

How to Effectively Enforce IPR Infringement in Cambodia

Cambodia's lack of a customs recordal system means that the customs authorities have not yet received any requests for customs supervision regarding intellectual property rights (IPR) infringement. However, IPR holders still have options to engage Cambodian customs to enforce IPR infringement. One way is to file a request for recordal of exclusive distributorship.

Parallel imports in Cambodia – Permissible or trademark infringement?

Per article 11 of [Cambodian Law concerning Marks](#), Trade Names and Acts of Unfair Competition of the Kingdom of Cambodia (2002) which provides for “**Registration and Rights Conferred by Registration**”, the owner of a protected trademark has the exclusive right to use, meaning that an adverse party's use of his mark without prior consent/agreement will constitute a trademark infringement. In such scenario, the trademark owner is entitled to institute court proceedings against any person who infringes the mark by using an identical or confusingly similar sign for goods/services similar to those under the protected mark.

It is worth noting that per Article 11.3, “***The rights conferred by registration of a mark shall not extend to acts in respect of articles which have been put on the market in the Kingdom of Cambodia by the registered owner or with his consent.***” This means that the trademark owner is **not entitled** to take legal actions against the genuine goods which have been put on the market in the Kingdom of Cambodia. Therefore, it also means that trademark owners can take legal actions against third parties who “import” the genuine goods manufactured by the trademark owner from foreign countries into Cambodia. In other words, act of importing the trademarked goods/products even if such goods/products are genuine into Cambodia without the trademark owner's prior consent will amount to a trademark infringement.

As such, parallel imports are not allowable in Cambodia. As a result, this is a way for trademark owner to request Cambodian Customs (i.e. the [General Department of Customs and Excise](#)) to seize parallel imports.

How to prevent parallel imports or counterfeits at the borders in Cambodia?

To prevent parallel imports or counterfeits in Cambodia, a trademark owner must record an “**exclusive distributorship**” with **the Ministry of Commerce**. Once this record is accepted, the trademark owner and its appointed exclusive distributor have the exclusive and enforceable right to import and distribute the relevant trademarked goods in Cambodia. This recordal is valid for **two years** and can be renewed. If the trademark owner wishes to terminate the exclusive distributorship, they may withdraw the recordal at any time.

Once a distributorship is registered, enforcement measures can be initiated when commodities are imported or distributed in Cambodia by a party other than the exclusive registered distributor. The existing regulations do not restrict exclusive distributors from appointing sub-distributors, such that the exclusive distributor essentially works as an exclusive importer, with additional distribution rights being granted to other organizations in Cambodia. In such a case, the agreements governing these distribution networks should be worded clearly to demonstrate the rights granted by the IP owner to the exclusive distributor and its sub-distributors.

After the Ministry of Commerce of Cambodia accepts the request for recordal of exclusive distributor, it will issue an exclusive letter (*for exclusive distributor in Cambodia*) and send a copy to Cambodian Customs, Economic Police and relevant authorities. In this way, Cambodian Customs officers can easily and straightforwardly check the importer's name against the database of recorded exclusive distributorships to determine whether a shipment can be halted pending further action. There is no need for officers to verify whether the goods are genuine or counterfeit, as they simply need to confirm that the importer is the recorded exclusive distributor. If the importer is not listed as the exclusive distributor, the customs officer will simply suspend customs clearance for the shipment and notify the trademark owner for further actions.

How long will such Notice be issued? Can you provide us with a scan of such a Notice for our reference?

The Ministry of Commerce will issue an exclusive letter (for exclusive distributor in Cambodia) and send a copy to Cambodian Customs, Economic Police and relevant authorities within to **2 months** upon receipt of sufficient documents from the IPR holders.

What are required documents to register exclusive distributorship in Cambodia to fight against IPR infringement?

The requirement documents for recordal exclusive right include:



Exclusive Right Letter.pdf)

- (i) Exclusive Right Letter signed by applicant and certified by Notary Public; (see: Exclusive Right Letter.pdf)
- (ii) A copy of the registration certificate.
- (iii) A copy VAT certificate (Cambodian company who appoint as exclusive distributor)
- (iv) A copy patent (Cambodian company who appoint as exclusive distributor)
- (v) A copy of the company certificate and company information sheet (Cambodian company who appoint as exclusive distributor)
- (vi) A copy of the company status
- (vii) Request form sign by chairman company who appoint as exclusive distributor.

The bottom line

Although Cambodia currently lacks a customs recordal system for intellectual property rights (IPR) infringement, there are still ways for IPR holders to engage with Cambodian customs to enforce IPR infringement in Cambodia. This can be achieved by submitting a request for the recordal of exclusive distributorship to the Ministry of Commerce. Upon approval, the Ministry of Commerce will issue a Notice of an exclusive letter (for exclusive distributor in Cambodia) and forward copies of the notice to Cambodian Customs, Economic Police, and other relevant authorities. This process ensures that IPR holders receive the necessary attention from Cambodian enforcement authorities, enabling the timely detection and seizure of IPR infringing goods in Cambodia, whether they are imported through customs or appear in the marketplace.

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