

## Questions on border control measures in Cambodia

1. Whether it exists the customs filing for trademarks in Cambodia. If exists, please kindly send us the basic introduction of the customs system.

### Our advice:

Cambodia has not initiated a formal Customs recordation system. In other words, customs recordal is not available in Cambodia now. However, upon detecting an allegedly trademark infringement goods consignment to be imported into Cambodia, the trademark owner may request to the Cambodian customs authorities to suspend customs clearance. (*Article 35: The owner of any registered trademark may make application to the customs or the competent authorities or court to suspend clearance of goods suspected of being counterfeit by proving that he is the owner of the registered mark*). Per Article 43 of the Cambodian Trademark Law, the customs may, on its own initiative, suspend the clearance of goods in respect of which it has acquired prima facie evidence that importation of counterfeit trademark goods is taking place or is imminent. "**Counterfeit trademark goods**", under Article 61 of the Cambodian Trademark Law means any goods, including packaging, bearing without authorization a trademark which is **identical** to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation.

Under Article 35 of the Cambodia Law on Marks, Trade Names and Acts of Unfair Competition, both the Cambodia courts and the General Department of Customs and Excise are statutorily entitled to accept and decline the request for customs suspension. [*Article 35: The owner of any registered trademark may make application to the customs or the competent authorities or court to suspend clearance of goods suspected of being counterfeit by proving that he is the owner of the registered mark*].

**Counterfeit trademark goods** is defined as goods bearing, without authorisation, a trademark, which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark. Such goods thereby infringe the rights of the owner of the trademark in question under the IP Law.

2. The specific requirements (application materials) for filing the customs.

Our advice: Per Article 36 of the Cambodia Law on Marks, Trade Names and Acts of Unfair Competition, the IPRs holders in Cambodia must provide the following documents prior to inspection and suspension:

- An extract from the register of marks in Cambodia;
- A statement of the grounds for request for customs suspension of goods, and in particular the prima facie evidence showing that such trademark goods are counterfeit;
- A complete description of the goods on or in connection with which the trademark is used, together, where appropriate (or requested), with a sample of the bona fide product;
- The name and address of the requester and of his representative (alternatively: full details of the applicant, as prescribed);
- An authorization from the owner of the registered trademark, where the request for customs suspension of goods is filed by an authorized representative, and
- The prescribed fee in accordance with the determination of the Ministry of Economy and Finance.

A **deposit** for the request of customs suspension of goods: Under Article 38 of the Cambodia Law on Marks, Trade Names and Acts of Unfair Competition, "*Customs or other competent authorities, specified by Sub-Decree, shall have authority to require the applicant to provide a security or equivalent assurance sufficient to protect the importer, consignee, exporter or owner of the goods and the competent authorities. Such security or equivalent assurance shall be determined in a manner which does not unreasonably deter recourse to this procedure*".

Per Article 37 of the Cambodia Law on Marks, Trade Names and Acts of Unfair Competition, upon payment of deposit from the requester, "*within 10 working days of the receipt of an application under Article 35, the*

*Cambodian customs or competent authorities shall notify the applicant whether the application has been granted or rejected or reserved for further consideration”.*

### 3. The fees for filing the customs, including official fees and your service expenses.

**Our advice:** In case of request for suspension of customs clearance against a shipment of suspicious infringement goods, a security deposit which will be decided by the Customs deposited in cash, by check or by bank guarantee must be made.

To enable us to provide you with the involved costs for customs suspension, we need to have in our hands the initial information/evidence of the suspicious shipment.

### 4. The time required for filing the customs.

**Our advice:** It may take us 2-3 working days to make necessary preparations and file a request for customs suspension.

**Time-limit for customs suspension in Cambodia:** Upon approval of the request of customs suspension under Article 35, the Cambodian customs shall suspend clearance of the goods referred to in the request. The suspension shall remain in force for the initial period, and any extension thereof which is not more than 10 working days. The customs shall immediately inform the importer and the requester of the suspension of the clearance of the goods, and shall state the reasons of such suspension. The Cambodian customs shall also notify the importer of the name and address of the requester (*See Article 38 of the Cambodia Law on Marks, Trade Names and Acts of Unfair Competition*)

**Releasing the suspended goods consignment in Cambodia:** If, within a period not exceeding 10 working days after the requester has been served notice of the suspension, the Cambodia customs authorities have not been informed that proceeding leading to a decision on the merits of the case have been initiated by a party other than the defendant, or that the duly empowered authority has taken provisional measures prolonging the suspension of the release of the goods, the goods shall be released, provided that all other conditions for importation or exportation have been complied with; in appropriate cases, this time-limit may be extended by another 10 working days.

If proceedings to a decision on the merits of the case have been initiated, a review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable period, whether these measures shall be modified, revoked or confirmed.

**Compensation for wrongful request of customs suspension of goods consignment in Cambodia:** Per Article 41 of the Cambodia Law on Marks, Trade Names and Acts of Unfair Competition, *“the relevant authorities shall have the authority to order an applicant to pay the owner, the importer, the exporter and the consignee of the goods appropriate compensation for injury caused to them through the wrongful detention of goods or through the detention of goods released pursuant to Article 39. In case of any party does not agree with this decision, that party has the right to file an appeal before the court”.*

**Allowing examination of goods:** Per Article 41 of the Cambodia Law on Marks, Trade Names and Acts of Unfair Competition, *“the Cambodian customs or other competent authorities may allow the right holder, importer or exporter to examine the goods, the clearance of which has been suspended in accordance with Article 39, and to remove samples for examination, testing and analysis, to determine whether the goods are counterfeit. Where a positive determination has been made that the goods are counterfeit, the customs authorities may inform the right holder of the name and addresses of the exporter, the importer and the consignee and of the quantity of goods in question. Without prejudice to the protection of confidential information, the customs or other competent authorities may, on request, provide the right holder with copies of documents lodged in respect of such goods or with any available information or documents relating to any previous importation or exportation of similar goods by the same importer or exporter”*

**Ex officio action from the Cambodian customs:** Per Article 42 of the Cambodia Law on Marks, Trade Names and Acts of Unfair Competition, *“the Cambodian customs may, on its own initiative, suspend the clearance of goods in respect of which it has acquired prima facie evidence that importation of counterfeit trademark goods is taking place or is imminent”.* With respect to acts performed under Article 42, both public

authorities and officials shall be exempted from liability to appropriate remedial measures where those actions are taken or intended in good faith.

In addition, *“the Cambodian customs shall immediately inform the right holder of the place and date of the suspension of customs clearance and they may at any time seek from the right holder any information that may assist them to exercise these powers”* under Article 43 of the Cambodia Law on Marks, Trade Names and Acts of Unfair Competition

Following a court decision, Per Article 46 of the Cambodia Law on Marks, Trade Names and Acts of Unfair Competition, *“the Cambodian customs and competent authorities shall have the authority to order the destruction of infringing goods. The customs shall not allow the re-exportation of counterfeit trademark goods or subject them to different customs procedure”*.

#### 5. The protection period of the customs filing for a trademark.

**Our advice:** As answered to your question 1 above, Cambodia does not have a formal trade mark recordation system. However, if the trade mark owner is aware of a shipment containing counterfeit goods, he or she may inform customs and file a motion to initiate actions for suspension of customs clearance of suspicious counterfeit goods.

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