

ការពន្យល់ និង ឧទាហរណ៍
EXAMPLES AND EXPLANATIONS SERIES

កម្មសិទ្ធិបញ្ញា

INTELLECTUAL
PROPERTY RIGHTS

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ឯកសារ បណ្តុះបណ្តាល
TRAINING MATERIALS

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Chapter 1

Intellectual Property Rights and Economic Development

1 Introduction

In the last 2 years Cambodia has succeeded in its efforts to mainstream trade into its overall national development policies. Trade mainstreaming means domestically giving greater visibility to the linkages between trade and all other related economic policy areas such as investment, financial and commercial institutional infrastructure, including in areas such as corporate governance, and intellectual property rights regime. Externally mainstreaming means encouraging broad-based economic cooperation and resource mobilization through regional and global economic linkages.

Economic integration means recognizing the reality of the literal "globalization" of business activity in

DEFINITION: WHAT IS INTELLECTUAL PROPERTY?

Intellectual property ("IP") is a legal term that refers to industrial property and to copyright and related rights. It comprises the protection of patents, trademarks, industrial designs, and geographical indications. It also includes the protection of utility models, trade dress and layout-designs or topographies of integrated circuits, where such protection exists, and protection against unfair competition including/or protection of undisclosed information/trade secrets. IP is really a type of property or asset, just as valuable (or more valuable) than physical or real property, even though it may be intangible, like knowledge. The value of IP assets relative to physical assets has increased because of the importance of technology and creative works in the modern economy. IP consists of new ideas, original expressions, distinctive names, and appearance that make products unique and valuable. IP is often traded (or "licensed") in its own right without trading in the value of an underlying product or service, by means of patent or other IP licenses from a rights owner to another.

the last quarter century, where a new set of assets, denominated as "knowledge" and "innovation", have now moved to the forefront of business strategy for both large and small enterprises around the world. Like any other type of asset, they may be susceptible to obsolescence, misappropriation and duplication. For that we see the development of the legal framework that has been constructed to contain, define and allocate ownership and control of these assets, in the form of patent, trade secrets, copyrights and trademarks and other types of intellectual property, provides an owner with far more than a set of property rights.

Within this larger scheme of economic development Cambodia views policies and legislation related to protection of intellectual property rights as important instruments in the economic, social, scientific and technological development strategy of the country, both for the short and long-term. Efficient and effective protection of intellectual property rights is vital for the development of the domestic economy, for promoting foreign investment, for the transfer and dissemination of technology, and for increasing

local jobs and income as well as facilitating the integration of Cambodia's economy into the regional and global economies.

While mindful of these challenges, the Government was nonetheless hampered by financial and technical capacity constraints to respond to its drive to modernize the national intellectual property legislations to keep pace with international developments and the needs of emerging technologies.

Moreover the Government is conscious of the need to strengthen the enforcement mechanisms to better fight against infringement, and counterfeiting. The police force, the judiciary and the customs administrations need to be made aware of their important role in enforcement of intellectual property rights.

Adequate national resources should be reallocated to these enforcement agencies to enable them to effectively deal with both piracy and the broad-based pirate networks, in order to protect national authors, composers, artists, film and record producers, and the software industry, as well as invention and innovation.

For the last few years the Government and the private sector have worked hand in hand in designing policies and strategies to ensure the strengthening and promotion of the use of the intellectual property system for socio-economic development of the country. The system has begun to bring considerable economic value.

At the Annual Convention of the Ministry of Commerce held last January 14, 2003, Commerce Minister Cham Prasidh has noticed with appreciation the country's achievements in the areas of IPR development and enforcement, a factor he considered crucial for instilling investors' confidence and attracting FDI. Another positive indicator was the increase of registrations of local brands.

2 Intellectual property for business

a- Why is Intellectual Property relevant to your business?

Along with human creativity and inventiveness, intellectual property is all around us. Every product or service that we use in our daily lives is the result of a long chain of big or small innovations, such as changes in designs, or improvements that make a product look or function the way it does today. Take a simple product. For example, a pen. Ladislao Biro's famous patent on ballpoint pens was in many ways a breakthrough. But, like him, many others have improved the product and its designs and legally protected their improvements through the acquisition of IP rights. The trademark on your pen is also intellectual property, and it helps the producer to market the product and develop a loyal clientele.

And this would be the case with almost any product or service in the marketplace. Take a CD player. Patent protection is likely to have been obtained for various technical parts of a CD player. Its design may be protected by industrial design rights. The brand name is most probably protected by a trademark and the music played in the CD player is (or has been) protected by copyright.

b. How does this affect your business?

Regardless of what product your enterprise makes or what service it provides, it is likely that it is regularly using and creating a great deal of intellectual property. This being the case, you should systematically consider the steps required for protecting, managing and enforcing it, so as to get the best possible commercial results from its ownership. If you are using intellectual property that belongs to others, then you should consider buying it or acquiring the rights to use it by taking a license in order to avoid a dispute and consequent expensive litigation.

Almost every business has a trade name or one or more trademarks and should consider protecting them. Most businesses will have valuable confidential business information, from customers' lists to sales tactics that they may wish to protect. A large number would have developed creative original designs. Many would have produced, or assisted in the publication, dissemination or retailing of a copyrighted work. Some may have invented or improved a product or service.

In all such cases, your business should consider how best to use the IP system to its own benefit. Remember that IP may assist your business in almost every aspect of your business development and competitive strategy: from product development to product design, from service delivery to marketing, and from raising financial resources to exporting or expanding your business abroad through licensing or franchising.

c. How can Intellectual Property enhance the market value of your business?

The value of intellectual property (IP) is often not adequately appreciated and its potential for providing opportunities for future profit is widely underestimated by businesses. However, when IP is legally protected and there is demand for the IP-protected products and/or services in the marketplace, IP can become a valuable business asset.

IP may generate an income for your business through the licensing, sale, or commercialization of the IP-protected products or services that may significantly improve an enterprise's market share or raise its profit margins.

IP rights can enhance the value or worth of your business in the eyes of investors and financing institutions. In the event of a sale, merger or acquisition, IP assets may significantly raise the value of your enterprise, and at times may be the primary or only true assets of value.

The strategic utilization of IP assets can, therefore, substantially enhance the competitiveness of your business. Business enterprises should make sure that they are ready to face the challenge and take measures to exploit their IP and protect it wherever possible. Like physical assets, IP assets must be acquired and maintained, accounted for, valued, monitored closely, and managed carefully in order to extract their full value. But before this can be done, businesses must first acknowledge the value of IP and begin to see it as a valuable business asset.

d. Intellectual Property as a business asset

An enterprise's assets may be broadly divided into two categories: physical assets - including buildings, machinery, financial assets and infrastructure - and intangible assets - ranging from human capital and know-how to ideas, brands, designs and other intangible fruits of a company's creative and innovative capacity. Traditionally, physical assets have been responsible for the bulk of the value of a company, and were considered to be largely responsible for determining the competitiveness of an enterprise in the market place. In recent years, the situation has changed significantly. Increasingly, and largely as a result of the information technologies revolution and the growth of the service economy, companies are realizing that intangible assets are often becoming more valuable than their physical assets.

In short, large warehouses and factories are increasingly being replaced by powerful software and innovative ideas as the main source of income for a large and growing proportion of enterprises worldwide. And even in sectors where traditional production techniques remain dominant, continuous innovation and endless creativity are becoming the keys to greater competitiveness in fiercely competitive markets, be it domestic or international. Intangible assets are therefore taking center stage and businesses should seek how to make best use of their intangible assets.

One crucial way of doing so is by legally protecting intangible assets and, where they meet the criteria for intellectual property protection, acquiring and maintaining IP rights. IP rights may be acquired in particular for the following categories of intangible assets:

e. Intellectual Property Protection as an Investment

IMaking the right investments is crucial for enhancing the market value of your business. Investing in equipment, property, product development, marketing and research can strongly enhance your company's financial situation by expanding its asset base and increasing future productivity. Acquiring

Copyright and related rights: Cultural, artistic and literary works including, in most countries, also for computer software and compilation of data (Music/Songs, Films, Novels, Paintings, Computer Programs)	Trademarks, including collective and certification marks: Distinctive signs (Symbols Signs Words Phrases)	Patents: Inventions, Innovative products and processes	Utility models: Innovative products and processes
Branches of Intellectual Property Law			
protection against unfair competition including/or protection of undisclosed information/trade secrets: <u>Trade secrets</u>	layout-designs or topographies of integrated circuits: Microchips	Industrial designs: Creative designs, including textile designs	Geographical indications: Denominations for goods of a given quality or reputation attributable to the geographical origin, Distinctive signs

intellectual property may have a similar effect. Markets will value your company on the basis of its assets, its current business operations and expectations of future profits. Expectations for future profit may be considerably affected by the acquisition of key patents. There are numerous examples of businesses that have seen their market value increase overnight as a result of their acquisition of important patents in key technologies.

Similarly, a good trademark with a good reputation among consumers may also enhance your company's current value and may decisively contribute to making your company's products and services more attractive to consumers. Investment in developing a good IP portfolio is, therefore, much more than a defensive act against potential competitors. It is a way of increasing your company's market value and improving future profitability.

f. The Value of Intellectual Property Assets

A crucial point about legal protection of intellectual property is that it turns intangible assets into exclusive property rights, albeit for a limited period of time. It enables your business to claim ownership over its intangible assets and exploit them to their maximum potential. In short, IP protection makes intangible assets "a bit more tangible" by turning them into valuable exclusive assets that can often be traded in the market place.

If the innovative ideas, creative designs and powerful brands of your business are not legally protected by IP rights, then these may be freely and legally used by any other enterprise without limitation. However, when they are protected by IP rights, they acquire concrete value for your enterprise as they become property rights which cannot be commercialized or used without your authorization.

Increasingly, investors, stock market brokers and financial advisors are becoming aware of this reality and have begun to value IP assets highly. Enterprises worldwide are also more and more acknowledging the value of their IP assets, and, on occasions, have included them in their balance sheets. Many enterprises, including businesses, have begun to undertake regular technology and IP audits. In a number of cases, enterprises have realized that their IP assets are in fact worth more than their physical assets. This is often the case for companies operating in knowledge-intensive and highly innovative sectors, or companies with a well-known brand name.

g. Auditing your Intellectual Property

One way your business may acquire a better position to capitalize on the potential benefits of its IP assets and extract their full value is by conducting an IP audit. Ideally, this should be done by professional IP auditors, but often a preliminary IP audit may be done within your company. This entails identifying, monitoring, valuing your business's IP assets so as to make sure that you are making the most out of them. By establishing a culture of identifying and cultivating IP assets and strategically using them, an enterprise can increase its revenue, have an edge over its competitors and position itself well in the market; these are strategies that may lead to an increased market value of your business.

-
- Acquiring IP assets - Knowledge of your company's intellectual property and of its value will assist you in deciding which type of IP rights to acquire and maintain, and how best to manage the IP assets of your business.
 - Mergers and acquisitions - Good knowledge of what IP assets your business owns can lead to a significant increase in the value of your business. This is because investors would value a company on the basis of their expectations of future profits, which may, to a considerable extent, be based on the exploitation of IP rights.
 - Licensing - Your business can increase its cash flow (revenue) by licensing out its IP rights to a third party. An IP audit will assist your business in determining the value of your own IP in order to obtain maximum benefit from license agreements. The revenue resulting therefrom has the potential of increasing the market value of your business.
 - Collateral - A well-structured IP portfolio can also be used as collateral. In such cases lenders will use your IP assets to determine the credit worthiness of your business.
 - Enforcement - Knowing the value of your IP assets will assist your business in taking decisions on whether it is worthwhile taking action against infringement and in what way this may be done on a case by case basis.
 - Cost reduction - A well managed IP register would help you identify obsolete IP assets (thus enabling you to cut-down IP asset maintenance costs), avoid infringing other people's IP rights, etc. This would undoubtedly lead to a reduction in costs.

**Chapter
2****Institutional and Legislative
Development****1 Institutional arrangements****a. Key ministries responsible for intellectual property**

The National Assembly is the highest organ of State power exercising its competence in making policy and regime on Intellectual Property Rights through its legislation. At the executive branch the Government had initiated many efforts to strengthen the administration of intellectual property system. There are 4 main ministries responsible for intellectual property:

- the Ministry of Commerce (MoC) is the responsible agency for policy formulation and implementation which respect of trademarks, acts of unfair competition, geographical indications and undisclosed information including trade secret.
- the Ministry of Industry, Mines and Energy (MIME) is responsible for patents, industrial designs and utility models, layout designs, and plant variety protection.
- the Ministry of Culture and Fine Arts (MCFA) is responsible for copyrights and related rights. while the Ministry of Information is responsible with regards to audio-visual, and broadcasting materials.

b. The Intellectual Property Division (IPD)

The Intellectual Property Division (IPD) of the Ministry of Commerce was established on September 22, 1997 under Sub-Decree No. 54 to administer the Trademark regime, a function previously performed by the External Relations and Trademark Office of the Foreign Trade Division.

The IPD is comprised of two offices, the Mark Registration Office, and the Information and Dissemination Office. Their main duties and responsibilities cover the followings:

- To review and recommend IPR policies to the Minister of Commerce and to the Government;
- To prepare IPR laws and regulations and coordinate technical assistance cooperation in the field of IP with the international community;
- To oversee the three core IPR areas in Cambodia and act as a focal point with other relevant ministries;
- To develop and promote IPR regime, specifically trademark, geographical indications and undisclosed information including trade secret; and
- To implement IPR obligations of the State as stipulated in various agreements, conventions to which Cambodia is a party to.

The IPD has already registered over 16,000 foreign and domestic marks based on the Prakas (Declaration) No. 368 of the Ministry of Commerce dated December 15, 1997 and the new Law on Marks, Trade Name and Acts of Unfair Competition. Each year approximately 1,500 marks are registered at the MoC. The leading country registering marks in Cambodia is the United States of America.

c. Inter-ministerial Committee to oversee 3 IP areas

On 22 February 1999 the Government issued Decision No. 16 establishing an Inter-ministerial Committee to oversee 3 IP areas (Trademark, Copyrights, and Patent and Industrial Design) under the chairmanship of the Minister of Commerce and the vice-chairmanship of the Minister of Industry, Mines, and Energy. Membership of the Committee included the representatives of the Ministries of Culture and Information. The IPD was designated as the Committee Secretariat.

The Committee was established for the purposes of expediting the drafting of IPR legislations and regulations where Cambodia was obligated to under the US BTA and other international instruments. It is also responsible for ensuring effective coordination on IPR matters, internally with other relevant ministries and institutions and, externally with the international community on technical assistance.

d. Other relevant institutions

There are also other competent authorities involving in the enforcement of intellectual property rights. They include administrative bodies and judiciary bodies which play the role as mediator, arbitrator and law enforcement agents:

- In the Ministry of Commerce, the Enforcement Section of the Intellectual Property Department plays the role of mediator to settle disputes on trademark matters between right owners and infringers.
- The Customs and Excise Department (CED) under the Ministry of Economy and Finance is entrusted with the enforcement of intellectual property at borders.
- The Cambodia Import-Export Inspection and Fraud Suppression Department of the Ministry of Commerce (Camcontrol) in addition to its enforcement duty inside the domestic markets, also cooperates with the CED to enforce the intellectual property rights at the borders.
- The Economic Police is an enforcement agency which provide supports in all enforcement activities.
- The Committee for Suppression of Copyright Infringement is an special agency established by Government Sub-Decree to suppress violations of copyright and circulation of pirated products within domestic market.
- The Cambodian Courts (including the Municipal or Provincial Court, the Court of Appeal, and the Supreme Court) is the final decision-making body in solving disputes on intellectual property rights.

Once the Commercial Court has been created, this court will replace the previous institutions in handling all commercial and intellectual property dispute.

e. Private Sector

For the last few years the Government and the private sector have worked hand in hand in designing policies and strategies to ensure the strengthening and promotion of the use of the intellectual property system for socio-economic development of the country. The system has begun to bring considerable economic value. At the Annual Convention of the Ministry of Commerce held last January 14, 2003, Commerce Minister Cham Prasidh has noticed with appreciation the country's achievements in the areas of IPR development and enforcement, a factor he considered crucial for instilling investors' confidence and attracting FDI. Another positive indicator was the increase of registrations of local brands.

2 Legislative Development

a. UNTAC period

Prior to the passage of new legislation, the legal framework with regard to IPR protection was based on 2 instruments:

- Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia During the Transitional Period dated September 10, 1992. Article 47: Counterfeit of Seals, Bank Notes, Public Documents, Stamps and Trademarks, and Article 48: Violation of Copyright. The Provisions were adopted during the United Nations Transitional Authority for Cambodia (UNTAC) period; and
- Declaration No 368 of the Ministry of Commerce regarding Procedures of the Intellectual Property Department dated December 15, 1997.

In the absence of a comprehensive Civil Procedure Code which normally contains procedures to obtain a civil judgment, execution procedure, and procedure for provisional measures, the enforcement of Cambodia's IPR cases were troublesome. Issues of concerns related to civil judicial procedures and remedies, provisional measures, administrative procedures and remedies, border measures, and criminal procedures to implement the enforcement provisions of the WTO Agreement on TRIPS were not systematically addressed.

b. New IPR laws

The implementation of IPR reforms called for the adoption of new IPR laws which are compatible with the requirements of the WTO requirements. Inadequate legislation would make it difficult to introduce the changes required to support the new procedures.

The Law on Marks, Trade Names and Acts of Unfair Competition was adopted and promulgated into law

in 7 February 2002 and the Law on Patents, Utility Model Certificates and Industrial Design and the Law on Copyright and Neighboring Rights were adopted and promulgated on 22 January 2003 and 5 March 2003 respectively. The enactment of these drafts, a monumental challenge in itself, will remove the ambiguities and inconsistencies as found in the current two criminal laws, namely the 1993 Law on Criminal Procedures of the State of Cambodia, and the 1993 UNTAC Provisions on Criminal Law. Moreover, they will provide the backbone for the fair and just adjudication of the criminal process.

Among the various IPR laws which remain to be adopted are: (i) the Law on Geographical Indications Including Appellation of Origin, (ii) the Law on Plant Variety Protection, (iii) the Law on Layout Designs of Integrated Circuits, and (iv) the Law on Protection of Undisclosed Information including Trade Secrets. For the time being there is no indication that Cambodia will consider in the near term adopting the Law on Protection of Encrypted Satellite Signals.

c. General civil code and civil procedure code

The enforcement provisions of the TRIPS Agreement require that a member provide civil as well as criminal remedies for infringement of IPRs. They also obligate members to provide means by which right-holders can obtain the cooperation of customs authorities to prevent imports of infringing goods. Of direct relevance to the enforcement of Cambodian IP laws are legislations related to customs and the general civil code and court procedures.

The new Civil Code which will not duplicate the provisions of Cambodia's specific IPR laws will contain civil judicial procedures and remedies, provisional measures, administrative procedures and remedies, border measures, and criminal procedures to implement the enforcement provisions of the WTO Agreement on TRIPS. The Ministry of Justice has completed the draft Criminal Code, and drafting continues on the Law on Criminal Procedures with the assistance from France. These core legislations represent an essential reform for the court system which currently operates without well-defined pretrial, trial, and sentencing rules and procedures, most of which derive from Cambodia's previous non-market legal system.

3 Membership of international intellectual property conventions and regional or bilateral agreements

Cambodia's drive behind IPR reforms came about as a result of forces outside the country and was initially kick started with the Bilateral Trade and Intellectual Property Rights Protection Agreement (BTA) signed with the US in 1996. Membership in regional and international Organizations such as the ASEAN and WIPO has also largely influenced the country's IPR development. However the real momentum behind IPR reforms came with the process of WTO accession and its resulting commitments under the TRIPS. Several WTO Members voiced their concerns on the issues and encouraged Cambodia to put more efforts to establish a TRIPS-consistent regime in IPR, in particular in the critical area of Trademarks and Copyrights.

WHAT ARE THE TRIPS REQUIREMENTS?

The WTO TRIPS agreement covers the seven main areas of intellectual property rights: copyright, trademarks, geographical indications, industrial designs, patents, layout designs of integrated circuits, and undisclosed information, including trade secrets. In each area the agreement specifies minimum standards of protection, requires governments to establish enforcement procedures, and provides means of dispute settlement. The minimum standards are similar for each of the seven areas.

Cambodia also committed to incorporate into the protocol of accession the schedule laying out measures to be taken by Cambodia to bring its IPR regime to be complied with the specific provisions of TRIPS. See Table 2.1: Action Plan on the Implementation of the TRIPS Agreement and the Summary Sheet of each IPR legislation in various chapters.

Cambodian became a member of WIPO on 25 July 1995 and acceded to the Paris Convention on 22 September 1998. Cambodia officially participated in the ASEAN Framework Agreement on Intellectual Property Cooperation on April 30, 1999. The Memorandum of Understanding on Intellectual Property Cooperation between Cambodia and Thailand was also concluded on March 05, 1997.

The BTA with the United States of America was concluded on October 04, 1996 and came into effect on October 25, 1996. The purpose of the Agreement aims at developing mutually beneficial trade relations between the two countries and to provide adequate and effective protections and enforcement of intellectual property rights. Under Article 11 of the BTA Cambodia is required, at a minimum, to observe the commitments set forth in this Agreement and adhere to, or rejoin or reestablish its membership in, the Conventions listed below:

- a. the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplications of their Phonograms, 1971 (Geneva Convention).
- b. the Berne Convention for the Protection of Literary and Artistic Works (Paris, 1971) (Berne Convention);
- c. the Paris Convention for the Protection of Industrial Property, 1967 (Paris Convention); and
- d. the International Convention for the Protection of New Varieties of Plants, 1978 (UPOV Convention), or the International Convention for the Protection of New Varieties of Plants, 1991 (UPOV Convention).

With the recent enactment of the copyright and patent laws, Cambodia is now preparing to become a member of Bern Convention and the Patent Cooperation Treaty. Cambodia's membership in WIPO and the Paris Convention has allowed it to directly reduce implementation costs, through its access to their

technical expertise and development programs. Participation in United Nations agencies such as UNCTAD has mainly been through collaboration in the area of technical assistance. Cambodia has in the past requested UNCTAD to sponsor training workshops on issues relevant to IPR reform.

TRIPS Agreement	Laws and draft regulations addressing the subject matter	Timeframe for completion
General provisions – Participation in intellectual property conventions	<ul style="list-style-type: none"> - Participation in: - WIPO since 1995 - The Paris Convention since 1998 	
	<ul style="list-style-type: none"> - The Berne Convention - Geneva Phonogram Convention - Brussels Satellite Convention 	After adoption of Law on Copyrights
	<ul style="list-style-type: none"> - The Patent Cooperation Treaty 	After adoption of Law on Patents
	<ul style="list-style-type: none"> - International Convention for the Protection of New Varieties of Plants 	Under consideration
Part II, Section 1. Copyright and Related Rights	<ul style="list-style-type: none"> - Law on Copyright & Related Rights of 5/3/2003 	
	<ul style="list-style-type: none"> - Draft Sub-Decree and implementing regulations on Copyrights & Related Rights. 	2004
Part II, Section 2. Trademarks	<ul style="list-style-type: none"> - Law on Marks, Trade Name and Acts of Unfair Competition of 7/2/2002. - Sub-Decree and implementing regulations on the Laws on Marks, Trade Name and Acts of Unfair Competition 	
Part II, Section 3. Geographical Indications	<ul style="list-style-type: none"> - Draft Law on Geographical Indications - Draft Sub-Decree and implementing regulations on Geographical Indications. 	2004 2005

Part II, Section 4. Industrial Design	- Law on Patents, Utility Models and Industrial Designs of 22/1/2003.	
Part II, Section 5. Patents	- Law on Patents, Utility Models and Industrial Designs of 22/1/2003.	
	- Draft Law on Plant Variety Protection. - Draft Sub-Decree and implementing regulations on Plant Variety Protection	2005 2006
Part II, Section 6. Layout Designs of Integrated Circuits	- Draft Law on Layout Design of Integrated Circuits. - Draft Sub-Decree and implementing regulations on Layout Design of Integrated Circuits.	2006
Part II, Section 7. Protection of Undisclosed Information	- Draft Law on Protection of Undisclosed Information and Trade Secret.	2005
	- Draft Sub-Decree on Protection of Undisclosed Information and Trade Secret.	2006
Part II, Section 8. Control of Anti-competitive Practices in Contractual Licences	- Law on Marks, Trade Name and Acts of Unfair Competition of 7/2/2002. - Law on Patents, Utility Models and Industrial Designs of 22/1/2003.	
	- Law on Copyright & Related Rights of 5/3/2003	
Part III, Section 2. Civil and Administrative Procedures and Remedies	- Draft Civil Code - Draft Civil Procedure Code - Law on Marks, Trade Name and Acts of Unfair Competition of 7/2/2002.	2004
	- Law on Copyright & Related Rights of 5/3/2003	
Part III, Section 3. Provisional Measures	- Law on Marks, Trade Name and Acts of Unfair Competition of 7/2/2002.	
Part III, Section 4. Special Requirements Related to Border Measures	- Law on Marks, Trade Name and Acts of Unfair Competition of 7/2/2002.	
	- Law on Copyright & Related Rights of 5/3/2003	
Part III, Section 5. Criminal Procedures	- Law on Marks, Trade Name and Acts of Unfair Competition of 7/2/2002. - Law on Patents, Utility Models and Industrial Designs of 22/1/2003. - Law on the Management of Pharmaceuticals.	
	- Law on Copyright & Related Rights of 5/3/2003.	
Other	- Capacity building of key IP personnel in the above IP fields.	2006

Chapter

3

Copyright Protection

1 Introduction

For some enterprises, the use or exploitation of copyrighted, sound recordings, broadcasts or performances may be a central part of their daily business activities. This may be the case for radio stations, publishing houses, libraries, shops or nightclubs. For others, it may simply be an occasional tool used for enhancing corporate publications, websites and other marketing devices. For others still, use of copyright material may be confined to the use of their computer software.

DEFINITION: WHAT ARE COPYRIGHTED WORKS?

Copyright protection is available to authors of original literary, dramatic, musical, artistic and other intellectual works. The owner of a copyright has the right, for a specified period of time, to exclude others from reprinting, publishing, distributing, copying, publicly performing or publicly displaying the work and from preparing derivative works based on the copyrighted work. A copyright does not, however, prevent others from using any of the knowledge set forth in the work to make, use or sell the idea or invention, since copyright protection does not extend to any idea, procedure, process, system, method or operation, concept, principle or discovery. Any violations of the exclusive rights of the copyright owner are referred to as "infringement" or "piracy".

How can Your SME Benefit From Copyright?

Is your enterprise involved in the creation, recording, publication, dissemination, distribution or retailing of artistic, musical or literary works? Does your company have a website, a brochure, a corporate video, or does it advertise on newspapers or TV? Is your SME using music, pictures, or software products owned by others in any of its publications, brochures, databases or websites? Does your company own the rights to any computer software? If you answered "yes" to any of the above, then you may wish to find out more about copyright issues.

2 Substantive standards of protection, including procedures for the acquisition and maintenance of intellectual property rights.

A Law on Copyright and Related Rights had been adopted by the Council of Ministers in March 2002, and ratified by the National Assembly and the Senate on 21 January 2003. The Law on Copyright and Related Rights had been promulgated on 5 March 2003. Prior to that, copyright protection had been regulated by Article 48 of the 10 September 1992 Provisions Relating to the Judiciary and Criminal Law and Procedures Applicable in Cambodia during the Transitional Period.

a Works Protected

The person who created the work is the author of the work. Only original works are copyright-protected. Ideas must be expressed in a particular form to enjoy copyright protection. For example, a story told in a book is one form of creation. The same story told in film is a different form of creation that deserves the same protection, even if the film is based on the book. Thus, the same story can take different forms and still be protected. However, an author's idea need not be complete to be considered work.

A work can have several authors if the creation is the result of corroborations. For example, film is often a joint effort between the writer, director, producer, and actors. Songwriters and music composers work together to produce songs.

Works that are created from an original work by means of translating, adapting or modifying are considered derivative works. The re-making of an old movie is an example of derivative work. Consent from the original author must be obtained before any modification can be made. In our earlier example, a film based on a book requires permission from the book author before it can be made. Once the film is made, those responsible for its creation will be entitled to copyright protection as well.

Subject matters protected under the copyright law include:

- A. Literary works: oral or written - poems, novels.
- B. Scientific documents
- C. Official legislative, judicial and
- D. Spoken works (conferences, speeches, sermons, etc.)
- E. Musical works: songs, musicals
- F. Dramatic and dramatic-musical works; choreographic works and pantomimes;
- G. Artistic works: drawings, paintings, sculpture
- H. Musical compositions with or without words;
- I. Maps and drawings drawing, painting, architectural, sculptural, engraving and lithography works;

- J. Audiovisual works with or without sound and photographs extracted from these works;
- K. Photographic works: photographic works and works produced with techniques similar to photography; portraits
- L. Graphic and typographic works;
- M. Computer programs compilations of data (Articles 7 and 21), computer programs as literary works, rental rights for computer programmes
- N. Work of applied arts; illustrations, cards, plans, sketches and plastic works pertaining to geography, topography, architecture and sciences;
- O. Motion pictures: movies, documentaries and derived works, such as translation, adaptation, transformation of one or several pre-existing works. the exclusive rights of a broadcaster to authorize rebroadcasts by wireless means (Articles 47 and 48).

b Rights Arising From Copyright: Rights of Authors

The owner of copyright in a work is generally the original creator or author of the work. There are, however, some exceptions to this rule. In some countries, for example, the economic rights over a copyright work are deemed to vest initially in the employer/producer, while in some others these are deemed to be assigned or transferred to the employer/producer.

Copyright law grants author moral and economic rights. Moral rights include three particular points. The economic right of an author is the exclusive right to reproduce, communicate to the public and create derivative work. This means that no one is allowed to use the work of an author without his/her authorization. An author may use his work as he wishes as long as it is not contrary to public interest.

Rights of Authors	
Moral rights	Economic rights
the moral right of an author is the exclusive right to decide the manner and the timing of disclosure of his/her work as well as the principle to govern this disclosure	A Adaptation and simplification or modifications of his/her work.
the author enjoys this right by disclosing his/her name, title and work to the public.	B Rental of the original or copy of an audiovisual work or a work embodied in a phonogram, a computer program, a database or a musical work in the form of musical notation.
the author has the right to oppose all forms of distortion or modification of the content of his/her work.	C Any other means of communications to the public of the work.
Moral rights indefinitely belong to the author(s) of the work.	D Translation of his/her work into foreign languages

c Limitations of Author's Rights

The author may not prohibit free and private representations made exclusively:

- to a close circle of people such as family or friends;
- for educational use and not for financial gain;
- for the translation of works from Khmer into the languages of the ethnic minorities or vice versa.

However, credit must be given to the right-holder. Therefore, any person may copy the work of an author for his personal use without the consent from the author. In other words, it is not unlawful to use published work for the purpose of illustration without payment or consent of the author as long as credit is given to him. For example, in writing a paper, you may take excerpts from a book without the author's consent as long as you cite the source and author's name. This does not violate the author's moral right since acknowledgement is given to the author. You may also purchase CDs and share it with my friends. However, you may not reproduce volumes of CDs and then sell it to the public for my own personal economic gain. This would be an infringement of the author's economic right.

How can you obtain international protection?

If the country of which you are a national or a resident has ratified the international conventions in the field of copyright and related rights administered by WIPO, such as the Berne Convention, or is a member of the WTO and has implemented its obligations under the TRIPS Agreement, or if you have published your work for the first time or at least simultaneously in one of the above countries, your work protected by copyright will benefit from automatic protection in a large number of countries. If this is not the case, there may still be some reciprocal agreements between your country and some foreign countries that provide similar rights.

d Steps to Acquiring Protection (Applications)

As a general rule, copyright protection is automatic and does not depend on registration. In some countries, however, there is a copyright depositary and registering your work in the depositary would be a smart choice as it would considerably assist you in case of dispute for example over the ownership of the work.

In Cambodia works are protected only by filing copyright protection at the Ministry of Culture and Fine Arts. The registration requires the record of the author's real name, date of the first publication of work, and date of the creation of work as well as the record of the author's right. The Ministry will issue the Certificate of Registration for the registered work. A fee is collected in accordance with a joint Declaration of the Ministry of Culture and Fine Arts and the Ministry of Economy and Finance.

e Related Rights

Laws that govern copyrights also apply to related rights. While copyright protects the work of an author, related rights protect those who communicate the message of intellectual creator to the public. There are four kinds of related rights in the Law on Copyrights:

Related Rights

- 1 Rights of performing artists in their performances;
- 2 Rights of phonogram producers in their phonograms;
- 3 Rights of video producer in motion pictures; and
- 4 Rights of broadcasting organizations in radio and television programs.

f Rights of Performing Artists

Performers are artists, dancers, musicians, singers or other persons who give a performance. Performance is the acting on stage namely, dancing, musical performance, singing, or delivering in other ways and means of artistic work, tradition, habit, literary, education, or science. The performers have exclusive right to authorize or undertake the following acts:

Rights of Performing Artists

- 1 Broadcast and communicate to the public of his/her performance
- 2 Fix in phonogram of his/her unfixed performance
- 3 Reproduce of a fixation in phonogram of his/her performance
- 4 Distribute to the public by sale or transfer of ownership, of an original fixation in phonogram of his/her performance that have not been a subject to any distribution authorized by the performer.
- 5 Rent or lend to the public of an original fixation in phonogram of his/her performance or copies thereof.
- 6 Under an agreement, a performer also has rights to the following:
 - Authorize the broadcasting through any broadcasting organization, but other broadcasting organizations are not authorized to broadcast this performance.
 - Authorize the broadcasting through any broadcasting organization but that broadcasting organization is not authorized for the fixation of this performance in the phonogram.

Consider the example of a singer to illustrate these rights. As a singer, you perform on stage by holding a concert. You may have the concert recorded on a tape cassette or compact disc. You may then reproduce and sell or lend these recorded materials to the public. And you may select a radio station to broadcast the concert.

Similar to citing to an author's work, a performer retains the right to require his/her name displayed on live performance or fixed performance where applicable. A performer also retains the right to object to all deformation, mutilation or other modification of his/her performance that are prejudicial to his/her reputation.

However, a performer may not forbid the reproduction and the communication to the public of their performance, if it is accessory to an event constituting the principal subject of a scene, or of a work, or of an audio-visual document.

g Rights of phonogram producers

A phonogram producer is a person who fixes the sounds of a performance or other sounds, other than those incorporated in a cinematographic or other audiovisual work. Fixing of sounds mean the recording of sounds of a live performance into some enduring material form such as tapes, records, compact discs, or any other device.

All reproductions, sales, exchanges, leases, and communication to the public of the phonogram require the authorization of the phonogram producer. The phonogram producer has the right to distribute to the public, by sale or by means of transfer of ownership, the original or copies of the phonogram that has not been subjected to any distribution authorized by that producer.

h Rights of video producers

Video producer is the natural or legal person who has the initiative and responsibility for the recording of a sequence of images, with or without sound, leading to the realization of a video production. All reproduction of video recording for the purpose of communicating to the public, sale, exchange, and lease requires the authorization of the video producer.

The transfer of right of the video producer requires the authorization of the author's right and the performers' right which incorporated into the work of this video production.

I Rights of broadcasting organizations

Broadcasting organizations consist of radio, television, and cable television station. These organizations have exclusive right to undertake or authorize the fixation of its broadcast, communication to the public, re-broadcasting, reproduction, distribution or first lease of the copy of its broadcast. The reproduction of any broadcast belonged to the broadcasting organization for the purpose of sale, lease, exchange, broadcasting or communicating to the public anywhere, must require the authorization of the said organization.

j Limitation of related rights

The following acts are permitted without the authorization of the right-holder and without payment of any remuneration.

- A The reporting of news events, on condition that only short fragments are extracted from the performance or from the substance of phonogram or from a broadcast.
- B The reproduction merely for the purposes of scientific research.
- C The reproduction for the framework of educational purpose, except for the performance or phonogram that has been produced for the educational purposes.
- D Quotation, in the form of short citation extracted from the performance or phonogram or broadcast, provided that such quotation is conformed to the reasonable practice and justified the proper informative objective.
- E All other uses constituting exceptions concerning works protected under copyright by the virtue of this law.
- F Picture and sound recording for the purpose of wholly or partly simultaneous broadcasting on the realization of a ceremony, meeting or other national events from the broadcasting of the original station.

k Duration of Protection

Only works of authors who are of Cambodian nationals, or have their habitual residence in Cambodia, or works published in the Kingdom of Cambodia are protected. However, if works were first published abroad, it can receive copyright protection in Cambodia if brought to publish within thirty days (30) of first communication to the public.

Unlike moral rights, an author may enjoy economic rights throughout his lifetime and an additional 50 years following his/her death. The rights subsisted for 50 years, starting on 1 January of the calendar year following the date of fixation, first disclosure of the performance, or first broadcast. The rights are then transmitted to the heirs or a third party stipulated in a will after the death of the author. In case of having no heirs, this right will be subjected by the administration and the governance of the state represented by the Ministry of Culture and Fine Arts. In the case of corroboration, the economic rights shall be protected during the life of the last surviving author and for an additional 50yrs after his/her death.

As to pre-existing works that had not yet fallen into the public domain, the spirit of the Law on Copyright and Related Rights complied throughout with Articles 1 through 21 of the Berne Convention, including Article 18. Chapter 5 (Articles 30 and 31) and Chapter 6 (Article 67) of the Law on Marks, Trade Names and Acts of Unfair Competition also covered the protected duration and adherence to international treaties.

Duration of Protection

- A 50 years For performers, protection follows the calendar year in which the performance was fixed in the phonogram, or in the absence of such fixation, from the end of the calendar year in which the performance took place.
- B 50 years For phonogram producer, protection follows the calendar year in which the phonogram has been published or in the absence of such publication, from the end of the year following the fixation of the phonogram.
- C 50 years For broadcasting program of the broadcasting organization, protection follows the end of the calendar year in which this program has been broadcast.

I Piracy, infringement and penalties

When an author's authorization is required and someone acts without the author's consent, the rights of the owner of the copyright are infringed. Piracy is the unauthorized copying of copyright materials for commercial purpose. The unauthorized copying of CDs and DVDs are common piracy acts.

Walk to any markets in Phnom Penh, you will find the sale of pirated CDs and DVDs selling for much cheaper than the originals. The reproduction and sale of these products are illegal because they are made without the authorization of the creator/producer of the goods. These piracy products are cheaper in price and often inferior in quality. As a result, the seller benefits at the expense of the creator and the consumer.

Consumers enjoy these products because they are inexpensive. However, consumers often do not realize the long-term effects of piracy. The amount of time, effort, skill and resources invested in producing a product are astronomical. Publishers and producers willingly invest in the creation of new works in expectation of the economic returns from their work. Piracy results in the misappropriation of these economic returns. As a result, there will be less incentives to create new works.

The creator of a work has the right to allow or to prohibit the use of his work. If you discover anybody using your copyright works without authorization you may enforce your rights administratively and in the courts. In many countries, so-called border measures to prevent the importation of pirated copyright goods are also available. Some works such as software products phonograms and audiovisual works may include technological measures of protection (e.g. encryptions, conditional access systems) to safeguard them from unlicensed use. Such systems are means by which right owners may limit access to those customers who accept certain conditions for the use of works and the payment to be made for such use.

Registering work at the Ministry of Culture and Fine Arts allows an author to obtain legal rights to his/her work. The Ministry does not automatically enforce those rights. An author must constantly be on the lookout for anyone infringing on his/her rights. An author may file a petition to the court once an

infringement has occurred or perceived that his/her rights will be violated. The court will order an injunction to discontinue the illegal act. The author (complainant) may ask that the defendant (offender) be subjected to the compensation of damages, to the redress of moral injury, and to the return of the disputed equipment or materials, as well as to the return of any benefits deriving from the illegal act.

All production, reproduction, or performance, or communication to the public without an author's permission is an infringement and will be punished by law. The following is the penalties for the various violations:

Infringement and Penalties

- A Infringement of production and reproduction is punishable by six (6) months to twelve (12) months and/or five million (5,000,000) Riels to twenty-five million (25,000,000) Riels fine.
- B Importation or exportation of product obtained from the infringed acts of reproduction is punishable by six (6) months to twelve (12) months and/or two million (2,000,000) Riels to ten million (10,000,000) Riels fine.
- C Infringement of performance or communication to the public is punishable by one (1) month to three (3) months and/or one million (1,000,000) Riels to five million (5,000,000) Riels fine.
- D Punishment is doubled for repeated offenses.

Summary Sheet: Law on Copyrights and Related Rights	
1. Law: Law on Copyrights and Related Rights	2. Ministry Responsible: Ministry of Culture and Fine Arts
3. Status: - Prepared by the Ministry of Culture and Fine Arts; and - Submission to the Council of Ministers is expected in December 2001 and to the Parliament in June 2002.	5. WTO Agreement Implicated: Agreement on Trade-Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods (TRIPS)
4. Expected Approval Date (Parliament): 5/3/2003	
6. General Scope of the Law: - The scope for the protection of the intellectual property rights arises as a consequence of the creation of works. The protection of the copyright covers the life of the author, the year of his death and fifty years following his or her death. - The following are particularly considered as works: - books, brochures and other literary, artistic and scientific documents, as well as official texts of legislative, judicial or administrative nature; - conferences, speeches, sermons, pleading and other works of similar nature; - drama or musical drama works; - choreographic works, circus acts and mime shows; - musical compositions, with or without words; - film works and other works in a series of animated inter-linked pictures, with or without sound, called audiovisual works, still photographs extracted from the latter audiovisual works; - drawing, painting, architectural, sculptural, engraving and lithography works; - graphic and typographic works; - photographic works and those realized with the use of similar techniques to photography; - work of applied arts; - illustrations, cards, plans, sketches and plastic works pertaining to geography, topography, architecture and sciences; - computer programs; - derived works, e.g.: translation, adaptation, audiovisual or else - the transformation or the arrangement, conceived from one or several pre-existing works or expressions of folklore, the title of an intellectual work.	
7. Particular provisions in relation to WTO requirements: Agreement on Trade-Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods (TRIPS) The TRIPS Agreement clarifies and complete the following general principles of the Berne Convention: - A copyright owner has the right prevent others from using the protected work without their explicit approval in the following situations: <ul style="list-style-type: none"> • Copying and reproducing the work in public; • Performing the work in public; • Making a sound recording of the work; • Making a motion picture; • Broadcasting the work by radio or television; and • Translating and adapting the work. - The Berne Convention provides also for the protection of related rights in relation to the rights of authors of the works: <ul style="list-style-type: none"> • Performing artists in relation to their performance; • Producers of phonograms in relation to their phonograms; and • Broadcasting organizations in relation to their radio and television programmes. - The TRIPS Agreement completes the Berne Convention in the following areas: <ul style="list-style-type: none"> • Computer programmes and databases; • Rental rights to computer programmes, sound recordings and films; • Rights of performers and producers of phonograms; and • Rights of broadcasting organizations. 	

8. Provisions for Developing Countries (DCs):

Possibility of transitional periods to bring national legislation and regulations in conformity with the provisions of TRIPS Agreement: 5 years, up to 1 January 2000. (Article 65.2 and 65.4)

9. Provisions for Least Developed Countries (LDCs):

- Possibility of transitional periods to bring national legislation and regulations in conformity with the provisions of TRIPS Agreement: 11 years, up to 1 January 2006. Possibility of extension following duly motivated request. (Article 66)

- Developed country Members to provide incentives to enterprises and institutions in their territories for purpose of encouraging transfer of technology to LDCs. (Article 66.2)

Chapter
4**Trademarks, including service marks****1 Introduction****a Why are Trademarks important to businesses?**

Your trademarks are in many ways the face of your business. They allow your customers to distinguish your products or services from those of your competitors, giving your business the possibility to better market its goods or services. But trademarks are not just used as identifiers. They are also seen as a guarantee of consistent quality. A customer who is pleased with the quality of your product or service will continue to purchase it based on the quality expectations based upon the known trademark. You should, therefore, take great care in choosing and designing an appropriate trademark, protecting it, using it with care in advertising, and policing its misleading or improper use by others.

DEFINITION: WHAT IS A TRADEMARK?

Trademarks and service marks are signs, or any combination of signs, used to distinguish goods or services from others. Trademarks are marks used in connection with goods, such as Sony and Panasonic in electronic goods. Service marks are marks used in connection with services, such as in hotels, airlines, and restaurants. Marks identify the quality of goods and services and provide consumers guidance on the various selections. Owners of trademarks build their reputation by maintaining and improving the quality of their products. Therefore, trademarks have an important role in stimulating a country's economic progress.

Trademark law has a dual purpose in protecting the public from deception and encouraging owners and enterprises to provide quality goods and services by granting them exclusive rights to their marks. The exclusive right is acquired only by registration of the mark.

Creating or selecting a trademark is no easy task. Initially, you should make sure that your proposed mark meets the legal requirements for trademark registration. Above all, your mark must be sufficiently distinctive to be protectable and registrable with your national and foreign trademark offices. Inherent distinctiveness will also enhance its easy recognition by consumers. Moreover, among the commonly used criteria for creating, designing or selecting a trademark, you may wish to consider the following:

- The sign should be easy to read, spell, pronounce and remember in all relevant languages.
- It should have no adverse meaning in slang or undesirable connotations.
- It should be suitable for export markets with no adverse meaning in foreign languages, especially if you intend to commercialize the product abroad.
- It should not create confusion as to the nature of the product.
- It should be adaptable to all advertising media.

Categories of Trademarks		
Coined words (or “fanciful” words)	Arbitrary marks	Suggestive marks
These are invented words without any real meaning in any language (e.g. Kodak or Exxon). Coined words have the advantage of being easy to protect as they are more likely to be considered distinct. On the negative side, however, they may be more difficult to remember for consumers requiring greater efforts in advertising the products.	They are trademarks that consist of words that have a real meaning in a given language. The meaning of such words, however, has no relation to the product itself or to any of its qualities (e.g. Apple for a Computer). As is the case with coined words, while the level and ease of protection is generally high, there is no direct association between the mark and the product requiring thus greater marketing power to create such an association in the mind of the consumer.	They are marks which hint at one or some of the attributes of the product. The appeal of suggestive marks lies in the fact that they act as a form of advertising and may create a direct association in the mind of consumers between the trademark, certain desired qualities and the product. A related risk, however, is that some jurisdictions may consider a suggestive mark too descriptive or not sufficiently distinctive to meet the criteria for trademark protection.

b Substantive standards of protection, including procedures for the acquisition and maintenance of intellectual property rights

The Law on Marks, Trade Name and Acts of Unfair Competition had been promulgated on 7 February 2002. A sub-Decree and Implementing Regulations to the Trademarks Law was expected to be adopted during 2005. Under the Law, applications for registration of a mark were to be submitted to the Intellectual Property Division at the Ministry of Commerce. Actual use of a mark was not a condition for filing an application. Priority was given to the person who first validly filed the mark or claimed the earliest priority to the mark. Priority rights to a mark already filed in another member of the Paris Convention or the WTO could be conferred, on the basis of the first filing date, to the same applicant or his successor, provided that the filing in Cambodia was made within six months following the first filing. A trademark was protected for 10 years and could be renewed indefinitely for successive periods of ten years. Failure to use a registered mark for more than five years without valid reasons could lead to nullification of the protection. Trademark rights could be transferred or licenced and the right holder had the exclusive right to request the competent authority to handle infringement cases. The use of a trademark by a licence holder (but not the mere licensing of the right) was considered as an act of use.

Protection could be granted to a mark without distinctive characteristics, provided that such mark had been widely used and enjoyed a good reputation in Cambodia. Well-known marks were protected in accordance with Article 6bis of the Paris Convention and Article 16 of the TRIPS Agreement under Article 4(e)(f) and Article 14(f) of the Law on Marks, Trade Name and Acts of Unfair Competition. Cambodia had already conducted several enforcement operations with respect to well-known marks, and Cambodia has also made commitment to adhere to, and effectively enforce, Cambodia's international obligations and its intellectual property laws with respect to well-known marks in a fair and transparent manner in the future. The Law also included provisions concerning unfair competition, including

indications or allegations likely to mislead the public. No specific law on unfair competition was envisaged for the time-being.

The Trademark Law is intended to do the following:

1. Provide a registration process and remedies for the protection of the intellectual property known as marks.
2. Provide remedies for the protection of the related intellectual property known as trade names.
3. Provide remedies against acts of unfair competition.

a Criteria for Protectability

There are two requirements for the valid registration of a mark:

1. The mark must be distinctive or distinguishable of the goods or services of one enterprise from those of other enterprises.
2. The mark should not have any harmful effects of a misleading character or violate the public order, morality or good customs.

b Distinctiveness

It is reasonable that a sign must be distinctive in order to help the consumer to identify the various goods. A generic sign, such as the word "water" cannot be a trademark for bottled water. However, "Alpine Spring Water" distinguishes it from other kinds of bottled water on the market. It does not mean that common words cannot be a trademark. Common words can be highly distinctive. For example, the word "apples" is highly distinctive for computers. Therefore, a mark and the goods it is registered to must be evaluated together to decide if it is distinctive.

c Contrary to Public Interest and Morality and Good Customs

Signs that have harmful effects are excluded from registration on the grounds of public interest.

Signs excluded from registration

- A. Signs that deceive the public as to nature, quality, other characteristics, and geographical origin of the goods.
- B. Signs that confuse customers by the use of identical or similar trademarks for identical or similar goods.
- C. Signs that have reference of geographical region are false for products that do not come from the region.

- D Signs with obscene pictures and emblems of public authorities or of forbidden parties.
- E Signs reserved for use by the state, public institutions or international organizations.

d Trademark Registration

Chapter 2 covers the procedural aspects for registration of marks and for renewal of the registration. It also specifies the effect of a registration. The comments that follow are presented in the format of a procedural timeline for better understanding of the process. (See fig. for diagram of application process)

Trademark registration is filed at the Ministry of Commerce and is subject to an application fee as stated in the joint declaration of the Ministry of Economy and Ministry of Commerce. The application shall include a request, a reproduction of the mark and a list of the goods or services for which the registration of the mark is requested.

Upon receipt of the application, the registrar will examine the application for compliance of the requirements and confirm that the mark is distinctive without harmful effects to public interest.

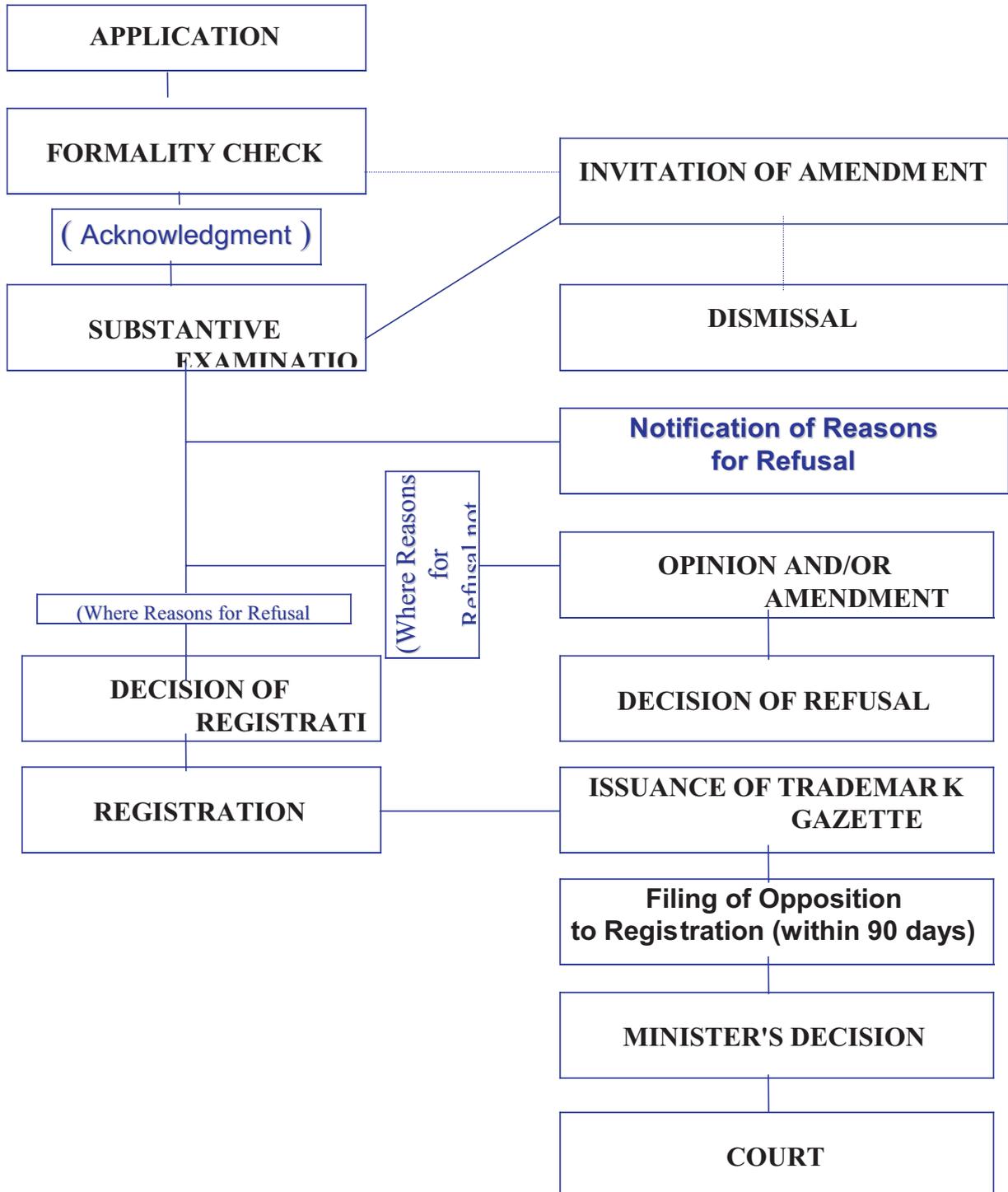
When conditions are met, the Registrar shall register the mark, issue to the applicant a certificate of registration, and publish a reference to the registration in the Official Gazette of the Ministry of Commerce.

If the Registrar finds the conditions are not met, then a written notice will be issued to the applicant. The application may be amended within 45 days; otherwise, the application will be refused.

Once the mark has been registered and published in the Official Gazette, any person who opposes the registration of the mark may do so with written request within 90 days after the publication. The Registrar will send a copy of the notice to the applicant, who may submit a counter-statement of the grounds on which he relies for his application. Failure to respond will result in abandonment of the registration.

The protection of a mark is good for a period of ten years, and renewable indefinitely for consecutive ten years with payment of the registration fee. There is a grace period of six months for late renewal.

FLOW OF TRADEMARK APPLICATION PROCEDURES



e Rights Arising from Trademark Registration: Rights of Owner

Successful trademark registration results in full trademark protection. The owner of the trademark has the right to use the mark and the right to exclude others from using it. The owner of the mark may seek remedies from any person who infringes the mark by using it without the owner's agreement. In addition, the right also extends to the use of a sign similar to the registered mark and use in relation to goods and services similar to those for which the mark has been registered, where confusion may rise in the public.

In other words, owner of a trademark may institute court proceedings against anyone using his mark without permission and against anyone who uses a similar mark in relation to the goods and services that would create public confusion.

f Invalidation and Removal

Chapter 3 provides for invalidation and removal of a mark from the Trademark Register (1) on the request of an interested party and (2) under certain circumstances, by the initiative of the Registrar. The procedures described in this Chapter are extremely important remedies for owners of marks because they offer an administrative forum in which to make a complaint about an invalid registration or a registration that has remained on the Register after expiration or without use in Cambodia. For foreign and national companies, an administrative forum is usually more convenient and cost-effective than a judicial forum. Therefore, a strong administrative remedy is a significant factor for encouraging trade.

As previously mentioned, any interested person may request the Ministry of Commerce to invalidate the registration of mark if it is proven that the mark is indistinguishable or that it is contrary to the public interest. Invalidation will take effect as of the date of registration and will be recorded and published. In short, the Ministry of Commerce has the right to order the cancellation of a registered mark where:

Right to order cancellation

- A The applicant fails to apply for renewal within the 6 months grace period.
- B The owner of the mark requests for the removal.
- C The owner of the registered mark has not complied, within 90 days, with the conditions or restrictions prescribed
- D The owner of the registered mark ceases to have an address for service in the Kingdom of Cambodia.
- E There is evidence that the owner of the registered mark is not the legitimate owner.
- F The registered mark is similar or identical to a well-known mark owned by a third party.

g Acts of Unfair Competition

Chapter 7 is a broad prohibition making unlawful any act of competition that is contrary to honest practices in industrial or commercial matters. This definition requires "honest practices" to be measured in accordance with common practices in industry or commerce. Section 22 provides specific acts of unfair competition prohibited by the Trademark Law as follows:

1. All acts that cause confusion with a competitor's establishment, goods, or industrial or commercial activities.
2. False allegations in the course of trade that are of such a nature as to discredit a competitor's establishment, goods, or industrial or commercial activities.
3. Indications or allegations that, when used in the course of trade, are liable to be misleading to the public regarding the nature, manufacturing process, characteristics, quantity, or suitability for purpose of the goods.

The remedies and penalties for acts of unfair competition are found in Chapters 8 (infringement), Chapter 9 (provisional remedies), and Chapter 15 (penalties).

Any dishonest practices in industry, commercial, service matters shall be considered as act of unfair competition. To briefly mention again, act of unfair competition includes the following:

Acts of Unfair Competition		
Acts that create confusion with the enterprises, the goods, or the industrial, commercial or service activities of the competitor	False allegations that discredit the establishment, the goods, or the industrial, commercial or service activities of the competitor	Mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity of the goods

h Collective Marks

Chapter 4 of the Trademark Law covers Collective Marks. A collective mark is particularly useful when a single mark owner wants to ensure its customers of the quality and character of goods or services being provided by enterprises that are associated with the mark owner. To maintain the collective mark, however, it is essential that the mark owner keep strict control over the enterprises that are authorized to use the mark. Failure to use the mark in compliance with the regulations that are on the Register is a ground for removal of the mark.

Collective mark identifies the affiliation of enterprises using the mark, whereas trademark indicates individual enterprises as the origin of marked goods and services. Collective mark may be used only by member enterprises of the registered collective mark. These member enterprises comply with the requirements concerning the use of the collective mark, and therefore, inform the public of the standards

of their products associated with the mark. The provisions for trademark will also apply to collective mark.

The use of a collective mark (by a cooperative or an association of enterprises) allows the association members to benefit from a reputation acquired on the basis of the common origin or other common characteristics of the goods produced or services rendered by different enterprises. This is, particularly, the case where the origin or other common characteristics are the main contributing factor in determining the quality or good taste of a product or service. The use of a collective mark may foster an alliance or facilitate cooperation with other businesses so as to take full advantage of common resources.

When registering for collective mark, it is necessary to designate the mark as a collective mark on the application. In addition, a copy of the regulations governing the use of the collective mark should be included. The registered owner should notify the Registrar of any changes made in respect to the regulations.

i Trade Names

A trade name is the name identifying and distinguishing an enterprise. The naming of an enterprise follows the same concept as trademark. A name may not be used if it is able to deceive trade circles or the public as to the nature of the enterprise identified by that name. For example, "Pailin Jewelry" is not an appropriate name for a company if it does not sell jewelry from Pailin. To do so, would deceive the public in thinking that the jewelry came from such a distinguished destination.

Chapter 6 of the Trademark Law serves to define further the names that may not be used to identify an enterprise because (1) the name or designation itself is considered improper, or (2) the name or designation fails to distinguish the enterprise.

j Infringement, remedies and penalties

Chapter 8 first defines what acts are deemed to constitute infringement for various types of marks and then state the remedy. The provisions are compliant with international trends and WIPO in recognizing well known marks, whether registered or not in Cambodia. Given the relatively recent establishment of the Registry in Cambodia, this Chapter is an important recognition of the rights of many international companies that have famous marks but that are still expanding into the Southeast Asian region.

Chapter 9 outlines the provisional or temporary orders that a court may issue to prevent an infringement or to preserve evidence relevant to an alleged infringement. These proceedings are extremely important in infringement cases because evidence is often destroyed before absolute proof of infringement can be obtained. The strict time limitations, if carefully followed by the courts, should keep abuse and damages to a minimum.

Chapter 10 Border Measures

The procedure established in Chapter 10 is intended to be a means by which the Trademark Registry and the Customs and Excise Department can liaise and cooperate in the enforcement of marks that are crossing the border of Cambodia. In practice, both institutions will need to establish procedures before this method of enforcement can be initiated. International companies will welcome a strong customs enforcement of marks crossing the border. Application to use this method of enforcement may also be brought before other competent authorities and the Court, provided procedures are in place. If implemented with force and speed, this procedure could be effective and encouraging to international traders. A further procedure by which mark owners are notified of unauthorized shipments could further enhance this method of enforcement.

Disputes about the application of this Law and related regulations may be referred to the competent Court, as may matters that the Law and related Regulations specifically refer to the jurisdiction of a Court. Any interested party may appeal to the Court any decision by the Ministry of Commerce taken under this Law, in which event the appeal must be brought within three months of the decision date.

In Chapter 15, penalties in the form of fines and/or imprisonment will be accordingly applied to the following acts:

Penalties

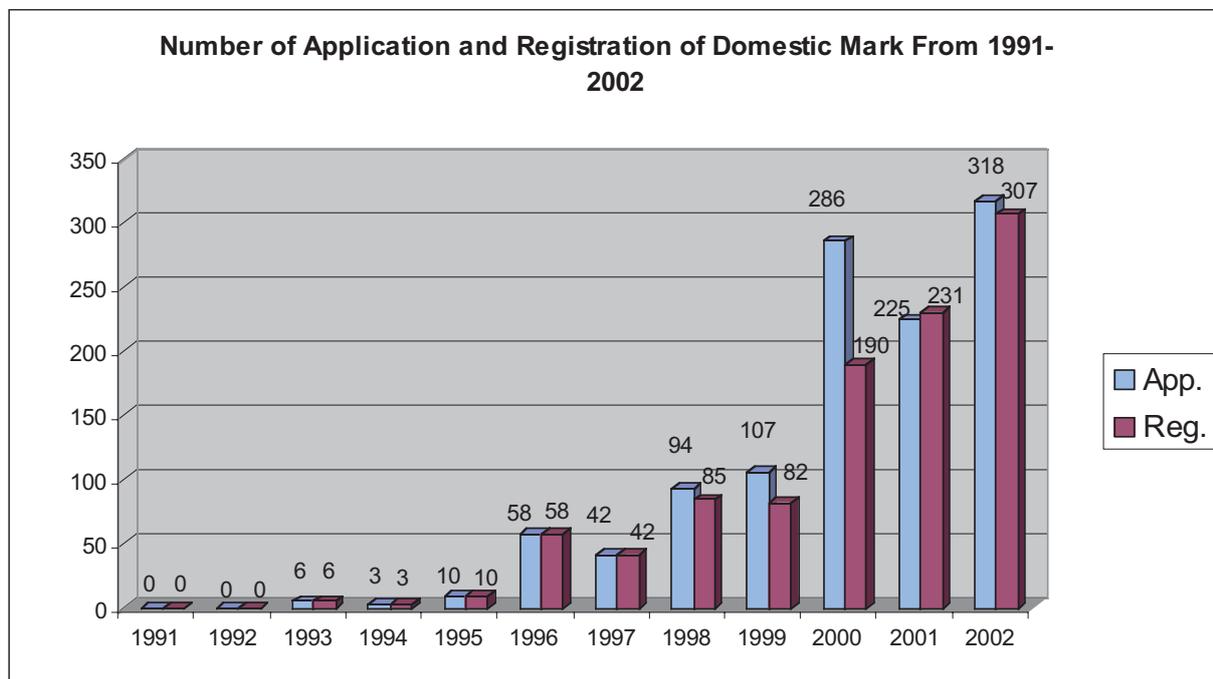
1. False statement to the Registrar in an application, opposition or other document filed concerning an application for registration, amendment of a registration, renewal of a registration or cancellation of the registration of a mark, trade name or a license pertaining to a mark shall be liable to a fine of not more than five million Riels, or to an imprisonment from one to six months, or both.
2. Counterfeit trademark, service mark, collective mark or trade name registered in the Kingdom of Cambodia by another enterprise shall be liable to a fine of from one to twenty million Riels, or to imprisonment from one to five years, or both.
3. Imitate a trademark, service mark, collective mark or trade name registered in the Kingdom of Cambodia by another person in order to mislead the public into believing that it is the trademark, service mark, collective mark or trade name of such other enterprises shall be liable to a fine of from five to ten million Riels, or to imprisonment from one month to one year, or both.
4. Willful import, sell, offers for sale or has for the purpose of sale goods bearing a counterfeit mark, shall be liable to the penalties provided in article 64 of the law on Marks, Trade name and Acts of unfair Competition.

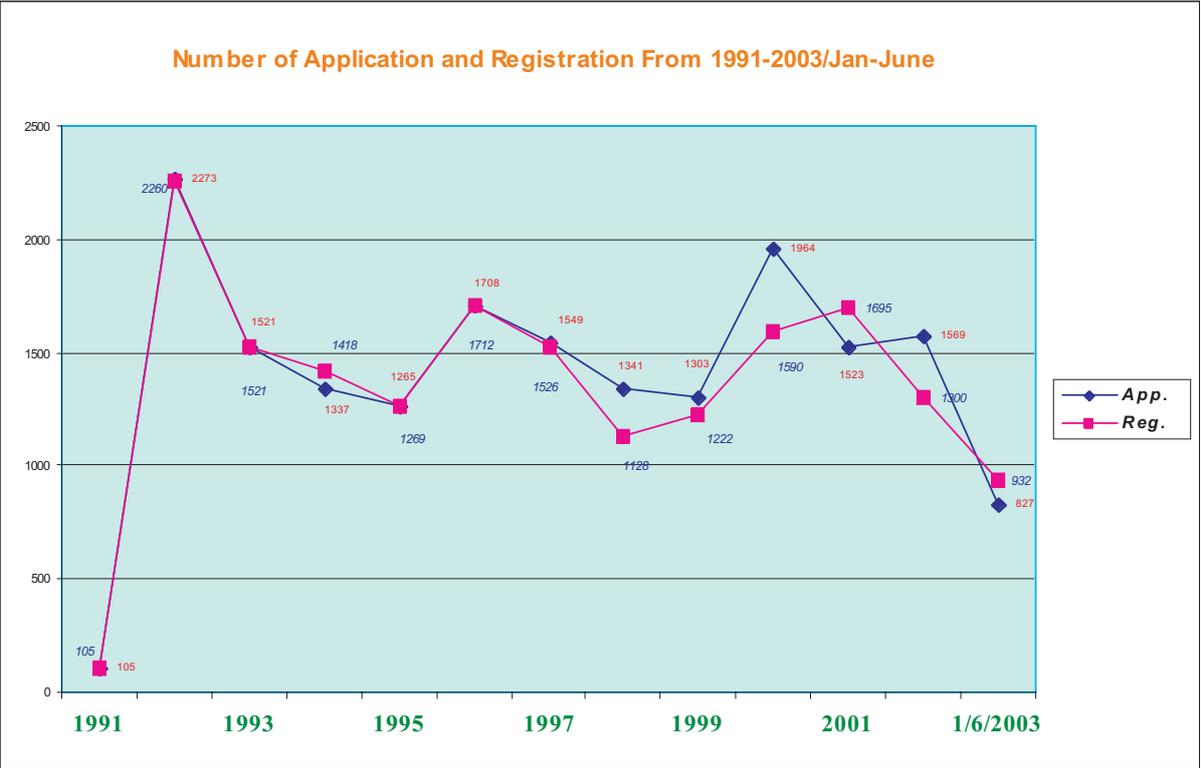
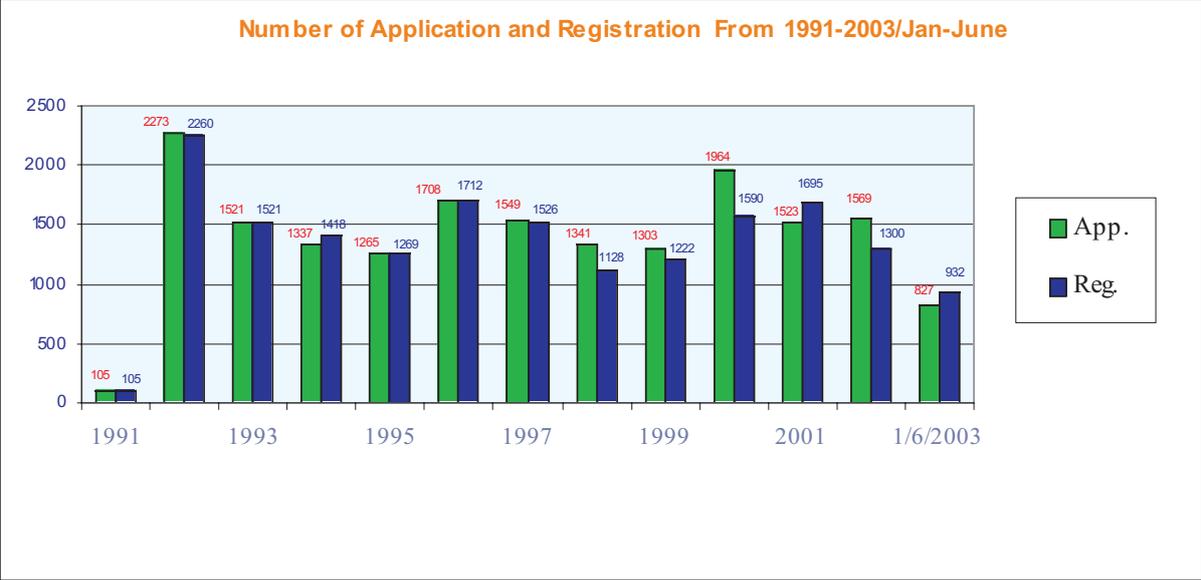
If the offender is a juristic person, the managing director, manager or representative of such juristic person shall also be liable to the penalty prescribed for such offence unless he can prove that he had neither knowledge nor consented to the commission of the offense by the juristic person.

Table 2.1 Registration of Trademarks and Service Marks in Cambodia from 1991-2003

Countries	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
1. Australia		7	20	27	75	32	16	23	1	26	24	22
2. Austria												
3. Bahamas		12	2	2			1					
4. Belgium		4	2	3	18		4	7	11	7	18	5
5. Brazil			5					1		2		
6. Brunei			1									
7. Bulgaria									1			
8. Cambodia			6	3	10	58	42	85	82	220	231	307
9. Canada		26	21	1	3	2	2	4	1	1	6	3
10. Chile						6						
11. China			9	7	6	19	26	11	14	23	43	27
12. Colombia				1								
13. Costa Rica										2	1	
14. Cuba											2	
15. Czech Rep.			3	1	1	1	2					
16. Denmark		18	8	4	6	8	4	6	1		2	12
17. Domin. Rep.									2			
18. Finland				2					2	2		
19. France		143	105	124	83	165	180	47	116	105	115	63
20. Germany		124	101	66	51	155	126	62	130	52	190	46
21. Greece			18	3		1						
22. Guyana						1						
23. Hong Kong		84	23	63	42	21	22	47	14	37	26	7
24. Hungary			2	1		1		1				2
25. India			4		7	12	5	1		9	19	1
26. Indonesia	6	73	8	105	12	19	27	13	6	44	20	21
27. Ireland										13	3	5
28. Israel				1	1				1			
29. Italy			12	3	105	68	22	7	15	27	23	3
30. Japan		248	157	159	53	97	126	128	90	132	112	59
31. Korea (N)											9	
32. Korea		4	13	20	18	45	43	12	4	15		10
33. Liechtenstein		25	8	1	12	5	15	4	3	2	8	1
34. Luxembourg		4		1	3	6	2	14	1	4	5	4
35. Malaysia		24	3	46	45	62	32	44	4	29	15	22
36. Mauritius								10				
37. Mexico			6	1	18	2	3	4			3	
38. Monaco					3	1	1	1			1	
39. Netherlands		156	18	25	43	66	33	39	14	70	84	25
40. New Zealand		3		1	1			7	8		1	1
41. Norway		2			11	4	1				4	1
42. Pakistan					4							
43. Paraguay											2	
44. Panama			9	2		3						
45. Philippines	7	22	2	4	13	8	4	8	1	1	2	1
46. Portugal											1	
47. Poland				1				1				
48. Puerto Rico							4		2		4	3
49. Russian Fed.					1	3			15		1	
50. Scotland		33	2				3					
51. Singapore		90	64	40	87	108	71	26	22	40	71	36
52. Sri Lanka												
53. Spain			3	4	4	7	5	11		12	3	5
54. Sweden	2	12	6	6	8	16	7	4	7	19	10	44
55. Switzerland	14	132	18	35	25	152	105	109	63	101	127	143
56. Taiwan			13	13	21	34	24	3	4	9	8	4
57. Thailand		114	66	45	73	59	35	18	94	71	120	138
58. Turkey										7		
59. U.S.A	38	595	599	460	289	395	293	237	318	324	207	140
60. United A.E.					1	2		14		2		3
61. Ukraine											2	
62. U. K.	38	305	184	126	108	59	218	118	140	147	117	68
63. Vietnam					3	9	15	1	32	35	41	65
Total	105	2260	1521	1418	1269	1712	1526	1128	1222	1590	1695	1300

Source for the table and charts: IPD, MoC





<p>ព្រះរាជាណាចក្រកម្ពុជា KINGDOM OF CAMBODIA ជាតិ សាសនា ព្រះមហាក្សត្រ Nation Religion King</p>	
<p>ក្រសួងពាណិជ្ជកម្ម MINISTRY OF COMMERCE នាយកដ្ឋានកម្មសិទ្ធិបញ្ញា INTELLECTUAL PROPERTY DIVISION</p>	
<p>កាលបរិច្ឆេទចុះបញ្ជី Date Registered:</p>	<p>លេខចុះបញ្ជី Registration No KH</p>
<p>បញ្ជីដើម PRINCIPAL REGISTER ពាណិជ្ជសញ្ញា សេវាសញ្ញា ពាណិជ្ជនាម (TRADEMARK, SERVICE MARK, TRADE NAME)</p>	
<p>សញ្ញា Mark: The Pizza Company & Device</p>	<p>លេខប្រើ Application No: 17706/02 កាលបរិច្ឆេទដាក់ពាក្យ Date Filed: October 04, 2002</p>
<p>ជំពូក/ទំរង់/សេវា Class/Goods/Services: 30 / - See back page.</p>	
<p>អ្នកស្នើសុំ Applicant: INTERNATIONAL FRANCHISE HOLDING (LABUAN) LTD.</p>	<p>អាសយដ្ឋាន Address: Level 7E, Main Tower, Financial Park, 8700 Labuan FT, Malaysia.</p>
<p>អ្នកត្រូវបានផ្តល់ Assignee:</p>	<p>អាសយដ្ឋាន Address:</p>
<p>ចុះបញ្ជីលើកទី១ លេខ/ ថ្ងៃ-ខែ-ឆ្នាំ First Reg. N°/Date: Intend to use in Cambodia.</p>	<p>ប្រទេស Country:</p>
<p>ការបដិសេធ Disclaimer: The trademark is protected in a whole form, but the elements * Company, Pizza and Flavoured to excite * are not separately protected.</p>	<p>បញ្ជាក់ពណ៌ Claim of color:</p>
<p>ចុះបញ្ជីសំរាប់រយៈពេល 10 (ដប់) ឆ្នាំ Registered for a term of 10 (ten) year</p>	<p>ចាប់ពី from October 04, 2002</p>
<p>អ្នកត្រួតពិនិត្យ Examiner</p>	<p>មេធាវី/ភ្នាក់ងារ Attorney / Agent: LEAP CAMBODIA TRADEMARK ASSOCIATES No 3 Eo, Samdech Neayok Sok 136 St., Phsar Thmei 3, Daun Penh, Phnom Penh, Cambodia.</p>
<p>ដើម្បីជាសក្ខីភាព ខ្ញុំសូមចុះហត្ថលេខា និង ប្រដាប់ត្រាបន្តបញ្ជីនៃក្រសួងពាណិជ្ជកម្មថ្ងៃនេះ In witness whereof, I have hereunto affixed my hand and the stamp of the Ministry of Commerce today</p>	
	

ក្រសួងពាណិជ្ជកម្ម
MINISTRY OF COMMERCE
នាយកដ្ឋានកម្មសិទ្ធិមញ្ញ
INTELLECTUAL PROPERTY DIVISION

ព្រះរាជាណាចក្រកម្ពុជា
KINGDOM OF CAMBODIA
ជាតិ សាសនា ព្រះមហាក្សត្រ
Nation Religion King

លិខិតទទួលស្គាល់ការដាក់ពាក្យ
ACKNOWLEDGEMENT OF FILING INSTRUCTION

លិខិតនេះសំរាប់ទទួលស្គាល់ចំពោះការដាក់ពាក្យស្នើសុំ (និងព័ត៌មានតម្រូវអោយបង់) សំរាប់ការចុះបញ្ជីនៃម៉ាកខាងក្រោម:
Receipt is acknowledged of the application (and the required) for the registration of the following mark:

ពាណិជ្ជសញ្ញា / សេវាសញ្ញា :
Trademark / Service mark: The Pizza Company & Device

ជំពូក/ទំនិញ/សេវា :
Class/Goods/Service: 30
See back page.

ក្នុងនាមនៃ (In the name of): INTERNATIONAL FRANCHISE HOLDING (LABUAN) LTD.
Level 7E, Main Tower, Financial Park, 8700 Labuan FT, Malaysia.

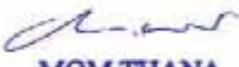
ឯកសាររួមមាន (The document comprise):
• គំរូម៉ាកចំនួន ១៥ (15 specimens of mark)
• លិខិតប្រកបដោយសិទ្ធិ (Power of Attorney)

លម្អិតដាក់ពាក្យបញ្ជីមានដូចខាងក្រោម:
The filing particulars are indicated as follows:

លេខដាក់ពាក្យ (Application N°): 17706/02
កាលបរិច្ឆេទដាក់ពាក្យ (Filing Date): October 04, 2002

ពាក្យស្នើសុំរបស់លោកអ្នកនឹងត្រូវបានពិចារណាតាមលំដាប់លំដោយ ហើយ លោកអ្នកនឹងត្រូវបានជូនដំណឹងពីការពិនិត្យម៉ាកនេះ ។
សូមបញ្ជាក់អោយច្បាស់នូវលេខដាក់ពាក្យ ព្រមទាំងកាលបរិច្ឆេទដាក់ពាក្យ ឈ្មោះអ្នកស្នើសុំ និងម៉ាកនៅពេលមានការសាកសួរ
អំពីការដាក់ពាក្យស្នើសុំនេះ ។ រាល់លិខិតផ្លូវការ និងជំនាក់ជំនង់ដទៃទៀត ត្រូវតែបញ្ជូនមកអោយក្រុមការងារកម្មសិទ្ធិមញ្ញ ។
Your application will be considered in its order and you will be notified as to the examination thereof. Be sure
to give the Application Number as well as the DATE OF FILING, NAME OF APPLICANT, and MARK when
inquiring about this application. All office letters and other communications MUST BE ADDRESSED OLY
TO: the Director of Intellectual Property Division.

អាសយដ្ឋានទំនាក់ទំនង:
Address for service:
LEAP CAMBODIA TRADEMARK ASSOCIATES
No 3E0, Samdach Neayok Sok 136 St., Phsar Thmei 3,
Daun Penh, Phnom Penh, Cambodia

កំពេច្យ.....
Phnom Penh... 24 OCT 2002

MOM THANA
Chief
Trademark Registration Office

INTERNATIONAL CLASSIFICATION OF GOODS AND SERVICES	
CLASSIFICATION OF GOODS	
Class 1	Chemicals used in industry, science and photography, as well as in agriculture, horticulture and forestry; unprocessed artificial resins, unprocessed plastics; manures; fire extinguishing compositions; tempering and soldering preparations; chemical substances for preserving food-stuffs; tanning substances; adhesives used in industry.
Class 2	Paints, varnishes, lacquers; preservatives against rust and against deterioration of wood, colourants, mordants, raw natural resins, metals in foil and powder form for painters, decorators, printers and artists.
Class 3	Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices.
Class 4	Industrial oils and greases; lubricants; dust absorbing, wetting and binding compositions; fuels (including motor spirit) and illuminants; candles, wicks.
Class 5	Pharmaceutical, veterinary and sanitary preparations; dietetic substances adapted for medical use, food for babies; plasters, materials for dressings; material for stopping teeth, dental wax; disinfectants; preparations for destroying vermin; fungicides, herbicides.
Class 6	Common metals and their alloys; metal building materials; transportable buildings of metal; materials of metal for railway tracks; non-electric cables and wires of common metal; ironmongery, small items of metal hardware; pipes and tubes of metal; safes; goods of common metal not included in other classes; ores.
Class 7	Machines and machine tools; motors and engines (except for land vehicles); machine coupling and transmission components (except for land vehicles); agricultural implements; incubators for eggs.
Class 8	Hand tools and implements (hand operated); cutlery; side arms; razors.
Class 9	Scientific, nautical, surveying, electric, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; automatic vending machines and mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment and computers; fire-extinguishing apparatus.
Class 10	Surgical, medical, dental and veterinary apparatus and instruments; artificial limbs, eyes and teeth, orthopaedic articles; suture materials.
Class 11	Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes.
Class 12	Vehicles; apparatus for locomotion by land, air or water.
Class 13	Firearms; ammunition and projectiles; explosives; fireworks.
Class 14	Precious metals and their alloys and goods in precious metals or coated therewith, not included in other classes; jewellery, precious stones; horological and chronometric instruments.
Class 15	Musical instruments.
Class 16	Paper, cardboard and goods made from these materials, not included in other classes; printed matter; bookbinding material; photographs; stationery; adhesives for stationery or household purposes; artists' materials; paint brushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); plastic material for packaging (not included in other classes); playing cards; printers' type; printing blocks.

Class 17	Rubber, gutta-percha, gum, asbestos, mica and goods made from these materials and not included in other classes; plastics in extruded form for use in manufacture; packing, stopping and insulating materials; flexible pipes, non-metallic.
Class 18	Leather and imitations of leather, and goods made of these materials and not included in other classes; animal skins, hides; trunks and travelling bags; umbrellas, parasols and walking sticks; whips, harness and saddlery.
Class 19	Building materials (non-metallic); non-metallic rigid pipes for building; asphalt, pitch and bitumen; non-metallic transportable buildings; monuments, non-metallic.
Class 20	Furniture, mirrors, picture frames; goods (not included in other classes) of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastics.
Class 21	Household or kitchen utensils and containers (not of precious metal or coated therewith); combs and sponges; brushes (except paint brushes); brush-making materials; articles for cleaning purposes; steelwool; un-worked or semi-worked glass (except glass used in building); glassware, porcelain and earthenware not included in other classes.
Class 22	Ropes, string, nets, tents, awnings, tarpaulins, sails, sacks and bags (not included in other classes); padding and stuffing materials (except of rubber or plastics); raw fibrous textile materials.
Class 23	Yarns and threads, for textile use.
Class 24	Textiles and textile goods, not included in other classes; bed and table covers.
Class 25	Clothing, footwear, headwear.
Class 26	Lace and embroidery, ribbons and braid; buttons, hooks and eyes, pins and needles; artificial flowers.
Class 27	Carpets, rugs, mats and matting, linoleum and other materials for covering existing floors; wall hangings (non-textile).
Class 28	Games and playthings; gymnastic and sporting articles not included in other classes; decorations for Christmas trees.
Class 29	Meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams; fruit sauces; eggs, milk and milk products; edible oils and fats.
Class 30	Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery, ices; honey, treacle; yeast, baking powder; salt, mustard; vinegar, sauces (condiments); spices; ice.
Class 31	Agricultural, horticultural and forestry products and grains not included in other classes; live animals; fresh fruits and vegetables; seeds, natural plants and flowers; foodstuffs for animals, malt.
Class 32	Beers; mineral and aerated waters and other non-alcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages.
Class 33	Alcoholic beverages (except beers).
Class 34	Tobacco; smokers' articles; matches.
Classification of Services	
Class 35	Advertising; business management; business administration; office functions.
Class 36	Insurance; financial affairs; monetary affairs; real estate affairs.
Class 37	Building and construction; repair; installation services.
Class 38	Telecommunication.

Class 39	Transport; packaging and storage of goods; travel arrangement.
Class 40	Treatment of materials.
Class 41	Educational; providing of training; entertainment; sporting and cultural activities.
Class 42	Providing of food and drink; temporary accommodation; medical; hygienic and beauty care; veterinary and agricultural services; legal services; scientific and industrial research; computer programming, services that cannot be placed in other classes.

Chart 1: Law on Trademarks and Acts of Unfair Competition	
1. Law: Law on Trademarks and Acts of Unfair Competition	2. Ministry Responsible: Ministry of Commerce
3. Status: - Adopted by the Council of Ministers - Ratified by the Parliament	5. WTO Agreement Implicated: Agreement on Trade-Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods (TRIPS)
4. Approval Date (Parliament): 7/2/2002	
6. General Scope of the Law: - The main objective of the Law is "to protect the marks and trade names duly registered in the Kingdom of Cambodia and prevent the acts of unfair competition on the creation, the utilization of marks and trade names." - The legal recognition of marks and trade names is a good start toward the protection of all intellectual property rights. Of the various forms of intellectual property, marks are easy to understand, and the structure for implementing the law is already in place. Therefore, domestic and foreign traders can gain protection within a short time from the passage of this Law, and the Kingdom of Cambodia will gain immediate favorable recognition in international political and business communities for being receptive and protective of global trade. - The Law provide in detail for, notably: <ul style="list-style-type: none"> • Requirements and procedure for registration of marks and the rights conferred by registration; • Requirements and procedure for invalidation and removal of marks; • Requirements and procedure for registration of collective marks; • Registration of trade name; and • Definition of acts of unfair competition and a list of acts considered as contrary to honest practices in industrial, commercial and services matters. - Detailed provisions in the Law cover also "Infringement and Remedies", "Provisional Measures" and "Border Measures".	
9. Provisions for Least Developed Countries (LDCs): - Possibility of transitional periods to bring national legislation and regulations in conformity with the provisions of TRIPS Agreement: 11 years, up to 1 January 2006. Possibility of extension following duly motivated request. (Article 66) - Developed country Members to provide incentives to enterprises and institutions in their territories for purpose of encouraging transfer of technology to LDCs. (Article 66.2)	

Chapter
5**Patents, Utility Model Certificates
and Industrial Designs****1 Introduction**

Innovative and creative ideas are at the heart of most successful businesses. Ideas by themselves, however, have little value. They need to be developed, turned into innovative products or services and commercialized successfully so as to enable your business to reap the benefits of your innovation and creativity. Intellectual Property (IP), patents in particular, can be crucial for turning innovative ideas and inventions into competitive products that significantly increase profit margins.

Your business may also use patents to earn royalty revenue by licensing such patented inventions to other firms that have the capacity to commercialize them. The market for your newly introduced product can effectively be protected by obtaining patent protection. Being a patent holder can also open other business avenues such as licensing or strategic alliances.

DEFINITION: WHAT IS A PATENT?

A patent is a grant which is issued by the national government conferring the right to the holder to exclude others from making, using or selling the patented subject matter in the granting jurisdiction during the term of the patent. To encourage creative minds to solve technological problems, patent law grants legal rights to the inventor over the control of their inventions. An invention may be a product or process that is a solution to a specific technological problem

A patent may be viewed as a monopoly since the owner has complete control over the manufacturing, selling, and using of the invention. The patent allows the owner to derive the material benefits as a reward for his intellectual work and effort. The invention can only be exploited with the authorization of the owner of the patent.

Reasons for Patenting Your Inventions

- A Exclusive rights - Patents provide the exclusive rights which usually allow your business to use and exploit the invention for twenty years from the date of filing of the patent application.
- B Strong market position - Through these exclusive rights, you are able to prevent others from commercially using your patented invention, thereby reducing competition and establishing yourself in the market as the pre-eminent player.

- C Higher returns on investments - Having invested a considerable amount of money and time in developing innovative products, your business could, under the umbrella of these exclusive rights, commercialize the invention enabling your business to obtain higher returns on investments.
- D Opportunity to license or sell the invention - If you chose not to exploit the patent yourself, you may sell it or license the rights to commercialize it to another enterprise which will be a source of income for your business.
- E Increase in negotiating power - If your business is in the process of acquiring the rights to use the patents of another enterprise, through a licensing contract, your patent portfolio will enhance your bargaining power. That is to say, your patents may prove to be of considerable interest to the enterprise with whom you are negotiating and you could enter into a cross licensing arrangement where, simply put, the patent rights could be exchanged between your enterprise and the other.
- F Positive image for your enterprise - Business partners, investors and shareholders may perceive patent portfolios as a demonstration of the high level of expertise, specialization and technological capacity within your company. This may prove useful for raising funds, finding business partners and raising your company's market value.

2 Patent

The Law on Patents, Utility Models and Industrial Designs had been promulgated on 22 January 2003. Drafting of implementing regulations under this Law is underway. The Law afforded patent protection to inventions which involved an inventive step and were industrially applicable. Patents could not be issued for discoveries, scientific theories and mathematical methods; schemes, rules and methods for doing business, performing intellectual activities, or playing games, and computer programs; diagnostic, therapeutic and surgical methods for the treatment of human beings and animals; inventions contrary to public order or morality; and biological methods for breeding plants and animals, other than microbiological methods, as well as products derived from these methods. As for exclusions, the algorithms used in computer programs, not the programmes per se, are ineligible for patent protection, and "schemes or methods for doing business" are only ineligible for patent protection to the extent that they are lacking industrial application.

Specifically concerning action against counterfeit pharmaceuticals, right-holders could use provisions in the Law on the Management of Pharmaceutical Products to protect their lawful rights. With regards to the distinction between counterfeit and generic products, in the case of importation of counterfeit medicines, right holders could seek protection of their rights under the Trademark Law and/or the provisions of the Law on the Management of Pharmaceutical Products. Article 12 of the latter provides for criminal penalties - fines of Riels 20 million to 50 million, and prison terms ranging from 5 to 10 years - for knowingly producing, importing, exporting, distributing or selling unregistered narcotic drugs or pharmaceuticals that were counterfeit, of sub-standard quality or expired, and thus having an adverse effect on human health.

a **Conditions of Patentability**

An invention is patentable if it meets three criteria. The invention must be:		
<i>New</i>	<i>Inventive Step</i>	<i>Industrially Applicable</i>
<ul style="list-style-type: none"> • The first criterion of patentability is that an invention must be new. An invention is new if it is not anticipated by prior art. Prior art means knowledge already known by the public by way of publication or oral disclosure, by use or any other way prior to the filing (or priority date) of the application claiming the invention. • Prior art by publication is any tangible form that carries the information, such as in writing, drawing, film, tapes, internet. • Oral disclosure implies non-recorded words and includes lectures and radio broadcasts. • Disclosure by use is a public, visual disclosure. Examples include display, sale, demonstration, television broadcasts, and actual public use. 	<ul style="list-style-type: none"> • The new invention must contain an inventive step. An invention is considered as involving an inventive step if it would not have been obvious to a person having ordinary skill in the art. The requirement excludes the best experts in the field. The standard is that of the average person. If a person of ordinary skill could deduce the steps, then the invention is obvious and would not be patentable. 	<ul style="list-style-type: none"> • An invention is considered industrially applicable if it can be made or used in any kind of industry. The invention must be practical and not theoretical. If the invention is a product, it should be possible to make that product. If it is a process, it should be possible to carry the process out.

b Naming of Inventor

The right of a patent belongs to the inventor or inventors if more than one person have jointly made the inventions. In the case of where more than one person made the invention independently, the person whose application has the earliest filing date, or if priority is claimed, the earliest validly claimed priority date shall have the right to the patent.

When an inventor made an invention as part of his employment, the right to the patent belongs to the employer. The inventor shall be named on the patent unless in a special written declaration signed by him and addressed to the Registrar indicates that he does not wish to be named.

c Right of Priority and Priority Date

Applications for registration are submitted to the Ministry of Industry, Mines, and Energy, and priority is given to the person having first filed an application or claimed priority to the patent. Application for patent protection is subjected to the formality and substantive examination.

An inventor may seek protection in more than one country. After filing an initial application, he has up to twelve months to decide which foreign countries he desires protection. The priority date is the date in which the invention had previously been filed for patent registration in another country. The right of priority is important in respect to the relevant prior art for evaluating novelty and inventive step.

d Patent Application Procedure

Applications for patents are filed with a fee. Patent applications are subject to mandatory examination as to form and substance. The application should include a request, a description, claims, drawings (if required), and an abstract.

The request is a petition that a patent be granted, the applicant's name, the inventor and the agent (if any), and the title of the invention. If the applicant is not the inventor, the request should include a statement justifying the applicant's right to the patent.

The description of the invention must be clear and complete for the invention to be carried out by a person having ordinary skill in the art, and shall, in particular, indicate the best mode known to the applicant for carrying out the invention, at the filing date or, where priority is claimed, at the priority date of the application.

The claim(s) must be clear and concise, and define the matter for which protection is sought. The description and drawings are useful to interpret the claims.

Drawings are required if it is necessary for the understanding of the invention.

The abstract provide technical information and will not be taken into account for the purpose of interpreting the scope of the protection.

e Filing Date and Patent Application Examination

The filing date is the date of receipt of a completed application providing the following information:

- An express or implicit indication that the granting of a patent is sought.
- Indications allowing the identity of the applicant to be established.
- A description of an invention.

If the application does not meet the requirement, the Registrar will notify the applicant for amendment. The filing date will then be the date of receipt of the required corrections. If the applicant fails to make the changes, the application will be treated as if it had not been filed. If the application refers to a drawing, and the drawing was not submitted with the application, the filing date will be the date of receipt of the missing applications. Otherwise, the Registrar will record the filing date the date of receipt of the application and will treat any reference to the said drawings as non-existent.

Once the Registrar establish that the application is complete, it will do an international search to confirm that the invention meets the three criteria - new, inventive step, non-obvious. The Registrar will grant the applicant the patent when all conditions are satisfied. Otherwise, it will notify the applicant of the rejection.

When granting a patent, the Registrar will:

- A. Publish a reference to the grant of the patent;
- B. Issue to the applicant a certificate of the grant of the patent and a copy of the patent;
- C. Record the patent;
- D. Make available copies of the patent to the public, on payment of the prescribed fee.

f Rights Arising from Patent Registration: Rights of Owner

The patent holder has the exclusive right to transfer or licence a patent and to request third persons to stop infringement, and could claim compensation. Thus the exploitation of a patented invention by any persons other than the owner will require the owner's agreement (Article 41). The exploitation of a patented invention means the making, importing, offering for sale, selling and using the product (or process). The owner may take legal actions against any person exploiting the patented invention (Article 42). So, unauthorized exploitations (including importation) of the patented invention in respect of

products or process are constituted as infringement.

g Duration and Fees

Patents are granted upon expiration of an 18 month period starting on the priority date and protection was provided for 20 years from the filing date. While a patent is in force, the Registrar collects an annual fee in advance for each year, starting one (1) year after the filing date of the application for grant of the patent. There is a grace period of six (6) months for late payment.

h Limitations of Rights

There are exceptions to infringement of exclusive rights to use a patented product:

Limitations of Rights

- A Where the use of the patented product is solely for purposes of scientific research and experiment;
- B Where the patented product that is used is a product which was put on the market in the country by the owner of the patent for invention, or with his authorization;
- C Where the use of the patented product occurs in vehicles in transit in the country;
- D Where the patented product is used by third parties who have the special right to continue to make the product; and
- E Where the patented product is used under a non-voluntary license or under an authorization granted by the government on public interest grounds.

i Compulsory licensing

The Patent Law prescribes two separated sections with regard to compulsory licensing: one is exploitation by the Government or person thereby authorized (Article 47 to article 55) and Non-voluntary license (Article 56 to Article 64). The provisions grant power to the Minister in charge to authorize, even without the consent of patent owner, a government agency or third person designated by him/her to have rights to use the patented technology to serve public interest with regards to national security, nutrition, health or development of other vital sectors of the national economy. The Minister may decide to authorize, and subsequently to terminate, according to the decision of a judicial body on the manner of exploitation, by the owner of the patent or his licensee, if the practices are anti-competitive. This exploitation is limited to the purpose for which it was authorized and shall be subject to payment of adequate remuneration to the owner of patent.,

Non-voluntary license is on the other hand could be applied following four years from the date of filing patent application or three years of non-use of a patent, or if a patented product had not been offered for sale in sufficient quantity to supply the Cambodian market without valid reason, but only for use predominantly for the supply of the domestic market.

Basic Conditions	Exploitation by Government or person thereby Authorized	Non-Voluntary License
Public interest, in particular, national security, nutrition, health or other developments of other vital sectors of national economy so requires; or (including national emergency or other circumstances, public non-commercial use)	√	
A juridical body has determined that the manner of exploitation by the owner of the patent or his licensee, is anti-competitive.	√	
Failure to obtain contractual license on reasonable commercial terms and conditions and within a reasonable time.	√	
Failure to exploit or insufficiently to exploit in domestic market		√
The invention claimed in the later patent involves an important technical advance of considerable economic importance in relation to the earlier patent.		√

j Issue of parallel import - national and international exhaustion

Rights conferred by patent provided exclusive rights to the owner of the patent to exploit his/her patented invention in Cambodia. However, under Article 44(a) of the Patent law, the rights under the patent shall not be extended to the acts in respect of articles which have been put on the market in Cambodia or outside Cambodia by the owner of patent or with his consent. This exclusion makes it clear that the parallel importation of the products, even those made by licensee, is not considered as the patent infringement. Therefore, the rights of patent owner have been exhausted under the domestic and international exhaustion principles. In this case, the parallel importation is permitted for any goods, including pharmaceutical products. Nonetheless, the prospect of an increase of essential drugs through parallel imports is still subjected to contractual arrangements on marketing channel between patent owners and their licensees.

3 Utility Models

Utility models are similar to patent inventions. However, utility model is a less sophisticated solution and therefore, the requirements and procedure for obtaining a certificate is simpler than a patent. Utility models do not require an inventive step; it has to be new and industrially applicable.

The term of protection is also shorter and the fees required for obtaining protection is also lower than for patents. A utility model certificate is good for seven years without any possibility of renewal.

Effective utilization of utility models, where such protection is available, can help the entrepreneur stays

abreast of its competitors. If strategically used, the protection of utility models can be an effective tool in positioning the enterprise in the marketplace especially if it is active in a business where technological advantage plays an important role in determining who holds a larger share of the market. By paying close attention to his/her competitors' products and their promise of benefits, the entrepreneur can always improve his/her products in order to provide the same or even greater benefits and protect his/her innovation as utility models, especially if the criteria of patentability are not fully met.

DEFINITION: WHAT IS A UTILITY MODEL?

A utility model is an exclusive right granted for an invention, which allows the right holder to prevent others from commercially using the protected invention, without his authorization, for a limited period of time. In its basic definition, which may vary from one country (where such protection is available) to another, a utility model is similar to a patent. In fact, utility models are sometimes referred to as "petty patents" or "innovation patents."

PATENTS, UTILITY MODELS OR TRADE SECRETS?

In many cases, where an enterprise has merely improved an existing product and the said improvement is not sufficiently inventive to be deemed patentable, utility models may represent a good alternative. On occasions, it may be advisable for the enterprise to keep its innovations as trade secrets which requires, in particular, that sufficient measures are taken to keep the information confidential.

The main differences between utility models and patents are the following:

- A. The requirements for acquiring a utility model are less stringent than for patents. While the requirement of "novelty" is always to be met, that of "inventive step" or "non-obviousness" may be much lower or absent altogether. In practice, protection for utility models is often sought for innovations of a rather incremental character which may not meet the patentability criteria.
- B. The term of protection for utility models is shorter than for patents and varies from country to country (usually between 7 and 10 years without the possibility of extension or renewal - & years in Cambodia).
- C. In most countries where utility model protection is available, patent offices do not examine applications as to substance prior to registration. This means that the registration process is often significantly simpler and faster, taking, on average, six months.
- D. Utility models are much cheaper to obtain and to maintain.

- E. In some countries, utility model protection can only be obtained for certain fields of technology and only for products but not for processes.
- F. Utility models are considered particularly suited for SMEs that make "minor" improvements to, and adaptations of, existing products. Utility models are primarily used for mechanical innovations.

4 Industrial Design

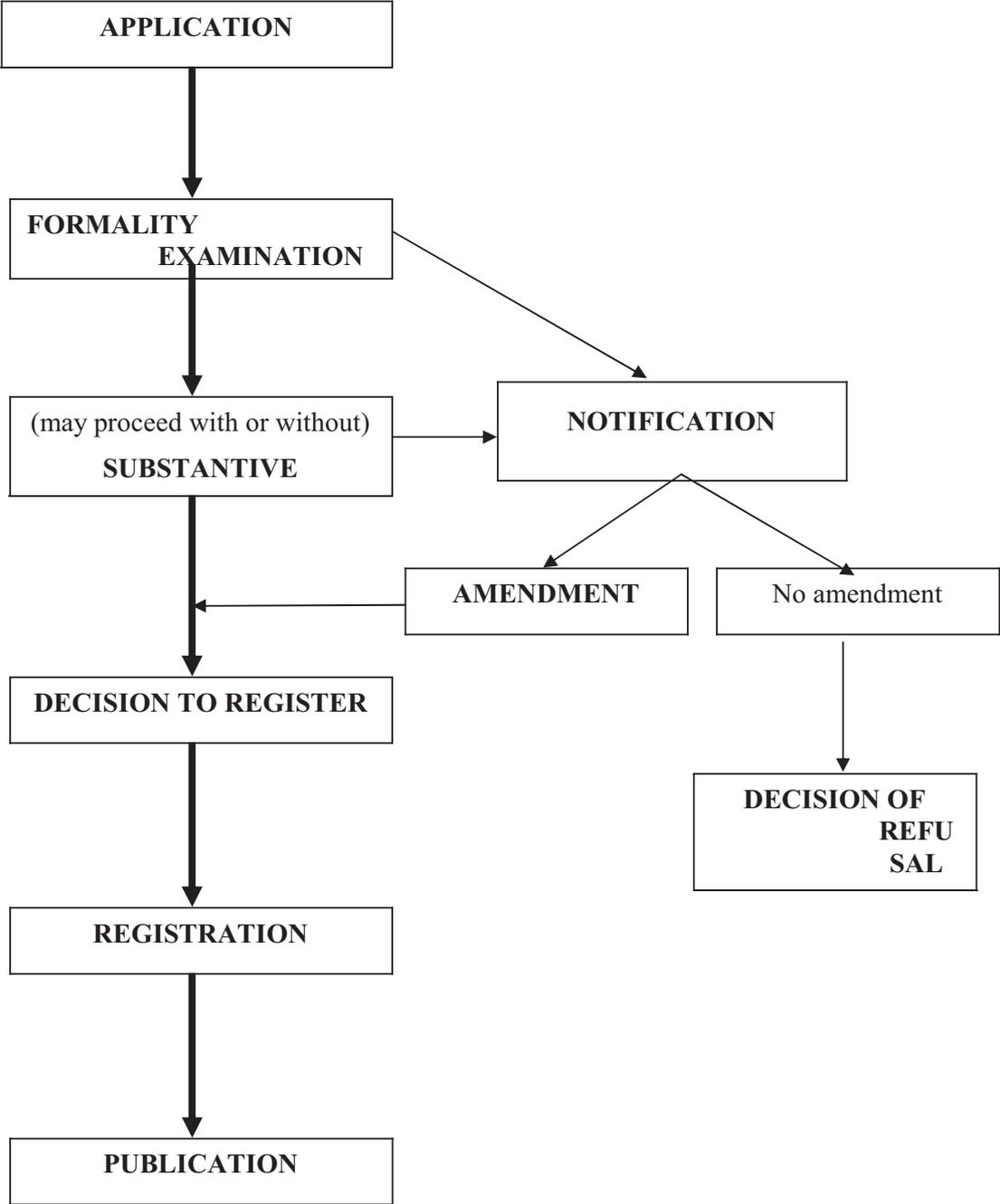
In today's highly competitive global economy, a visually attractive design alone may enable you to captivate a demanding and extremely diversified clientele. Through creative designs, your business could reach out to and appeal to diverse groups of customers from different age groups, regions, cultures, etc. Having design rights on an attractive shape or style of a product may give you the much-needed edge over the competition.

Industrial designs are protected according to the Law on Patents, Utility Models and Industrial Designs. Only new industrial designs, i.e. designs not disclosed to the public through publication or use prior to the priority date, could be registered under the new Law. Protection do not extend to parts of a design dictated essentially by technical considerations. Industrial designs contrary to public order or morality could not be registered. Applications for registration are submitted to the Ministry of Industry, Mines, and Energy, and the priority date is the date of filing or first claim. Applications have to be published to afford an opportunity to oppose the registration. Protection is provided for 5 years from the filing date of the application of registration and could be renewed for two further consecutive periods of five (5) years with fees. A period of six (6) months is allowed for late payment of the renewal fee. Industrial designs could be transferred or licenced. The owner has the exclusive right to request the competent authority to take action against infringements and could claim compensation.

Cambodia's legislation complies with the provisions of Article 26.1 of the TRIPS Agreement concerning the right of an industrial design holder to prevent the importation of articles bearing or embodying a protected design. Cambodia's legislation guarantees the right for the holder to prohibit third persons from "exploiting" a registered industrial design, i.e. by making, selling, or importing articles incorporating the industrial design (Section 42.1 of the Law).

FLOW CHART ON THE REGISTRATION OF INDUSTRIAL DESIGN

Provisional



5 Impact of IP laws and public health- the access to medicines

Articles 27 and 34 of TRIPS require every member states to observe the minimum protection of both product and process patent (including the patent protection of medicines). Rights conferred through patent protection under these articles include the rights to prevent and stop the making, using, offering for sale, selling, importing of a patented product without consent of the right-owner even though they are generic, pirated or counterfeiting products. However, an exception is allowed under article 31 by referring to the use of compulsory licensing for the sake of public interests or in case of emergency.

Practically, the patent protection of medicine is yet to be the requirement for Cambodia until 2016 (Doha Declaration - special treatment for LDCs). The Patent Office of Cambodia only has to serve as a mailbox (TRIPS Art. 70.8) for any patent application during this period. Further, for the protection of undisclosed information, Cambodia has committed to the protection of exclusive data submitted for marketing approval which becomes a quasi-protection of patent on this subject matter and therefore in certain coverage.

Strategic approach of health policy makers:

1. Taking advantages of international exhaustion to encourage parallel import of essential drugs thus eliminate market segmentation and price discrimination on pharmaceutical products.
2. Encourage the implementation of compulsory licensing and non voluntary license for the production of necessary medicines to combat HIV/AIDS, Malaria, TB and other epidemics.
3. Promote the investment of generic producers by undertaking efficient enforcement of IPRs on pharmaceutical products either through patent or trademark protection.

In Cambodia the protection of IPRs for pharmaceutical products has been made through the protection of registered marks. Under their commercial names, producers and distributors of pharmaceutical products register the marks of their products with the Intellectual Property Department of the Ministry of Commerce. Those marks enjoy the same duration of protection through normal procedure as the other marks but can only be marketed after having a marketing approval of the Ministry of health based on the submitted test data for individual product. The protection of denomination of product under trademark is an important factor for the protection of medicine to retain its position in the market after the expiry of patent protection. Article 12 the Cambodian Trademark Law provides that trademark registration is renewable, a provision which provides indefinite protection linked to the reputation and quality of medicine. Moreover Article 11 provides that rights conferred through trademark registration prevent and stop the use of names causing consumer confusion. Statistics shows that during the period 2000 to 2003 there was an increase of trademark registration for medicine:

Trademark Registration for medicine under class 5		
Year	Domestic applicants	Foreign Applicants
2000	171	1367
2001	248	1517
2002	312	1045
2003	264	1554
2004 (as of May)	133	561

Parallel control is conducted by the Department of Cosmetics and Drugs of the Ministry of Health under a Ministerial Declaration and the provisions of the Law on the Management of Pharmaceutical Products. Moreover, Paragraph 187 of Cambodia's Protocol of Accession to the WTO provides for specific actions against counterfeit pharmaceutical products. In this respect, right-holders of patented medicines could use the provisions in this law to protect their rights ... "... Aware of the distinction between counterfeit and generic products, ... in case of importation of counterfeit medicines, right-holders could seek protection of their rights under the trademark law or the provisions of the law on the management of pharmaceutical products. Article 12 of the latter provided for criminal penalties - fines of 20 millions to 50 millions Riels, and prison terms ranging from 05 to 10 years - for knowingly producing, importing, exporting, distributing or selling unregistered narcotic drugs or pharmaceutical products that were counterfeit, of sub-standard quality or expired, and thus having an adverse effects on human health".

Summary Sheet: Law on Protection of Patent, Utility Models, and Industrial Designs	
1. Law: Law on Protection of Patent, Utility Models, and Industrial Designs	2. Ministry Responsible: Ministry of Industry, Mines, and Energy
3. Status: - Prepared by the Ministry of Industry, Mines, and Energy; and - Submission to the Council of Ministers is expected in December 2001 and to the Parliament in June 2002.	5. WTO Agreement Implicated: Agreement on Trade-Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods (TRIPS)
4. Expected Approval Date (Parliament): 22/1/2003.	
6. General Scope of the Law: The relevant provisions of the Law on Patent Protection are: <ul style="list-style-type: none"> • Any invention may be patented which is new, involves an inventive step and is industrially applicable; • Any product for use in any of the methods required to achieve novelty, inventive step and industrial applicability may be considered as a patentable invention; and • The Law considers as non patentable inventions: (i) discoveries, scientific theories and mathematical methods; (ii) schemes, rules or methods for doing business, performing purely mental acts or playing games, and computer program; (iii) methods for treatment of the human or animal body by surgery or therapy, as well as diagnostic methods practised on the human or animal body; or (iv) inventions that are contrary to public order or morality and essentially biological methods for breeding plants or animals, other than microbiological methods and products deriving from those methods. <p>- The right to an invention shall be established on the basis of filing an application for protection at the Ministry of Industry, Mines and Energy and on being granted a protection certificate (Patent for Invention). The rights shall be granted to the applicant who has first validly filed an application for a patent or who is the first validly to claim the earliest priority.</p>	

- The Law defines an industrial design as an object for protection as part of industrial property rights in Cambodia. Any composition of lines or colour or any three of dimensional form, or any material, whether or not associated with lines or colours, is deemed to be an industrial design, provided that such composition, form or material gives a special appearance to a product of industry or handicraft and can serve as a pattern for a product of industry or handicraft, and appeals to and is judged by the eye.
- The protection of an industrial design does not extend to anything in an industrial design which serves solely to obtain a technical result and to the extent that it leaves no freedom as regards arbitrary features of appearance.
- An industrial design is registrable if it is new. An industrial design shall be new if it has not been disclosed to the public, anywhere in the world, by publication in tangible form or by use or in any other way, prior to the filing date or, where applicable, the priority date of the application for registration. Industrial designs that are contrary to public order or morality shall not be registrable.
- Utility models do not require an inventive step; it has to be new and industrially applicable. The term of protection is also shorter and the fees required for obtaining protection is also lower than for patents. A utility model certificate is good for **seven years** without any possibility of renewal.

7. Particular provisions in relation to WTO requirements:

Agreement on Trade-Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods (TRIPS)

- On Patent:

- Patents provide property right to inventions, which shall be (i) new; (ii) involve an inventive step; and (iii) capable of industrial application. It shall be related to a product or a process. - Covered by Section 1 of Chapter 1 of the draft Law.
 - Non-discrimination from origin of patent. - Covered by Chapter 4 of the draft Law.
 - Rights of a patent holder. - Covered by Sections 3 and 9 of Chapter 2 of the draft Law.
 - Compulsory licensing in case the patent holder request unreasonable terms for use of patent. - Covered by Sections 11 and 12 of Chapter 2 of the draft Law.
 - Mandatory disclosure of information by patent holders. - Covered by Section 8 of Chapter 2 of the draft Law.
 - Minimum validity of 20 years from the date of filling. - Covered by Article 45 of the draft Law.
- ###### **- On Industrial Designs:**
- Under the TRIPS Agreement, member countries must protect industrial designs which are (i) new and (ii) original. - Covered by Sections 1 and 2 of Chapter 5 of the draft Law.
 - Exclusive rights by owner of protected design to use or assign the use of the design. - Covered by Sections 5 and 7 of Chapter 5 of the draft Law.
 - Specific provisions in relation to textile sector. - Covered by Sections 1 and 2 of Chapter 5 of the draft Law.
 - Possible validity of at least 10 years from the date of filling. - Covered by Article 109 of the draft Law.

8. Provisions for Developing Countries (DCs):

Possibility of transitional periods to bring national legislation and regulations in conformity with the provisions of TRIPS Agreement: 5 years, up to 1 January 2000. (Article 65.2 and 65.4)

9. Provisions for Least Developed Countries (LDCs):

- Possibility of transitional periods to bring national legislation and regulations in conformity with the provisions of TRIPS Agreement: 11 years, up to 1 January 2006. Possibility of extension following duly motivated request. (Article 66)

- Developed country Members to provide incentives to enterprises and institutions in their territories for purpose of encouraging transfer of technology to LDCs. (Article 66.2)

Chapter 6

Geographical indications, including appellations of origin

1 Introduction

Geographical Indications (GIs) have major economic importance both at the country level and at the producers level. Inherent in certain products from a particular region are characteristics that are due to the soil, climate or particular expertise of the people of that area which consumers of those products expect and have confidence in. In France, for example, 138,000 agricultural holdings are involved generating annual net sales of Euro 19 billion which represents the biggest positive foreign trade balance in the agrifood sector. In Italy 300 000 workers are producing GIs related products.

Definition: What are Geographical Indications?

Geographical indications are indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

For producers, capitalizing on the reputation for their products that emanate from such GIs makes sound business sense in differentiating their products from those of others. Added value in price terms for all cheeses covered by GIs on average is about Euro 2 more per kilo. Bresse chicken: sells at a price 4 times higher than ordinary chicken. In Italy, Italian "Toscano" oil is sold at a premium of 20% since it has been registered as a GI in 1998. EU consumers highly appreciate GIs as demonstrated by a 1999 consumers survey showing that 40% of consumers are ready to pay a 10% premium price for origin. Many of these products whose names are protected, are exported. 85% of French wine exports use GIs. 80% of EU exported spirits use GIs

What is a GI?

- A. AGI is a specific, distinctive intellectual property right
- B. It is an intellectual property right recognised in more than 140 countries (WTO TRIPS Agreement)
- C. It is a collective right of use
- D. A GI is the name of a region or locality and designates a product which originates in that region or locality
- E. The GI, linked as it is to traditional practices, enjoys a high reputation.

F. A GI cannot be created - it can only be recognised. It confirms the value of products which already exist.

Why have Geographical Indications at all?

A. They are a protective tool: they protect the producer from counterfeiting and the consumer from fraud.

- They add value to and protect a demanding and determined approach adopted by producers.
- They provide the consumer with more detailed information on the origin and quality of the product (provenance, process, verifications carried out).
- They ensure that the product is traceable.

B They are a marketing tool: Promotion and a passport for export " GIs promote products by raising the market profile of notorious, unique and high-quality goods.

- GIs highlight the authentic image of a defined region or locality of origin.
- GIs are recognised internationally.

C They are a rural development tool: A different approach to production " Maintenance and revitalisation of the local rural fabric.

- Added value for products made according to traditional practices.
- Promotion of the national agricultural heritage and preservation of cultural traditions.
- Encouragement of biodiversity.

D They are a tool for economic justice:

- Potential GI wealth spread equally between countries of North and South.
- Protection provided by governments at less cost for producers.

Examples of various GIs in the world

Asia	Europe	France alone
<p>China: Long Jin tea, Maotai, Shaoxin yellow rice wine, Xuan Wei ham.</p> <p>Vietnam: Nuoc Mam fish sauce from Phu Quoc</p> <p>Other huge potential : Thai jasmine Hom Mali rice</p> <p>Darjeeling tea (India)</p> <p>coffees (Indonesia, Laos, Central America)</p> <p>black sticky rice (Laos)</p> <p>Kampot pepper (Cambodia)</p> <p>silk (Thailand; Cambodia)</p> <p>Palm sugar (Cambodia)</p> <p>and more (See list)</p>	<p>A fortified wine: Port (Portugal)</p> <p>A cheese: Parmigiano Reggiano (Italy)</p> <p>Confectionery: Jijona (Spain)</p> <p>A vegetable: Jersey Royal Potato (United Kin gdom)</p> <p>A meat product: Ardennes ham (Belgium)</p>	<p>Spirits: Cognac, Armagnac</p> <p>Wines: Bordeaux, Burgundy, Champagne, Languedoc local wines</p> <p>Cheeses: Roquefort, Camembert from Normandy</p> <p>Meat products: Bayonne ham</p> <p>Plant products: Baux Valley olive oil, Camargue rice</p> <p>Craft products: Puy's lace</p>

CAMBODIA'S LIST OF ETHNIC GOODS AND SERVICES			
No.	Goods/Services	Classification	Description
1	Hol	25	Cambodian long skirt made of pure silk of bright colored weaving decoration.
2	Phamoung	25	Cambodian dress made of pure silk of bright color.
3	Khean	25	Cambodian long skirt made of net color cotton or mixed silk.
4	Samputh Kben/Samloy	25	Cambodian long edged skirt.
5	Kromar	25	Cambodian multi-function checked towel.
6	Chorabab	25	Decorated Cambodian fabric made of silk.
7	Phahum	25	Cambodian multi-function thin quilt.
8	Anlougne	25	Cambodian dress made of silk or mixed silk with edged decoration.
9	Khor chev (male long pant).	25	Cambodian countryside long pant, popular among farmers.
10	Ao Bampong (female long blouse).	25	Cambodian countryside long blouse with round neck, popular among female farmers.
11	Kleng-Ek	28	Cambodian kite with sound system.
12	Korko (soup)	29	Cambodian mixed vegetable soup cooked with fish.
13	Prahok (Pasted fish)	29	Cambodian salty pasted fresh water fish.
14	Pha-ork (Pasted fish)	29	Cambodian salty and sour pasted fresh water fish.
15	Trey Cha-Er (Smoked fish)	29	Cambodian styled smoked fresh water fish.
16	Trey-Ngiet	29	Cambodian styled sun-dried salted fresh water fish.
17	Skor-Thnot (Palm sugar)	30	Refined sugar of brown color made of condensed palm juice.
18	Num Ansorm (steamed cake)	30	Cambodian glutinous rice steamed cake wrapped by banana leaf with/without inner pasted sweet/salty items.
19	Num Korm (steamed cake)	30	Cambodian glutinous flour steamed cake wrapped by banana leaf with inner pasted sweet green beans.
20	Num Bot (steamed cake)	30	Cambodian glutinous flour steamed cake wrapped by banana leaf with inner pasted salty items
21	Num Chekbok	30	Cambodian steamed cake made of banana.
22	Num Thnot	30	Cambodian steamed cake wrapped by banana leaf made of ripe palm fruit and palm sugar.
23	Num Chang (steamed cake)	30	Cambodian steamed cake wrapped by bamboo leaves made of glutinous rice without any inner items.
24	Kontom (steamed cake)	30	Cambodian steamed cake wrapped in sugar palm leaves made of glutinous rice and brown beans.
25	Kror-lan (cake)	30	Cambodian burned glutinous rice mixed with a kind of beans wrapped in bamboo slot.
26	Num Bampong	30	Cambodian steamed broken glutinous rice served with coconut meat, red beans and brown sugar.
27	Lort (Desert)	30	Cambodian rice flour desert served with sweet sauce and coconut milk.
28	Taperr (Desert)	30	Cambodian fermented and pasteurized black glutinous rice.
29	Bor-bor Thnot (Desert)	30	Cambodian sweetened porridge served as desert made of sugar palm fruit.
30	Kos-Kachorl	41	Service of coin massage to stimulate blood circulation and release stress.
31	Och (Fire healing technique)	41	Service of fire healing technique used to reduce internal/nerve pain.

32	Kru-Khmer (Health Service)	41	Service of Khmer traditional healing.
33	Chub kachorl	41	Service of traditional healing by using vacuum glass to vaporize excessive air from human skin to reduce or relieve pain.
34	Chmorb (Health Service)	41	Service of Khmer traditional mid wife.
35	Kru Chol-Roup	41	Service of Khmer spiritual healer to rehabilitate and cure all kinds of disease spiritually.
36	Kru Arak	41	Service of Khmer spiritual healer to consult the spirit on unknown disease and/or appeal/wish for any kind of best wishes, namely request for prosperity, or good yielding of agricultural products.

2 Substantive standards of protection, including procedures for the acquisition and maintenance of intellectual property rights

Cambodia does not protect geographical indications at present. A new law covering this subject, including additional protection for geographical indications for wines and spirits, is expected to be promulgated in 2006.

The draft Law establishes the rules concerning the recognition, registration, and protection of Geographical Indications in Cambodia. Article 2 provides that protection as Geographical Indication may be obtained for agricultural goods, foodstuffs, handcrafted goods and any other goods complying with the definition provided under the draft Law.

BE CAREFUL: GIs differ from an indication of provenance.

1. An indication of provenance simply provides information on the country or region from which the product comes;
2. But it does not indicate any link between the place of origin and the characteristics of that product

a Registration restriction

The draft Law restricts two types of products from the registration as a Geographical Indication: a) an indication that has become generic and therefore is not protected in its country of origin. An "indication that has become generic" means that the indication of a good is identical to the usual name used in everyday language as a common noun designating a type of good; and b) an indication likely to conflict with the name of a plant variety or animal breed.

b Administration of GIs

Chapter 2 of the draft Law provides for the establishment and administration of GIs products. A Geographical Indication management service will be created within the Intellectual Property Department, Ministry of Commerce, so called the "Geographical Indications Office". the Office is mainly responsible for: i) receiving and examining applications forms; ii) receiving oppositions and counterstatements; iii) registering Geographical Indications; iv) mediating GIs disputes; v) managing the GIs Register; and vi) publishing the GIs Official Gazette. A GIs Commission will be created ////

c Registration Procedures

Article 8 of the draft Law provides that an application for registration of a GI must be filed with the Geographical Indications Office of the Intellectual Property Department, Ministry of Commerce. Natural

or legal persons authorized to apply for a registration of a Geographical Indication can be either: a) group of producers, organizations representing producers or operators that may have an interest in the Geographical Indication; b) the representatives of local public administrations located in the geographical area of the good that could benefit from the Geographical Indication.

Article 10 provides that an application for the registration of a GI must include the following:

- the name and address of the applicant;
- the name of the good containing the Geographical Indication;
- a description of the good for which the Geographical Indication applies, in other words the raw materials and particularly its physical and chemical characteristics;
- the boundaries of the geographical area covered by the Geographical Indication as well as a description of its characteristics in terms of geology, pedology, climate, and hydrography;
- the documents proving the good originates from within the boundaries of the geographical area;
- a description of the method in which the good is produced;
- the documents proving the good's link to the geographical environment or geographical origin;
- the method used to control the good;
- elements likely to confirm the notoriety of the good;
- the specific labelling details relating to the Geographical Indication.

The Geographical Indications Office will verify, within a 6-month period, starting from the filing date of the application, that this application meets all of the requirements and declares whether the application is admissible. If so, the GIs Office provides an acknowledgment of filing instructions to the applicant, indicating the filing date of the Geographical Indication application and the file is sent to the Geographical Indications Commission for further substantive examination.

The Geographical Indications Commission proposes the recognition of national Geographical Indications through the discussion and the approbation of the book of requirements which must specify the geographical area of production, production conditions, and qualification process for the good. After its final approval by the GIs Commission, the book of requirements is filed for registration to the Geographical Indications Office. The registration of a GI is published in the Official Gazette

d Procedures for opposition

Article 13 of the draft Law provides that within 90 days of the GI registration being published, any interested person may oppose the GI registration with the Geographical Indications Office. To be admissible, any opposition must: i) either proves non-compliance of the proposed indication; or ii) prove that the proposed indication would be prejudicial to the existence of a trademark registered in good faith in Cambodia; or iii) specify which elements show the generic nature of the indication concerned by the application for registration.

The applicant is notified of the opposition by the Geographical Indications Office providing him/her with a time limit of 45 days for submission of a counterstatement. Once the GIs Office has considered the opposition, the counterstatement as well as recommendations from the GIs Commission, both the applicant of the Geographical Indication and the opponent shall be notified of the IPD reasoned decision. The IPD decision may be subject of an appeal by the applicant or the opponent.

e Termination of protection

Article 15 provides that any interested person, including the GIs Commission, may submit that a condition laid down in the book of requirements of a good covered by the Geographical Indication is not fulfilled, in which case the IPD may take the necessary steps, which may include cancellation of the Geographical Indication registration.

f Foreign Geographical Indications registration

Chapter IV for policy for, and recognition of, foreign Geographical Indications registrations. To be admissible for registration a foreign Geographical Indication must have been recognized and/or registered in accordance with the provisions of the country of origin. The GIs Office may register the GIs of foreign countries when application is made by producers or operators holding legitimate interest or by the representative administrations or authorities of the foreign country.

The IPD may request the foreign GI applicant to provide the name of the responsible authority with regards to the good covered by the GI and the address of the responsible authority's principal office or place of business or representation in Cambodia. This authority may be a diplomatic representation of the foreign country in Cambodia.

The provisions for the draft Law apply to those foreign GIs to the extent that:

- those Geographical Indications identically or equivalently meet the conditions set out in Article 10
- the existence of a system of control and eventually of opposition, in the country of origin, is established as being equivalent to those defined in the present Law.

An application can be filed with the GI Office. Evidence of compliance to the conditions set out in the first two points in a) may be given through the country of origin's official instrument of GI management. If the conditions are fulfilled, the GI can be registered with the GI Office, in the GIs Registry and published in the Official Gazette. An opposition and appeal procedures may be taken follow along the same procedures as domestic GIs.

Once a foreign GI is registered, it shall be protected against any illegal use on Cambodian territory.

g Geographical Indications protection

Chapter VI provides that registered GIs are protected against any:

- a) direct or indirect commercial use of a registered GI in respect of goods covered as well as not covered by the registration to the extent that those goods are comparable to those covered under this registered GI or to the extent that this use benefits or could benefit from the reputation of the Geographical Indication;
- b) misuse, imitation, or evocation, even if the true origin of the good is indicated or if the GI is translated or accompanied by an expression such as "style", "type", "method", "manner", "imitation", or translations of such expressions, or a similar expression.
- c) other false or misleading indication as to the provenance, origin, nature, or essential qualities of the good appearing on packaging or wrapping, in advertising materials or on documents concerning the good, as well as the packing of the product in a container liable to convey a false impression as to its origin.
- d) other practices likely to mislead the general public as to the true origin of the good.

Where registered, a Geographical Indication cannot become generic or fall into the public domain.

Summary Sheet: Law on Geographical Indications	
1. Law: Law on Geographical Indications	2. Ministry Responsible: Ministry of Commerce
3. Status: - Draft completed at Ministry of Commerce	5. WTO Agreement Implicated: Agreement on Trade-Related Aspects of Intellectual Property Rights
4. Approval Date (Parliament): 2006	
6. General Scope of the Law: - The main objective of the Law is to establish rules concerning the recognition, registration, and protection of Geographical Indications in Cambodia. Protection as Geographical Indications may be obtained for agricultural goods, foodstuffs, handcrafted goods and any other goods complying with the requirements of the Law. - The Law provide in detail for, notably: <ul style="list-style-type: none"> • Requirements and procedure for registration of GIs and the rights conferred by registration; • Requirements and procedure for registration of foreign GIs and the rights conferred by registration; • Requirements and procedure for invalidation and removal of marks; • Procedures for oppositions and termination of protection; 	
7. Provisions for Least Developed Countries (LDCs): - Developed country Members to provide incentives to enterprises and institutions in their territories for purpose of encouraging transfer of technology to LDCs. (Article 66.2)	

Chapter
7**Other Intellectual Property Laws****1. Requirements on undisclosed information, including trade secrets and test data**

Trade secrets encompass manufacturing or industrial secrets and commercial secrets. The unauthorized use of such information by persons other than the holder is regarded as an unfair practice and a violation of the trade secret. Depending on the legal system, the protection of trade secrets forms part of the general concept of protection against unfair competition or is based on specific provisions or case law on the protection of confidential information.

The subject matter of trade secrets is usually defined in broad terms and includes sales methods, distribution methods, consumer profiles, advertising strategies, lists of suppliers and clients, and manufacturing processes. While a final determination of what information constitutes a trade secret will depend on the circumstances of each individual case, clearly unfair practices in respect of secret information include industrial or commercial espionage, breach of contract and breach of confidence.

*Definition:***What is a Trade Secret?**

Broadly speaking, any confidential business information which provides an enterprise a competitive edge may be considered a trade secret.

Some advantages of trade secrets include:

- A. Trade secret protection has the advantage of not being limited in time (patents last in general for up to 20 years). It may therefore continue indefinitely as long as the secret is not revealed to the public
- B. Trade secrets involve no registration costs (though there may be high costs related to keeping the information confidential).
- C. Trade secrets have immediate effect.
- D. Trade secret protection does not require compliance with formalities such as disclosure of the information to a Government authority.

Examples:

An SME develops a process for the manufacturing of its products that allows it to produce its goods in a more cost-effective manner. Such a process provides the enterprise a competitive edge over its competitors. The enterprise in question may therefore value its know-how as a trade secret and would not want competitors to learn about it. It makes sure that only a limited number of people know the secret, and those who know it are made well aware that it is confidential. When dealing with third parties or licensing its know-how, the enterprise signs confidentiality agreements to ensure that all parties know that the information is a secret. In such circumstances, the misappropriation of the information by a competitor or by any third party would be considered a violation of the enterprise's trade secrets.

Contrary to patents, trade secrets are protected without registration, that is, trade secrets are protected without any procedural formalities. Consequently, a trade secret can be protected for an unlimited period of time. For these reasons, the protection of trade secrets may appear to be particularly attractive for small businesses. There are, however, some conditions for the information to be considered a trade secret. Compliance with such conditions may turn out to be more difficult and costly than it would appear at first glance. While these conditions vary from country to country, some general standards exist which are referred to in Art. 39 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement):

Conditions for protection:

- A. The information must be secret (i.e. it is not generally known among, or readily accessible to, circles that normally deal with the kind of information in question).
- B. It must have commercial value because it is a secret.
- C. It must have been subject to reasonable steps by the rightful holder of the information to keep it secret (e.g., through confidentiality agreements).

Precautionary measures to be taken by the enterprises

- 1. considering whether the secret is patentable and, if so, whether it would not be better protected by a patent.
- 2. making sure that a limited number of people know the secret and that all those who do are well aware that it is confidential information.
- 3. including confidentiality agreements within employees' contracts. Under the law of many countries, however, employees owe confidentiality to their employer even without such agreements. The duty to maintain confidentiality on the employer's secrets generally remains, at least for a certain period of time, even after the employee has left the employment.
- 4. signing confidentiality agreements with business partners whenever disclosing confidential information.

Article 128 of the Law on Patent, Utility Models and Industrial Designs provided protection for undisclosed data. In addition, Cambodia is in the process of preparing and adopting a separate Law on the Protection of Undisclosed Information and Trade Secrets. The Law was planned for adoption by the National Assembly in 2006.

Summary Sheet: Law on Protection of Undisclosed Information and Trade Secrets	
1. Draft Law: Law on Protection of Undisclosed Information and Trade Secrets	2. Ministry Responsible: Ministry of Commerce
3. Status: - Technical assistance requested by the Ministry of Commerce to prepare draft.	5. WTO Agreement Implicated: Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)
4. Expected Approval Date (Parliament): 2006	
6. General Scope of the Law: The Government has the intention of adopting regulations to protect trade secrets, know-how, undisclosed test data or other data required by the Government as set forth under the WTO Agreements.	
7. Particular provisions in relation to WTO requirements: Agreement on Trade-Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods (TRIPS) - The Agreement requires that undisclosed information (trade secrets or know-how) must benefit from protection. - The information that can benefit from such protection must be secret, has commercial value because it is secret and that has been subject to reasonable steps to keep it secret. - The Agreement also requires protection (unfair commercial use) for undisclosed test data and other data that must be submitted to Government for approval in relation to pharmaceutical or agricultural products.	
8. Provisions for Developing Countries (DCs): Possibility of transitional periods to bring national legislation and regulations in conformity with the provisions of TRIPS Agreement: 5 years, up to 1 January 2000. (Articles 65.2 and 65.4)	
9. Provisions for Least Developed Countries (LDCs): Possibility of transitional periods to bring national legislation and regulations in conformity with the provisions of TRIPS Agreement: 11 years, up to 1 January 2006. Possibility of extension following duly motivated request. (Article 66) Developed country Members to provide incentives to enterprises and institutions in their territories for purpose of encouraging transfer of technology to LDCs. (Article 66.2)	

b Plant variety protection

Plant varieties had been excluded from the Law on Patent, Utility Models and Industrial Designs. Thus, Cambodia did not provide plant variety protection at present, but a draft Law on Plant Variety Protection was in preparation with the assistance of UPOV. Promulgation of the Law was at present foreseen in 2006.

Summary Sheet: Law on Plant Variety Protection	
1. Contemplated Law: Law on Plant Variety Protection	2. Ministry Responsible: Ministry of Industry, Mines, and Energy
3. Status: - Technical assistance requested by the Ministry of Industry, Mines, and Energy to prepare draft.	5. WTO Agreement Implicated: Agreement on Trade-Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods (TRIPS)
4. Expected Approval Date (Parliament): 2006	
6. General Scope of the Contemplated Law: The Government has the intention of adopting comprehensive rules in order to protect plant variety by patents or by an effective <i>sui generis</i> system or by any combination thereof as required under the WTO Agreements.	
7. Particular provisions in relation to WTO requirements: Agreement on Trade-Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods (TRIPS) - On Patent: <ul style="list-style-type: none"> • Patents provide property right to inventions, which shall be (i) new; (ii) involve an inventive step ; and (iii) capable of industrial application. It shall be related to a product or a process. • Non-discrimination from origin of patent. • Rights of a patent holder. • Compulsory licensing in case the patent holder request unreasonable terms for use of patent . • Mandatory disclosure of information by patent holders. • Minimum validity of 20 years from the date of filling. 	
8. Provisions for Developing Countries (DCs): Possibility of transitional periods to bring national legislation and regulations in conformity with the provisions of TRIPS Agreement: 5 years, up to 1 January 2000. (Articles 65.2 and 65.4)	
9. Provisions for Least Developed Countries (LDCs): Possibility of transitional periods to bring national legislation and regulations in conformity with the provisions of TRIPS Agreement: 11 years, up to 1 January 2006. Possibility of extension following duly motivated request. (Article 66) Developed country Members to provide incentives to enterprises and institutions in their territories for purpose of encouraging transfer of technology to LDCs. (Article 66.2)	

d Layout designs of integrated circuits

Cambodia's patent utility law did not appear to contain any provisions for the protection of layout-designs as required by Article 35 of the TRIPS Agreement, and sought confirmation that these provisions were or would be provided for in a separate law. The subject-matter would be protected through a new Law on Layout Designs of Integrated Circuits.

Summary Sheet: Law on Layout Designs of Integrated Circuit	
<p>1. Contemplated Law: Law on Layout Designs of Integrated Circuit</p>	<p>2. Ministry Responsible: Ministry of Industry, Mines, and Energy</p>
<p>3. Status: - Technical assistance requested by the Ministry of Industry, Mines, and Energy to prepare draft.</p>	<p>5. WTO Agreement Implicated: Agreement on Trade-Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods (TRIPS)</p>
<p>4. Expected Approval Date (Parliament): 2006</p>	
<p>6. General Scope of the Contemplated Law: The Government has the intention of adopting regulations allowing the registration of layout designs of integrated circuits in order to fully protect right holder in conformity with the Treaty on Intellectual Property in Respect of Integrated Circuits, adopted in Washington in 1989 and the additional requirements under the WTO Agreements.</p>	
<p>7. Particular provisions in relation to WTO requirements:</p> <p>Agreement on Trade -Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods (TRIPS)</p> <ul style="list-style-type: none"> - The Agreement requires countries to protect the layout designs of integrated circuits in accordance with the Treaty on Intellectual Property in Respect of Integrated Circuits, adopted in Washington in 1989. - In addition, the Agreement states, notably, that the importation or sale of an article incorporating a protected integrated circuit shall be considered unlawful, unless authorization was granted from the right holder. - The Agreement prohibits also the compulsory licensing of the protected right except in the case of public non-commercial use or to remedy practices judged as anti-competitive by a judicial and administrative process. - The duration of the protection must be at least 10 years from the date of registration or, where registration is not required, 10 years from the date of first exploitation. 	
<p>8. Provisions for Developing Countries (DCs): Possibility of transitional periods to bring national legislation and regulations in conformity with the provisions of TRIPS Agreement: 5 years, up to 1 January 2000. (Articles 65.2 and 65.4)</p>	
<p>9. Provisions for Least Developed Countries (LDCs):</p> <ul style="list-style-type: none"> - Possibility of transitional periods to bring national legislation and regulations in conformity with the provisions of TRIPS Agreement: 11 years, up to 1 January 2006. Possibility of extension following duly motivated request. (Article 66) - Developed country Members to provide incentives to enterprises and institutions in their territories for purpose of encouraging transfer of technology to LDCs. (Article 66.2) 	

Chapter
8**Measures to Control Abuse of
Intellectual Property Rights****1 Introduction**

The main objective of acquiring IP protection is to enable your SME to reap the fruits of those inventions and creations of its employees which resulted in IP rights for your SME. Its intellectual property assets can only lead to benefits when the acquired intellectual property rights can be enforced, otherwise, infringers and counterfeiters will always take advantage of the absence of effective enforcement mechanisms to benefit from your hard work.

Why Enforce IP Rights?

Acquisition and maintenance of an intellectual property right is meaningless if that right cannot be enforced in the marketplace. It is the threat of enforcement which allows an intellectual property right to be exploited as a commercial asset. When viewed in this context, the existence of an effective enforcement regime becomes a central aspect of a well-functioning IP system.

Enforcement of IP rights is essential in order to:

- A. Preserve the legal validity of its IP rights before the relevant public authority.
- B. Prevent infringement from occurring or continuing in the marketplace in order to avoid damage including loss of goodwill or reputation.
- C. Seek compensation for actual damage, e.g. loss of profit, resulting from any instance of infringement in the marketplace.

The burden of enforcing IP rights is mainly on the holder of such rights. It is up to the IP right holder to identify any infringement/counterfeiting of its IP rights and to decide what measures should be taken. Whereas in most cases he/she would initiate civil proceedings, in the case of counterfeiting and piracy you may consider initiating criminal procedures, if that option is available.

However, it is the responsibility of the national or state governments to establish institutions which facilitate the enforcement of intellectual property rights. The judiciary and, in some cases, the administrative bodies like intellectual property offices or customs authorities are government institutions which may have to deal with infringement or counterfeiting cases. Where border measures are available to prevent the importation of counterfeit trademark goods or pirated copyright goods, customs authorities have a major role to play when it comes to IP enforcement at the international borders of a country.

According to the provisions of the applicable legislation, the customs authorities have to take action at their own initiative, on request of the right holder, or execute court orders. Furthermore, in some countries, there are industry associations which assist their members in enforcing their IP rights.

In addition, there is also the option to seek enforcement between parties by a private arbitration or mediation where your contract provides for a dispute to be settled by that means.

a Availability of Enforcement Procedures

The Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement) obliges members of the World Trade Organization (industrialized countries and many developing countries) to provide the prescribed mechanisms for enforcement of intellectual property rights. The relevant provisions of the TRIPS Agreement seek to ensure that civil, administrative and criminal procedures and remedies meet the prescribed minimum standards regarding evidence and availability of injunctions, damages, other remedies, right of information, indemnification of the defendant and administrative procedures.

For an IP right holder, it is of great practical importance to know that judicial authorities in a large number of countries are vested with powers to order prompt and effective provisional measures aimed at stopping an alleged infringement.

In order to prevent the importation of counterfeit trademark and pirated copyright goods, border measures (at the international border) are available to the right holder in many countries through the national customs authorities. As an IP right holder he/she can be helped more easily by the customs authorities at the border; because otherwise he/she would have to deal with many infringers once the goods have been distributed in the country.

b How do we enforce the Intellectual Property Rights?

It is always useful and often necessary to seek expert advice once an IP right holder have established that someone is infringing his/her IP rights.

In order to avoid tying up the limited financial and human resources in formal proceedings, once an IP right holder have found out that someone is infringing his/her IP rights, he/she should first think of sending a letter (commonly known as "cease and desist letter") to the alleged infringer informing him/her of the possible existence of a conflict between the IP rights of his/her enterprises and his/her business activity (identifying exact area of conflict) and suggest that a possible solution to the problem be discussed.

It is advisable to seek the assistance of an attorney when one writes such a "cease and desist" letter in order to avoid court proceedings initiated by the alleged infringer protesting that no infringement has

taken place or is imminent. This procedure is often effective in the case of non-intentional infringement since the infringer will in most such cases either discontinue his activities or agree to negotiate a licensing agreement.

When faced with intentional infringement, including, in particular, counterfeiting and piracy, he/she is well advised to seek the assistance of law enforcement authorities to surprise the infringer at his/her business premises in order to prevent an infringement and to preserve relevant evidence in regard to the alleged infringement. Furthermore, the infringer may be compelled by the competent judicial authorities to inform the IP right holder of the identity of third persons involved in the production and distribution of the infringing goods or services and their channels of distribution. As an effective deterrent to infringement, the judicial authorities may order, upon request of the IP right holder, that infringing goods be destroyed or disposed of outside the channels of commerce without compensation of any sort.

If he/she consider it in his/her interests to avoid court proceedings, he/she may consider making use of available alternative dispute mechanisms such as arbitration or mediation.

2 Enforcement: General obligations in Cambodia

Current measures to control abuse of intellectual property rights were based on the Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia during the Transitional Period of 10 September 1992, and Declaration No. 368 of 15 December 1997 concerning measures to control abuse of intellectual property rights in Cambodia. In addition, new laws such as the Law on Marks, Trade Name and Acts of Unfair Competition, the Law on Copyright and Related Rights and the Law on Patents, Utility Models and Industrial Designs contained provisions concerning the non-performance of obligations, such as failure to pay maintenance fees, or failure to use registered trademarks or patents for the period determined by the law, which could result in nullification of the protection or the granting of a licence to a third person or administrative body with a view to supplying the domestic market.

Intellectual Property Enforcement Mechanism	
Exclusive Rights	- Trademark Law : Article 3 - Law on Patents, Utility Model Certificates and Industrial Designs : Articles 10 and 14 - Law on Copyrights and Related Rights: Article 19
Administrative Measures	- TM Law : Articles 56 and 57 - Patents Law : Article 122
Border Measures	- TM Law : Articles 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46 - Copyrights Law : Article 66
Civil Proceedings and Provisional Measures	- TM Law : Art. 27, 28, 29, 30, 31, 32, 33, 34 - Patents Law : Art. 125, 126 - Copyrights Law : Art. 57, 58, 59, 60, 61, 62
Criminal Proceedings	- TM Law : Art. 62, 63, 64, 65, 66, 67, 68, 69, 70 - Patents Law : Art. 132, 133, 134, 135 - Copyrights Law : Art. 63, 64, 65

Cambodia's draft laws on intellectual property would comply fully with the provisions of Article 41 of the TRIPS Agreement concerning the availability of enforcement procedures under domestic legislation, the existence of fair and equitable procedures, and the opportunity for parties to proceedings to obtain the review of final administrative decisions and initial judicial decisions by a judicial authority.

a Civil judicial procedures and remedies

The provisions on civil judicial procedures and remedies had been included in the draft Civil Code, Civil Procedure Code and specific intellectual property laws currently in preparation. Implementing regulations for these laws and codes were under consideration. The Civil Procedure Code would include procedures concerning civil judgement, execution and provisional measures, and intellectual property legislation would cover provisions for remedies and provisional measures. Enforcement authorities would comprise Courts, Customs, as well as Camcontrol, an organisation under the authority of the Ministry of Commerce, and the Economic Police, both in charge of fraud repression and inspections of exported and imported goods.

Under the new regulations, courts - including municipal and provincial courts - would have the authority to handle cases of abuse of intellectual property rights, disputes over royalties and remuneration, violation of authors and application rights, and disputes related to the transfer and licensing of rights. The injured party could seek court injunctions to stop infringement and claim compensation for damages. The amount of damages would be calculated on a case-by-case basis. The Civil Code and the Civil Procedure Code would provide the legal authority, though no detailed provisions, for the award of damages and other remedial measures

Courts had the authority to order that documents be produced (Article 152 of the draft Civil Procedure Code), and failure to do so would lead the Court to consider the other party's allegations to be true (Article 153), and to impose a fine on the impeding party (Article 154). Confidential information was protected under Article 42 of the Trademarks Law and Article 128 of the Patents Law. A general provision referring to specific legislation was included in Article 115.1 of the draft Civil Procedure Code.

b Provisional measures

The courts and authorities responsible for administrative enforcement of intellectual property legislation had the authority to order prompt and effective provisional measures based on prima facie evidence to prevent an infringement and preserve relevant evidence. Pursuant to Article 30a of the Law on Marks, Trade Name and Unfair Competition, there was prima facie evidence when there were reasonable grounds to believe that an infringement was taking place. Applicable provisional measures included detention of material evidence and facilities, search for concealed materials and facilities, order to stop an infringement, confiscation of the infringing goods, and temporary seizure of the goods with a view to ensuring proper compensation.

c Administrative procedures and remedies

Under the new regulations the authorities competent to apply administrative measures and remedies were the Ministry of Commerce, Ministry of Industry, Mines, and Energy, and Ministry of Culture and Fine Arts; Customs offices; and the Economic Police. Administrative measures and remedies included warning, monetary fines up to 25 million Riels (about US\$6,000), seizure of material evidence and facilities, destruction of infringing goods, and compensation for damages. Pursuant to the Law on Marks, Trade Name and Acts of Unfair Competition and the Law on Copyrights and Related Rights, competent authorities had the power to issue injunctions to order a party to stop an infringement and to suspend clearance of goods, as stipulated in Article 44.1 of the TRIPS Agreement, but did not have the authority to order infringers to provide right holders with information on third parties involved in the production and distribution of infringing goods. They could however acquire such information themselves. The Law on Marks, Trade Name and Acts of Unfair Competition (Article 46) and the Law on Copyright and Related Rights (Article 59) prohibited the re-exportation of counterfeit or pirated goods and conferred customs and other competent authorities the power to destroy infringing goods upon a court decision. Infringing goods could not be destroyed without a court order.

d Special border measures

The draft Law on Customs did not include provisions on border measures as required by Article 51-60 of the TRIPS Agreement. The necessary border measures had been incorporated in the Law on Marks, Trade Names and Acts of Unfair Competition (Articles 35-47). In addition, the Law on Copyrights and Related Rights (Article 63) included, by reference, all border measures included in the Law on Marks, Trade Names and Acts of Unfair Competition. The draft Law (Article 8) explicitly required the customs authorities to execute all laws of Cambodia, and this provision would be underpinned by a sub-Decree to be prepared by the Department of Customs and Excises, in collaboration with the Ministries responsible for the protection of intellectual property.

Cambodia's legislation provided for seizure, forfeiture and destruction of infringing goods, evidences, copies and equipment used in the creation of infringing goods, and prohibited the re-exportation of counterfeit trademark goods or use of different customs procedures. Under the new regulations, customs authorities were allowed to inform right holders about the possible importation or exportation of infringing goods. The right holder could apply to the customs authorities to suspend clearance of the suspected goods. The application should include a detailed description of the goods. The customs authorities were obliged to inform the right holder of the measures taken, and should cancel the measures if no proceedings had been initiated within 10 days. The right holder was liable for any damages resulting from an unsubstantiated application. In case of prima facie evidence, customs authorities could suspend clearance of suspected goods on their own initiative, and should immediately inform the right holder of the place and date of suspension.

e Criminal procedures

Infringement of intellectual property was liable to criminal prosecution pursuant to the Law on Marks, Trade Names and Acts of Unfair Competition (Articles 63 through 68), the Law on Patent, Utility Models and Industrial Designs (Articles 132 and 133), and the Law on Copyright and Related Rights (Articles 64 and 65). Criminal infringement cases were punishable with fines of up to 25 million Riels (about US\$6,000) and/or prison sentences ranging from one to 60 months. The maximum penalties were doubled for second offences committed within five years from the date of the first conviction. Implementing regulations to the laws would specify the circumstances under which these criminal penalties would be imposed. In case of sale, distribution and importation of counterfeit pharmaceuticals, provisions in the Law on the Management of Pharmaceuticals could also be applied to impose criminal penalties and protect the rights of the right-holders.

Settlements of IPR infringements through administrative and judicial means.

- 21 cases of cancellations of registered marks relating to ownership conflict or similarity of marks: (Rolex & Crown Device, Hugo Boss, Applaud 25, Hunting World & Elephant, Nina Ricci, Gucci)
- Suppressions and/or ordering not to use of imitated or similar registered marks and/or acts of unfair competition: Mercedes (trade dress infringement) for cigarette; Elephant (trade dress infringement) for cigarette; Gleam (motorcycle).
- In 2001, there were 6 court cases: "Budweiser" for beer, "Crocodile" for clothing, "Rolex Crown Device" for cigarette, "AAD BOON 502" for glue, "Bic" for lighter, and "SOLEX" for lock.
- There is no patent infringement cases pending in the Cambodian court yet. The capacity of court in the specialized areas of IPR is extremely limited at present.