

CAMBODIA

Administrative trade mark proceedings in Cambodia

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When brand owners face trade mark infringement in Cambodia, they have access to a number of enforcement options to take against infringers and protect their rights. Sending a cease-and-desist letter to an infringer requesting them to stop the infringement is a standard first port of call. If the infringer refuses to comply with the letter's demands, a public notice or warning can be used to help make the public aware of the infringement. Border measures are available to suspend clearance for inspection of alleged counterfeit goods. And of course, criminal and civil actions can be pursued through the police and the courts.

But perhaps the most popular route — and in our view the most transparent and effective — is for a brand owner to initiate administrative proceedings with the Cambodian Department of Intellectual Property Rights (DIPR). This article provides an overview of how administrative proceedings work and why they provide a good option for enforcing trade mark rights.

Initiating a proceeding

There are no specific laws or regulations governing administrative proceedings in Cambodia. Instead, officers at the DIPR abide by a set of informal rules whereby they serve as mediators and facilitate mediation between a trade mark owner and an alleged infringer.

An administrative proceeding has relatively simple procedures and lower costs, compared to the other enforcement options listed above. To initiate an administrative proceeding for trade mark infringement, a formal request must be filed at the DIPR, Ministry of Commerce, which should include an investi-

gation report and supporting evidence that shows the alleged infringer is involved in infringing activities. The fee for a trade mark owner to file an administrative proceeding is KHR 80,000 (US\$20). This fee does not include the cost of legal representation, nor does it account for the cost of conducting an investigation or compiling evidence.

The supporting evidence can include certificates of registration; photos, catalogues, and brochures containing the infringing mark; photos of the infringing products on sale in the infringer's shop; purchase receipts showing the name of the shop and describing the purchased product; and actual specimens of the infringing product.

Negotiating commitments

If the evidence supports a prima facie case of infringement, the DIPR's Bureau of Litigation, which deals with administrative proceedings, will send an official letter requesting the infringer to attend the DIPR's office to discuss the dispute and negotiate an end to the infringement. The DIPR's officers act as mediators. At this stage, the DIPR will not order penalties, fines, or the seizure or destruction of counterfeit goods. Instead, the parties can agree to certain commitments.

There are no limitations on the commitments that can be agreed to by the parties. They typically include ceasing importing or selling the infringing products; destroying all inventory of the infringing products and providing evidence of the destruction, or delivering the inventory to the trade mark owner for destruction; disclosing the supply chain; recalling products from the market; and amending the infringer's mark if the dispute involves an issue of similarity. A written undertaking can require the infringer to pay damages, although this is unusual without actual litigation unless the brand owner has a strong case of criminal liability against the infringer.

In practice, infringers rarely ignore the DIPR's invitation to attend negotiations—the government request is usually sufficient to compel them to come to the bargaining table. Typically, negotiations take two to three cycles to complete and culminate in a signed agreement.

Administrative proceedings usually generate a positive outcome.

If an infringer ignores the invitation letter, the DIPR normally resends the letter at least three times. If the infringer continues to ignore the request, the act of not attending the administrative proceeding can serve as supporting evidence of infringement in subsequent judicial proceedings. This is the only real consequence that infringers face for ignoring the invitation letter. The DIPR does not have the authority to order penalties, fines or the seizure or destruction of counterfeit goods if the request is ignored.

Pursuing criminal and civil actions

In the event that an infringer fails to live up to its commitments from the administrative proceedings or refuses to take part in the process, brand owners have recourse to both criminal and civil actions through the Cambodian courts. Some brand owners may pursue these actions from the outset to seek a binding judgment against an infringer, rather than attempting resolution through the DIPR at the first stage. But the Cambodian court system often does not generate predictable results, and because of the high success rate and relatively low costs of the DIPR's mediation process, administrative proceedings are viewed as a valuable and transparent avenue for deterring infringement. They should be strongly considered any time a brand faces infringement in Cambodia.