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- IP Protection in Cambodia (Update 2017)

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Introduction

Intellectual property is a vital asset for many firms doing business in Cambodia. Whether it is distinguishing goods from those of a competitor, protecting the fruits of research investment, or maintaining the confidentiality of financial plans, IP considerations appear in virtually all industries.

Cambodia's 2004 accession to the World Trade Organization prompted the adoption of several laws regulating intellectual property rights. While it will be a number of years before Cambodia comes into full WTO compliance, investors can already take advantage of the developing regulatory framework, and seek out protection for their inventions, trademarks, industrial designs, and other creative products.

Although the law is still in development, relatively efficient procedures for registering and enforcing important IP rights are already in place. Ignoring, or postponing, the registration of IP assets, could prove to be very costly in the long run.

Trademarks

Trademarks allow their owners to prevent others from using identical, or confusingly similar, marks to identify their goods and services. Enterprises operate under a trade name, and most of them have a trademark that is protectable.

Indeed, registering and enforcing one's trademarks is crucial to differentiating one's products from those of competitors. While unregistered trade names receive a degree of protection, proper registration is vital for any successful business.



Trademarks and related IPRs are principally protected under the 2002 Law on Marks, Trade Names and Acts of Unfair Competition. The Law lists the steps for registering a trademark and the range of protection. An applicant who has already registered a mark in another member country, of the Paris Convention, will have priority in registering that mark in Cambodia.

Having become the 95th member of the Madrid System, in 2015, Cambodia can now be either the designated state, or the state of origin, when applying for a trademark in a large number of countries.

After becoming party to the Madrid Protocol, the number of trademark applications increased sharply.

In accordance with the recent Prakas No. 293, issued on August 30, 2016, on the Procedure for Registration and Protection of the Certification Mark, both local and foreign certification marks are eligible for registration in Cambodia.

The application process begins with the filing of an application form, and if filed through a Lawful Trademark Agent, an original notarized power of attorney. Unless the application is rejected, and requires an appeal, completing the registration process usually takes about six to nine months, from the time of filing, to the delivery of the final certificate.

Registration is valid for ten years and renewable for successive ten-year terms. In the sixth year of the initial term, and of each renewal term, the mark owner must submit an affidavit of use or non-use, and pay an official fee.

The Law also provides procedures for opposing, and invalidating the marks of third parties. This can be crucial to prevent others from registering marks that are either identical, or confusingly similar to one's own.

A trademark owner has the right to prevent others from infringing on their mark. The three main enforcement options are:

- i) File a lawsuit in a civil court for money damages and/or specific relief,

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ii) Request the customs authorities to suspend clearance of imported infringing goods, and

iii) Seek criminal prosecution and/or fines.

Trademark law is the most developed field for protection of IP in Cambodia, although its enforcement has room for improvement. As registration procedures are well established, and routinely practiced, the next important stage, online registration for trademarks, is being put into place.

Patents & Utility Models

Patents and utility models protect the technical aspects of inventions. To receive a patent or utility model, the invention must be new and industrially applicable. For a patent, the invention must also involve an inventive-step, meaning it is not obvious to one skilled in the art. This is the key difference between the two - a utility model can be obvious, whereas a patentable invention cannot.

The Law on Patents, Utility Models and Industrial Designs (2003) governs this area of IP. A protectable invention can be any idea which permits, in practice, the solution to a specific problem, in the field of technology.

The Law categorically excludes certain types of inventions, such as scientific theories and mathematical formula. It also excludes inventions that are not socially “useful”, such as illegal narcotics, as they would harm public health or morality.

In exchange for a patent or a utility model, the inventor must disclose the invention to the public. This way the body of public knowledge increases, and is available to all, once the term of protection expires.

Patents last for 20 years from the date of filing, while utility models are valid for only 7 years. As utility models are less inventive than patented inventions, they are deemed to merit a shorter term of exclusivity. Owners of either must pay an annual maintenance fee, which increases over time, to keep the registration alive.

Both patent and utility model applications are filed with the Department of Industrial Property of the Ministry of Industry and Handicrafts (MIH). While Cambodia is not a party to the Patent Cooperation Treaty (PCT), the Law does provide procedures for registering foreign applications in Cambodia.

In early 2015, Cambodia and Singapore reached an agreement for a Memorandum of Understanding (MoU) on Cooperation in Industrial Property between the Ministry of Industry & Handicrafts (MIH) and The

Intellectual Property Office of Singapore (IPOS). This MOU allows either MIH or IPOS to be the representative of either state to receive patent design applications. IPOS functions as the search and examination authority for patents on behalf of MIH. MIH recognizes patents granted through IPOS.

This MOU is only valid for 5 years, from January 20, 2015. In addition to the MOU between IPOS and MIH, Cambodia and Japan also issued a Joint Statement of Intent (May 4, 2016), aiming to launch cooperation for facilitating patent granting in Cambodia.

Under the concluded agreement on “Cooperation for Facilitating Patent Grants (CPG)”, Cambodia will accelerate patent granting, for applications filed in the country, without conducting an examination Applicable, in effect, when an application corresponds to one that has already been examined, and granted, in Japan, and for which the applicants request the other country to accelerate the granting patent process.

This cooperation will allow applicants to win patent rights, for those patents already registered in Japan, to be processed in an accelerated manner, in Cambodia

While Cambodia is a party to the Patent Cooperation Treaty (PCT) on 08 December 2016, the Law does provide procedures for registering foreign applications in Cambodia. Therefore, both local and foreign inventor can file the patent through PCT system in many countries. On 28 January 2017, Cambodia also become a member of European Patent Office, so starting from this date, the local and foreign patent's inventor can file in the European countries in one time.

Patent owners need to be aware that their rights are subject to revocation and abridgement by the government. The Ministry has the right to exploit a patented invention itself, or allow a third party to do the same, in order to promote public interest (e.g. national defense, nutrition, health, and development).

Further, patent holders who delay in exploiting their inventions, risk having the government grant licenses, to other third parties, without their permission. Looking to the future, the government is currently considering a new law on compulsory licenses, for certain drug patents.

The owner of a patent has the right to exclude others from making, importing, stocking, offering for sale, or using infringing products. Both licensees and the patent owner have the

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right to bring a civil suit for monetary damages and injunctive relief. The Law, however, does not provide procedures for suspending customs clearance of the infringing goods.

Industrial Designs

Industrial design recognition protects an industrial or handicraft product's appearance. Where its composition, form, or construction material make that appearance special, and where the product can serve as a pattern for a product of industry or handicraft, and appeals to and is judged by the eye. The owner of an industrial design has the right to exclude others from exploiting the design, by making or selling it, for example.

The design must be novel and can be a composition of lines or colors, a three-dimensional shape, or a novel material. Technical product features are not protected, as that is the domain of patent law. Nor does it extend in a way that restricts arbitrary features of appearance.

As with patents and utility models, industrial designs are registered with the Department of Industrial Property of the MIH. In practice, the registration procedures are very similar.

Industrial design registrations last for a period of five years from the filing date, renewable for two further consecutive five-year terms, for a total of fifteen years.

Industrial designs are closely related to both copyrights and trademarks. In fact, there is significant overlap amongst the three, though each covers a different aspect of the exploitation of the product.

Under the MoU between MIH and IPOS, the same rules also apply to the recognition of the industrial design registered either by MIH or IPOS.

On 25 February 2017, Cambodia also became a member of Hague Agreement. So starting from now, the local and foreign applicant can file through this system in many countries in one time for registration and post-registration.

Similar to patents and utility models, the owner of an industrial design has the right to exclude others from making, importing, selling, stocking, selling, and using infringing products, and intent a civil suit for monetary damages and injunctive relief.

Copyright

Cambodia's Law on Copyright and Related

Rights (2003) provides protection for original works of authorship. Books, sculptures, architecture, computer programs, paintings, photographs, musical compositions, and many other types of work, are governed by the Law.

Authors have both economic and moral rights to their works. Economic rights relate to the commercial exploitation of the work, and allow the author to prevent others from making copies or derivative works.

For most authors, the economic rights expire fifty years after their death. Special rules apply for anonymous, pseudonymous, posthumous, collective, and audiovisual works.

Moral rights, on the other hand, are perpetual and non-transferable. They allow an author to prevent the destruction or modification of their work, to insist on public attribution as the author, and to decide on the manner and timing of the work's publication.

The Law limits these rights in a number of ways. For instance, reproducing a work for non-commercial, educational, or private home use is generally permitted. Contrary to public perception, copyright is not an absolute right to prohibit all uses of one's work.

Unlike trademarks, patents, and most other IPRs, there is no need to register a copyright. Works are protected automatically from the time of creation.

Nevertheless, there is a voluntary deposit procedure to register works with the Ministry of Culture and Fine Arts. Though the Law does not require, nor specify, any particular advantage to registering, it may facilitate the enforcement of one's rights in administrative, or judicial, proceedings.

The Ministry of Culture and Fine Arts recently issued Prakas No. 112, dated 05 July 2016, on Collective Rights Management, aimed at promoting the establishment of a collective rights management unit to protect copyright and related rights of Cambodian and foreign authors in Cambodia.

Geographical Indications

The Law on Geographical Indications (GIs) was promulgated on January 20, 2014. Under this law, a geographical indication is a name or sign used on certain products corresponding to a specific location, where the quality or reputation of the goods is essentially attributable to its place of origin.

The Ministry of Commerce is the competent authority in charge of managing, possessing and registering all GI applications in

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Cambodia. An applicant for a GI must be a GI associative group, or a group/unit representative of producers/operators who will receive benefit from GI registration.

Foreign GI applications are eligible for registration and protection in Cambodia if they were successfully registered in the applicant's home country. The foreign GI will not be accepted for registration in Cambodia, if it has not been registered in the country of origin. Cambodia will not accept the registration of a foreign GI that is invalid, or has lapsed, in the country of origin. An application for the foreign GI shall be submitted; by their legal representative, through a legal agent in Cambodia.

As part of the registration procedure, the applicant must submit a Book of Specifications and other documents required by the Prakas of the Ministry of Commerce.

GI cannot be registered if the mark:

- is contrary to the law, good morals, society or public order in Cambodia;
- might confuse or mislead the public on the characteristics of the goods with type, quality, place of origin, production, or use;
- has been used as plant seed, or animal breed;
- is generic

Unlike the previous Prakas on GI registration, which provides only 10 years from the filing date, the registered GI, under the new law, will be protected from the filing date, until any cancellation is effected.

Two Cambodian GIs were registered with the Ministry of Commerce on April 2, 2010, prior to the promulgation of the Law on GIs, one being Kampot Pepper, and the other Kampong Speu Palm Sugar.

Integrated Circuits

The layout design of integrated circuits, also known as microchips, can be registered through the Ministry of Industry and Handicrafts.

The design must not have been commercially exploited previously, nor have been the subject of commercial exploitation, for a period not exceeding two years, in any part of the world.

In addition, it must be original, meaning that it is a result of its creator's own intellectual effort, and is not common place, among creators of designs and manufacturers of integrated circuits, at the time of its creation.

Registrations are valid for a period of ten years, with an annual payment.

Trade Secrets and Undisclosed Information

Trade secrets, and undisclosed information, are typically defined as any commercially valuable information that is not known, nor readily ascertainable, and is subject to reasonable efforts to maintain its secrecy.

Cambodia has no specific law related to trade secret and undisclosed information, though a draft is under consideration. Nevertheless, provisions in a number of laws impose duties of confidentiality and penalties for divulgence of commercial secrets.

Non-disclosure agreements are often used to maintain the confidentiality of information that needs to be shared with, for example, an employee or contractor. Such agreements are contracts like any other, and are enforceable under the Civil Code (2007).

The Law on Commercial Enterprises (2005) prohibits the unauthorized publication of a firm's financial statements. It also requires the Ministry of Commerce to maintain the confidentiality of most company documents in its records. The Law on Audit (2000) imposes a duty of confidentiality on government auditors.

The Law on Banking and Financial Institutions (1999) prohibits certain persons from disclosing confidential information in accounting, or administrative documents. The Law provides for criminal penalties of up to five years imprisonment, and \$60,000 in fines. As in virtually every country, the Law on the Bar (1995) requires lawyers to maintain client confidentiality.

Finally, the Penal Code (2010) contains several provisions on this point. Under the code, any person who holds, by reason of their position, profession, function or mission, confidential information, and who divulges such information, is subject to criminal prosecution. The Law also criminalizes the intercepting of mail, tapping into telephone calls, and hacking of computer networks.

Right of Publicity

The right of publicity allows an individual to control the use of his identity for commercial purposes. This would prohibit, for instance, placing a photograph of someone on product packaging, without their permission. There is no law in Cambodia specifically on this point, nor any drafts currently under consideration.

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The unauthorized use of someone's identity for commercial purposes may be considered a form of unfair competition, in violation of "honest practice".

Currently, the only legal provision directly treating the right of publicity is Article 26 of the Law on Copyright and Related Rights (2003), which prohibits unauthorized biographies.

Integrated Circuit Layout Design	A product, in its final form or an intermediate form, in which the elements, at least one of which is an active element, and some or all of the interconnections are integrally formed in or on a piece of material, and which is intended to perform an electronic function	10 years, non renewable	Mandatory Ministry of Industry and Handicraft
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	Subject Matter	Term	Registration
Trademark	Any visible sign capable of distinguishing the goods or services of an enterprise	10 years, renewable indefinitely	Mandatory Ministry of Commerce
Patent	Inventions that are new, industrially applicable, and involve an inventive step	20 years with annually fee	Mandatory Ministry of Industry and Handicraft
Utility Model	Inventions that are new and industrially applicable	7 years with annually fee	Mandatory Ministry of Industry and Handicraft
Industrial Design	Any composition of lines or colors, or any three dimensional forms, or any material, so long as it gives a special appearance to a product	5 years, renewable twice	Mandatory Ministry of Industry and Handicraft
Copyright	Original works of authorship	Life of the author + 50 years, with certain exceptions	Voluntary Ministry of Culture & Fine Arts
Geographical Indications	A name or sign used on product which corresponds to a specific location, where the quality or reputation of the goods is essentially attributable to its place of origin.	Permanent unless cancellation or invalidation	Mandatory Ministry of Commerce