

## Legislative developments demand IP owners' attention

Recent and pending reforms affecting cosmetics, film and video, computer crime and product liability, as well as trade marks and copyright, are of great relevance to IP owners, as **Alan Adcock** of **Tilleke & Gibbins** explains

**T**hailand saw several important legislative changes in 2008 that affect IP rights and IP-focused businesses. In 2009, proposed amendments to the Copyright Act and the Trade Mark Act will also affect IP owners and infringers. With the recent political turmoil hopefully settled for at least the next four years, the government may now be able to put politics aside and focus on further development and protection of IP rights.

### Cosmetic Act

The registration of cosmetics in Thailand has seen a significant shift recently as Thailand prepares to comply with the ASEAN Harmonized Cosmetic Regulatory Scheme. The Ministry of Public Health's September 25 2008 Announcement Regarding the Definition of Controlled Cosmetics provides for a new classification for all three types of cosmetics ("specially controlled cosmetics", "controlled cosmetics" and "general cosmetics") to be classified as "controlled cosmetics". This requires all cosmetics to file a notification to the Thai Food and Drug Administration (FDA) before manufacturing or selling in Thailand. Manufacturers and importers of general cosmetics, which had previously been subject to more lenient FDA requirements, must now notify the FDA of their products by December 31 2010. Information that must be provided when submitting notification to the FDA includes:

- 1) Registered business name and address of office and storage location of manufacturer or importer.
- 2) Name, category or kind of cosmetics to be manufactured or imported.
- 3) Details of all ingredients.
- 4) Product label.

### Film and Video Act

The new Film and Video Act entered into force in Thailand on June 4 2008. It establishes for the first time

in Thailand a rating system for films and videos consisting of seven categories:

- General audience (no age restriction).
- 13-year-olds and above.
- 15-year-olds and above.
- 18-year-olds and above.
- 20-year-olds and above.
- Banned films.
- Educational films.

Further, it is now mandatory to file an application for inspection of the movie by the Board of Film and Video Censors to obtain the necessary approval for screening, renting and selling films and videos in Thailand. For foreign production companies hoping to shoot in Thailand, an application must now be filed with the Office of Tourism Development setting out the screenplay, plot and a short description of the movie.

Concerning piracy, two sections of the new Act can be used against those who sell, exchange or rent fake DVDs or VCDs. Any business renting, exchanging, or selling videos now requires a licence from the relevant government agency. Non-compliance may lead to an initial fine of up to Bt500,000 (\$15,000) and additional fines of Bt10,000 per day for each day the violation continues. Further, the package of each movie rented, exchanged or sold in these stores will bear a regulated label, with non-compliance resulting in a fine of up to Bt100,000.

### Computer Crimes Act

Thailand's Computer Crimes Act came into force on July 19 2007 and is considered to have some of the most onerous provisions so far legislated in this area.

According to the Act, data retention is mandatory for all service providers, who are required to keep records of their users' e-mail, chat and internet usage and personal identification for a minimum of 90 days. The details of this mandatory data retention were left