



# IP Litigation and Enforcement Guide: Thailand





### Is your jurisdiction a common law or civil law jurisdiction?

Thailand is a civil law jurisdiction.

### What methods are there for enforcing IP rights in your jurisdiction?

IP Right	Civil	Administrative	Criminal	Customs
Trademark	Yes	No	Yes	Yes
Unfair competition	No	No	No	No
Passing off	Yes	No	Yes	No
Copyright	Yes	No	Yes	Yes (upon specific shipment request)
Registered designs/design patents	Yes	No	Yes	No
Patent	Yes	No	Yes	No

### What courts have jurisdiction to handle civil IP cases?

The Central Intellectual Property and International Trade Court has the jurisdiction to hear all intellectual property cases.

### Is there any bifurcation of proceedings? For example, for determining validity or damages?

It will depend on particular judges. If a case concerns both validity and infringement with damages, some judges may split proceedings into two stages: the first stage to hear the validity of the argument and the second stage to hear the infringement arguments. They may choose to issue a decision on the validity first. If there is no validity, they may dismiss infringement hearings altogether. However, other judges may choose to hear both issues before making a decision.

### **What are procedures for civil enforcement?**

A civil action is initiated by filing a complaint setting out the Plaintiff's claim, legal ground and demand. The Defendant can then file a reply. There will be a preliminary oral hearing to determine issues of dispute and to set the method and dates for witness testimonies. If parties agree and the Court permits, witness testimonies can be done by way of written affidavits and supporting evidence. Otherwise, there will be oral witness testimonies before the judges (without a jury) where witnesses are called for additional questions, cross-examined and re-directed. For more complex cases, there may be closing statements either in writing or oral format. About one month afterwards, the presiding judge will announce the judgement orally. Written judgement will be available weeks later.

### **Is a power of attorney needed for civil action to be brought? If so what are the procedures and time lines?**

Yes, a power of attorney that has been notarised by a notary public and legalised up to the Thai embassy/consulate is required for civil action to be brought. In practice, a scanned copy of the legalised power of attorney should be enclosed with the complaint. An original legalised power of attorney can be presented to the Court later in the first witness testimony hearing.

### **What is the average time to trial in a civil case?**

The average time to trial in a civil case in the first instance is about 18 to 24 months.

### **What is the language of the proceedings? Is there a choice of language?**

Thai is the official language of the proceedings. As a rule, all evidence must be translated into Thai. However, the Central Intellectual Property and International Trade Court may allow documentary evidence in English, if parties agree to it and it is not key evidence. There is no choice of language.

### **Is it possible to apply for summary judgment?**

Yes, it is possible to apply for summary judgement in civil cases when a party raises a question of law which, if decided in favor of that party, can dispense with further trial or with the trial of material issues in the case, and the Court may examine such question of law and give a decision on it.

Another scenario for summary judgement in civil cases is where there is no reply from the Defendant. The Plaintiff must petition for a decision in their favor by default.

### **On what basis are interim injunctions granted?**

Interim injunctions may be granted where the Plaintiff can establish that (i) the Defendant intends to move, destroy, transfer or sell disputed or own property; (ii) the Defendant intends to repeat or continue infringement or alleged illegal act; the Plaintiff continues to suffer damage from the Defendant's act; (iii) there is concern that the Defendant will proceed with registration, amendment to registration, cancellation of registration regarding disputed or own property which will cause damage to the Plaintiff; (iv) the Defendant hides away from the Court's summon or order; (v) the Defendant hides, distributes or destroys documents that are possibly evidence against the Defendant during trial, or disputed or own property; or (vi) the Defendant may run away as suggested by their behavior or trade.

Preliminary injunctions may be granted where it can be established that the injunction is reasonable and there is enough reason to grant it, and the damage cannot be compensated monetarily or otherwise, or the potential Defendant is not in the position to compensate damage, or it is difficult to enforce the case against the potential Defendant afterwards. The Court is to weigh the damage against the potential Plaintiff and the potential Defendant before deciding whether to grant preliminary injunction.

### **On what basis are permanent injunctions granted?**

Upon request of the Plaintiff, permanent injunctions may be granted if infringement has been established.

### **What appeal procedures are available from a first instance judgment?**

A first instance judgement in a civil case can be appealed to the Court of Appeal for Specialised Cases, Intellectual Property and International Trade Case Division, within 1 month from the date when the judgement was announced or upon request within the allowed time extension. There are some restrictions to appeals. For example, fact cannot be contested in appeals concerning damage less than THB 50,000. In addition, appeals can only include the fact and points of law raised in the first instance. No new facts or points of law is allowed.

Further appeal to the Supreme Court is possible if requested and allowed by the Supreme Court, provided that the case involves an important issue, for example, (i) it concerns public interest or public order; (ii) if the Court of Appeal's decision or order on key points of law conflicts with the precedent of the Supreme Court; (iii) if the Court of Appeal's decision or order rules on key points of law with no precedent of the Supreme Court; (iv) if the Court of Appeal's decision or order conflicts with the other court's final decision or order; (v) it will lead to development in the interpretation of the law; (vi) if the Court of Appeal's decision or order contains a dissenting opinion in a key issue; or (vi) the Court of Appeal's decision or order rules on a point of law in a way that is not in accordance with international treaties to which Thailand is a member of.

### **What are the procedures for criminal enforcement ?**

Criminal enforcement can be initiated via the authorities or by the right holders themselves.

To proceed via the authorities, a complaint must be filed to the police. The police may review evidence, investigate, conduct raid(s), interview witnesses and/or interrogate suspects before bringing a charge against them. The police will forward the case to the public prosecutor with a recommendation whether to prosecute. The public prosecutor will review the case and may request additional evidence from the police. If the prosecutor thinks the evidence is sufficient to pursue the criminal case, they will initiate a criminal case with the Court and a public hearing will be held.

Right holders can also pursue a criminal enforcement directly with the Court. For such private criminal cases, there is an additional step of preliminary examination for the Plaintiff to establish a *prima facie* case against the accused before the Court can decide whether to accept the case.

### **What are the procedures for criminal appeals?**

Appeals can be made as of right to the Court of Appeal for Specialised Cases, Intellectual Property and International Trade Case Division. However, appeals cannot be made to a point of fact in a criminal case involving the maximum penalties not exceeding 3 years of imprisonment or THB 60,000 in fines or both. Further appeals can be made as of right to the Supreme Court with some restrictions.

### **What are the procedures for administrative enforcement?**

There is no governmental administrative enforcement in Thailand.

### **What are the measures for Customs border protection?**

The Thai Customs has the power to detain goods that are suspected of infringing trade marks or copyrights.

Right holders can file an application to record their trade mark with the Customs via the Department of Intellectual Property. The recordal is automatically valid as long as the trade mark itself remains valid. The right holders are recommended to provide training to the Customs on how to differentiate between the genuine and counterfeit products. The Customs will detain the suspected goods and inform the right holders or their agents. The right holders or agents must file a written confirmation whether the goods are genuine or counterfeit within certain timeframes (which usually range from 24 hours to 7 days depending on the detaining Customs ports). If the goods are confirmed as counterfeits, the Customs will usually impose a fine on the importer and will destroy the goods in their annual destruction ceremony.

Currently, it is not possible to record copyrighted works with the Customs. Right holders are required to contact and notify the Customs to detain suspected goods on a shipment-by-shipment basis.

## What IP treaties is your jurisdiction a member of?

- Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled
- Paris Convention
- Berne Convention
- PCT
- Madrid Protocol
- Patent Prosecution Highway (PPH, Japan-Thailand)
- ASEAN Patent Examination Cooperation (ASPEC)
- WIPO Convention
- World Trade Organization (WTO) - Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement)

## Further reading

### Guides:

- [\*IP Guide: Online e-commerce shopping platforms in Southeast Asia - Thailand\*](#)

### Articles:

- [\*Thailand: Draft Examination Manual released for public comment\*](#)
- [\*Mind the Gap - IP Protection law vs. reality of anti-counterfeiting in Thailand\*](#)
- [\*The effect of COVID on IP in Thailand\*](#)
- [\*E-filings and hearings in Courts in South East Asia\*](#)

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