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| THEMATIC TITLE | PROBLEMS ON REGISTRATION AND VALUATION TRADEMARKS ASSESSMENT IN ACCORDANCE WITH THE COMMERCIAL COLLATERAL ACT B.E. 2558 |
| KEYWORD | PROBLEMS ON REGISTRATION AND VALUATION |
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ABSTRACT

According to Thai laws in the past, the 2 forms of using properties as collateral to secure a loan comprised of the principle of mortgage and the principle of pledge. The aforesaid principles have certain limitation, namely, the limitation of mortgage is that properties to be mortgaged must be any types of immovables or certain types of movables specified by law, while the properties to be pledged must be movables and the pledgor must deliver the pledged property to the pledgee, otherwise such pledge shall not be valid. The result is that the pledgor cannot utilize the pledged property and that affects them as an entrepreneur. Nowadays, a trademark is considered as one of the intellectual properties which is not immovable nor movable property. It is deemed as an intangible asset according to the 51st Accounting Standards and has economic value, but cannot be used as a mortgaged property or a pledged property. This makes both principles inappropriate for the current business operation, and becomes an obstacle for SME entrepreneurs to access the sources of funds.

Due to aforesaid limitation, a draft of the Commercial Collateral Act B.E.was proposed. In order to solve aforesaid problems and impediments, the principles used for drawing up the Commercial Collateral Act B.E.were based on the types of taking properties to be collateral without delivering to the financial institutions, including the types adopted in the countries under the Common law system and those under the Civil law system. Then the Commercial Collateral Act B.E. 2558 was announced. It stipulates that the entrepreneurs can use

the intellectual property (trademark) which is the asset with economic value but cannot be used for mortgage or pledge pursuant to the law to be commercial collateral. The Commercial Collateral Act B.E. 2558 is considered as a new tools of legal profession that is kept an eye on in the aspects of the law enforcement to help the entrepreneurs and to allow them to access the sources of funds more easily. Based on investigation of the Commercial Collateral Act B.E. 2558, it is found that some criteria still have problems and become the obstacles for enforcement, namely, (1) the problem on the complicated procedure for collateral registration, (2) the problem on the particularized details of collateral registration. In case the collateral provider fails to completely identify all information in registration lists, the registrar shall not register the collateral for a loan. Thus, the collateral receiver shall not be the secured creditor, (3) the problem on the persons relating to trademark valuation assessment, (4) the problem on the suitable valuation assessment methods for trademarks.

Therefore, this independent study provides some proposals that; (1) registering trademark as commercial collateral is the process that bring about the right to affirm to the third party, thus, the registration procedure should not be too complicated, (2) the registration is deemed to be the notification that the collateral for loan has been provided without delivery, and to specify a person who has right on the collateral. Therefore, failing to identify all information in the registration lists completely should not result in the refusal by the registrar to register collateral, (3) the specific training courses and professional certifying tests relating to valuation assessment of intellectual property should be provided by focusing on the studies of the valuation assessment of the intellectual property, economics and accounting simultaneously, (4) the ministerial regulations relating to trademark valuation assessment should be introduced by specifically prescribing the method of valuation assessment of the intellectual property to be used as collateral.