

Kingdom of CAMBODIA
Announcement on the registration procedure and protection of
trademarks

(a certification mark Rule)

Ministry of Commerce No.293 P.N.

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Article 1. Purpose

This Announcement aims to protect consumers and producers by implementing a certification mark system aiming to inform the public or consumers that the goods or services of the owner have a specific character or quality or meet specific specifications or standards.

Article 2. Objectives

This Announcement aims to determine the procedures for the registration, protection and management of certification mark in the Kingdom of Cambodia.

Article 3. Scope

This Announcement applies to any sign that complies with the definition of a trademark as set out in Article 4 and the relevant regulations and can be registered and protected under the trademark system in the Kingdom of Cambodia.

Article 4. Definition

"Certification mark" refers to a name, symbol or logo or a combination of such signs that identifies goods or services related to the used trade mark and that identifies the registered owner of the mark as to the raw materials, source, method of production, quality, clarity or other characteristics of the goods or services.

Article 5. Applicable Provisions

Unless otherwise stated in this Announcement, all relevant provisions of The Law Concerning TradeMarks, Trade Names and Acts of Unfair Competition and related regulations shall also apply to certification marks.

Article 6. Competent Authority

The Intellectual Property Department of the Ministry of Commerce has the authority and responsibility for the registration, protection, and management of trademarks as authorized by the Ministry of Commerce.

Article 7. Ownership of a certification mark

1. The applicant for registration of a certification mark must be a legal entity and have the capacity to designate the goods or services for which the certification mark is to be registered.

2. The applicant for registration or the owner of a registered certification mark shall not use or be involved in the production, marketing or other business of goods or services that are identical or similar to the goods or services for which the certification mark is to be registered.

3. The applicant for registration or the owner of a registered certification mark shall not be permitted to register a trademark or service mark that is identical or similar to a registered certification mark for identical or similar goods or services.

4. The applicant for registration or the owner of a registered trademark or service mark under The Law Concerning Marks, Trade Names and Acts of Unfair Competition shall not be permitted to register a certification mark that is identical or similar to a trademark or service mark for identical or similar goods or services.

5. The use of a registered certification mark by any party shall require the prior permission of the owner of the certification mark.

Article 8. Application for Registration

Application for registration of a certification mark shall be made according to the application form in Khmer or English and shall be filed in accordance with Articles 5 to 7 and Article 9 of The Law Concerning Marks, Trade Names and Acts of Unfair Competition at the Intellectual Property Department of the Ministry of Commerce, accompanied by the following documents:

1. A sworn statement by the applicant that he will not be involved in the production, marketing or provision of services that are identical or similar to the goods or services for which the certification mark is to be registered.

2. Evidence that the applicant is a legal entity.

3. The regulations governing the use of the certification mark shall contain at least the following information:

a. Standards relating to the raw materials, sources, methods of production of the goods or services, quality, clarity or other characteristics to be indicated by the certification mark.

b. The methods and procedures that the owner of the registered certification mark will use to verify those standards.

c. The mechanism that the owner of the certification mark will

employ to control the correctness of the use of the certification mark and the continued compliance with the above standards.

d. The methods and procedures of the certification mark to be used on goods and services.

e. The fees to be paid to the owner of the certification mark for the use of the certification mark, if any

f. The dispute resolution procedure.

4. Other required documents prescribed by applicable laws or regulations or specified in the application.

5. A certification mark applied for registration by a foreign legal entity shall be accompanied by proof of registration or an application for registration of the mark in the country of origin.

6. A letter of authorization stating the correctness if the application is filed through an agent representing the owner of the mark.

Article 9. Public service

The public service fee for trademark registration shall be determined by a joint declaration between the Ministry of Economy and Finance and the Ministry of Commerce in accordance with relevant laws or regulations. When the public service fee for trademark registration has not been determined, the joint declaration between the two ministries on public service fees for trademark registration in force shall be applied.

Article 10. Examination of the application

1. When the applicant has filed the application and paid the registration fee, the Department of Intellectual Property shall examine the following:

a. The mark has the qualifications to be protected as a certification mark in accordance with Articles 4 and 7 of this Announcement,

b. The application must meet the requirements as set out in Article 8 of this Announcement, including the relevant regulations, and

c. The certification mark is not registrable under Article 4 of The Law Concerning Marks, Trade Names and Acts of Unfair Competition and Article 10 of the Law on Trademarks and Geographical Indications of Goods.

2. In cases where a term indicating geographical origin is used as a certification mark or as part of a certification mark to indicate

that the goods or services actually originate in the geographical area indicated by that term, the Registrar shall not refuse to register the certification mark solely on the grounds that it is a geographically descriptive mark pursuant to Article 4 of The Law Concerning Marks, Trade Names and Acts of Unfair Competition. If the term indicating geographical origin is not used for the purpose of indicating the geographical origin of the goods or services, the Registrar shall refuse to register the mark, even if the term is used as a certification mark or as part of a certification mark, pursuant to Article 4 of The Law Concerning Marks, Trade Names and Acts of Unfair Competition.

3. In the event that the application does not meet the requirements as stipulated in Article 8 of this Announcement, the applicant for registration may amend the application within 6 (six) months from the date of the written notice issued by the Registrar. In the event that the applicant fails to amend the application within that period, the Registrar has the right to refuse registration of the certification mark.

4. During the examination of the content of the application, the Registration Officer may invite the applicant or relevant persons to provide explanations or additional evidence, or seek advice from experts in the relevant field or sector to make a decision.

5. Where necessary, the Registration Officer may establish additional guidelines for the examination of the content of the application for registration and the management of the certification mark.

Article 11 Registration and publication in the official gazette

1. The Ministry of Commerce shall register a certification mark and issue a certification to the applicant in cases where the application meets the requirements as set out in Articles 5 and 10 of this Announcement.

2. In accordance with Article 10 of The Law Concerning Marks, Trade Names and Acts of Unfair Competition, the Ministry of Commerce shall publish the registered certification mark together with the regulations governing the use of the mark in the Official Gazette of the Ministry of Commerce.

3. All corrections, amendments, transfers of ownership and other changes shall also be published.

Article 12. Rights obtained from registration

The rights obtained through the registration of a certification mark are as follows:

1. The owner of a certification mark shall have the exclusive right to authorize third parties to use the registered certification mark to produce or market goods or provide services in accordance with the standards set out in the regulations governing the use of certification marks. This authorization shall not be refused if the third party can meet all the requirements as set out in the regulations governing the use.

2. If the authorization to use the certification mark does not meet all the requirements set out in the regulations, the owner of the certification mark may revoke its authorization to use the certification mark and/or may take other measures as set out in the regulations governing the use.

3. In order to prevent or deter infringement, the owner of a trademark may take the necessary legal measures against the infringing party and may seek all relevant remedies, including compensation for damages, interim measures and injunctive relief as provided for in Articles 24 to 47 and Articles 62 to 69 of The Law Concerning Marks, Trade Names and Acts of Unfair Competition.

4. The owner of a trademark has the right to prevent the use of a certification mark or a trademark that is identical or similar to the registered certification mark for goods or services that are identical or similar to the goods or services for which the certification mark is registered.

5. The exclusive right of the owner of a certification mark shall not be subject to compelling third parties to obtain certification against their will.

6. The rights acquired from the registration of a certification mark shall not be transferred in whole or in part, except to the legal entity that will obtain the rights from the owner of the trademark in accordance with the requirements set out in Article 7 of this Announcement. This transfer of rights must be approved by the Ministry of Commerce.

Article 13. Registration of Foreign Trademarks

1. A foreign trademark may be registered in the Kingdom of Cambodia if it meets the requirements set forth in this Announcement and has already been legally registered in accordance with the regulations in the country of origin.

2. Foreign trademarks that are not protected or have ceased to be protected or have ceased to be used in the country of origin shall not be allowed to be registered or removed from the register in the Kingdom of Cambodia.

3. Foreign trademarks may be applied for registration in the Kingdom of Cambodia only through a representative agent as provided for in Articles 58 and 59 of The Law Concerning Marks, Trade Names and Acts of Unfair Competition and related regulations.

Article 14. Objection

In accordance with Article 10 of The Law Concerning Marks, Trade Names and Acts of Unfair Competition, interested parties may file an objection to the registration of a certification mark with the Ministry of Commerce within 90 (ninety) days from the date of publication of the registration, on the basis that one or more of the requirements set out in this Announcement or The Law Concerning Marks, Trade Names and Acts of Unfair Competition have not been met.

Article 15. Validity

1. The provisions on the validity and re-registration of trademarks as set out in Article 12 of The Law Concerning Marks, Trade Names and Acts of Unfair Competition shall also apply to certification marks.

2. If a certification mark ceases to be protected, it cannot be applied for registration as a trademark under the Law and Sub-Decree on Trademarks, Trade Names and Acts of Unfair Competition. Such certification marks shall not be used by any person before the expiry of a period of 10 (ten) years from the date of termination of protection, unless the Ministry of Commerce allows the continuation of the certification system by another legal entity that provides evidence that it has met the requirements of Article 8 of this Announcement.

Article 16. Compliance Monitoring

1. The owner of a registered certification mark shall establish a verification mechanism to ensure compliance with the certification standards as stipulated in Article 8(3)(b) of this Announcement and shall provide an annual report to the Intellectual Property Department, Ministry of Commerce, including a list of producers certified in accordance with the measures for certification. The report and related documents shall be in Khmer. In cases where the documents are not in Khmer, they shall be accompanied by a Khmer translation with a statement of authenticity.

2. In cases where the owner of a registered certification mark fails to provide an annual report, and in cases where it is found that there is no compliance with the certification standards, the Ministry of Commerce shall notify the owner of the registered certification mark, requiring them to resolve the failure within 90 (ninety) days from the date of issuance of the notice. Upon a request with clear reasons from the owner of the registered certification mark, the Ministry of Commerce may extend the period not exceeding 90 (ninety) days. If this requirement is still not met, the certification mark will be removed from the list.

Article 17. Amendments

1. After registration and with the permission of the Ministry of Commerce, the owner of a certification mark may amend the methods and/or procedures for:

- a. certifying the characteristics, standards or other characteristics of goods or services;
- b. supervising the use of the certification mark in trade.

2. The Ministry of Commerce shall agree to amendments upon request by the owner of a registered certification mark if the amendments do not seriously affect the original subject matter and standards of the certification mark.

3. The above amendments are possible only if the amendments do not seriously affect the original subject matter and project of the certification mark, which are related to the components of technological and scientific development.

Article 18. Invalidation and Deletion from the Register

1. The invalidation of the registration of a certification mark shall be based on the following grounds:

- a. The certification mark does not meet any of the requirements as set out in this Announcement and
- b. The registered certification mark owner does not have the legal right to apply for registration of the certification mark as set out in Articles 4 and 7 of this Announcement.

2. The deletion of a certification mark from the Register shall be based on the following grounds:

- a. The registered certification mark owner is no longer competent to certify goods or services.
- b. The registered certification mark owner fails to comply with the time limit as set out in Article 15 of this Announcement.
- c. The registered certification mark owner has started to use his own certification mark on goods or services.
- d. The use of the certification mark causes confusion in the public.
- e. The registered certification mark owner fails to comply with the regulations governing the use of the certification mark.
- f. Any modification that results in the above provisions being contrary to public order or social morality, and
- g. Foreign certification marks registered in accordance with Article 13 of this Announcement are no longer protected or are not used in the country of origin.

3. The effect of invalidation and cancellation of registration of certification marks shall be governed by Article 30 of the Law on Trademarks and Geographical Indications of Goods.

Article 19. Appeals

1. Any person concerned has the right to appeal to the Appeals Board or the competent court within 3 (three) months from the date of issuance of the decision of the Ministry of Commerce as stipulated in Article 62 of The Law Concerning Marks, Trade Names and Acts of Unfair Competition.

2. The decision of the Appeals Board shall be subject to appeal to the competent court within 3 (three) months from the date of issuance of the decision of the Appeals Board.

Article 20. Implementation

Cabinet Director, Director General, Secretary General, Heads of Departments and Units under the Advice of the Ministry of Commerce from the date of signing shall be responsible for implementing this Announcement effectively.