

6 March 2024

H.E. Srettha Thavisin

Prime Minister and Minister of Finance
The Secretariat of the Cabinet
1 Government House, Phitsanulok Rd
Dusit, Dusit District, Bangkok 10300
Kingdom of Thailand

Subject: Draft Notification of the Alcoholic Beverage Control Committee Re: Criteria, Procedures, and Requirements for Packaging, Label and Warning Statements for Produced and Imported Alcohol Beverages

Your Excellency,

I write to you today on behalf of the International Trademark Association (INTA).

INTA is a not-for-profit association of brand owners and trademark professionals dedicated to supporting trademarks and related intellectual property rights in order to foster consumer protection, economic growth and innovation. We currently have over 36,000 members from nearly 6,500 organizations from 185 countries (including 198 from Thailand).

INTA submits this letter in response to the recent draft Notification that the Office of Alcoholic Beverage Control Committee released for public hearing. The draft Notification outlines requirements for a) packaging; and b) labelling with warning messages and graphic health warnings (GHWs).

General Comments

Brands provide tremendous value to national economies by exponentially adding jobs and entrepreneurial opportunities that drive gross domestic product and international trade as demonstrated in the milestone studies by the U.S. Department of Commerce and the European Commission, as well INTA's study on the value of trademarks and the impact that Brand Restrictions have on youth. The 2021 study covered a number of Asia-Pacific countries, including Thailand, which I am honored to enclose a copy for your perusal.

Trademarks also serve the important function of protecting consumers against confusion, as well as against fraud and counterfeits impacting health and safety, including adulterated, defective, or otherwise unsafe goods.

Comments on Specific Regulations Provisions

The Notification, as currently drafted, will directly impact the way trademarks are used in relation to alcoholic products.

To begin with, the language used in several of the Clauses of the Notification is vague, abstract or excessively broad, which could lead to restrictive interpretations. For example, Clause 4(2) prohibits statements that are “*unfair to consumers*” or that may “*cause harm to society*.” Clause 4(1) states that packaging and labels of alcoholic beverages must not use statements that may cause consumers to believe that alcohol beverages are “*safe*.” These are seemingly subjective standards that would be difficult to apply consistently, particularly in light of the fact that alcoholic beverages are legal products.

In addition, the Notification prohibits the use of text or images featuring athletes, celebrities, and cartoon images (unless such images were trademarked before the Notification came into effect). However, such text and images are often part of a brand or a brand in and of themselves as shown below:

This provision not only puts new companies or companies that have not registered such text or images at a significant disadvantage, the restriction to use images or cartoons also violates other valuable intellectual property rights, namely copyrights. Like trademark rights, the owner of copyright has the right to use the subject of those rights and to prevent others from infringing such rights. Prohibiting a company from exercising these rights is such a significant restriction that it could well amount to an expropriation of property without compensation.

Perhaps the most problematic clause in the Notification is Clause 4(3), which states that packaging and labels of alcoholic beverages must not use statements that directly or indirectly induce the consumption of alcoholic beverages or highlight the properties, benefits, or qualities of alcoholic beverages. However, an advertisement by definition is the means of communication in which a brand is promoted to a viewership in order to attract interest, [engagement](#), and sales. Clause 4(3) thus effectively acts as a prohibition on the advertisement of alcoholic beverages which simply goes too far.

Whilst INTA recognizes the importance of public health, it views with great concern measures by governments that seek to prohibit, misappropriate or significantly restrict the use of branding for lawful products. Such measures are determinantal to consumers, trademark owners and competition, and unreasonably expropriate valuable personal property rights. Specifically, any such measures should be proportional to the alleged harm and should be no more restrictive on economic value and use of the brand than is necessary for the relevant governmental authority to achieve its legitimate public health objectives. INTA respectfully submits that the proposed Notification fails to meet this threshold. INTA strongly believes that Thailand should use less drastic alternatives than the proposed Notification to address health and safety goals, such as public education campaigns which do not violate international and national law, expropriate valuable trademark rights, impinge upon consumer choice, limit competition, and pave the way for increased counterfeiting and trade in diverted goods.

Concluding Remarks

INTA believes that the Notification is not narrowly tailored to meet the objectives of regulating alcohol consumption, will arbitrarily deprive brand owners of their intellectual property, and will have a negative impact on consumer choice, and future market access.

If you have any questions or concerns, please contact INTA’s Asia-Pacific Chief Representative, Walter Chia at wchia@inta.org.

We thank you for the opportunity to provide these comments and remain at your disposal for any clarifications or further requests for information.



Etienne Sanz de Acedo
Chief Executive Officer
International Trademark Association

CC:

H.E. Srettha Thavisin, Prime Minister and Minister of Finance
H.E. Chonlanan Srikaew, Minister of Public Health
H.E. Somsak Thepsuthin, Deputy Prime Minister
Mr. Vuttikrai Leewiraphan, Director General, Department of Intellectual Property,
Ministry of Commerce

Annex

INTA Brand Restrictions Study – Thailand



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