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| THEMATIC PAPER | PROTECTION OF TRADEMARK IN THE ASEAN ECONOMIC COMMUNITY (AEC) |
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ABSTRACT

Trademark is an industrial property which is substantially valuable and beneficial to trademark owners throughout the period of ownership of the trademark. According to the Trademark Act and its amendment (No.2) B.E. 2000, trademark right is protected based on the geographical area which means that the right is only protected in a country where registered. This creates some problems for the trademark owners who are infringed in another country where the registration has not been granted or other people register the trademark in another country and claim their exclusive right as the proprietor. In addition, the right for import of trademarked products for importers, who are not the authorized distributor, can be one of the problems as well.

Although the Southeast Asian Region has been gathered, the details and procedures of the trademark laws in each country are different. The trademark protection is the main mechanism in driving economy in the region, the protection under the territorial principle is therefore insufficient. More specifically, the protection coverage expanding to all member countries is significant.

From the research of relevant documents, books, principles, theories and laws comparing with the international laws, it is found that trademark laws in each member countries of AEC protect trademarks and enforce the law only within their countries, not outside the territories. When the infringement occurs in another country, the trademark owner is not legally protected unless the mark is registered in such country in which the registration fees are relatively

high. Although the registration under the Madrid Protocol System can expand the protection to multiple country members with the filing of a single application, it does not cover countries which are not the members of the Madrid Protocol. If the principles and procedures of the European Community Trademark system (CTM) and the Federal Trademark Registration system of the US are applied as a guideline for amendment, it will protect the entrepreneurs' trademarks of each member countries.

When goods are freely moved within the ASEAN region, the exhaustion of trademark right remains a problem. Under the Trademark Act B.E. 2534, there is no provision specifying the exhaustion of right for trademark, unlike the patent. As such, the import of foreign goods for sale competing with distributors with lower prices, or so called as "Parallel Importation", is lawful as the imported goods are original, not counterfeit. One receiving the imported product has a right to sell such product freely to other countries within the ASEAN region as the parallel importation exhausting the trademark right does not cause damage to the trademark owners.

Consequently, to build the capability on the economic competition, protect the industrial properties, reduce any problem and make the import and export of goods across the AEC member countries to be freely and without any restriction, it is recommended to seek the cooperation of the AEC member countries to establish a central agency to be responsible for the trademark registration applying the single filing system. Additionally, the principle of the exhaustion of right should be specified to create the balance of commercial competition and protect the benefit of consumers to be appropriate and fair.