

Enforcement of Intellectual Property Rights (IPR)

CAMBODIA

1. INTRODUCTION TO IPR ENFORCEMENT IN CAMBODIA

Introduction

IP enforcement system in Cambodia is presented as a coordinated structure of separated institutions responsible for IP protection. Each department has its own structure and strategy to deal with IP infringement and to settle IP dispute. In accordance with the existing IP law, those institutions initiate their actions ex-officially or upon complaints of the right-holders.

Source of laws

Cambodian intellectual property laws possess various provisions for the purpose of IP enforcement and totally complied with the requirement of TRIPS.

- Law on Marks, Trade Name and Acts of Unfair Competition - (Administrative, Civil and Criminal Procedure).
- Law on Patent, Utility Model Certificate and Industrial Design - (Administrative, Civil and Criminal Procedure).
- Law on Copyright and Related Rights - (Administrative, Civil and Criminal Procedure).
- Draft Civil Code and Civil Procedure - (Civil Judgement and Provisional Measures).
- Draft Customs Code - (Border Measures).
- Law on the Management of Quality and Safety of Products and Services - (Border and Market Enforcement).
- Law on the Management of Pharmaceutical Products (Border and Market Enforcement).

Enforcement Authorities and Agencies

1. Enforcement Section of the Intellectual Property Department plays the role as enforcer of TM law and mediator to settle disputes on trademark matters between the right owner (complainant) and the infringer (defendant). This division legally enforces IPRs through the following initiatives:
 - Ex-officio action based on the provisions of the Law on Marks, Trade Names and Acts of Unfair Competition. This initiative is normally implemented in case of there is clear evidence of IPRs violation or infringement such as prohibited activities as mentioned in provisions of the law or case of violation on well-known trademark, and other evidently acts of unfair competition.
 - Acts upon request of the complainant – this enforcement action is usually implemented to bring the two parties to negotiate based on the presented evidence available from both sides. This division has no right to give judgment on any party

but can only help them to come to term in order to stop and prevent further infringement.

- Acts as the technical advisor and references to the court. This action will be implemented upon request of the judge, if there is a complexity of the case has been faced by the court in term of IP principles or the interpretation of IP law.

2. Customs authority is entrusted with the enforcement of intellectual property at the borders. Its duty is to prevent the import/export/transit of counterfeit goods and pirated copyright goods into/out of Cambodia. Customs protection of IP rights is normally initiated by the application made by the Right-holder or by their own initiatives (ex-officio action) upon prima facie evidence or strong information from the public. The application often accompanied by sufficient information on the products covered by registered mark in question and proof of ownership of rights and the required deposit of collateral for damages in case of the complain is unjustified. In the contrary, if the customs officers act under ex-officio initiatives, they should get all possible information about the products, the usual distribution of product in the country, the information on monitoring and inception of the suspected shipment.
3. Cambodia Import - Export Inspection and Fraud Suppression Department (CAMCONTROL), under the supervision of the Ministry of Commerce is entrusted to enforce the intellectual property rights in cooperation with the customs and economic police at the borders and in the domestic market. This department is also use its authority to keep track on the movement of goods to identify counterfeiting goods or pirating products by comparing their information with the data provided by Intellectual Property Department.
4. Economic Police is entrusted with the duty to enforce the intellectual property in cooperation with CAMCONTROL in the domestic market. Economic Police is an enforcement agency to provide supports in all enforcement activities.
5. Committee for Suppression of Copyright Infringement - this committee has been established in accordance with the Government Sub-Decree No. 63 dated September 04, 2000 in order to control the infringement of copyright and related right on Movie, video and DVD. Committee for Suppression of Copyright Infringement is an special agency established by Government Sub-Decree to suppress the violation of copyright and circulation of pirated products within domestic market
6. The three levels of Cambodian Courts - Municipal/provincial Courts, Appeal Court, and Supreme Court. Court has authority to prevent and preserve evidence. Applicable provisional measures include the detention of material evidences, the search for conceal materials, the order to stop an infringement, the confiscation of infringing goods, and temporary seizure of infringed goods.

2. CIVIL IPR ENFORCEMENT

Civil IPR enforcement can be initiated by the enforcement section of the Intellectual Property Department of the Ministry of Commerce and enforcement unit of the Industrial property Department of the Ministry of Industry, Mines and Energy. These sections will ex-officially act and act on the complain\ of right-holders.

2.1. COMPETENT COURTS

Court (Municipal/Provincial Court, Court of Appeal, and Supreme Court) is the highest body in solving disputes on intellectual property. In the future, the Commercial Tribunal or Commercial Chamber under the present court system, once it has been created, will replace the Municipal /Provincial Court to handle all the intellectual property disputes. Cambodian Courts (including Municipal or Provincial Court, Court of Appeal, and Supreme Court) is the final decision-making body in solving disputes on intellectual property right. Once the Commercial Court has been created, this court will replace the previous institutions in handling all commercial and intellectual property disputes.

2.1.1. First instance

Municipal courts and provincial courts are the first instance courts that provide prompt enforcement of Intellectual Property Rights upon complaints of the right-holder.

2.1.2. Appeal

Any decision taken by the Ministry of Commerce may be the subject of an appeal by any interested party before the Courts and such appeal shall be filed within three months of the date of the decision.

Appeal Court and Supreme Court are the last resort for IP enforcement. Both complainant and defendant have rights to appeal to these courts for any unsatisfactory decision of the first instance court on IP case. Decision of Supreme Court is a final and unchallenged decision.

2.2. REMEDIES AVAILABLE (COMPENSATION, INJUNCTIONS - PRELIMINARY AND FINAL)

Injunction

Both preliminary and final injunction can be obtained in the court (first instance court) by right-holder to prevent the lost of interests caused by the importation and/or infiltration of alleged infringing goods into commercial channel. Injunction can be done through Provisional and Border Measures as stipulated in Chapter 9 and 10 of Law on Marks, Trade Name and Act of Unfair Competition, Chapter 08 (Art. 126) of Law on Patent, Utility Model Certificate and Industrial Design, and Chapter 05 (Art. 59) of Law on Copyright and Related Rights.

Compensation

- TM law, Article 27, on the request of the owner of the mark or of a licensee if he has requested the owner of the mark to institute court proceedings for specific relief and the owner of the mark has refused or failed to do so, the court may grant an injunction to prevent infringement, an imminent infringement, or an unlawful act referred to Articles 21, 22, 23, award damages and grant any other remedy provided for in the general law.
- TM law, Article 28, on the request of any competent authority or any interested person, association or syndicate; in particular of producers, manufacturers or traders, the court may grant the same relief in case of an act of unfair competition referred to in Articles 22 and 23.

2.3. EXECUTION OF COURT ORDERS

Court order will be executed by any of the followings enforcement agencies including economic police, customs authority, Camcontrol agents or by a team of those agencies in cooperation with local authority. The request for execution of court order has to be submitted to the Department of justice for the execution by enforcement agencies. This procedure is also applied for the enforcement of IP related case.

2.3.1. Local Court Orders

Local court is having equal value to the orders of other court levels, if there is no appeal being made against that order.

2.3.2. Overseas Court Orders

Presently, there is no practice of executing overseas court orders in Cambodia.

3. CRIMINAL IPR ENFORCEMENT

Criminal IPR Enforcement can be conducted based on the provisions of the three principal IP laws – TM law, Patent law and Copyright law. The enforcement includes both imprisonment and fine.

3.1. POLICE AUTHORITIES (COMMERCIAL, MARKET, ECONOMIC POLICE ETC.)

Economic police is the main authority mandated to handle commercial and IP case. The other police units are required to cooperate with economic police to handle those case of the commercial and IP nature. Economic police is posted in municipal and provincial level.

3.2. COMPETENT COURTS AND JURISDICTION (INCLUDING APPEAL)

Municipal or provincial court (there are 21 provincial courts and 03 Municipal courts), one appeal court and one supreme court (located only in the capital city).

3.3. PENALTIES

TM law:

- Article 63, Whoever makes a false statement to the Registrar in an application, opposition or other document filed concerning an application for registration, amendment of a registration, renewal of a registration or cancellation of the registration of a mark, trade name or a license pertaining to a mark shall be liable to a fine of not more than five million Riels, or to an imprisonment from one to six months, or both.
- Article 64, Whoever counterfeits a trademark, service mark, collective mark or trade name registered under Article 11.(b), in the Kingdom of Cambodia

by another enterprise shall be liable to a fine of from one to twenty million Riels, or to imprisonment from one to five years, or both.

- Article 65, Whoever imitates a trademark, service mark, collective mark or trade name registered in the Kingdom of Cambodia by another person in order to mislead the public into believing that it is the trademark, service mark, collective mark or trade name of such other enterprise as under Article 23, shall be liable to a fine of from five to ten million Riels, or to imprisonment from one month to one year, or both.
- Article 66, Whoever wilfully imports, sells, offers for sale or has for the purpose of sale goods bearing a counterfeit mark, under Article 64, shall be liable to the penalties provided in that Article. Whoever wilfully import, sells, offers for sale or has for the purpose of sale goods bearing an imitated mark under Article 65, shall be liable to the penalties provided in that Article.
- Article 67, The maximum penalty for a repeated offence under Articles 64 and 65 of this Law, shall be doubled in both of fine and imprisonment as stipulated in those Articles respectively.
- Article 68, in the event an offender liable under this Law is a juristic person, the managing director, manager or representative of such juristic person shall also be liable to the penalty prescribed for such offence unless he can prove that he had neither knowledge or nor consented to the commission of the offence by the juristic person.
- Article 69, All goods which are imported, sold, offered for sale or had for the purpose of sale in violation of this Law, as stipulated in Article 66, shall be confiscated or/and destroyed, according to the decision of the court, whether or not anyone has been convicted of the offence.
- Article 70, whoever has exploited or received anything in kind or in cash by using the influence of his/her position, shall be considered as committing offence and shall be punished in accordance with the law in force.

Patent law:

- Article 132, whoever makes a false statement to the Registrar in any document filed under the provisions of this Law, shall be guilty of an offence punishable by a fine from one million (1,000,000) Riels to five million (5,000,000) Riels or by imprisonment from one (1) month to six (6) months, or by both. The maximum penalty for a repeated offence committed within five (5) years from the date of conviction for similar offence, shall be doubled in both of fine and imprisonment.
- Article 133, any person who knowingly performs an act which constitutes an infringement as defined in Article 125 of this Law hereof shall be guilty of an offence punishable by a fine from five million (5,000,000) Riels to twenty million (20,000,000) Riels or by imprisonment from one (1) year to five (5) years, or by both. The maximum penalty for a repeated offence committed within five (5) years from the date of conviction for similar offence, shall be doubled in both of fine and imprisonment.
- Article 134, where a person is found guilty of an offence under this Law, the competent Court may order the seizure of which is deemed as state asset, forfeiture and destruction of

the infringing goods and of any materials and implement the predominant use of which has been in the commission of the crime.

- Article 135, the competent official, who committed guilty in implementation of its own duty provided by this Law, shall be punished in according with administrative offences, which are not considering yet to the others criminal offences.

Copyright and Related Rights law:

- Article 64, all production, reproduction, or performance, or communication to the public, by whatever means, (of a work) in violation of the author's right, as defined by this law, are offences which must be punished by law.

Infringement of production or reproduction is punishable by 06 (six) months to 12 (twelve) months and/or 5,000,000 (five million) Riels to 25, 000, 000 (twenty five million) Riels fine. Double punishment is applied in case of repeated offence.

The importation or exportation of product obtained from the infringed acts of reproduction is punishable by 06 (six) months to 12 (twelve) months and/or 2,000,000 (two million) Riels to 10, 000, 000 (ten million) Riels fine. Double punishment is applied in case of repeated offence.

Infringement of performance or communication to the public is punishable by 01 (one) month to 03 (three) months and/or 1,000,000 (one million) Riels to 5, 000, 000 (five million) Riels fine. In case of having several offences, punishment will be multiplied by the number of offence. Double punishment of the previous cases is applied in case of repeated offence.

- Article 65, all production or reproduction (of a work) without having authorization of the performer or phonogram producer or video producer or broadcasting organization is punishable by 06 (six) months to 12 (twelve) months imprisonment and/or 5,000,000 (five million) Riels to 25,000,000 (twenty five million) Riels fine. In case of repeated offence, double punishment will be applied.

The importation or exportation of phonogram, cassette, or video cassette without authorization of the performer or phonogram producer or video producer or broadcasting organization is punishable by 01 (one) month to 03 (three) months and/or 2,000,000 (two million) Riels to 10, 000, 000 (ten million) Riels fine. Double punishment is applied in case of repeated offence.

The broadcasting by broadcasting organization without permission of the performer or phonogram producer or video producer or broadcasting organization is punishable by 01 (one) month to 03 (three) months and/or 1,000,000 (two million) Riels to 10, 000, 000 (ten million) Riels fine. Double punishment is applied in case of repeated offence.

- Article 66, in each case covered by article 64 and article 65 of this law, the court may decide as the following:

- To order the confiscation of all or parts of the revenue obtained through the acts of infringement, and equipment specially installed for the purpose of committing this offence.
- To order the confiscated materials or equipment to be returned to the owner of copyright or related right, without prejudice to any moral injury to be compensated.
- To order the destruction of the confiscated materials or equipment.

4. BORDER CONTROL

4.1. REGISTRATION PROCEDURE

- 1- Pursuant to Articles 35 and 36 of the Law and the provisions of the Law on the Governing of Quality and Safety of Goods and Services, the registered mark owner or licensee or his/her legal agents are entitled to file their petitions to the Customs and Excise Department or CAMCONTROL Department to suspend clearance for inspection of the alleged counterfeited goods.
- 2- Within not more than thirty (30) days after this Sub-Decree enters into force, the Ministry of Economy and Finance and Ministry of Commerce shall issue a Joint-Prakas (Joint Declaration) on the promulgation of the petition forms and other requirements in accordance with the enforced laws.
- 3- The petition will be valid for sixty (60) days starting from the date of acknowledgement. Before or after the expiry date, the applicant has to re-file his/her petition, if the request for the suspension and inspection is still needed.

Any petition shall be accompanied by the payment of administrative fees as prescribed by the Joint-Prakas (Joint Declaration) of the Ministry of Economy and Finance and Ministry of Commerce.

Beside the obligations referred in Articles 35, 36 and 38 of the Law, applicant is obliged to take responsibility for the means of transportation, warehouse to store the suspended goods. Warehouse should be located in the port premise or in the vicinity of export-import place determined and governed by the competent authority in accordance with enforced laws and regulations. The expenses for destroying infringed goods shall be the obligation of the plaintiff.

Customs and Excise Department and/or CAMCONTROL Department is entitled to refuse the suspension of the goods for inspection, only if the applicant fails to fulfill any requirement made by Customs and Excises Department and/or CAMCONTROL Department, in accordance with provisions of the Law and this Sub-Decree.

4.2. REGISTRATION AUTHORITY

Customs and Excise Department of the Ministry of Economy and Finance, CAMCONTROL Department of the Ministry of Commerce, and Economic Police of the Ministry of Interior are the competent authority for the registration of petition to request border measure.

4.3. RELEVANT COURTS

The Royal Government of Cambodia's approval to establish a Commercial Court separated from the normal court system will become an efficient tool to settle both commercial and IP dispute. It is a proper factor to create more confidence on Cambodian IP enforcement mechanism among businessmen and foreign investors

4.4. REMEDIES (INJUNCTION)

As provided by provisions of the three cores IP laws – Trademark (including Trade Name and Acts of Unfair Competition), Patent (including Utility Model Certificates and Industrial Design), Copyright and Related Rights, injunction can be issued by competent court upon the request of right-holder. However, injunction can be issued unless following the proper procedure required by court such as depositing financial instruments or monetary guarantee for the compensation to the defendant in case of false accusation.

5. ADMINISTRATIVE IPR ENFORCEMENT

5.1. ROLE OF PATENT OFFICE (IF ANY)

Role of Patent Office in the enforcement of IPRs has been clearly defined by Law on Patent, Utility Model Certificates and Industrial Design concerning the responsibility to enforce IPRs through the duty of its enforcement unit.

5.2. RELEVANT COURTS

With the recent approval of the Council of Ministers to establish a Commercial Court to deal with commercial and Intellectual Property Case in order to meet with its commitment during WTO accession, Cambodia now expects to have another court system specializing in settling commercial and IP disputes.

6. COMMENTS

Presently, there is no plan to change any enforcement mechanism of IPRs in Cambodia. Intellectual Property Right Enforcement mechanism is based and continues to follow the principles of TRIPS.

~~~~~