

LAOS

## Administrative actions against retailers in Laos

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The key legislation that governs intellectual property in Laos is Law No 01/NA of December 20 2011, on Intellectual Property, as amended. Under the IP Law, trade mark owners can bring an administrative action, through the Department of Intellectual Property Rights (DIPR), against a shop that sells counterfeit products. This is the most effective anti-counterfeiting measure in Laos.

### Administrative actions

To initiate an administrative action against a retailer selling counterfeit products, a trade mark owner must first send a letter to the DIPR, which requests a resolution to the dispute. The DIPR will then take the following steps:

**Step 1:** The DIPR will send a warning letter to each store which is known to carry the infringing products. Local newspapers will inform the public about the counterfeit products and order the infringers to destroy all counterfeit goods in their possession within a specific period of time.

Afterward, a raid committee, comprised of authorities including the DIPR, the Department of Tax, the Department of Customs, the Office of Economic Police, the Ministry of Industry and Commerce, and the Ministry of Health, together with the IP owner or its representative, will initiate a raid action against each store that received a warning letter. If counterfeit goods are found, the authorities will seize them for destruction and warn the infringers not to repeat the offence.

**Step 2:** The raid committee, at the request of the IP owner, will conduct a second raid action against the same stores. If counterfeit goods are found again, the Ministry of Science and Technology may fine the infringer under Article 160 of the

IP Law, which states that any individual, legal entity or organisation that commits a second or later unintentional violation will be fined 1% of the damages incurred. If they intentionally violate the law a second time or repeatedly, they will be fined 5% of the damages incurred for each violation.

**Step 3:** A third raid action can be initiated if the IP owner would like to continue monitoring the same stores regardless of whether or not they are actually still selling counterfeit goods. If an infringer is found to have committed the same offence a third time, the authorities may order the infringer to close his or her business and advise the trade mark owner to commence judicial proceedings.

Under Article 161 of the IP Law, a civil action can be brought against an infringer and damages can be awarded. A criminal procedure can be commenced under Article 162, as revised. This Article states that individuals who violate IP rights, counterfeit, deceive, commit fraud or commit acts of unfair competition that result in damages against third parties will be imprisoned for three months to two years and fined between  $\text{K}500,000$  (\$60) and  $\text{K}10,000,000$  (\$1,225). If the violator has committed other criminal offences, he or she will be punished under the criminal law.

### Raid to seize counterfeit motor oil

In 2015, our IP enforcement team in Laos carried out a series of raid actions against sellers of counterfeit goods bearing the trade mark of our client, a maker of Thai engines for agricultural activities. The raids were conducted in Vientiane and Savannakhet, and as a result a large amount of counterfeit motor oil was seized and removed from the market.

Initially, warning letters were sent to each infringing store and local newspapers published stories about the upcoming raid action. The first raid action was conducted and counterfeit goods were seized and sent away for destruction.

The authorities warned the infringers not to infringe again or else the infringers would be fined. No other punishment

was imposed on the infringers, as first-time offenders are not penalised and this was the first known counterfeiting offence of each infringer. If an infringer is a repeat offender (that is, has infringed more than two times), the authorities may consider taking the case before the court and rendering punishment under Article 162, as revised, which can include imprisonment or a fine. After conducting the raid action, local newspapers and radio stations publicised the results.

This case study demonstrates that administrative actions are effective at creating public awareness of an IP owner's rights. It also demonstrates the DIPR's willingness to work with IP owners in Laos. IP owners can therefore be assured that efforts will be made by the government to protect their rights and to stem the tide of counterfeit goods. Trade mark owners should use administrative actions to tackle trade mark infringement and raise public awareness of their IP rights in Laos.