

TRADEMARK ACT B.E. 2534 (1991)
AMENDED BY TRADEMARK ACT (NO. 2) B.E. 2543 (2000)
AND TRADEMARK ACT (NO. 3) B.E. 2559 (2016)*

BHUMIBOL ADULYADEJ, REX.

Given on the 28th Day of October B.E. 2534;

Being the 46th 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 2¹ This Act shall come into force after the expiration of ninety days from the date of its publication in the Government Gazette.

Section 3 The following shall be repealed: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rules insofar as they are provided for herein or are contrary to or consistent with the provisions hereof shall be superseded by this Act.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. In this Act:—

"Mark"² means a photograph, drawing, invented device, logo, name, word, phrase, letter, numeral, signature, combination of colors, figurative element, sound 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;

* This text has been prepared for information and comprehensive purposes only and contains no legal force in any case whatsoever. The Department of Intellectual Property shall assume no responsibility for any liabilities arising from the use and/or reference of this text. The original Thai text as formally adopted and published in the Government Gazette shall in all circumstances remain the sole authority having legal force.

¹ Published in Government Gazette Vol. 108 part 199, special page 7 dated 15 November B.E. 2534 (1991)

² Section 4 amended by Trademark Act (No. 3) B.E. 2559

“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”³ 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”⁴ 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 5⁵ The Minister of Commerce shall have charge and control of the execution of this Act and shall have the power to appoint Registrars and competent officers, issue ministerial regulations prescribing official fees not exceeding those indicated in the schedule annexed hereto, reduce or exempt official fees and prescribe other matters and issue notifications for the execution of this Act.

³ Section 4 amended by Trademark Act (No. 2) B.E. 2543

⁴ Section 4 amended by Trademark Act (No. 2) B.E. 2543

⁵ Section 5 paragraph one amended by Trademark Act (No. 3) B.E. 2559

Chapter 1 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 7⁶ A distinctive trademark is a trademark which enables the public or users to distinguish the goods with which the trademark is used from other goods.

A trademark having or comprising any of the following essential characteristics shall be deemed distinctive.

(1) a personal name, a surname of a natural person not being such by its ordinary signification, a full name of a juristic person in accordance with the law on such matter or a tradename represented in a special manner and having no direct reference to the character or quality of the goods;

(2) a word or phrase having no direct reference to the character or quality of the goods and not being a geographical name prescribed by the Minister;

(3) an invented word;

(4) a stylized letter or numeral;

(5) a combination of colors represented in a special manner;

(6) the signature of the applicant or the predecessor in his or her business or the signature of another person with his or her permission;

(7) the representation of the applicant or of another person with his or her permission or of a deceased person with the permission of his or her ascendants, descendants and spouse, if any;

(8) an invented device;

(9) a picture having no direct reference to the character or quality of the goods and not being a picture of a map or a geographical site prescribed by the Minister;

(10) a shape which is not the natural form of the goods or a shape which is not necessary to obtain a technical result of the goods or a shape which does not give value to the goods;

(11) a sound having no direct reference to the character or quality of the goods or a sound which is not the natural sound of the goods or a sound which does not result from the functioning of the goods.

A trademark having no characteristics under paragraph two (1) to (11), if used on goods which have been widely sold or advertised in accordance with the rules prescribed

⁶ Section 7 amended by Trademark Act (No. 3) B.E. 2559

in a notification by the Minister and if it is proved that the rules have been duly met, shall be deemed distinctive.

Section 8⁷ 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.

Paragraph two⁸ (Repealed)

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.

⁷ Section 8 amended by Trademark Act (No. 2) B.E. 2543

⁸ Section 9 paragraph two repealed by Trademark Act (No. 3) B.E. 2559

Section 11 Applications for trademark registration shall comply with the rules and procedures prescribed in the Ministerial Regulations.

⁹In 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 13¹⁰ Subject to Section 27, the Registrar shall not grant registration to a trademark applied for if he finds that:

(1) it is identical with a trademark registered by another person for use with goods in the same class or in different classes found to be of the same character

(2) it is so similar to a trademark registered by another person that the public might be confused or misled as to the ownership or origin of the goods for use with goods in the same class or in different classes found to be of the same character.

Section 14 (Repealed)¹¹

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,

¹²The Registrar shall order the applicant to amend the application within sixty days from the date of receipt of the order and shall notify the applicant in writing without delay.

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

⁹ Section 11 paragraph two Added by Trademark Act (No. 2) B.E. 2543

¹⁰ Section 13 amended by Trademark Act (No. 3) B.E. 2559

¹¹ Section 14 Repealed by Trademark Act. (No. 3) B.E. 2559

¹² Section 15 paragraph two amended by Trademark Act (No. 3) B.E. 2559

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)¹³ order the applicant to disclaim exclusive right to such part or parts of the trademark within sixty days from the date of receipt of the order;

(2)¹⁴ order the applicant to enter such other disclaimers as the Registrar finds it necessary to define the rights of the owner of such trademark within sixty days from the date of receipt of the order.

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 18¹⁵ The applicant shall be entitled to appeal the order of the Registrar under Section 15, Section 16 and Section 17 to the Trademark Board within sixty days from the date of receipt of the Registrar's notification. Decisions of the Board shall be final.

If the Board decides that the order of the Registrar under Section 15 or Section 17 is correct, the applicant shall comply with the order of the Registrar within sixty days from the date of receipt of the Board's decision.

If the Board decides that the order of the Registrar under Section 15, Section 16 and Section 17 is incorrect, the Registrar shall proceed with the application.

Section 19¹⁶ If the applicant fails to appeal under Section 18 paragraph one and does not comply with the order of the Registrar under Section 15 or Section 17, as the case may be, or if the applicant appeals under Section 18 paragraph one but fails to comply with Section 18 paragraph two, the application shall be deemed abandoned.

Section 20¹⁷ Where several applicants file applications for registration of trademarks, if the Registrar finds that those trademarks have any of the following characteristics, he shall proceed with the application first filed and inform the subsequent applicants in writing to await the processing of the application filed before:

(1) the trademarks are identical whether for use with goods in the same class or in different classes found by the Registrar to be of the same character

(2) the trademarks are so similar as to cause public confusion as to the ownership or origin of goods, whether for use with goods in the same class or in different classes found by the Registrar to be of the same character.

Where the trademark first filed is not registered, the Registrar shall proceed with the application next filed and inform the applicant of that application and other applicants without delay.

Section 21¹⁸ An applicant seeing his or her trademark applied for is not identical with nor confusingly similar to other prior pending trademarks, may appeal the

¹³ Section 17 (1) amended by Trademark Act (No. 3) B.E. 2559

¹⁴ Section 17 (2) amended by Trademark Act (No. 3) B.E. 2559

¹⁵ Section 18 amended by Trademark Act (No. 3) B.E. 2559

¹⁶ Section 19 amended by Trademark Act (No. 3) B.E. 2559

¹⁷ Section 20 amended by Trademark Act (No. 3) B.E. 2559

¹⁸ Section 21 amended by Trademark Act (No. 3) B.E. 2559

Registrar's order under Section 20 paragraph one to the Trademark Board within sixty days from the date of receipt of the order. In such case, Section 18 shall apply *mutatis mutandis*.

Section 22¹⁹(Repealed)

Section 23²⁰(Repealed)

Section 24²¹(Repealed)

Section 25²²(Repealed)

Section 26²³ (Repealed)

Section 27²⁴ Where there are applications under Section 13 or Section 20 paragraph one, as the case may be, if the Registrar finds there has been honest concurrent users or special circumstances making it proper to do so, he or she may grant registration of such identical or similar trademarks of several owners subject to such conditions and limitations as to the mode or place of use or such other conditions and limitations as he or she may think fit to impose. The Registrar shall, without delay, notify the applicant and the registered owner of the order in writing with reasons.

The applicant or the registered owner may appeal the order of the Registrar under paragraph one to the Trademark Board within sixty days from the date of receipt of the notification.

Decisions of the Board under paragraph two shall be final.

Section 28²⁵ 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:

¹⁹ Section 22 repealed by Trademark Act No. 3 B.E. 2559

²⁰ Section 23 repealed by Trademark Act No. 3 B.E. 2559

²¹ Section 24 repealed by Trademark Act No. 3 B.E. 2559

²² Section 25 repealed by Trademark Act No. 3 B.E. 2559

²³ Section 26 repealed by Trademark Act No. 3 B.E. 2559

²⁴ Section 27 amended by Trademark Act (No. 3) B.E. 2559

²⁵ Section 25 amended by Trademark Act (No. 2) B.E. 2543

(1)²⁶ The right of priority under paragraph one has not been exercised in respect of the application under paragraph two; and

(2)²⁷ The application under paragraph two can no longer be processed under the trademark law of the state where the application is filed; and

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

Section 28bis²⁸ 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 When an application for registration of a trademark is considered acceptable, the Registrar shall order the application to be published.

Paragraph two (repealed)²⁹

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 31³⁰ The applicant shall be entitled to appeal the Registrar's revocation order under Section 30 paragraph one to the Trademark Board within sixty days from the date of receipt of the notification.

²⁶ Section 28 paragraph three (1) amended by Trademark Act (No. 3) B.E. 2559

²⁷ Section 28 paragraph three (2) amended by Trademark Act (No. 3) B.E. 2559

²⁸ Section 28bis amended by Trademark Act (No. 2) B.E. 2543

²⁹ Section 29 paragraph two repealed by Trademark Act (No. 3) B.E. 2559

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 not 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 33³¹ 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 35³² Upon publication of a trademark application under Section 29, any person seeing that he or she has better title to 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 file an opposition, with grounds thereof, with the Registrar within sixty days from the date of publication under Section 29.

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

Section 36³³ If an opposition is filed under Section 35, the Registrar shall send a copy thereof to the applicant without delay.

³⁴The applicant shall submit to the Registrar within sixty days from the date of receipt of the copy opposition, a counterstatement in the form prescribed by the Director-General stating the grounds on which he or she relies in support of the application. The Registrar shall, without delay, send a copy of the counterstatement to the opposer.

³⁰ Section 31 paragraph one amended by Trademark Act (No. 3) B.E. 2559

³¹ Section 33 paragraph one amended by Trademark Act (No. 2) B.E. 2543

³² Section 35 paragraph one amended by Trademark Act (No. 3) B.E. 2559

³³ Section 36 amended by Trademark Act (No. 2) B.E. 2543

³⁴ Section 36 paragraph two amended by Trademark Act (No. 3) B.E. 2559

If the applicant fails to comply with the requirement under paragraph two, he shall be deemed to have abandoned his application.

³⁵In considering and deciding the opposition, the Registrar may order the applicant and the opposer to give a statement, submit an explanation or additional evidence. If the applicant or the opposer fails to comply with the order of the Registrar within sixty day from the date of receipt of the order, the Registrar shall proceed to consider and decide the opposition on the basis of the evidence available.

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

³⁶The applicant or the opposer shall be entitled to appeal the decision of the Registrar to the Trademark Board within sixty days from the date of receipt of the notification of the decision of the Registrar. 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.

³⁷Where there is an order to register the trademark under paragraph one, the Registrar shall notify the applicant of the order in writing and the registration fee shall be paid within sixty days from the date of receipt of the notification. If the applicant fails to pay the fee within the time specified, 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.

³⁵ Section 36 paragraph four amended by Trademark Act (No. 3) B.E. 2559

³⁶ Section 37 paragraph two amended by Trademark Act (No. 3) B.E. 2559

³⁷ Section 40 paragraph two amended by Trademark Act (No. 3) B.E. 2559

Section 42³⁸ 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.

³⁸ Section 42 amended by Trademark Act (No. 2) B.E. 2543

³⁹Assignment or inheritance of the trademark under paragraph one may be effected in respect of all or certain items of goods.

Section 50⁴⁰ (Repealed)

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 51/1⁴¹ Where the assignor, the assignee or the inheritor under Section 48 or Section 49 files an application for or accepts an assignment of or inherits an application for a trademark found by the Registrar to be identical with or similar to the trademark he or she assigned, accepted an assignment thereof or inherited, whether for use with goods in the same class or in different classes having the same character, the Registrar shall not grant registration of that trademark. In such case, the provision of Section 13 or Section 20 shall apply *mutatis mutandis*.

Where it appears to the Registrar that the applicant or the assignee or the inheritor of the trademark application under paragraph one has received a written consent from the assignor, the assignee or the inheritor, as the case may be, special circumstances shall be presumed in respect of the said trademark application and the Registrar may allow co-existence of such identical or similar trademarks of several owners. The provision of Section 27 shall apply *mutatis mutandis*.

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.

Section 52/1⁴² Where an application for registration of an assignment or inheritance of a trademark does not conform with Section 51 paragraph two or an application for a change in the particulars of a registration does not conform with Section 52, the Registrar shall notify the applicant or the trademark owner in writing to make an amendment within sixty days from the date of receipt of the notification.

If the applicant or the trademark owner fails to comply with the Registrar's notification under paragraph one, the application for registration of the assignment or the inheritance or the application for a change of the particulars in the registration, as the case may, shall be deemed abandoned.

³⁹ Section 49 paragraph two amended by Trademark Act (No. 3) B.E. 2559

⁴⁰ Section 50 repealed by Trademark Act (No. 3) B.E. 2559

⁴¹ Section 51/1 added by Trademark Act (No. 3) B.E. 2559

⁴² Section 52/1 added by Trademark Act (No. 3) B.E. 2559

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 54⁴³ A trademark owner wishing to renew his or her trademark registration shall submit a renewal application to the Registrar and pay the renewal fee within three months prior to the expiration date.

Where the trademark owner fails to submit a renewal application within the period specified under paragraph one, he may, if still wishing to renew, submit a renewal application to the Registrar and pay the renewal fee and a surcharge of twenty percent thereof within six months of the expiration date.

During the period under paragraph two or when the trademark owner has submitted a renewal application and pay the renewal fee within the time period under paragraph one or paragraph two, as the case may be, the trademark shall be deemed registered until the Registrar orders otherwise.

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

Section 55⁴⁴ Where a trademark owner submits a renewal application and pays the renewal fee within the time specified in Section 54 paragraph one or paragraph two and the Registrar finds the renewal is in accordance with the rules and procedures prescribed in the Ministerial Regulations under Section 54 paragraph four, the Registrar shall renew the registration for a further period of ten years from the date of expiration of the initial registration or of the last renewal thereof, as the case may be.

Where a trademark owner submits a renewal application and pays the renewal fee within the time specified in Section 54 paragraph one or paragraph two but the Registrar finds the renewal is not in accordance with the rules and procedures prescribed in the Ministerial Regulations under Section 54 paragraph four, the Registrar shall order the trademark owner to correct the application within sixty days from the date of receipt of the order and shall notify the trademark owner of the order in writing without delay. If the owner does not comply with the order within the specified period, the Registrar shall order cancellation of the trademark registration.

Section 56⁴⁵ Where a trademark owner does not apply for renewal of a registration within the period specified under Section 54 paragraph two, the registration 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.

⁴³ Section 54 amended by Trademark Act (No. 3) B.E. 2559

⁴⁴ Section 55 amended by Trademark Act (No. 3) B.E. 2559

⁴⁵ Section 56 amended by Trademark Act (No. 3) B.E. 2559

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.

⁴⁶The trademark owner shall be entitled to appeal the order of the Registrar under paragraph one to the Trademark Board within sixty days from the date of receipt of the notification of the order. If no appeal is filed within the specified period, the order of the Registrar shall be deemed final.

Decisions of the Board under paragraph two shall be final.

Section 61⁴⁷ 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)⁴⁸ the trademark is identical with a trademark registered by another person for use with goods in the same class or in different classes of the same character, or
- (4)⁴⁹ the trademark is so similar to a trademark registered by another person that it may confuse or mislead the public as to the ownership or origin of goods for use with goods in the same class or in different classes of 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.

⁴⁶ Section 60 paragraph two amended by Trademark Act (No. 3) B.E. 2559

⁴⁷ Section 60 amended by Trademark Act (No.2) B.E. 2543

⁴⁸ Section 61 (3) amended by Trademark Act (No. 3) B.E. 2559

⁴⁹ Section 61 (4) amended by Trademark Act (No. 3) B.E. 2559

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 Sections 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 Sections 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.

⁵⁰The trademark owner or the registered licensee shall be entitled to appeal the order of the Registrar under paragraph one to the Trademark Board within sixty days from the date of receipt of the notification of the order. If no appeal is filed within the specified period, the order of the Registrar 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.

⁵⁰ Section 69 Paragraph 3 amended by Trademark Act (No.3) B.E. 2559

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 Sections 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 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.

⁵¹The trademark owner or the licensee shall be entitled to appeal the order of the Registrar under paragraph one to the Trademark Board within sixty days from the date of receipt of the notification. If no appeal is filed within the specified period, the order of the Registrar shall be deemed final.

⁵²Decisions 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

⁵¹ Section 74 paragraph two amended by Trademark Act (No. 3) B.E. 2559

⁵² Section 74 paragraph three added by Trademark Act (No. 2) B.E. 2543

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.

Section 79/1⁵³ Unless otherwise stated in a trademark license agreement, the agreement shall not cease to be binding because of an assignment or inheritance of the trademark under the agreement.

Chapter 1/1⁵⁴

Trademark Registration under Madrid Protocol

Section 79/2 In this Chapter

“Madrid Protocol” means Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks adopted at Madrid on June 27, 1989 and the amendments.

“International Application” means an application for international registration of a trademark, service mark, certification mark or collective mark filed under the Madrid Protocol.

“International Bureau” means the International Bureau of the World Intellectual Property Organization.

“Office of Origin” means an office which receives an application for or grants registration of a trademark used as a base for filing an international application.

Section 79/3 Trademark registration under the Madrid Protocol shall be in accordance with the provisions of this Chapter and the provisions in Chapter 1 Trademark, except Section 10, Section 40 paragraph two and Section 59, shall apply mutatis mutandis.

Section 79/4 A person eligible to file an international application in the Kingdom shall be one who has filed an application for or obtained a registration of the trademark in the Kingdom and has the following qualifications:

- (1) being a Thai national or a juristic person having a principal office located in Thailand, or
- (2) being domiciled in Thailand, or
- (3) having an effective industrial or commercial establishment in Thailand.

Section 79/5 Any person having filed an international application in the Kingdom may designate other member states for protection and may request territorial extensions for protection after having obtained an international registration.

Section 79/6 When an international application requesting protection in the Kingdom is notified by the International Bureau, it shall be deemed an application in the Kingdom and the Registrar shall proceed with it under this Act.

⁵³ Section 79/1 added by Trademark Act. (No. 3) B.E. 2559

⁵⁴ Chapter 1/1 Trademark Registration under Madrid Protocol Section 79/2 – Section 79/15 added by Trademark Act. (No. 3) B.E. 2559

Where the Registrar finds that the trademark under paragraph one lacks registrable characteristics or the application does not conform with the provisions under this Act, the Registrar shall refuse registration and inform the International Bureau, with reasons, within the time and in accordance with the rules, procedures and conditions prescribed in the Ministerial Regulations.

Where the Registrar sees that there may be an opposition lodged beyond the time prescribed in the Ministerial Regulations under paragraph two, he shall notify the International Bureau in writing within the time and in accordance with the rules, procedures and conditions prescribed in the Ministerial Regulations. Where there is an order refusing registration which results from the opposition, the Registrar shall notify the International Bureau in writing, with reasons for the opposition, within the time and in accordance with the rules, procedures and conditions prescribed in the Ministerial Regulations.

Absent any notification whatsoever to the International Bureau under paragraph two or paragraph three, it shall be deemed that the Registrar allows registration of the trademark without need to publish the mark under Section 29.

The trademark, once registration is granted, shall enjoy the same protection as that afforded to a trademark applied for registration in the Kingdom.

Section 79/7 When registered, the date of filing the international application with the Office of Origin shall be deemed the date of registration of the trademark, except where the International Bureau receives the international application beyond the time prescribed in the Ministerial Regulations in which case the date of receipt of the international application by the International Bureau shall be the date of registration of the trademark.

A trademark registration shall be valid for ten years from the registration date stated in paragraph one and may be renewed under this Act.

Section 79/8 Where there is a territorial extension for protection in the Kingdom after the International Bureau has granted registration, the provision of Section 79/6 shall apply mutatis mutandis. In such case, it shall be deemed that the trademark has been protected in the Kingdom since the date of recordal by the International Bureau of the request for extension in the International Register and the expiration date of registration shall be the same date as that of the international registration and it may be renewed under this Act.

Section 79/9 Where the trademark registered in the Kingdom is the same as the trademark of the international registration covering the Kingdom and both belong to the same owner, the trademark owner may request the Registrar to record the international registration to replace the national registration for all goods or certain items which are the same.

The provisions under paragraph one shall not prejudice any prior rights acquired by the national registration.

Section 79/10 Where the application for a trademark filed with the Office of Origin, including the registration resulting therefrom, or the registration of a trademark effected at the Office of Origin, which is used as a base for filing an international application, is withdrawn, abandoned, rejected or cancelled, as the case may be, in respect of all or some of the goods within the time period prescribed in the Ministerial Regulations, and the cancellation of the international registration of that trademark is notified by the International Bureau, it shall be deemed that the application or the registration requesting protection in the Kingdom is similarly withdrawn, abandoned, rejected or cancelled, as the case may be, in respect of all or some of the goods on the date of cancellation of the international registration.

The provision under paragraph one shall also apply to a case where action for withdrawal, abandonment, rejection or cancellation has begun before the expiration of the time period prescribed in the Ministerial Regulations under paragraph one but has completed after the expiration of the said time period.

Where Thailand is the Office of Origin, when there is an occurrence under paragraph one or paragraph two, the Registrar shall notify the International Bureau in accordance with the rules, procedures and conditions prescribed in the Ministerial Regulations.

Section 79/11 Where an international registration of a trademark requesting protection in the Kingdom is cancelled by the International Bureau for causes under Section 79/10, the owner of the cancelled international registration may file an application for that trademark in the Kingdom for the same goods but this must be done within the time period and in accordance with the rules, procedures and conditions prescribed in the Ministerial Regulations and the international registration date under Section 79/7 or the recordal date of the international extension under Section 79/8, as the case may be, shall be deemed the filing date in the Kingdom.

Section 79/12 Summonses, notifications or other communications to the applicant of an international application or the owner of an international registration, the agents, the attorneys or other persons pursuant to this Act shall be sent to the International Bureau for further delivery to those persons, except for cases prescribed in the Ministerial Regulations. Delivery of the said communications shall be in accordance with the rules, procedures and conditions prescribed in the Ministerial Regulations.

Once delivered in accordance with the rules, procedures and conditions prescribed in paragraph one and upon lapse of the time prescribed in the Ministerial Regulations, it shall be deemed that the communications are received by the persons under paragraph one.

Section 79/13 Application and registration, recordal of an international registration to replace a registration in the Kingdom, request for protection, amendment of registration particulars, appeal against the Registrar's orders and renewal of registrations including other proceedings under the Madrid Protocol shall be in accordance with the rules, procedures and conditions prescribed in the Ministerial Regulations.

Section 79/14 Issuance of the Ministerial Regulations under Section 79/6, Section 79/7, Section 79/10, Section 79/11, Section 79/12 and Section 79/13 shall comply with the Madrid Protocol.

Expenditure for proceeding abroad under the Madrid Protocol shall be in accordance with the notification by the Director-General as prescribed by the International Bureau.

Section 79/15 The provisions in this Chapter shall, mutatis mutandis, apply to service marks, certification marks and collective marks for which international registration is sought under the Madrid Protocol, as the case may be.

Chapter 2 **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. Sections 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 89⁵⁵ The owner of a certification mark or any other person prejudiced or to be prejudiced by the order of the Registrar under Section 87 or Section 88 shall be entitled to appeal the order to the Trademark Board within sixty days from the date of the publication under Section 87 or from the date of receipt of the notification 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 3 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 4 Trademark Board

Section 95⁵⁶ 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

⁵⁵ Section 89 paragraph one amended by Trademark Act (No. 3) B.E. 2559

⁵⁶ Section 95 amended by Trademark Act (No. 2) B.E. 2543

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 The Board shall have the following powers and duties:—

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

(2)⁵⁷ 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 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.

⁵⁸The 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.

⁵⁷ Section 96 (2) amended by Trademark Act (No. 2) B.E. 2543

⁵⁸ Section 99 paragraph four added by Trademark Act (No. 2) B.E. 2543

Section 99bis⁵⁹ 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 101⁶⁰ 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 5 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.

⁵⁹ Section 99 paragraph four added by Trademark Act (No. 2) B.E. 2543

⁶⁰ Section 101 amended by Trademark Act (No. 2) B.E. 2543

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 106bis⁶¹ 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 106ter⁶² In performing the duties under Section 106bis, 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 106quarter⁶³ In performing his duties under this Act, the Registrar and competent officer shall be the competent official under the Criminal Code.

⁶¹ Section 106bis added by Trademark Act (No. 2) B.E. 2543

⁶² Section 106ter added by Trademark Act (No. 2) B.E. 2543

Chapter 6 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 109/1⁶⁴ Any person using the packagings or utensils bearing another person's trademark, certification mark or collective mark registered in the Kingdom with his or other persons' goods to mislead the public into believing that the goods belong to the owner of the trademark or the collective mark or that the certification mark is allowed for use with the goods, shall be liable to imprisonment for a term not exceeding four years or a fine not exceeding four 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.

⁶³ Section 106^{quarter} added by Trademark Act (No. 2) B.E. 2543

⁶⁴ Section 109/1 added by Trademark Act (No. 3) B.E. 2559

Section 112bis⁶⁵ Any person who obstructs the Registrar or Competent officer in the exercise of his functions under Section 106bis shall be liable to imprisonment not exceeding one year or a fine not exceeding twenty thousand baht or both.

Section 112ter⁶⁶ Any person who fails to provide convenience to the Registrar or competent officer in the exercise of his functions under Section 106bis 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 114⁶⁷ 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 Section 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.

Provisional Measures

Section 117 Trademarks which have been and continue to be registered under Trademarks Act B.E. 2474 on the date of entry into force of this Act shall be deemed trademarks under this Act.

Section 118 The trademark Board under the Trademarks Act B.E. 2474 in office on the date of entry into force of this Act shall, for not more than sixty days, continue to exercise their functions until there is a trademark Board under this Act.

Section 119 All applications for trademark registration, applications to amend registrations, applications to transfer rights to trademarks and applications to renew trademarks submitted under the Trademarks Act B.E. 2474, if, prior to the date of entry into force of this Act, the Registrar:

(1) has not given any order with respect thereto, shall be treated as having been submitted under this Act and further action shall be taken under this Act;

(2) has given any order with respect thereto, shall be further processed under the Trademarks Act B.E. 2474 until the matter becomes final.

Section 120 On applying for renewal of a trademark registered under the Trademarks Act B.E. 2474 in respect of all goods in any class, the owner shall clearly specify the kinds of goods for which protection is desired. In such case, the provisions of Section 9 shall apply *mutatis mutandis*.

⁶⁵ Section 112bis added by Trademark Act (No. 2) B.E. 2543

⁶⁶ Section 112ter added by Trademark Act (No.2) B.E. 2543

⁶⁷ Section 114 amended by Trademark Act (No. 2) B.E. 2543

Section 121 Appeals against orders or decisions of the Registrar and oppositions under the Trademarks Act B.E. 2474 which are pending prior to the date of entry into force of this Act shall be governed by the Trademarks Act B.E. 2474 until they become final.

Section 122 Periods of time for submitting appeals, oppositions, counterstatements and notifications to the Registrar that agreement has been reached or legal proceedings filed under the Trademarks Act B.E. 2474 if not yet elapsed prior to the date of entry into force of this Act shall be counted anew from the date this Act comes into force.

Section 123 All Ministerial Regulations, notifications, rules and orders issued under the Trademarks Act B.E. 2474 shall continue in effect insofar as they are not contrary to or inconsistent with this Act until the Ministerial Regulations and notifications issued under this Act become effective.

unofficial translation

Official Fees⁶⁸

- | | | |
|-----|--|----------------------------|
| (1) | Application for registration of a trademark, service mark, certification mark or collective mark | |
| | (a) 1 to 5 items of goods or services in each class | 1,000 baht per item |
| | (b) over 5 items of goods or services in each class | 9,000 baht per class |
| (2) | Representation of trademark, service mark, certification mark or collective mark exceeding 5 centimeter in width or length | 200 baht per centimeter |
| | Fraction of a centimeter shall be counted as a centimeter | |
| (3) | Opposition against an application under (1) | 2,000 baht per opposition |
| (4) | Application to assign rights to an application for a trademark, service mark, certification mark or collective mark | 2,000 baht per application |
| (5) | Registration of a trademark, service mark, certification mark or collective mark | |
| | (a) 1 to 5 items of goods or services in each class | 600 baht per item |
| | (b) over 5 items of goods or services in each class | 5,400 baht per class |
| (6) | Replacement certificate of registration | 200 baht per copy |
| (7) | Application to register an assignment or inheritance of a trademark, service mark, certification mark or collective mark | 2,000 baht per application |
| (8) | Application to amend registration particulars under (5) | 400 baht per application |

⁶⁸ Official Fees amended by Trademark Act (No.3) B.E. 2559

- (9) Renewal of registration under (5)
- (a) 1 to 5 items of goods or services in each class 2,000 baht per item
 - (b) over 5 items of goods or services in each class 18,000 baht per class
- (10) Petition to the Trademark Board to cancel the registration under (5) 1,000 baht per request
- (11) Application for registration of a trademark or service mark license 1,000 baht per application
- (12) Registration of a trademark or service mark license 2,000 baht per license
- (13) Application to amend the registration particulars under (12) 400 baht per application
- (14) Petition to cancel the registration under (12) 400 baht per request
- (15) Application to amend the application under (1), (7) or (11) 200 baht per application
- (16) Application to amend rules of a certification mark
- (a) before registration of the certification mark 200 baht per application
 - (b) after registration of the certification mark 400 baht per application
- (17) Appeal
- (a) Appeal against the Registrar's order under Section 16, Section 17, Section 27 or the Registrar's decision under Section 37 4,000 baht per appeal
 - (b) Appeals under other provisions 2,000 baht per appeal

- (18) Search of registration particulars of trademarks, service marks, certification marks or collective marks or files thereof 200 baht per hour
Fraction of an hour shall be counted as an hour
- (19) Request for an extract of register of trademarks, service marks, certification marks or collective marks, with certification 400 baht per copy
- (20) Request for copy documents 20 baht per page
- (21) Request for certification of documents of the same case
- (a) not over 40 pages 20 baht per page
- (b) over 40 pages 800 baht per copy
- (22) Request for certification of registration 100 baht per copy
- (23) Other applications 200 baht per application
- (24) Preparation and delivery of an international application or other applications under Madrid Protocol
- (a) Preparation and delivery of an application for registration 2,000 baht per application
- (b) Preparation and delivery of a renewal application, an application for assignment, an application for amendment and other applications 1,000 baht per request
- (c) Request for recordal of an international registration to replace a registration in the Kingdom 2,000 baht per request

Trademark Act B.E. 2534

Remarks: The reasons for enactment of this Act are as follows. The Trademark Act B.E. 2474 had been promulgated and enforced for a long time. The provisions are obsolete and cannot protect the rights of the trademark owner efficiently. Also, the service mark the certification mark and trademark or service mark license are being widely known and legally protected in many countries, are still not protected under Thai law. Furthermore the aforementioned Act has some inadequate provisions, such as, power and duties of Registrars and Trademark Board as well as the right of applicants are not expressly legalized. This absence causes a lot of difficulties in practice. It is expedient the revise the Act. It is, therefore, necessary to enact this Act.

Countersigned by

Anand Panyarachun
Prime Minister

Published in the Government Gazette Vol. 108 Part 199 special edition page 7 dated 15 November B.E. 2534 (1991)

Trademark Act (No. 2) B.E. 2543

Remarks: The reasons for enactment of this Act are as follows. The plurilateral trade negotiation at Uruguay Round where many countries had agreed on TRIPS and the establishment of World Trade Organization (WTO) had been achieved with success and came into force. Therefore, Thailand, as a member of WTO, has an obligation to implement the aforementioned agreement in order to achieve an efficient protection of intellectual property. Also, it is expedient to revise the conditions, characteristics and the prohibitions of registration of trademarks, the cancellation and the related procedures, the collection of publication's fee and the composition, power and duties of the Trademark Board, as well as to provide for the assignment of the officer under this Act and to enhance the power of Registrar in considering the opposition to the registration. It is, therefore, necessary to enact this Act.

Section 27 Any trademark applications, service mark application, certification mark application and collective mark application, which are filed before the entry into force of this Act, shall be deemed applications under the Trademark Act B.E. 2534, amended by this Act.

Section 28 The Minister of Commerce shall have the charge and control of the execution of This Act.

Countersigned by

Chuan Leekpai
Prime Minister

Published in the Government Gazette Vol. 117 Part 29a page 11 dated 1 April B.E. 2543 (2000)

Trademark Act (No. 3) B.E. 2559⁶⁹

Section 2 This Act shall come into force at the expiration of ninety days from the date of its publication in the Government Gazette, except for the provision of section 31 for which a Royal Decree shall be issued as to its effective date.

Section 34 The official fees annexed to the Trademark Act B.E. 2534 as amended by the Trademark Act (No. 2) B.E.2543 shall be cancelled and the official fee annexed to this Act shall be adopted.

Section 35 Subject to Section 36 applications filed before the effective date of this Act shall be deemed applications filed under the Trademark Act B.E. 2534 as amended by this Act and shall be processed as follows:

(1) where the Registrar has issued an order, the said application shall be processed under the provisions of the Trademark Act B.E. 2534 in force before the effective date of this Act until finality due.

(2) where the Registrar has not issued an order, the said application shall be processed under the provisions of the Trademark Act B.E. 2534 as amended by this Act.

Levy of official fees for applications under paragraph one shall be subject to the provisions of the Trademark Act B.E. 2534 in force before the effective date of this Act until finality.

Associated trademarks, service marks, certification marks, or collective marks effected before this Act comes into force shall be deemed trademarks, service marks, certification marks or collective marks with no association orders under the Trademark Act B.E. 2534 as amended by this Act.

Section 36 Where several applicants have filed applications for trademarks, service marks, certification marks or collective marks before the effective date of this Act and the Registrar has given orders that the said marks are identical or similar but has not given orders to the applicants to agree as to which one shall be the sole registered owner, the applications in such case shall be processed in accordance with the Trademark Act B.E. 2534 as amended by this Act.

Section 37 An order for cancellation of a trademark, service mark, certification mark or collective mark under Section 58 and Section 59 of the Trademark Act B.E. 2534 issued by the Registrar before the effective date of this Act, shall be executed and the official fees levied under the provisions of the Trademark Act B.E. 2534 in force before the effective date of this Act until a cancellation order or a non-cancellation order is given, as the case may be.

Section 38 All Ministerial Regulations or Notifications issued under the Trademark Act B.E. 2534 in force before the effective date of this Act shall continue in effect insofar as they are not contrary to or inconsistent with the Trademark Act B.E. 2534 as amended by this Act until ministerial regulations or notifications issued under the Trademark Act B.E. 2534 as amended by this Act come into force.

Section 39 The Minister of Commerce shall have charge and control of the execution of this Act.

⁶⁹ Trademark Act (No. 3) translated by Boonma Tejavaniya

Remarks: The reasons for enactment of this Act are as follows. Nowadays, protection of trademarks at the international level extends to new types of marks which are not covered by the provisions of the Trademark Act B.E. 2534. Also, as Thailand would accede to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Madrid Protocol) the salient feature of which provides for the filing of a single international application for protection of trademarks, service marks, certification marks and collective marks in the member states, it is expedient to expand the scope of trademark protection and to amend the provisions of the relevant part of this Act to conform to the said Madrid Protocol. Besides, as packagings or utensils bearing another person's registered trademark, certification mark or collective mark are used deceptively thus causing damage to the public and the said trademark owner, it is expedient to penalize and determine penalty for the said act. It is also expedient to revise the registration procedure and time period for more clarity and explanation and to amend the official fees annexed to the Act for more appropriateness. It is, therefore, necessary to enact this Act.

Countersigned by

General Prayut Chan-o-cha
Prime Minister

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Compiled by Puttipat Jiruschamna