

# ASIA BUSINESS LAW JOURNAL

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# CAMBODIA

Intellectual property (IP) is a vital asset for many firms doing business in Cambodia. Whether it be to distinguish goods from those of a competitor, protect the fruits of research investment, or maintain the confidentiality of financial plans, IP considerations surface in virtually all industries.

While the present patent registration system in Cambodia arguably is trying to meet international standards, the trademark system for application, registration and enforcement is much more developed, and has been used extensively.

Prior to application, a search is usually undertaken to ascertain whether or not a trademark can be registered before the application is filed (i.e., to determine whether there are any identical or

confusingly similar marks, and whether the mark is capable of registration). The application for a trademark search must be submitted to the Department of Intellectual Property Rights (DIPR) within the Ministry of Commerce. Normally the DIPR will respond in writing stating the result of the search within 50 to 60 working days following receipt of the application.

In order to file an application for a trademark search, the applicant must provide a specimen of the trademark, classification and information regarding previous registrations in other jurisdictions, if any.

The application process begins with filing an application form provided by the DIPR, along with other relevant documents. Cambodia uses a first-to-file system, so the use of a mark is not

required when filing an application. A mark has to fulfil the following conditions in order to claim protection. It must be distinctive, it cannot be generic, deceptively similar to a previous or existing trademark, it cannot be a geographical name or surname, it cannot be deceptive or confusing or be scandalous or offensive, and it cannot have direct reference to the character or nature of the goods/services.

There is also a condition that registrations for trademarks must be done only through a local proxy. Applicants not residing or carrying on business in Cambodia must be represented by an agent residing and practising in Cambodia to act on their behalf.

Cambodia still has a long way to go in terms of its IP enforcement, and infringement is rife in all areas of consumer products. While all the relevant laws in Cambodia provide that each IP agency is responsible and able to take action on infringement of IP

rights, it is the lack of knowledge and know-how of the officials that has prohibited an effective enforcement effort.

In most cases, the IP officials cannot distinguish the infringed products from the authentic ones. And in most cases, the relevant IP officials have to be accompanied or guided by the rights owners. Meantime, even though Cambodian IP laws stipulate that all disputes on IP must be settled in the Cambodian courts, there is no special court for IP.

Even though the present level of IP-related cases is low, it is, however, a matter that needs to be dealt with in a hope that when the IP system in Cambodia is functional, the judicial system will be ready to handle all related cases.

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## FAST FACTS

Governing Ordinance	The Law concerning Marks, Trade Names and Acts of Unfair Competition of the Kingdom of Cambodia (2002)
Filing System	First to use
Territorial Protection	Protect all marks duly registered in Cambodia
Filing in Series	Series application is not acceptable in Cambodia
Classes	1-45 (10th edition of NICE classification applicable)
Filing in Multiple Classes	Yes
Official fee	30,000 riels (US\$7,50) for application form submission 260,000 riels for registration 120,000 riels for publication
Power of Attorney	Yes
Period of Priority Claim	Six months
Protection Period	Ten years from the date of filing
Renewal	Registration is renewable for consecutive periods of 10 years subject to written request and payment of prescribed fee.
Examination on absolute grounds	Yes
Examination on relative grounds	Yes
Opposition period	Within 90 days from the date of publication in the Official Gazette
Use requirement	Affidavit of Use/Non-Use must be filed within one year following the fifth year from the date of registration
Assignment / Licence	Any unrecorded licence contract has no effect as against third parties
Collective mark	Yes
Certification mark	Yes
Defensive mark	No
Non-traditional mark	Cambodia only accepts colours if they are used in combination with other distinctive element(s). The scent, sound and moving marks are not registrable yet in Cambodia.