

## **Doyle's Practice Guide to Thailand Business Law**

### **道乐泰国商业投资法律实用指南**

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#### **Chapter 11**

#### **第十一章**

#### **What are the Benefits Associated with Registering Trademarks in Thailand? 在泰国注册商标有哪些好处？**

Effectively branding products and services is becoming increasingly important in today's ultra competitive market place. This situation makes protecting the company's trademarks, which are the visual symbols of the brand, essential.

在如今竞争激烈的市场里，能有效地为产品和服务树立品牌变得越来越重要。在这种情况下，使得公司的商标保护显得至关重要，因为这是产品品牌的视觉符号。

The purpose of this chapter is to explain:

本章旨在解释：

1. the general objectives of trademark law; and  
商标法的总体目标；以及
2. the benefits associated with registering trademarks in Thailand.  
泰国注册商标的好处。

#### **Objectives of Trademark Law**

商标法的目标

The objectives of trademark law include:

商标法的目标包括：

1. assisting consumers in determining the origin of goods and services being sold;  
帮助消费者确定所售商品和服务的来源；
2. protecting consumers from confusion resulting from the use of identical or similar marks; and  
保护消费者不因使用相同或相似的商标而产生混淆；以及
3. protecting trademark owners from counterfeiting and other forms of unfair competition.  
保护商标所有人免遭假冒和其他形式的不正当竞争。

**EXAMPLE:** An obvious example illustrating the need for trademark law is the sale of counterfeit goods. In this situation a producer illegally uses a trademark in order to deceive the public by "passing off" imitation goods as authentic. This has the substantial negative impacts of both

confusing the consuming public as to the origin of the goods being sold and potentially damaging the goodwill the true owner of the mark has established in the market.

示例：说明商标法必要性的一个明显例子是销售假冒商品。在这种情况下，生产商非法使用商标，将仿冒商品“冒充”为正品，从而欺骗公众。这种情况会产生严重的负面影响，既会使消费者对所售商品的来源产生混淆，又可能损害商标的真正所有人在市场上建立起来的商誉。

**EXAMPLE:** Another example of the need for trademark law is the sale of goods containing the same, or similar marks either by competitors or parties operating in different sectors. Although in this situation there may be no intention to deceive consumers, the unregulated use of such similar marks can easily confuse consumers.

示例：商标法必要性的另一个例子是，竞争对手或在不同行业经营的各方销售的商品含有相同或相似的商标。虽然在这种情况下，可能没有欺骗消费者的意图，但不加管制地使用这种类似商标很容易使消费者产生混淆。

## **Benefits of Registration**

### 注册商标的好处

There are many benefits to registering trademarks. The first four discussed below are associated with protecting trademarks against would-be infringing third parties in Thailand. The last two focus on how to enhance the value of a business by registering its trademarks.

注册商标有许多好处。下文讨论的前四项与保护商标免受泰国第三方侵权有关。后两条主要介绍如何通过注册商标提升企业价值。

#### **1. Preventing Trademark Squatting**

##### 防止商标抢注

Trademark squatting occurs when a party who does not rightfully own a trademark registers the mark anyway in a country where the true owner has yet to register the mark.

商标抢注是指：不正当拥有该商标者在该商标真正所有者尚未注册的国家注册该商标。

In Thailand, this can pose a big problem for the true owner, as challenging the imposter's claim to the mark can be extremely difficult.

在泰国，商标抢注对真正所有者而言是一个大麻烦，因为去挑战抢注人对商标的主张可能是极其困难的。

**EXAMPLE:** On a trip to Europe, a Thai party notices a new brand of blue jeans that is becoming very popular there. Upon his return to Thailand that party applies to register the trademark displayed on the blue jeans (stating he is the owner of the mark), and the application is eventually approved. Later, the new blue jeans brand expands globally and the true owner of the mark seeks to register it in Thailand. Because the imposter has already registered the mark in Thailand the owner's application would be initially rejected.

示例：一位泰国人在欧洲旅行时注意到一种新品牌的蓝色牛仔裤在欧洲非常流行。回到泰国后，该当事人申请注册蓝色牛仔裤上的商标（声明自己是商标所有人），申请最终获得批准。后来，新的蓝色牛仔裤品牌在全球扩张，真正的商标所有人也在泰国申请注册该商标。由于冒名者已经在泰国注册了商标，商标所有人的申请会被初步驳回。

If the true owner then decides to challenge the squatter's ownership of the mark, he may submit a petition to cancel the imposter's mark registration at the Court of Justice.

如果真正的所有人随后决定对“占用者”的商标所有权提出质疑，他可以向法院提交撤销冒名顶替者商标注册的申请。

Note that the petition to the Court must be submitted within five years of the date that the Registrar issued an order to register the mark, and the evidentiary standard required of the true owner in order to cancel the imposter's mark registration is quite high.

需要注意的是，向法院提出的申请必须在注册官发出商标注册令之日起五年内提交，而且要求真正的所有人达到的取消冒名商标注册的证据标准相当高。

The owner's only other alternative would be to negotiate with the imposter to transfer the ownership of the trademark registration in Thailand to the true owner.

所有者唯一的其他选择是与冒名者谈判，将泰国商标注册的所有权转让给真正的所有者。

Owners of new marks used in Thailand should always try to register those marks in Thailand as early as possible in order to prevent this situation.

在泰国使用的新商标的所有者应尽早在泰国注册这些商标，以避免出现这种情况。

## 2. Imposing Penalties

### 侵权处罚

Although enforcement in Thailand has improved in recent years, trademark infringement still happens. It is therefore vital that trademark owners take the steps necessary to place themselves in a good position to enforce their trademark rights if it becomes necessary to do so.

尽管近年来泰国的商标执法工作有所改善，但商标侵权行为仍时有发生。因此，商标所有人必须采取必要的措施，使自己处于有利地位，以便在必要时行使商标权。

The first and most important step that a trademark owner can take is to register the trademark with the Department of Intellectual Property (DIP).

商标所有人可以采取的第一步，也是最重要的一步，就是向知识产权局 (DIP) 注册商标。

Registering the trademark with the DIP gives the owner much more power to enforce his rights against would-be infringers than he would have if the mark is registered outside Thailand. There are many reasons for this, but the most important is the increased penalties applicable to infringing third parties if the mark is registered with the DIP. Below are the maximum penalties applicable to parties who either produce a counterfeit mark or import or sell goods bearing a counterfeit mark. 与仅在泰国境外注册商标相较，在泰国知识产权厅注册商标将被赋予商标所有者更大的权利去对抗潜在的侵权者。其原因有很多，但最重要的是：若商标在知识产权厅进行注册，则会增加对侵权的第三方的处罚。以下是适用于生产假冒商标或进口、销售带有假冒商标的商品的当事人的最高处罚。

	Not registered in Thailand but registered overseas	Registered in Thailand	Registered in Thailand and 2 <sup>nd</sup> offence within 5 years
Fines applicable (import, production or sale)	up to 60,000 baht	up to 400,000 baht	up to 800,000 baht

Imprisonment applicable (import, production or sale)	up to 3 years	up to 4 years	up to 8 years
适用罚款 (进口、生产或销售)	不在泰国注册，但在泰国境外注册的 多达泰铢 6, 000	在泰国注册的 多达泰铢 400,000	在泰国注册并为5年内的第2次违法行为 多达泰铢 800,000
适用监禁时长 (进口、生产或销售)	多达 3 年	多达 4 年	多达 8 年

**EXAMPLE:** Suppose a well-known French handbag producer begins to sell its products in Thailand. The French company has already registered the trademark used on the handbag in France. A local competitor then starts to illegally produce and sell bags containing a mark identical to that of the French company's mark. The French company decides to file a claim against the counterfeiter in Thailand.

示例：假设一家著名的法国手提包生产商开始在泰国销售其产品。该法国公司已经在法国注册了手提包上使用的商标。随后，当地的一家竞争对手开始非法生产和销售印有与法国公司商标相同的商标的手提包。法国公司决定向泰国的仿冒者索赔。

If the French company had not registered the mark with the DIP when the infringement began, the maximum fine applicable would be only 120,000 baht (60,000 baht x 2 violations) and/or six years maximum imprisonment (3 years x 2 violations = 6 years maximum imprisonment).

如果该法国公司在侵权开始时没有在知识产权局注册商标，则适用的最高罚款仅为泰铢 12 万（泰铢 6 万 x 2 次侵权）和/或 6 年最高监禁（3 年 x 2 次侵权 = 6 年最高监禁）。

If the French company had already registered its trademark with the Thailand DIP when the infringement began, the maximum fine would be 800,000 baht (400,000 baht fine x 2 infractions = 800,000 baht) and/or eight years maximum imprisonment (4 years imprisonment x 2 infractions = 8 years).

如果该法国公司在侵权开始时已经在泰国知识产权局注册了商标，则最高罚款为泰铢 80 万（泰铢 40 万罚款 x 2 次违规 = 泰铢 80 万）和/或最高监禁 8 年（4 年监禁 x 2 次违规 = 8 年）。

In the above example, the maximum fine applicable to infringing parties increases dramatically from 120,000 baht to 800,000 baht and the maximum term of imprisonment increases from six years to eight years, depending upon whether or not the mark is registered in Thailand.

在上述例子中，根据商标是否在泰国注册，适用于侵权方的最高罚款额从泰铢 120,000 大幅增至泰铢 800,000，最高监禁期从 6 年增至 8 年。

Also, note that if the infringing party has been convicted of another infringement within five years (from the date of passing the punishment for a previous offence) the maximum criminal penalties applicable are doubled.

此外,请注意,如果侵权方在五年内(自前次犯罪处罚通过之日起)因另一次侵权行为被定罪,则适用的最高刑事处罚将加倍。

**EXAMPLE:** Suppose a Thai party is convicted of selling goods bearing a counterfeit mark in Year One and is convicted again for selling goods bearing a counterfeit mark in Year Five. Ordinarily, the maximum penalty for the infraction in Year Five would be 400,000 baht and a term of imprisonment of four years. However, because the same individual has been convicted of infringement within five years (from the date of passing the punishment for a previous offence) the maximum penalties would be doubled to 800,000 baht (400,000 baht fine x 2) and a maximum imprisonment of eight years (four years x 2).

示例:假设泰国一方在第一年因销售带有假冒商标的商品而被定罪,并在第五年再次因销售带有假冒商标的商品而被定罪。通常情况下,第五年的最高处罚为泰铢 400,000 和四年监禁。然而,由于同一个人在五年内(自上次违法行为处罚通过之日起)被判定犯有侵权行为,最高处罚将翻倍至泰铢 80 万(罚款泰铢 40 万 x 2)和最长八年监禁(四年 x 2)。

Note that even though terms of imprisonment are technically applicable to trademark infringers under Thai law, in actual practice, Thai courts in the past have been generally reluctant to impose a sentence of imprisonment on infringers in these situations.

需要注意的是,尽管根据泰国法律,监禁条款在技术上适用于商标侵权者,但在实际操作中,泰国法院过去一般不愿意在这种情况下对侵权者判处监禁。

### 3. Claiming Priority

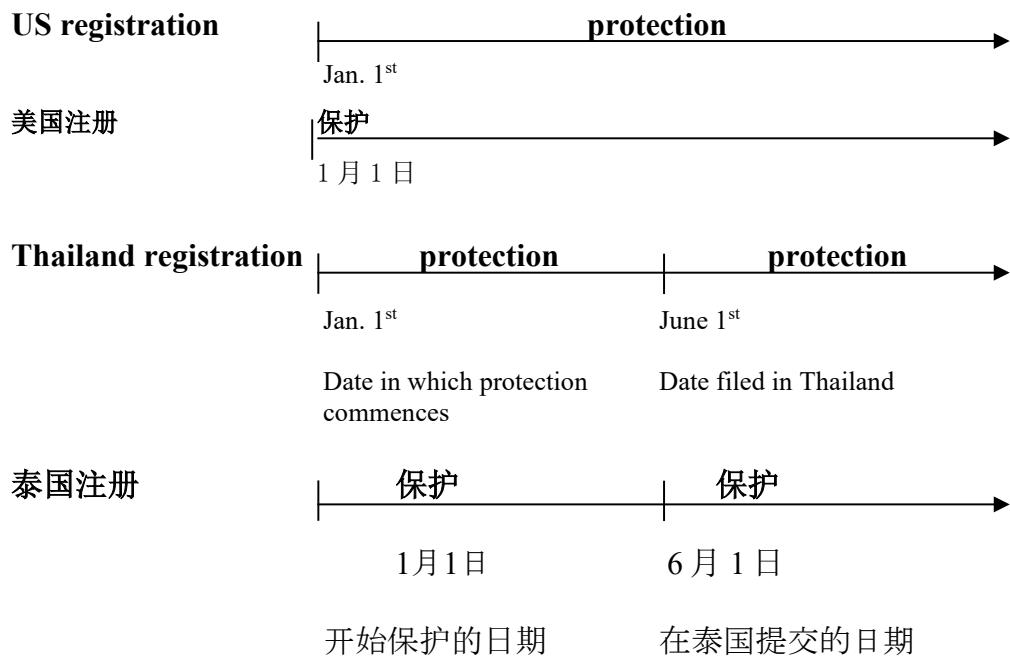
#### 申请优先权

Under Thai law, if a trademark application is filed in one country and then is subsequently filed in Thailand within six months of the initial filing of the trademark, the owner shall receive protection in Thailand as of the date of the initial filing (as long as the country of first filing grants similar rights to Thailand parties).

在泰国法律中,若商标申请在一个国家提出,随后又在商标首次提交日起的6个月内再在泰国提出时,则该商标在首次提交之日起受泰国保护。(只要首次提交申请的国家授予泰国当事人类似的权利即可。)

**EXAMPLE:** A US businessperson files to register a trademark in the US on January 1<sup>st</sup>. The mark had not previously been registered anywhere in the world. On June 1<sup>st</sup> of the same year he files to register the mark in Thailand. Both applications are eventually approved. Generally, because both the US and Thailand are members of the Paris Convention for the Protection of Industrial Property, and the Thailand application was filed within six months of the initial US application, the owner can claim protection of the mark (referred to as priority) in Thailand as of January 1<sup>st</sup> instead of as of June 1<sup>st</sup>.

示例:一位美国商人于 1 月 1 日在美国申请注册一个商标。该商标此前未在世界任何地方注册过。同年 6 月 1 日,他在泰国申请注册该商标。两份申请最终都获得了批准。一般来说,由于美国和泰国都是《保护工业产权巴黎公约》的成员国,而且泰国的申请是在美国首次申请后六个月内提交的,因此商标所有人可以从 1 月 1 日而不是 6 月 1 日起在泰国要求商标保护(称为优先权)。



#### 4. Providing Evidence of Ownership 提供所有权证明

Trademark registration in one country can also be used as evidence of ownership of the mark in other countries when disputes arise.

当出现争议时，在一个国家注册的商标也可以作为在其他国家拥有该商标的支持证据。

**EXAMPLE:** In Year One a Canadian company registers a trademark in Canada. In Year Three the company attempts to register the same mark in Thailand, only to find that an imposter holding no rights to the mark has already registered the mark in Thailand. If the Canadian company wishes to petition the DIP to cancel the imposter's registration in Thailand, they may use the company's Certificate of Trademark registration in Canada as evidence of the Canadian company's better right to the mark.

示例：在第1年，一家加拿大公司在加拿大注册了商标。在第3年，该公司试图在泰国注册同样的商标时，却发现有该商标权利的冒名顶替者已在泰国抢注了商标。若加拿大公司希望向知识产权厅申请取消抢注人在泰国的注册时，他可以使用公司在加拿大的商标注册证书，来作为该公司对其商标的优先权利的维权证据。

#### 5. Enhancing Share Value 提高股份价值

The amount of goodwill a company accumulates with the purchasing public can greatly enhance the value of that company's shares.

公司在消费者群体中积累的商誉可以极大地提升其股票的价值。

Goodwill is an intangible asset that denotes the confidence and good feelings that the market associates with a business's products and/or services. Many times the consuming public associates the goodwill created in the market with the company's trademarks rather than with the name of the company. This creates a situation where the company's registered trademarks can be very important and valuable assets.

商誉是一种无形资产，表示市场对企业产品和/或服务的信心和好感。大部分时候，消费者会将市场上产生的商誉与公司的商标进行挂钩，而不是与公司的名字进行联系。因此造就了公司的注册商标可以是非常重要且宝贵的资产的情况。

**EXAMPLE:** Investors establish a company to produce, market and sell a new clothing line. The name of the company is NIX Ltd., but the trademark displayed on the clothing is “Cherry.” The company registers the mark under appropriate classes (see Chapter 12) in Thailand and in the other countries where the clothing will be sold. Shortly after its introduction into the market, the line becomes very popular and creates a high degree of name recognition in the market.

示例：投资者成立一家公司，生产、营销和销售一种新的服装系列。公司名称为 NIX 有限公司，但服装上的商标为 “Cherry”。公司在泰国和服装销售地所在的其他国家注册了相应类别的商标（见第 12 章）。该系列服装进入市场后不久就大受欢迎，在市场上获得了很高的知名度。

NIX Ltd. is later approached by a US clothing company to enter into negotiations for the US company to purchase a controlling stake in NIX Ltd. from existing NIX Ltd. shareholders. During the negotiations, the US company sends valuation experts to determine the value of NIX Ltd.’s assets, including the goodwill associated with the “Cherry” line, which would arguably be the company’s most valuable asset.

后来，一家美国服装公司找到 NIX 有限公司，就该美国公司从 NIX 有限公司现有股东手中购买 NIX 有限公司控股权一事进行谈判。在谈判过程中，美国公司派出评估专家确定 NIX 有限公司的资产价值，包括与 “Cherry” 系列相关的商誉，这可以说是该公司最有价值的资产。

Determining the value of a trademark is a fairly subjective exercise, but because the company has already registered “Cherry” in the countries where the clothing line is sold, NIX Ltd. has clearly defined legal rights to the mark. This fact places NIX Ltd. in a much stronger position to negotiate a higher value of the goodwill associated with the mark, thereby allowing the NIX shareholders to maximize the acquisition opportunity. If the company had not registered the mark they would not have such specific rights to the mark, and it would almost certainly be in a weaker position to negotiate the value of the goodwill associated with the mark as an asset.

确定商标的价值是一项相当主观的工作，但由于该公司已在销售服装系列的国家注册了 “Cherry” 商标，因此 NIX 有限公司对该商标拥有明确的法律权利。这一事实使 NIX 有限公司处于更有利的地位，可以通过谈判获得与该商标相关的商誉的更高价值，从而使 NIX 股东最大限度地利用收购机会。如果该公司没有注册商标，他们就不会对该商标拥有如此具体的权利，几乎可以肯定的是，他们在谈判与该商标相关的商誉作为资产的价值时会处于弱势地位。

## 6. Trademark Licensing

### 商标许可

As mentioned above, registering the mark gives the owner clearly defined legal rights. This degree of certainty of ownership is quite important when licensing the use of the trademark to third parties.

如上所述，商标注册赋予所有人明确的法律权利。在许可第三方使用商标时，这种所有权的确定性相当重要。

In trademark licensing agreements one party (referred to as the licensee) acquires particular rights to use a trademark from another party that owns, or otherwise has rights to the trademark (referred to as the licensor).

在商标许可协议内，被许可人从拥有或以其他方式拥有商标权利的许可人获得使用其商标的特定权利。

In these situations it is not legally required but it is generally advisable that the mark which is to be licensed first be registered in the country(ies) where it will be used.

在这些情况下，法律上并无规定，但通常建议首先在将要使用该商标的国家注册该商标。

**EXAMPLE:** The owner of a successful Thai restaurant called “Razorbacks” decides to develop a chain of restaurants of the same name in Thailand. Instead of investing to open these additional restaurants himself, the owner instead plans to use a licensing model whereby he would sell a license for the use of the name “Razorbacks” to third parties who would then use the name in their restaurants. The owner has not yet registered the trademark “Razorbacks” in Thailand.

示例：一家成功的泰国餐馆 “Razorbacks” 的店主决定在泰国发展同名连锁餐馆。店主没有自己投资开设新的餐馆，而是计划采用一种许可模式，即向第三方出售 “Razorbacks” 名称的使用许可，由第三方在其餐馆中使用该名称。店主尚未在泰国注册 “Razorbacks” 商标。

In order to maximize the opportunity to license the use of the trademark “Razorbacks” the owner should first register the mark in Thailand under appropriate classes (see Chapter 12).

为了最大限度地获得 “Razorbacks” 商标的使用许可，商标所有人应首先在泰国的适当类别下注册该商标（见第 12 章）。

By registering the mark, the owner will be able to show prospective licensees that he has clearly defined rights with respect to the mark. If he does not register the mark his rights to it will be less clearly defined, thereby potentially making it more difficult for him to market the idea to prospective licensees.

通过注册商标，商标所有人可以向潜在的被许可人表明，他对该商标拥有明确界定的权利。如果他不注册商标，他对商标的权利就不那么明确，从而可能使他更难向潜在的被许可人推销自己的想法。

Another situation in which registering the trademark to be licensed is quite important occurs when a trademark owner outside of Thailand wishes to license the use of a trademark to a Thailand party.

在另一种情况下，当泰国境外的商标所有人希望将商标的使用许可给泰国一方时，注册被许可使用的商标就显得相当重要。

In this situation if the trademark owner has registered the mark in Thailand he may authorize the licensor to pursue claims against infringers on the mark in Thailand on his behalf.

在这种情况下，如果商标所有人已在泰国注册商标，他可以授权许可人代表他向泰国的商标侵权者索赔。

**EXAMPLE:** A UK retail store chain called “Zippers” enters into a licensing agreement with a Thailand company granting it rights to use the name on its shops in Thailand and defend the mark against would-be infringers in Thailand. The UK company has registered the trademark “Zippers”

under the appropriate classes (see Chapter 12) in Thailand. The Thailand company has also registered the licensing agreement with the DIP.

示例：一家名为“Zippers”的英国零售连锁店与一家泰国公司签订了一份许可协议，授予该公司在泰国的商店使用该名称的权利，并在泰国对可能的侵权者进行商标维权。英国公司已在泰国的适当类别下注册了“Zippers”商标（见第12章）。泰国公司还向知识产权局登记了许可协议。

A competing retail store then opens in Thailand called “Zipps,” and the Thailand company takes the position that the name infringes on the mark “Zippers.”

随后，一家名为“Zipps”的竞争零售店在泰国开业，泰国公司认为该名称侵犯了“Zippers”商标。

In this situation because the mark has been registered in Thailand and the licensing agreement has been registered with the DIP, the Thailand company would have the authority to pursue claims against infringers in Thailand on behalf of the UK owner.

在这种情况下，由于商标已在泰国注册，许可协议也已在知识产权局注册，泰国公司将成为有权代表英国所有人向泰国的侵权者索赔。

If not, the local licensee would not have such right, and the UK company would instead have to pursue the claim itself.

否则，当地被许可人就没有这种权利，英国公司就必须自己提出索赔。

Note that in order for the licensee in Thailand to pursue a claim in Thailand against a third party on behalf of the owner, the licensee must first register the licensing agreement granting the licensee the rights to use and protect the mark with the DIP. This registration can normally be accomplished within a day.

请注意，泰国的被许可人若要代表商标所有人在泰国向第三方索赔，必须首先在知识产权局注册授予被许可人商标使用权和保护权的许可协议。注册通常可在一天内完成。

Jointly produced by Seri Manop & Doyle and Hylands Law Firm  
由赛瑞 马依珀&道乐律师事务所与浩天律师事务所联合制作

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