

# Meeting the Challenges of Innovation in Asia

Trademark owners need a long-term plan for dealing with infringement and counterfeiting in the ASEAN region, where enforcement can be challenging. Kowit Somwaiya, a member of the INTA Board of Directors, explains more in an interview with Ed Conlon.



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“Counterfeiting in ASEAN remains one of the significant concerns for doing business in this region,” says INTA Board of Directors member Kowit Somwaiya, Managing Partner at LawPlus Ltd. (Thailand), who assists with the Association’s advocacy efforts in the ASEAN region.

A growing threat globally is online trademark infringement, he says, but while there are some actions available against this problem, “they are not effective or efficient in many ASEAN countries.” General problems include cumbersome processes for addressing infringement and a lack of cooperation between authorities.

Trademark owners therefore need to have a long-term strategic plan that deals with infringement in the region, Mr. Somwaiya adds. This should include assessing the landscape for trademark infringement in each state, the “actual and potential” negative impacts on the business, and the basic measures to be taken if and when infringement activities are identified, including an investigation, cease and desist letter, and police complaint.

“The plan should also include annual budgets, responsible/implementation teams, and expected results, preferably quantified in key performance indicators. The plan should cover a period of three to five years,” he adds.

The Association of Southeast Asian Nations (ASEAN) member states—Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam—are increasingly trying to

encourage and facilitate IP enforcement and compile and communicate data on enforcement cases, best practices and national guidelines for criminal and civil actions, Mr. Somwaiya explains.

Just two years ago, the ASEAN region began a decade-long strategic IP plan (2016–2025). Enforcement is one of the core focuses in the plan; others include acceding to the Madrid Protocol and creating the ASEAN IP Portal.

Concerning the Madrid Protocol, which is administered by the World Intellectual Property Organization (WIPO), Malaysia and Myanmar have yet to join the treaty. On the ASEAN IP Portal, the member states have set up an online platform to provide public access to IP-related data and information in the region.

The major progress on the fourth core aim—legislation development—comes from Myanmar, which is passing four IP laws, including one on trademarks. “This is to ensure that its IP legislation is more in line with the Agreement on Trade-Related Aspects of Intellectual Property Rights,” Mr. Somwaiya says. Once these new IP laws come into force, they will substantially change the



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current practices of IP registration and enforcement in Myanmar.”

Mr. Somwaiya helps to further the Association’s efforts in the ASEAN region, particularly with respect to advocacy, communication, education, and networking opportunities, as well as assisting the Association in implementing its 2018–2021 Strategic Plan. He works closely with INTA’s Board of Directors, officers, committees, and advisory council on global and regional issues, especially in the Asia-Pacific area (which includes the ASEAN region).

“On the ground I help INTA promote the values of trademarks and brands among regional brand owners and the public. I advocate best practices for registration and protection of trademarks and related IP, harmonization of trademark laws and practices, and enforcement of trademark rights against trademark infringement, to name a few,” he says.

Mr. Somwaiya says the major challenges facing INTA and brand owners are innovation and technological changes, which will be “fast, disruptive, and challenging.”

“For example, the speedy development of online platforms/e-commerce, social media, financial technology, and blockchain technology will result in more sophisticated online trademark infringements and more unfair use and unfair competition in relation to brands on a global basis,” he suggests.

He adds that growth rates of e-commerce and social media use in the ASEAN region have been very high in the past few years, and he expects them to increase in 2018.

“This could mean more difficult problems in enforcing trademark rights against online infringers,” Mr. Somwaiya emphasizes.

In response, brand owners should invest time and money in informing and educating their management teams, including counsel, about all aspects of online IP infringement activities “so that at all times they are aware of the volume and severity of the infringement problems applicable to their brands and businesses.” ●