SEMINAR ON IPR ENFORCEMENT FOR POLICE AUTHORITIES IN THAILAND

KENNETH WRIGHT | BANGKOK | 13th SEPTEMBER 2019
ELEMENTS OF IPR OFFENCES

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1. TRIPS AGREEMENT.

2. EU ACQUIS.

3. THAILAND.

4. CONCLUSION.
TRIPS AGREEMENT

WORLD TRADE ORGANIZATION.

- INTERGOVERNMENTAL ORGANISATION.

- REGULATION OF INTERNATIONAL TRADE.

- 164 MEMBER STATES.

TRIPS AGREEMENT

AGREEMENT ON TRADE RELATED ASPECTS OF IPR.

• INTERNATIONAL LEGAL AGREEMENT (1994).

• MINIMUM STANDARDS.

• PROTECTION.

• ENFORCEMENT.

• DISPUTE SETTLEMENT.
TRIPS AGREEMENT

ARTICLE 51 NOTE 14 - DEFINES COUNTERFEITING.

• ANY GOODS, INCLUDING PACKAGING.

• BEARING WITHOUT AUTHORISATION A TRADEMARK.

• IDENTICAL.

• CANNOT BE DISTINGUISHED IN ITS ESSENTIAL ASPECTS.
ARTICLE 51 NOTE 14 - DEFINES PIRACY.

• ANY GOODS WHICH ARE COPIES.
• MADE WITHOUT CONSENT.
ARTICLE 61.

Members shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale. Remedies available shall include imprisonment and/or monetary fines sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity. In appropriate cases, remedies available shall also include the seizure, forfeiture and destruction of the infringing goods and of any materials and implements the predominant use of which has been in the commission of the offence. Members may provide for criminal procedures and penalties to be applied in other cases of infringement of intellectual property rights, in particular where they are committed wilfully and on a commercial scale.
ARTICLE 61.

- WILFUL TRADEMARK COUNTERFEITING.
- WILFUL COPYRIGHT PIRACY.
- WHAT DOES WILFUL MEAN?
ARTICLE 61.

- **WILFUL TRADEMARK COUNTERFEITING.**

- **WILFUL COPYRIGHT PIRACY.**

- **WHAT DOES WILFUL MEAN?**

- **DEFINITION - “INTENTIONAL OR DELIBERATE”.**
TRIPS AGREEMENT

VIENNA CONVENTION ARTICLE 31(1).

• A TREATY SHALL BE INTERPRETED IN GOOD FAITH.

• IN ACCORDANCE WITH ORDINARY MEANING.

• TO BE GIVEN TO THE TERMS OF THE TREATY.
TRIPS AGREEMENT

ARTICLE 61.

• **WILFUL TRADEMARK COUNTERFEITING.**

• **WILFUL COPYRIGHT PIRACY.**

• **WHAT DOES WILFUL MEAN?**

• **DEFINITION - “INTENTIONAL OR DELIBERATE”**.
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ARTICLE 61.

- ON A COMMERCIAL SCALE.

- WHAT DOES COMMERCIAL SCALE MEAN?
TRIPS AGREEMENT

ARTICLE 61.

- ON A COMMERCIAL SCALE.

- WHAT DOES COMMERCIAL MEAN?

- DEFINITION - “ENGAGED IN COMMERCE” OR “INTENDED TO MAKE A PROFIT”.

- WHAT DOES SCALE MEAN?

- DEFINITION - “SIZE OF SOMETHING”
TRIPS AGREEMENT

WTO DISPUTE SETTLEMENT PANEL (2009).

• IPR DISPUTE BETWEEN US AND CHINA.

• CENSORSHIP.

• BORDER MEASURES.

• THRESHOLD FOR CRIMINAL OFFENCE (TOO HIGH).
WTO DISPUTE SETTLEMENT PANEL (2009).

• COMMERCIAL SCALE.

• “MAGNITUDE OR EXTENT OF TYPICAL OR USUAL COMMERCIAL ACTIVITY”.

• FLEXIBLE DEFINITION.

• CAN ADJUST TO DIFFERENT SITUATIONS.
ARTICLE 61.

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ARTICLE 61.

• REMEDIES AVAILABLE SHALL INCLUDE IMPRISONMENT AND/OR MONETARY FINES.

• SUFFICIENT TO PROVIDE A DETERRENT.

• CONSISTENT WITH CRIMES OF CORRESPONDING GRAVITY.

• WHAT ARE CRIMES OF CORRESPONDING GRAVITY?
ARTICLE 61.

- SOME EU MEMBER STATES HAVE DECIDED ON THEFT.
- DENMARK  MAXIMUM SENTENCE 6 YEARS IMPRISONMENT.
- UNITED KINGDOM  MAXIMUM SENTENCE 10 YEARS IMPRISONMENT.
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TRIPS AGREEMENT

ARTICLE 61.

• **SEIZURE, FORFEITURE AND DESTRUCTION OF INFRINGING GOODS.**

• **SEIZURE, FORFEITURE AND DESTRUCTION OF ANY MATERIALS AND IMPLEMENTS.**

• **PREDOMINANT USE OF WHICH HAS BEEN IN THE COMMISSION OF THE OFFENCE.**
1. TRIPS AGREEMENT.

2. EU ACQUIS.

3. THAILAND.

4. CONCLUSION.
1. TRIPS AGREEMENT.

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4. CONCLUSION.
THAILAND

• TRADEMARK ACT.

• 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.
THAILAND

• WILFUL. (NOT REQUIRED)

• TRADEMARK COUNTERFEITING. ✓

• COMMERCIAL SCALE. (NOT REQUIRED)

• IMPRISONMENT OR FINE ✓

• DETERRENT. ?

• CORRESPONDING GRAVITY. ?
THAILAND

• COPYRIGHT ACT.

• Section 69
• Whoever infringes the copyright or the performer's rights according to Section 27, Section 28, Section 29, Section 30 or Section 52 shall be inflicted with a fine from twenty thousand Baht up to two hundred thousand Baht.

• If the offence in paragraph one is committed with the commercial purpose, the offender shall be inflicted with imprisonment for a term from six months up to four years or a fine from one hundred thousand Baht up to eight hundred thousand Baht or both imprisonment and fine.
THAILAND

• COPYRIGHT ACT.

• Section 70
• Whoever commits a copyright infringement according to Section 31 shall be inflicted with a fine from ten thousand Baht up to one hundred thousand Baht.

• If the offence in paragraph one is committed with the commercial purpose, the offender shall be inflicted with imprisonment for a term from three months up to two years or a fine from fifty thousand Baht up to forty hundred thousand Baht or both imprisonment and fine.
• WILFUL. (NOT REQUIRED)

• COPYRIGHT PIRACY. ✔

• COMMERCIAL SCALE. (NOT REQUIRED)

• IMPRISONMENT OR FINE. ✔

• DETERRENT. ?

• CORRESPONDING GRAVITY. ?
1. TRIPS AGREEMENT.
2. EU ACQUIS.
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CONCLUSION

1. TRIPS - MEMBER STATES MUST HAVE CRIMINAL PROCEDURES AND PENALTIES.

2. WILFUL TRADEMARK COUNTERFEITING AND COPYRIGHT PIRACY.

3. ON A COMMERCIAL SCALE.

4. REMEDIES SHOULD INCLUDE IMPRISONMENT AND/OR MONETARY FINES.

5. DETERRENT.

6. CONSISTENT WITH CRIMES OF A CORRESPONDING GRAVITY.
THANK YOU

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ADDITIONAL / ALTERNATIVE OFFENCES

• FRAUD.
• LABOUR.
• LABELLING.
• HEALTH AND SAFETY.
• CONSUMER.

* UNFAIR COMPETITION.
* MONEY LAUNDERING.
* PROCEEDS OF CRIME.
* TAX.
* SOCIAL SECURITY.