

Ministerial Regulation (Prakas)
on
the Procedure for the Registration and Protection of Certification Marks

Minister of Commerce

- Having seen the Constitution of the Kingdom of Cambodia;
- Having seen the Royal Decree No. NS/RKT/0913/903 dated September 24, 2013 on the Appointment of the Royal Government of Cambodia;
- Having seen the Royal Kram No.02/NS/94 dated July 20, 1994 promulgating the law on the Organization and Functioning of the Council of Ministers;
- Having seen the Royal Kram No. NS/RKM/0196/16 dated January 24, 1996 promulgating the Law on the establishment of the Ministry of Commerce;
- Having seen the Royal Kram No. NS/RKM/0202/006 dated February 07, 2002 promulgating the Law Concerning Marks, Trade Names and Acts of Unfair Competition;
- Having seen the Sub-Decree N0.131 RNKR.BK dated March 19, 2014 on the Organization and Functioning of the Ministry of Commerce;
- Having seen the Sub-Degree N0.64 RNK.BK dated July 12, 2006 on the Implementation of the Law Concerning Marks, Trade Names and Acts of Unfair Competition;
- Pursuant to the necessity of the Ministry of Commerce.

Hereby Decides

Article 1: Purpose

The purpose of this Ministerial Regulation (Prakas) is to protect consumers and producers by adopting its system aiming to inform consumers that the goods or services of a person possess certain characteristics, qualities or meet certain qualifications or standards.

Article 2: Objective

The objective of this Ministerial Regulation is to provide a procedure for the registration, protection and management of certification marks in the Kingdom of Cambodia.

Article 3: Scope

Signs that meet the definition of certification marks provided by article 4 of this Ministerial Regulation may be registered and protected in the Kingdom of Cambodia under the certification mark system.

Article 4: Definition of Certification Mark

The term “Certification Mark” means any word, name, symbol, or device, or any combination thereof indicating that the goods and/or services in connection with which the mark is used are certified by the registered owner of the mark in respect of the origin, material/s, mode of manufacture of goods or performance of services, quality, accuracy, or other characteristics”

Article 5: Provisions applicable mutatis mutandis

Except where otherwise specified in this Ministerial Regulation, the relevant provisions of the Law Concerning Marks, Trade Names and Acts of Unfair Competition shall apply mutatis mutandis to certification marks under this Ministerial Regulation.

Article 6: Competent Authority

The Ministry of Commerce shall delegate all functions relating to the registration, protection and management of certification mark to the Department of Intellectual Property.

Article 7: Ownership of Certification mark

1. The applicant for a certification mark shall be a legal person and shall be competent to certify the goods and/or services for which the mark is registered.
2. The applicant or the registered owner shall not use the certification mark or engage in the production, marketing or other commercialization of goods or services that are identical with or similar to those for which the certification mark is registered.
3. The applicant or the registered owner of a certification mark shall not be allowed to register a trademark or a service mark which is identical with or similar to the certification mark in connection with the goods or services which are identical with or similar to those for which the certification mark has been registered.
4. The applicant or the registered owner of a trademark or service mark under the Law Concerning Marks, Trade Names and Acts of Unfair Competition shall not be allowed to register a certification mark which is identical with or similar to such trademark or service mark in connection with the goods and/or services which are identical with or similar to those for which the trademark or service mark is to be used.
5. The use of registered certification mark by any party shall be authorized first from the owner.

Article 8: Application for Registration

An application for registration of a certification mark shall be prepared in Khmer or English language and filed with the Department of Intellectual Property, the Ministry of Commerce, in line with the provisions of articles 5 to 7 and 9 of the Law Concerning Marks, Trade Names and Acts of Unfair Competition. In addition, the application for registration of a certification mark shall be filed together with the following:

- a. A statement that the applicant will not be engaged in the production or marketing of the goods or provision of services that are identical with or similar to those for which the certification mark is provided;
- b. Evidence that the applicant is a legal person.
- c. A regulation governing the use (Regulation of Use) of the certification mark. Such regulation will include at least the following:

- i. The standards relating to the origin, the material/s, the mode of manufacture of goods or performance of services, the quality, the accuracy, or other characteristics that are to be certified by the mark;
 - ii. The manner in which the registered owner shall verify those standards;
 - iii. The mechanisms that the registered owner will employ to supervise the correct use of the certification mark and the continued compliance with the above standards;
 - iv. The manners in which the certification marks will be used on products and services;
 - v. The fees payable, if any, for the use of the mark;
 - vi. The procedures for settling disputes.
- d. Others as may be prescribed by the law and regulations or indicated in the application form.
 - e. A certification mark filed by a foreign legal person must be accompanied by the proof of the registration or application for registration of the mark in the country of origin.
 - f. Power of Attorney, if the application is filed by the local trademark agent.

Article 9: Fees

The applicant for registration of a certification mark shall pay the fees as prescribed in the joint Ministerial Regulation of the Ministry of Economic and Finance and the Ministry of Commerce. In case this joint Ministerial Regulation has not been issued, the joint Ministerial Regulation of the Ministry of Economic and Finance and the Ministry of Commerce in regard to trademark or service mark application shall be applied.

Article 10: Examination of application

1. Upon the applicant's filing of the application and payment of the application fee, the Registrar of the Department of Intellectual Property shall examine
 - a) whether or not the mark qualifies to be protected as certification mark under article 4 and 7 of this Ministerial Regulation,
 - ii) whether or not the application complies with the requirements of Article 8 of this Ministerial Regulation and relevant provisions, and
 - iii) whether or not the mark is unregistrable under Article 4 of the Law Concerning Marks, Trade Names and Acts of Unfair Competition and Article 10 of the Law on Geographical Indication.
2. In the event that a geographical term is used either alone or as a portion of the mark to certify that the goods and/or services originate in the geographical region identified by the term, the Registrar should not refuse registration of the certification mark on the ground that the mark is primarily geographically descriptive, in accordance with Article 4(a) of the Law Concerning Marks, Trade Names and Acts of Unfair Competition. However, if a geographical term, used either alone or as a portion of the mark, is not used with the aim of certifying the geographical origin, the competent authority may refuse registration of the mark under Article 4 of the Law Concerning Marks, Trade Names and Acts of Unfair Competition.
3. Where the application does not meet the requirements provided by Article 8 of this Ministerial Regulation, the applicant may revise the application within 6 months from the

issued date of written notification of the competent authority. In case there is no revision within this limited period, the application will be rejected.

4. In the course of substantive examination of application, the competent authority may invite the applicant or any interested person to provide additional explanations or evidence. The competent authority may seek the advice of experts in the related fields or areas for taking into consideration and arriving at a decision.

5. If necessary, the competent authority may enact additional rules for the substantive examination of applications for registration and management of certification marks.

Article 11: Registration, Publication in the official Gazette

1. Where the application meets the requirements provided by Article 5 and 10 of this Ministerial Regulation, the Ministry of Commerce shall register the mark and issue a certificate of registration to the applicant.

2. In line with Article 10 of the Law Concerning Marks, Trade Names and Acts of Unfair Competition, after the registration of the certification mark; the Ministry of Commerce shall publish the mark together with its Regulations of Use in the Official Gazette of the Ministry of Commerce.

3. All the corrections, revisions, assignments and other changes also will be published.

Article 12: Conferred rights

1. The registered owner of the certification mark shall have the exclusive right to authorize the use of the mark by third parties that produce or market goods or provide services possessing the standards set out by the Regulation of Use of the certification mark. Such authorization may not be denied if any such third party is in a position to comply with all requirements of the Regulation of Use.

2. The registered owner may withdraw authorization to use the certification mark and/or apply other sanctions as provided by the Regulations of Use if an authorized user of the mark fails to comply with all required standards provided by the Regulations.

3. To prevent or pursue an infringement, the registered owner can take the necessary legal actions against infringing parties and can seek all relevant remedies, including damages and injunctions, etc., as provided by articles 24 to 47 and 62 to 69 of the Law Concerning Marks, Trade Names and Acts of Unfair Competition.

4. The exclusive right of the registered owner of the certification mark shall include the right to prevent the use of a mark which is identical or similar to the registered certification mark in connection with the goods and/or services which are identical with or similar to those for which the certification mark is registered.

5. The exclusive right of the registered owner of the certification mark shall not be subject to force third parties to certify their products without their consent.

6. The rights acquired upon registration of the certification mark shall not be transferrable in whole or in part, unless the legal person acquiring the right complies with the requirements set out in article 7 and the transfer is approved by the Ministry of Commerce.

Article 13: Registration of Foreign Certification Marks

1. A foreign certification mark can be registered in the Kingdom of Cambodia, if the mark meets the requirements and conditions for certification marks under this Ministerial Regulation and it is registered in its country of origin.

2. Foreign certification marks which are not protected have ceased to be protected or fall in disuse in their country of origin shall not be registered or shall be cancelled in the Kingdom of Cambodia.

3. Foreign certification marks can be filed in the Kingdom of Cambodia only if it is made through the agent as stated in Article 58 and 59 of the Law Concerning Marks, Trade Names and Acts of Unfair Competition and relevant provisions.

Article 14: Opposition

In line with Article 10 of the Law Concerning Marks, Trade Names and Acts of Unfair Competition, within ninety (90) days from the publication date of the registration, any interested party may file an opposition to the registration of the certification mark on the ground that one or more of the requirements provided by this Ministerial Regulation or by the Law Concerning Marks, Trade Names and Acts of Unfair Competition are not fulfilled.

Article 15: Validity

1. The provisions for the validity and renewal of registration of a mark under the Law Concerning Marks, Trade Names and Acts of Unfair Competition shall apply *mutatis mutandis* to those of registration of certification mark.

2. If a certification mark ceases to be protected, it may not be the subject matter of an application for registration under the Law Concerning Marks, Trade Names and Acts of Unfair Competition, nor be used by anybody prior to the expiry of 10 years from the date of termination of the protection, unless the competent authority approves the continuation of the certification scheme by another legal person that proves to comply with the requirement of article 8 of this Ministerial Regulation.

Article 16: Compliance Control

1. The registered owner of a certification mark shall establish verification mechanisms to ensure compliance with the standards of certification provided by art 8(iii)(b), and shall provide annual reports to the Department of Intellectual Property of the Ministry of Commerce including the list of certified products and their producers, the measures taken for certifying them, as required by the Department. Such documents shall be prepared in Khmer. Any documents other than Khmer language shall be translated into Khmer with the confirmation of the correct translation.

2. In the event that the registered owner does not provide the annual report, or that any instance of non-compliance with the standards of certification is found, the Ministry of Commerce shall send a notice to the registered owner requesting that such default be remedied within ninety days from the date of the notification.

Upon the request with clear state reason from the registered owner, Ministry of Commerce may extend this period not exceeding 90 days. If still failing to comply with the requirement, the certification mark shall be cancelled

Article 17: Amendment

1- After registration and only upon approval by the Ministry of Commerce, the registered owner of a certification mark may amend the methods and/or procedures for

- a) the certification of the characteristics, standards, or other features of the goods and/or services,
- b) exercising control over the use of the certification mark in commerce.

2- Upon the request of the registered owner of the certification mark, the Ministry of Commerce shall approve the amendment if it does not significantly and substantially affect the original objectives and standards of the certification mark.

3- In the event that such an amendment was requested especially in connection with the elements related to the developments of technologies and sciences, it shall be presumed that the amendment would not significantly and substantially affect the original objectives and schemes of the certification mark.

Article 18: Invalidation and Cancellation of registration

1- The registered certification mark shall be invalidated if it is found that:

- a) any requirement for certification mark under this Ministerial Regulation has not been fulfilled; and
- b) the registered owner of the certification mark was not legitimately entitled to apply for registration of a certification mark under articles 4 and 7 of this Ministerial Regulation.

2- The registered certification mark shall be canceled if:

- a) the registered owner is no longer competent to certify the goods or services for which the mark is registered;
- b) the registered owner does not comply with the time limit as prescribed under Article 15 of this Ministerial Regulation;
- c) the registered owner commences using the certification mark on its own goods and/or services;
- d) the certification mark is used in a manner that misleads the public;
- e) the registered owner has failed to secure the observance of the Regulation of Use of the certification mark;
- f) an amendment of the above Regulation has rendered it contrary to public order or accepted principles of morality; and
- g) the foreign certification mark registered under Article 13 of this Ministerial Regulation has ceased to be protected or has fallen in disuse in its country of origin.

3- The effect of invalidation and cancellation of the certification mark shall be applied in comply with the Article 30 of the Law on Geographical Indication.

Article 19: Appeal

1- Any interested party may appeal to the Appeal Board or to the competent courts against the decision of the Ministry of Commerce within three months from the date of decision as stated in Article 62 of the Law Concerning Marks, Trade Names, and Acts of Unfair Competition.

2- The decision of Appeal Board may be the subject of an appeal to the competent court within three months from the date of its decision.

Article 20: Effective date of this Ministerial Regulation

Director of Cabinet, Director General, Inspector General, and all Directors of Departments under the Ministry of Commerce shall effectively implement this Ministerial Regulation from the date of signature.

CC :

- General Secretariat of Senate
- General Secretariat of Assembly
- General Secretariat of the Royal Government
- Office of the Council of Ministers
- Cabinet of **Samdach Hun Sen** Prime Minister of the Kingdom of Cambodia
- Cabinet of Deputy Prime Minister Samdech Krala Hom Sar Kheng
- Cabinet of Deputy Prime Minister Bin Chhin
- Ministry of Economy and Finance
- Relevant Ministries-Institutions
- Anti-Corruption Unit (ACU)
- CamControl
- General Department of Customs and Excise of Cambodia
- Municipality and all Provinces
- Document – Archive.

Phnom Penh, 30 August 2016
Minister of Commerce

[Signature and Seal]

PAN Sorasak