

THAILAND

III.K. Counterfeiting Issues

Creation of the Thai Intellectual Property and International Trade Court in 1997 has always been seen as an important milestone in the development of the Thai IP enforcement regime. Two recent sentences handed down by the IP Court in trademark counterfeiting criminal prosecutions may herald a new willingness to mete out truly deterrent judgments.

In Red Court Case 2208/44, police acting on a complaint from Levi Strauss & Co. against an individual at Exclusive & Progressive Co., Ltd., seized 644 pieces of counterfeit LEVI'S clothing. Charges were also levied against a second individual as the director of Exclusive & Progressive Co., Ltd. The IP Court imposed a fine of 700,000 Baht (this fine was over the maximum 400,000 Baht suggested in the Trademark Act) and a sentence of 4 years imprisonment. Because the defendants pleaded guilty, the sentence was reduced to 2 years imprisonment and the fine cut to 350,000 Baht. However, the Court took note that the director of the company had a prior conviction for a similar offense, and thereafter increased the fine for this offender by one-third to 466,667 Baht according to Section 92 of the Penal Code of Thailand. This judgment shows that the Court, when properly motivated, will strictly punish the repeat offender, which will give a clear message to first offenders not to risk repeating an offense.

In Red Court Case 977/46, a police raid initiated by Levi Strauss & Co. against an individual at a warehouse netted a record seizure of 109,178 counterfeit LEVI'S clothing products. Following a guilty plea on April 30, 2003, the IP Court imposed a prison sentence of 8 months. Because the defendant pleaded guilty, the sentence was reduced to 4 months imprisonment, but it is worth noting that the prison sentence was ordered to be served without suspension. Although the sentence term was not long, it is significant that the Court rendered the judgment without suspension.

It will be interesting to monitor criminal sentences in the coming months to determine whether these two IP Court judgments are an aberration or truly signal a growing recognition on the part of the Thai judiciary that trademark infringement will be treated as a serious offense.

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