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- Trademark Enforcement in Cambodia

AUTHORS

- Mr. Tok Thavsothaly Associate

A No 65B, St 111
PO Box 172
Phnom Penh
Cambodia

T +855 23 217 510
+855 23 967 450

F +855 23 212 840

E cambodia@bnglegal.com

W www.bnglegal.com

1. Introduction

As a compliance state to a free market, the foreign interest in Cambodia market is growing, and the demands of their commercial protection is considerable. In term of the commercial trademark protection, the statistic of filing the application keeps increasing from years to years. We refer to the statistic posted in the web page of the Department of the Intellectual Property of Cambodia, below is the official data of the trademark application filed in Cambodia from 2008-2012 :

Years	Numbers of Applications Filed
2011-2012	5140 (foreign applicant 4234)
2010-2011	4459 (foreign applicant 3653)
2009-2010	3969 (foreign applicant 3129)
2008-2009	3077 (foreign applicant 2271)
2008	3099 (foreign applicant 2521)

Upon the registration of the mark, the owner of the mark will own the exclusive rights on the registered trademark; however, it is inevitable that the infringement against those legitimate rights happens. Noticeably, as an example of the enforcement involving the Intellectual Property rights, the enforcement institutions and Intellectual Property right agencies brought an action against the counterfeiting medicines and cosmetics of more than 5-tens and valued at over 1 million dollars which are imported from overseas for distribution in Cambodia .

This newsletter will briefly explain the trademark enforcement in regard to the infringement happening in the Kingdom by providing the enforceable actions plan consisting of the pre-court proceeding and court proceeding as below.

2. SEARCHING PROCEDURE



To ensure an effective action against the trademark infringement, we will require all necessary documents from the trademark owner proving ownership of the relevant mark(s) and also evidence of infringement such as samples and photos of infringing products. This is to gain a strong ground for any potential complaint to the relevant authorities as well as the Competent Court.

This step may include conducting a trademark search with the Department of Intellectual Property Rights (DIPR) of the Ministry of Commerce (MoC) in order to identify the infringer. If the trademark search result does not provide adequate information of the infringer, a private investigation may be necessary before taking further actions. This investigation will be mainly focused on finding the identity of the infringer.

At the same time, a request for an Infringement Evaluation may be submitted to the DIPR. This request aims to obtain an advisory opinion from the Registrar, as this opinion (if it is favorable to the trademark owner) can be served as a ground for any possible complaint to relevant authorities including the Court for a raid action etc.

3. WARNING PROCEDURE

Upon receiving information about the infringer during the search, it is possible to send the infringer a Cease and Desist letter (C&D) as a first warning or notification. Sending this letter is not compulsory, but this action can be served important evidence in a court proceeding. The infringer cannot make an excuse that they are not aware of an infringement caused by their action in using confusingly, similar mark on similar or identical goods or services with the trademark owner. For this reason, we suggest sending the C&D letter to any identified infringer before taking further actions such as the raid action or the court proceedings.

4. ENFORCEABLE ACTION

If sending the C&D Letter does not resolve the matter, the owner of the trademark can lodge the further complaint in various enforceable actions as follows:

- ADMINISTRATIVE MEAN (REQUEST FOR DISPUTE SETTLEMENT BY DIPR)

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The owner of the trademark can lodge a complaint for an intervention from the DIPR for conciliation and amicable settlement of the infringement case in question. DIPR is empowered by the Trademark Law to be the primary authority to amicably settle the case of trademark infringement. After receiving and reviewing the complaint or request for settlement from the trademark owner, the DIPR would invite both parties for their arguments at DIPR's office. At this stage, the trademark owner may present or submit the Advisory Opinion on Infringement Evaluation from the DIPR as evidence.

Upon the conciliation at the DIPR and if DIPR confirms that there is an infringement, the Registrar will decide that the infringer stops their act of infringements. The decision of the Registrar is not final and binding which the infringer may not bind and may lodge a complaint with the Competent Court against the Registrar's decision.

b. RAID ACTIONS

If the decision of the DIPR does not settle the matter, the trademark owner may consider lodging a complaint for a raid action to relevant authorities including an Economic Police and a prosecutor or Custom officials for the border measure.

I. ECONOMIC POLICE

The Economic Police officers in charge would, upon an order from the prosecutor, conduct a police raid, including but not limited to, seizing infringing goods or cease doing the infringing business and holding in custody identified infringing importers. The Economic Police, upon request from the owner could also destroy the captured infringing goods.

Once the Economic Police seizes the infringing goods, the owners of these products may come to claim back their properties. At this stage, before the prosecutor, we could be able to make a formal agreement with the infringers' signature stipulating that they stop selling the infringing products or they agree to be punished in accordance with the agreement.

It is important to note that a Court injunction is required prior to any raid or seizure action. For this reason, BNG will work with a reputable local attorney-at-law in this regard. Two separate Power of Attorneys will be required (Our firm will provide the forms for the trademark owner's execution). We perform our services at the hourly charges as listed in the attached Legal Services Agreement.

c. COURT PROCEEDING

As a final option, the owner of the registered mark can submit a complaint to the competent Court. Court proceeding would consist of civil actions and criminal actions. In term of civil actions, the Court has the power to award the interim injunction to

search and seize evidence of infringement prior to the filing of the civil case, stop the counterfeiting activity while the case is pending, permanent injunction when the judgment is granted, and also the compensation for actual and punitive damages. In case of criminal actions, the Court has power to award imprisonment, seizure and destruction of the counterfeit goods. Should it be necessary, we would seek to enforce the court order through the prosecutor with the cooperation of the Economic Police.

Given the length and expense of the court proceedings, court prosecutions are typically a last resort.

While our firm does include attorneys licensed by the Bar Association of the Kingdom of Cambodia, our services stop short of actively representing clients in court proceedings. We will work with you to develop a full and accurate understanding of the law and your legal position, represent you in any settlement negotiations. In case of court proceedings the firm will appoint a trial counsel to represent the client. At this point, a separate engagement letter for their services and invoice will be sent. We will, of course, cooperate with trial counsel throughout the process and remain your primary communication contact for this matter.

The Intellectual Property Enforcement Action in Cambodia can be in brief as provided in the table below:

Possible Actions	Competent Authority	Content	Purpose
Search Procedure	DIPR	<ul style="list-style-type: none">• To conduct trademark search• To conduct trademark infringement evaluation	<ul style="list-style-type: none">• To identify the infringer• To obtain an advisory opinion from the registrar whether there is an infringement
Warning letter	Executed by Attorney at Law	<ul style="list-style-type: none">• To send the cease/desist letter	<ul style="list-style-type: none">• To allow the infringer aware of the infringement and warn them to stop their action before taking further action

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Administrative Means	DIPR	<ul style="list-style-type: none">• The parties present and submit the evidence of infringement	<ul style="list-style-type: none">• To obtain the decision to resolve the matter at the DIPR
Raid Action	Economic Police	<ul style="list-style-type: none">• To conduct a police raid action against infringement in the market	<ul style="list-style-type: none">• To seize infringement goods, or cease doing the infringing business• To hold in custody identified infringing importer
Court Proceeding	Municipal or Provincial Court	<ul style="list-style-type: none">• To proceed with the Civil Actions• To proceed with the Criminal Actions	<ul style="list-style-type: none">• To award the interim injunction (pre-serving relief), or permanent injunction when the judgment is granted• To award the compensation for actual and punitive damages• To award the imprisonment, seizure and destruction of the counterfeit goods

Conclusion

The continuous numerous of trademark applications is proving that the IP legal enforcement is now in the development progress, we can see the infringement of the legitimate owner exclusive rights in the image of using the trademark affixing to the counterfeit products, or using the similar or identical of the legitimate mark that such an act misleads or causes the confusion to the public consumers.

Despite provisions of law and authorized structure to govern any trademark infringement, the cooperation between those governmental authorized officials is very important for the effective and efficient measure in regard to anti-infringement actions.