

**International Trademark Association
Non-Traditional Trade Mark East Asian and Pacific Subcommittee 2008-2009
Collated by ELLA CHEONG, Chairman**

AD = Acquired Distinctiveness required; ID = Inherently Distinctive; IT = In Theory; CL = Supporting Case Law available (provide separately)

24 April 2008 – Amended 17 April 2009

| Country | Trade Dress | Sound | Shape (3-D) | Single Colour | | | | Combination Colour | | | | Smell | Taste | Touch | Motion | Position (Placement of mark on goods) | Hologram |
|---------------------------------------|-------------|-----------|-------------|-----------------------|------------|------------|--------------|-----------------------|---------------|---------------|---------------|-----------|-----------|-----------|-----------|---------------------------------------|-----------------------------|
| | | | | Per Se w/o Attachment | On Product | On Service | On Packaging | Per Se w/o Attachment | On Product | On Service | On Packaging | | | | | | |
| Afghanistan (Carrick) | X | X | X | X | | | | ✓ | | | | X | X | X | X | X | ✓ (if in shape of mark) |
| Australia (Tracey) | ✓ (ID) | ✓ (ID) | ✓ (AD) | ✓ (AD) | ✓ (AD) | ✓ (AD) | ✓ (AD) | ✓ (ID) | ✓ (ID) | ✓ (ID) | ✓ (ID) | ✓ (IT) | ✓ (IT) | ✓ (IT) | ✓ (IT) | ✓ (AD) | ✓ (AD) |
| Bangladesh (Beth) | ✓ | X* | X* | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | X* | X* | X* | X* | X* | ✓ |
| Bhutan (Jennifer) (Neil) | ✓ (AD) | X | ✓ (AD) | ✓ (AD) | X | X | X | ✓ (AD) | X | X | X | X | X | X | X | ✓ (AD) | ✓ (AD) |
| Brunei (Tracey) | ✓ (ID) | X | ✓ (AD) | ✓ (AD) | ✓ (AD) | ✓ (AD) | ✓ (AD) | ✓ (AD) | ✓ (AD) | ✓ (AD) | ✓ (AD) | X | X | X | X | X | X |
| Cambodia (Catherine) | ✓ | X | ✓ | X | X | X | X | ✓ | ✓ | ✓ | ✓ | X | X | X | X | X | ✓ |
| China (Linda) | X | X | ✓ | X | X | X | X | ✓ (AD; ID) | ✓ (AD; ID) | ✓ (AD; ID) | X | X | X | X | X | X | X |
| East Timor* (Rupert) | ✓ (ID) | X | ✓ (ID) | X | X | X | X | X | ✓ (IT, ID) | X | ✓ (IT, ID) | X | X | X | X | X | X |

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| Hong Kong (Rebecca) | ✓ (ID) | ✓ (generally AD because HK Registrar takes the view that the public may treat sound as something emitted by the goods, rather than as a sign indicating trade origin. CL) | ✓ (Theoretically registrable unless (a) results from the nature of the goods themselves, (b) necessary to obtain a technical result, or (c) gives substantial value to the goods.; but in practice, Registrar usually requires AD. CL) | ✓ (AD) | ✓ (AD) | ✓ (AD) | ✓ (AD) | ✓ (AD) | ✓ (AD) | ✓ (AD) | ✓ (AD) | ✓ (IT; AD likely to be required) | ✓ (IT; AD likely to be required) | ✓ (IT; AD likely to be required) | ✓ (IT; AD likely to be required) | ✓ (AD; CL) | ✓ (IT) |

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| India (Beth) | ✓ | ✓ | ✓ | ✓* | ✓* | ✓* | ✓* | ✓* | ✓* | ✓* | ✓* | IT* but only if it can be represented graphically as in a "gramotograph" | IT* | X | ✓ | ✓ | ✓ |
| Indonesia (Rupert) | ✓ (ID) | X | ✓ (ID) | X | X | X | X | X | ✓ (IT, ID) | X | ✓ (IT, ID) | X | X | X | X | X | X |
| Japan (Michiru) | X | X | ✓ (ID/AD/CL) | X | X | X | X | X | X | X | X | X | X | X | X | X | X |
| Laos (Neil) | ✓ (ID) | X | ✓ (ID) | X | X | X | X | X | X | X | X | X | X | X | X | X | X |
| Macao (Rebecca) | ✓ (ID) | ✓ (ID) | ✓ (ID) | X | X | X | X | ✓ (ID) | ✓ | ✓ | ✓ | X | X | X | X | ✓ (ID) | ✓ (IT) |
| Malaysia (Tracy) (Linda) | ✓ (ID or AD if mark has low inherent distinctiveness) | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X |
| Maldives* (Catherine) | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X |
| Mongolia (Tracey) | ✓ (ID) | ✓ (IT) | ✓ (IT) | ✓ (IT) | ✓ (IT) | ✓ (IT) | ✓ (IT) | ✓ (IT) | ✓ (IT) | ✓ (IT) | ✓ (IT) | X | X | X | X | X | X |

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| Myanmar (Patsy) | ✓ (ID) | X | ✓ In 2D (ID) | ✓ (ID) | ✓ (ID) | ✓ (ID) | ✓ (ID) | ✓ (ID) | ✓ (ID) | ✓ (ID) | ✓ (ID) | X | X | X | X | X | X |
| Nepal (Jennifer) (Neil) | ✓ (AD) | X | ✓ (AD) | X | X | X | X | ✓ (AD) | X | X | X | X | X | X | X | ✓ (AD) | ✓ (AD) |
| New Zealand (Carrick) | ✓ | ✓ (most likely AD) | ✓ (most likely AD) | ✓ (AD) | ✓ (AD) | ✓ (AD) | ✓ (AD) | ✓ (AD) | ✓ (most likely AD) | ✓ (most likely AD) | ✓ (most likely AD) | ✓ (most likely AD) | ✓ (IT) | ✓ (IT) | ✓ (most likely AD) | ✓ (AD) | ✓ (most likely AD) |
| North Korea (Earl) | Nil Info | | | | | | | | | | | | | | | | |
| Pakistan (Kenichi) | ✓ (AD) | ✓ (AD) (yes in theory as the law does provide for sound marks but the Registry does not provide facilities to register sound marks and there is currently no application or such registration) | X (It has been a longstanding practice of the Registry not to grant any exclusive rights in relation to container, packaging or bottle of the product in question.) | ✓ (AD) May require secondary meaning | | | | ✓ (AD) | | | | X | X | X | X | ✓ (AD) | No specific provision regarding hologram as such. But it may fall within the description of “ a device, label, figurative element”. |

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| Philippines (Neil) | ✓ (AD, CL) | X | ✓ (CL) | X | X | X | X | X | X | X | X | X | X | X | X | ✓ (AD, CL) | X |
| Singapore (Patsy) | ✓ (ID) | ✓ (ID) | ✓ (ID) provided not: (a) results from the nature of the goods themselves, (b) necessary to obtain a technical result, or (c) gives substantial value to the goods | ✓ (AD) | ✓ (AD) | ✓ (AD) | ✓ (AD) | ✓ (AD) | ✓ (AD) | ✓ (AD) | ✓ (AD) | X | X | X | ✓ (IT) | X | ✓ (ID) |

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| S. Korea (Earl) (Neil) | X (CL) | X Covered in 2007 draft law – still not approved | ✓ (AD, CL) | ✓ (AD) | ✓ (AD) | ✓ AD | ✓ (AD) | ✓ (AD) | ✓ (AD) | ✓ (AD) | ✓ (AD) | X Covered in 2007 draft law – still not approved | X | X | ✓ (AD) | X (CL) | ✓ AD | |
| Sri Lanka (Kenichi) | ✓ (AD) | X | ✓ (AD) | ✓ (AD) | | | | ✓ (AD) | | | | X | X | X | X | ✓ (AD) | ✓ (AD) | |
| Taiwan (Yvonne) | X But registrable if in form of label/packaging of products | ✓ (ID) | ✓ (AD) | ✓ (AD) | ✓ (AD) | ✓ (AD) | ✓ (AD) | ✓ (AD) | ✓ (AD) | ✓ (AD) | ✓ (AD) | X | X | X | X | X | X (IT) | |
| Thailand (Peter) | ✓ | X | ✓* (AD) | X | | | | ✓ | | | | X | X | X | X | X | X | |
| Vietnam (Peter) | ✓ | X | ✓ | X | | | | ✓ (AD) | ✓ (AD) | ✓ (AD) | ✓ (AD) | X | X | X | X | X | X | |
| Total | ✓ | 22 | 9 | 23 | 13 | 11 | 11 | 11 | 21 | 17 | 15 | 16 | 3 | 3 | 3 | 6 | 9 | 12 |
| | X | 6 | 19 | 5 | 14 | 12 | 12 | 12 | 7 | 7 | 9 | 8 | 24 | 24 | 25 | 22 | 19 | 15 |

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- *Bangladesh** We have a report from an attorney in Bangladesh who said that he has never filed any trademark in Bangladesh for a sound, shape, smell, taste, touch, motion or position mark but that if he received documentary evidence of the Indian Registration (or registration from another country) of such a mark he would try to obtain a registration in Bangladesh. The new trademark law in Bangladesh, "Bangladesh Trade Marks Ordinance 2008" has yet to be translated into English.
- *East Timor** currently provides for protection only through the re-registration of trade marks registered in Indonesia. Consequently the scope of NTM protection is wholly dependent upon the law of Indonesia at present.
- *India** With regard to colour in India, it would not be possible to define the scope of a colour claim or limitation without identifying the particular colour(s) concerned. Accordingly, an application for registration in colour should be based on a graphic representation filed in the relevant colour(s) and precisely defined by reference to a pantone or other widely known and readily available colour standard. With regard to smell and taste, there is no restriction to such registrations under Indian law, but no smell or taste mark has been registered or filed to date. As stated in the chart, were a smell mark to be filed, it would need to be presented graphically in the form of a chromatograph.
- *Maldives** Protection of trademarks of all kinds in the Maldives may only be obtained by way of publication of a Trademark Caution Notice in the Maldives
- *Thailand** It is very difficult to prove acquired distinctiveness for 3D marks. The Supreme Court (highest appeal Court) has recently overturned a verdict of the IP court by rejecting BIC's applications for 3D marks for its lighters and pens. Coca Cola has also failed to register 3D marks for its bottles. We have previously attempted to register 3D trade marks for bottle shapes for clients producing alcoholic beverages and these meet with constant rejection on the grounds that the shapes represent the goods.