed within the prescribed period, the trademark shall be deemed registered until the Registrar orders otherwise.

The renewal of trademark registration shall be in accordance with the rules and procedures prescribed in the Ministerial Regulations.

Section 55 In the case where the owner of a trademark has applied for renewal within the period prescribed in Section 54 paragraph one, and the Registrar finds that the application complies with the rules and procedures prescribed in the Ministerial Regulations under Section 54 paragraph two, the Registrar shall renew the registration for a further period of ten years from the date of expiration of the registration or of the last renewal thereof, as the case may be.

In the case where the owner of a trademark has applied for renewal within the period prescribed in Section 54 paragraph one, but the Registrar finds that the application is not in compliance with the rules and procedures prescribed in the Ministerial Regulations under Section 54 paragraph two, the Registrar shall require the owner to correct the application within thirty days from the date of receipt of such order and notify, without delay the owner in writing. If the owner does not comply with the order within the time prescribed, the Registrar shall order the cancellation of the trademark registration.

In case of necessity making the owner unable to comply with the order of the Registrar within the period prescribed under paragraph two, the Registrar may extend the period as may be necessary under the circumstances.

Section 56 In the case where the trademark owner does not apply for renewal of the trademark registration within the period prescribed under Section 54 paragraph one, the registration of the trademark shall be deemed cancelled.

Section 57 The owner of a trademark may request the Registrar to cancel his trademark registration but in the case where the trademark is the subject of a registered license agreement, the consent of the license shall be required unless the license agreement provides otherwise.

Requests for cancellation of a registered trademark under the first paragraph shall be in accordance with the rules and procedures prescribed in the Ministerial Regulations.

Section 58 If it appears to the Registrar that the owner of a registered trademark violates or fails to comply with the conditions or restrictions prescribed by the Registrar upon registration, the Registrar may order the cancellation of the trademark registration.

Section 59 If the owner or his agent ceases to have in Thailand the office or address as registered, the Registrar shall order the cancellation of the trademark registration.

If the Registrar has a reasonable cause to believe that the owner of a registered trademark or his agent has ceased to have the office or address in Thailand as registered, the Registrar shall notify the owner or his agent in writing

at the register office or address to give a written explanation to the Registrar within fifteen days from the date of receipt of the notification.

If no reply is received within the period prescribed in paragraph two, the Registrar shall publish that the trademark is to be cancelled in accordance with the procedures prescribed in the Ministerial Regulations.

If still no reply is received within fifteen days from the date of publication under paragraph three, the Registrar shall order the cancellation of the trademark registration.

Section 60 An order to cancel a trademark registration under Section 55 paragraph two, Section 58 or 59 paragraph one, stating the grounds therefor, shall be notified in writing to the proprietor without delay.

The trademark owner may appeal the Registrar's order under the first paragraph to the Board within ninety days from the date of receipt of the notification. If no appeal is filed within the period prescribed, the order of the Registrar shall be deemed final.

Decisions of the Board under paragraph two shall be final.

Section 61<sup>(1)</sup> An interested person or the Registrar may petition the Board to order the cancellation of any trademark if it appears that at the time of registration the trademark:

(1) was not distinctive under Section 7;

(2) contained or consisted of a prohibitory characteristics under Section 8;

(3) was identical with a trademark registered by another person for goods of the same class or of different class with the same character;

(4) was so similar to a trademark registered by another person that the public might be confused or misled as to the owner or origin of the goods for goods of the same class or of different class with the same character.

Section 62 Any person who is of the opinion that any trademark is contrary to public order or good morality or to public policy may petition the Board to cancel the trademark registration.

Section 63 Any interested person or the Registrar may petition the Board to cancel a trademark registration if it is proved that at the time of registration the owner of the trademark had no bona fide intention to use the trademark with the goods for which it was registered and in fact there was no bona fide use whatsoever of the trademark for such goods or that during the three years prior to the petition for cancellation there was no bona fide use of the trademark for the goods for which it was registered unless the owner can prove that such non-use was due to

special circumstances in the trade and not to an intention not to use or to abandon the trademark for the goods for which it was registered.

Section 64 After the receipt of a petition under Section 61, 62, or 63, the Board shall, in writing, notify the owner and licensees, if any, to submit a reply to the Board within sixty days from the date of receipt of the notification of the Board.

Section 65 An order of the Board to cancel or not to cancel a trademark registration under Section 61, 62, or 63 shall, without delay, be notified in writing to the petitioner for cancellation, the owner of the trademark and licensee, if any.

The petitioner for cancellation, the trademark owner or licensees may appeal the order of the Board under the first paragraph to the court within ninety days from the date of receipt of the notification. If no appeal is filed within the prescribed period, the order of the Board shall be deemed final.

Section 66 Any interested person or the Registrar may petition the Court to cancel a registered trademark by showing that at the time of filing the legal action the trademark had become common to the trade for certain kinds or classes of goods to the extent that to the trade or in the public eye the trademark had lost its meaning as a trademark.

Section 67 Within five years from the date of the Registrar's order to register a trademark under Section 40, any interested person may petition the court to cancel a trademark registration by showing that he has better rights in the trademark than the person registered as its owner.

If the petitioner can prove that he has better rights for only some of the goods of the class in which the mark has been registered, the court shall restrict the registration to the goods that the petitioner cannot prove that he has better rights than the trademark owner.

## **PART 5 TRADEMARK LICENSING**

Section 68 The owner of a registered trademark may license another person to use the trademark for all or some of the goods for which the trademark is registered.

Trademark license agreements under the first paragraph shall be in writing and registered with the Registrar.

Applications to register a license agreement under paragraph two shall comply with the rules and procedures prescribed in the Ministerial Regulations and shall show at least the following particulars:

(1) conditions or terms between the trademark owner and licensee to insure effective control by the registered owner of the trademark over the quality of the goods of the licensee;

(2) the goods for which the trademark is to be used.

Section 69 In the case where the Registrar finds that Section 68 would not cause the public to be confused or misled and is not contrary to public order or morality or to public policy, the Registrar shall order registration of the agreement and for such purposes may impose conditions or restrictions. But if the Registrar finds that the license agreement will confuse or mislead the public or is contrary to public order or morality or to public policy, the Registrar shall refuse to register the license.

Orders of the Registrar under the first paragraph shall be promptly notified in writing to the owner of the trademark and persons who have applied to be registered as licensees. In the case where the Registrar has imposed conditions or restrictions or has refused registration, the said persons shall also be informed of the reasons such refuse.

The trademark owner or licensee applicant may appeal the order of the Registrar under the first paragraph to the Board within ninety days from the date of receipt of the notification. If no appeal is filed within the prescribed period, the order shall be deemed final.

Decisions of the Board under paragraph three shall be final.

Section 70 The use of the trademark on goods by the licensee in his business shall be deemed as the use by the trademark owner.

Section 71 The trademark owner together with the licensee may apply to the Registrar to amend the registration of a trademark license agreement in respect of the goods covered by the license or other conditions and restrictions included by the owner and Section 69 shall apply *mutatis mutandis*.

The application to amend the registration of a license agreement under the first paragraph shall comply with the rules and procedures prescribed in the Ministerial Regulations.

Section 72 The trademark owner together with the licensee may apply to the Registrar to cancel the registration of a license agreement.

Either the trademark owner or the licensee may apply to the Registrar to cancel the registration of a license agreement if it can be proved to have expired.

Any interested person or the Registrar may petition the Board to cancel the registration of a trademark license agreement if it is shown that:-

(1) the use of the trademark by the licensee has confused or misled the public or is contrary to public order or morality or to public policy, or

(2) the trademark owner can no longer exercise effective control over the quality of the goods under the license.

Cancellation of trademark licenses under this Section shall comply with the rules and procedures prescribed in the Ministerial Regulations.

Section 73 After the receipt of an application under Section 72 paragraph two or three, the Registrar or Board, as the case may be, in writing shall notify the trademark owner or licensee, as the case may be, to submit a reply within a prescribed period of not less than fifteen nor more than sixty days from the date of receipt of the notification.

In considering applications under Section 71 and 72, the Registrar or Board, as the case may be, may require any person concerned to submit evidence or additional information.

Section 74<sup>(1)</sup> When an order is made under Section 72 paragraph two by the Registrar, the order together with the grounds thereof shall be promptly notified in writing to the trademark owner and licensees. The order shall take effect from the date of receipt of the notification.

The trademark owner and licensee may appeal the order of the Registrar under the first paragraph to the Board within ninety days from the receipt of the notification. If no appeal is submitted within the prescribed period, the order of the Registrar shall be deemed final.

Decisions of the Board under paragraph two shall be final.

Section 75 Orders of the Board under Section 72 paragraph three, together with grounds thereof shall be promptly notified in writing to the trademark owner, licensees, petitioning interested person and Registrar. Such orders shall take effect from the date of receipt of the notification.

The interested person or the Registrar may appeal the order to the Board to the court within ninety days from the date of receipt of the notification. If no appeal is submitted within the prescribed period, the order of the Board shall be deemed final.

Section 76 If a trademark registration is cancelled, the licensing of such a trademark shall also cease to have effect.

Section 77 If not otherwise provided in the license agreement, the trademark owner shall have the right to use the trademark himself and to license persons other than such licensee to use the mark.

Section 78 If not otherwise provided in the license agreement, the licensee shall have the right to use the trademark throughout the country for all the goods for which the trademark is registered and for the entire term of the trademark registration and its renewals.

Section 79 If not otherwise provided in the license agreement, the licensee may not transfer the license to third persons nor sublicense others to use the trademark.

## **CHAPTER II SERVICE AND CERTIFICATION MARKS**

Section 80 The provision concerning trademarks shall apply to service marks *mutatis mutandis* and the word “goods” in those provisions shall mean “services”

Section 81 Except as otherwise provided in this Chapter, the provisions concerning trademarks shall apply to certification marks *mutatis mutandis*.

Section 82 The applicant for registration of a certification mark, in addition to complying with the provisions on registration of trademarks, shall:-

(1) submit the regulations on use of the certification mark together with the application for registration and

(2) demonstrate an ability to certify the characteristics of the goods or services as provided in the regulations under (1).

The regulations under (1) shall indicate the origin, composition, method of production, quality or other characteristics which are to be certified including the rule, procedures and conditions for authorizing use of the certification mark.

Section 83 The Registrar may require the applicant for registration of a certification mark to amend the regulations on use of the certification mark as he may think fit within sixty days of the date of receipt of the order and shall in writing promptly notify the applicant of the order with the grounds therefor. Section 18 and 19 shall apply to appeals against orders of the Registrar *mutatis mutandis*.

Section 84 If the Registrar is of the opinion that the applicant for registration of a certification mark does not have sufficient ability to certify the characteristics of the goods or services as provided in the regulations on use of the

certification mark or that registration of the certification mark would not be in the public interest, the Registrar shall refuse registration and shall in writing promptly notify the applicant of the order with the grounds of the refuse. Sections 18 and 19 shall apply to appeals against orders of the Registrar mutatis mutandis.

Section 85 In the publication of an application for registration of a certification mark, the Registrar shall indicate the essential elements of the regulations on use of the certification mark.

Section 86 The owner of a registered certification mark may apply to amend the regulations on use of the certification mark provided the public interest is not thereby affected.

Amendments under the first paragraph shall comply with the rules and procedures prescribed in the Ministerial Regulations.

Section 87 If the Registrar is that an amendment of the regulations under Section 86 are acceptable, the Registrar shall order the registration and the publication of the essential elements of the regulations as amended.

The Registrar shall in writing notify the owner of the certification mark of the order to advertise the amendment under the first paragraph without delay.

Section 88 If the Registrar is of the opinion that the regulations as amended under Section 86 are not acceptable, the Registrar shall refuse registration and in writing promptly notify the owner of the certification mark giving the grounds therefor,.

Section 89 The owner of the certification mark or any person who has been or will be prejudiced by an order of the Registrar under Section 87 or 88 may appeal the order to the Board within ninety days from the date of publication under Section 87 or from the date of receipt of the Registrar's order under Section 88, as the case may be.

The decision of the Board under the first paragraph shall be final.

Section 90 The owner of a registered certification mark may not use the mark on his own goods or services and may not license other persons to act as certifier by authorizing the use of the certification mark.

Section 91 The authorization of others to use a certification mark for goods or services shall be in writing and signed by the owner of the certification mark.

Section 92 The right to a registered certification mark may be transferred when:-

(1) the transferred has been approved by the Registrar on a showing by the transferee that he has sufficient ability to certify the characteristics of the goods or services as indicated in the regulations on use of the certification mark,

(2) the transfer is in writing, and

(3) is registered by the Registrar.

In cases where the Registrar does not give approval or refuses to register the transfer, Section 84 shall apply *mutatis mutandis*.

Applications for approval to transfer rights and for registration of the transfer under the first paragraph shall comply with the rules and procedures prescribed in the Ministerial Regulations.

Section 93 The right to certification mark shall terminate when the owner dies or loses its status of a juristic person.

### **CHAPTER III COLLECTIVE MARKS**

Section 94 Except for the provisions of Chapter I, Part 5, the provisions concerning trademarks shall apply to collective marks *mutatis mutandis*.

### **CHAPTER IV TRADEMARK BOARD**

Section 95<sup>(1)</sup> There shall be a committee called the Trademark Board composed of the Director-General of the Department of Intellectual Property as chairman, the Secretary General of the Juridical Council or his representative, the Attorney-General or his representative and no fewer than eight nor more than twelve other qualified persons in the fields of law or commerce with the experience in intellectual property or trademarks appointed by the Council of Ministers as members.

The qualified person members under the first paragraph, at least one third of such members shall be appointed from members of the private sector.

The Board may appoint any person to be secretary or assistant secretary.

Section 96<sup>(2)</sup> The Board shall have the following powers and duties:-

(1) to decide appeals against orders or decisions of the Registrar under this Act;

(2) to consider and order on the petition for cancellation of trademarks, service marks, certification marks, collective marks or trademark license agreements under this Act;

(3) to advise and counsel the Minister on the issue of Ministerial Regulations and notifications under this Act;

(4) to consider other matters assigned by the Minister.

Section 97 Members of the Board appointed by the Council of Ministers shall serve for a term of four years.

The term for interim appointees, whether appointed as additional members or replacement members, shall be for the unexpired term of the previously appointed members.

A member whose term has expired may be reappointed.

Section 98 Apart from vacating office at the expiration of their term under Section 97, members of the Board appointed by the Council of Ministers shall vacate office upon:-

(1) death,

(2) resignation,

(3) dismissal by the Council of Ministers,

(4) being adjudged bankrupt,

(5) being adjudged incompetent or quasi-incompetent,

(6) imprisonment under a final sentence of imprisonment unless for an offence of negligence or a petty offence.

Section 99<sup>(1)</sup> A quorum for meetings of the Board shall consist of at least one-half of the total number of members.

If the chairman does not attend or is not at the place of meeting, the meeting shall elect one of the members chairman for the meeting.

Decisions of the Board shall be by majority vote, each member having one vote. In case of a tied vote, the chairman of the meeting shall have an additional casting vote.

The member of the Board who has certain interest in a matter under consideration under Section 96 (1) or (2) shall not attend the meeting on the matter.

Section 99 bis<sup>(2)</sup> In performing its under Section 96 (1) and (2), the Board may appoint one or more specialized committees to examine appeals against orders or decisions of the Registrar under this Act. When the examination has been completed, the committee shall submit a report to the Board for issuing an order or rendering a decision.

The provisions of Section 99 shall apply to the meeting of specialized committees *mutatis mutandis*.

Section 100 The Board may appoint sub-committees to consider or do whatever may be assigned by the Board.

Section 99 shall apply to meetings of sub-committees *mutatis mutandis*.

Section 101<sup>(1)</sup> Appeals against orders and decisions of the Registrar and petitions for cancellation of trademarks, service marks, certification marks, collective marks and trademark or service mark license agreements under this Act shall be submitted to the Registrar in the forms prescribed by the Director-General.

The procedure for deciding appeals and petitions for cancellation of trademarks under the first paragraph shall be as prescribed by the Board.

Section 102 In the performance of its duties under this Act, the Board may inquire in writing or summon the Registrar, appellants or other persons concerned to give information, explanations or opinions or to submit relevant documents or other evidence for consideration.

## **CHAPTER V MISCELLANEOUS**

Section 103 Any person shall be entitled, during office hours, to inspect the register of trademarks, service marks, certification marks and collective marks and files thereof, to obtain copies or certified copies of documents and apply for certification by the Registrar of particular of registration on payment of the fees prescribed in the Ministerial Regulations.

Section 104 Summonses, notices and other communications to an applicant, opposer, owner of a registered trademark, service mark, certification mark or collective mark, licensee or any other person pursuant to this Act shall be sent by registered acknowledgement mail to the office or address given in the application for registration or as registered, as the case may be.

If the delivery by the means set forth in the first paragraph is not possible, service may be made by an officer or by again sending by registered acknowledgement mail. If service is by an officer, if the recipient is not present, the communication may be delivered to any person of legal age who lives or works in the office or at the address or it may posted in a conspicuous place at the office or address of the recipient.

Seven days after delivery by the means set forth in paragraph two have elapsed, the communication shall be deemed to have been received by the addressee.

Section 105 For the purpose of filing cases to the court or legal proceedings concerning trademarks, service marks, certification marks or collective marks under this Act, if the applicant or owner is not domiciled in Thailand, the office or address of the person or his agent given in the application or registration shall be deemed the domicile of such person.

Section 106 In the case where the Registrar petitions the Board to order the cancellation of a trademark, service mark, certification mark or collective mark or the cancellation of a trademark or service mark license agreement, the Registrar shall be exempt from the payment of fees under this Act.

Section 106 bis<sup>(1)</sup> In performing his duties under this Act, the Registrar or competent officer shall have the following powers:

(1) To enter the place of business, place of production, place of distribution, place of purchasing and place of storage of any business operator or person, or any place in which he has a reasonable ground for suspecting that a violation of the provisions of this Act is likely to occur, or to enter a vehicle of any person, or order the owner or operator of a vehicle to stop or park to make inspection for the enforcement of this Act or to make a search or seizure of evidence or property forfeitable under this Act, or to arrest in the following circumstances:

(a) where a flagrant offence is being committed in a place or vehicle;

(b) a person having committed a flagrant offence has, while being pursued, taken refuge or there is a serious ground for suspecting that such person is concealing in the place or vehicle;

(c) where there is a reasonable ground for suspecting that evidence or property forfeitable under this Act is kept in the place or vehicle, having a legitimate reason to believe that by reason of the delay in obtaining a warrant of search the evidence or property is likely to be removed, concealed, destroyed or altered from its original conditions;

(d) when a person to be arrested is the owner of the place or vehicle and the arrest is made with a warrant of arrest or can be made without such a warrant.

For such purposes, he shall have the power to inquire or require the business operator, owner or operator of the vehicle or persons concerned to submit books of accounts, registration documents, other documents or evidence, and also order the persons in such a place or vehicle to act or perform as it is necessary.

(2) In cases where there is clear evidence to believe that any provision of this Act is violated, to seize or confiscate goods, vehicle, documents or other evidence in connection with such violation. In such a case, he shall report to the Director-General for his approval within three days and shall comply with the rules and procedures prescribed by the Director-General with the approval of the Council of Ministers.

Section 106 ter<sup>(1)</sup> In performing the duties under Section 106 bis, the Registrar and competent officer shall produce his identification to the persons concerned.

The identification card under the first paragraph shall be in the form prescribed by the Minister in the Government Gazette.

Section 106 quarter<sup>(1)</sup> In performing his duties under this Act, the Registrar and competent officer shall be the competent official under the Criminal Code.

## **CHAPTER VI PENALTIES**

Section 107 Any person who makes a false statement to the Registrar or Board in an application, opposition or other document filed concerning an application for registration, amendment of a registration, renewal of a registration or cancellation of the registration of a trademark, service mark, certification mark or collective mark or a license pertaining to a trademark or service mark shall be liable to imprisonment not exceeding six months or a fine not exceeding ten thousand baht or both.

Section 108 Any person who counterfeits a trademark, service mark, certification mark or collective mark registered in Thailand by another person shall be liable to imprisonment not exceeding four years or a fine of not exceeding four hundred thousand baht or both.

Section 109 Any person who imitates a trademark, service mark, certification mark or collective mark registered in the Kingdom by another person in order to mislead the public into believing that it is the trademark, service mark, certification mark or collective mark of such other person shall be liable to imprisonment not exceeding two years or a fine of not exceeding two hundred thousand baht or both.

Section 110 Any person who:

(1) imports, distributes, offers for distribution or has in possession for distribution goods bearing a counterfeit trademark, service mark, certification mark or collective mark under Section 108 or an imitation trademark, service mark, certification mark or collective mark under Section 109, or

(2) gives or offers a service under a counterfeit service mark, certification mark or collective mark under Section 108 or an imitation service mark, certification mark or collective mark under Section 109, shall be liable to the penalties provided in those Sections.

Section 111 Any person who:

(1) represents as registered in Thailand a trademark, service mark, certification mark or collective mark which is not so registered,

(2) distributes or has in possession for distribution goods bearing a trademark or certification mark under (1) which he knows to be falsely represented, or

(3) gives or offers a service under a service mark, certification mark or collective mark under (1) which he knows to be falsely represented, shall be liable to imprisonment not exceeding one year or fine of not exceeding twenty thousand baht or both.

Section 112 Any person who violates Section 90 shall be liable to a fine not exceeding twenty thousand baht.

Section 112 bis<sup>(1)</sup> Any person who obstructs the Registrar or Competent officer in the exercise of his functions under Section 106 bis shall be liable to imprisonment not exceeding one year or a fine not exceeding twenty thousand baht or both.

Section 112 ter<sup>(2)</sup> Any person who fails to provide convenience to the Registrar or competent officer in the exercise of his functions under Section 106 bis shall be liable to imprisonment not exceeding one month or a fine not exceeding two thousand baht or both.

Section 113 The penalty for an offence under this Act committed within five years from the date of passing the punishment for another offence under this Act shall be doubled.

Section 114<sup>(1)</sup> In the event an offender liable under this Act is a juristic person, if the offence is committed by an order, act, failure to give an order or failure to act as required by his duties as a director, manager or any person responsible for the operation of such juristic person, shall also be liable to the penalty prescribed for such offence.

Section 115 All goods which are imported for distribution or had in possession for distribution in violation of this Act shall be confiscated whether or not anyone has been convicted of the offence.

Section 116 If there is clear evidence someone is committing or is about to commit an act under Sections 108, 109 or 110, the owner of the trademark, service mark, certification mark or collective mark may apply to the court to stop or refrain from such act.