

CONTACT DETAIL



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ARISE+ IPR

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IP ENFORCEMENT

What should I do when I realise that my IP rights have been violated?

When you recognise a violation of your IP rights, you should conduct some level of investigation to obtain information on the violation, including preliminary evidence of the infringement. Based on the type and level of infringement, you may consider enforcement actions against the infringer.

What enforcement agencies are responsible for protecting IP rights in Cambodia?

- Department of Intellectual Property of the Ministry of Commerce
- Department of Industrial Property of the Ministry of Industry, Science, Technology and Innovation
- Department of Copyright and Related Rights of the Ministry of Culture and Fine Arts
- General Department of Customs and Excise of Cambodia
- Counter-Counterfeit Committee of Cambodia
- Department of Anti-Economic Crime Police
- Consumer Protection, Competition and Fraud Repression Directorate General (CCF)
- Court

What enforcement measures can be taken to prevent or stop IP infringement?

To prevent IP infringements, you should actively notify the market of the IP rights you possess. This could include, for example, notices, leaflets, training events, or other public actions that inform the market of your IP rights. Additionally, it is important to obtain additional protection, for example, by registering an exclusive distributorship in Cambodia.

To stop an IP infringement, several measures are available, and they should be tailored to the type and level of infringement, and the alleged infringer. Measures include warning letters, cease-and-desist letters, administrative actions, criminal actions, or civil suits.



What legal remedies are available to IPR holders whose rights have been infringed?

IP rights holders may file a criminal complaint against infringers to ensure they are penalised in accordance with the law. The IP rights holder may also seek damages as the injured party. This is possible in both criminal and civil proceedings.

Depending on the type of infringement, the IP rights holder may request the court to order injunctions, which are interim measures that can stop or remedy the infringement. This may cover an order to stop further manufacturing, turn over infringing goods, or destroy infringing products.

What procedures should be followed to request the handling of IP infringement?

Although the exact procedure depends on the authority that is chosen to handle the complaint, the procedure generally covers preparing a complaint that sets out the infringement and, where possible, identifying the alleged infringer.

For filing before an enforcement authority such as the police, it is recommended to include preliminary evidence of the infringement, to limit the need for extensive investigations. For filing to request a court proceeding, all legal requirements of the filing must be met, and this will depend on the court and on the stage of the proceeding.

What evidence is needed to demonstrate IP infringement?

- Proof of the IP holder's rights, for example registration certificates.
- Evidence of the infringement (the level of evidence required depends on the authority).

What alternative dispute resolution options are available, besides the court?

The Department of Intellectual Property offers an administrative proceeding, which is a form of mediation. This is an effective alternative dispute resolution tool in Cambodia.



The leaflet covers enforcement content for three types of IP rights, including trade marks, industrial designs and geographical indications.

HOW TO ENFORCE YOUR IP RIGHTS IN CAMBODIA



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TRADE MARKS

What is a trade mark?

A trade mark is any visible sign capable of distinguishing the goods or services of one enterprise from those of another.



How can you protect your trade mark in Cambodia, and what rights are conferred on the owner of a registered trade mark?

Trade marks can be protected by registering directly at the Department of Intellectual Property of the Ministry of Commerce or by using the Madrid Protocol. The person registered as the trade mark owner will have the exclusive right to use the trade mark for the goods or services for which it is registered.

The mark must not be descriptive of the goods and services applied for and must not be forbidden under the Cambodian Trade Mark Law (for example, a mark that is identical or similar to a well-known trade mark or another registered trade mark, or a mark that consists of an armorial bearing, flag or other emblem).

What acts are considered trade mark infringements?

- Any use (see below) of a trade mark by an unauthorised third party for goods or services for which it is protected.
- Affixing of the trade mark on those goods by an unauthorised third party.

What constitutes 'use' of a trade mark?

'Use' of a trade mark means the actual use of a trade mark associated with the goods or services for which it was registered during the normal course of trade. Use could include, for example:

- use in relation to the goods or services or the offering of the goods or services for sale under the mark;
- use of the mark in advertising, on business stationery or any other documents.



INDUSTRIAL DESIGNS

What is an industrial design?

An industrial design refers to any composition of lines, colours, three-dimensional forms, or any material that gives a special appearance to a product of industry or handicraft, and which appeals to and is judged by the eye.

How can you protect your industrial design in Cambodia?

An application for registration of an industrial design must be filed with the Department of Industrial Property of the Ministry of Industry, Science, Technology and Innovation. In addition, you can seek design protection by using the international Hague System in Cambodia.

Which objects can and cannot be registered as industrial designs?

A registrable design must be new: it has not been disclosed to the public anywhere in the world prior to the application or priority date of the design application.

Designs that serve solely to obtain a technical result and leave no freedom as regards arbitrary features of appearance (i.e. functional designs) are not registrable. Furthermore, designs that are contrary to public order or morality are not registrable.

What acts are considered industrial design infringements?

An industrial design infringement is the unauthorised use of a registered design in the manufacturing, selling or importation of articles incorporating the design, unless the articles have been put on the market in or outside of Cambodia by the registered owner, or with their consent.



GEOGRAPHICAL INDICATIONS

What is a geographical indication?

A geographical indication (GI) refers to a distinctive name, symbol or any other sign that is used for naming or representing a geographical origin, and can identify the goods as originating in that geographical origin where the quality, reputation or other characteristics of the goods are essentially attributable to the geographical origin.

What are the differences between geographical indications and trade marks?

GIs differ from trade marks in the sense that GIs are used to identify a good as originating from a particular place while trade marks are used to identify goods or services as originating from a particular person or company that owns the mark. GIs are used by all producers or traders whose products originate from the particular place and which share the particular quality, reputation or other characteristics, while trade marks may only be used by the trade mark owner, or with the owner's consent.

While trade marks can be assigned or licensed, it is not possible to assign or license GIs. Moreover, GI protection runs indefinitely as long as the registration is not cancelled or invalidated according to the law, while trade marks require the filing of an Affidavit of Use/Non-use and renewal in order to be maintained.

What constitutes 'use' of a geographical indication?

'Use' of a GI refers to the offering for sale, production, sale, export or import of GI goods.

Members of the Geographical Indications Association, producers and/or operators who comply with the book of specifications are authorised to use the registered GI. These rights are not transferable.



When does a geographical indication become a generic name?

A GI cannot be validly registered if it is a generic term – a term or name which, although it identifies the place the goods originated from, is generally known by the public as referring to that specific type of product. Whether a term or name has become generic depends on how the public uses the term at the time.

Protected GIs shall not become generic.

For example, while 'Koh Kong' is the name of a province in Cambodia that is famous for a certain type of fish sauce, the name 'Koh Kong Fish Sauce' cannot be used as a GI for that fish sauce because 'Koh Kong Fish Sauce' is commonly known as the name of that specific type of fish sauce.

What acts are considered geographical indication infringements?

Infringement of GIs under the law includes:

- direct or indirect commercial misuse of a registered GI in respect of goods identical or comparable to those of the registered GI where the misuse benefited or would benefit from the reputation of the GI;
- unauthorised use, imitation, evocation or translation of the GI even if the true origin of the goods is accompanied by an expression such as 'style', 'type', 'method', 'manner', 'imitation', or translations of such expressions, or of similar expressions likely to mislead the public;
- false or misleading indication as to the origin, nature, or specific quality of the goods appearing on packaging or in advertising materials or on other documents concerning the goods that are likely to mislead as to the origin;
- other practices likely to mislead the public as to the true origin of the goods.

