

Prakas

on

the procedure for the registration and Protection of marks of goods which include a geographical indication

Senior Minister, Minister of Commerce

- Having seen the Constitution of the Kingdom of Cambodia,
- Having seen Royal decree N° NS/RKT/0908/1055 issued on 25/09/2008 on the appointment of the Royal Government of Cambodia,
- Having seen Rooyal Decree N°02 NS.94 issued on 20/07/1994 on the functioning of the Council of Ministers,
- Having seen Royal decree N°NS/RKM/0196/16 issued on 24/01/1996 on the promulgation of the law on the establishment of the Ministry of Commerce,
- Having seen Royal decree N°NS/RKM/0202/006 issued on 07/02/2002 on the promulgation of the law on marks, trade names and acts of unfair competition,
- Having seen sub-decree N°91ANKr.BK issued on 01/08/2007 on the establishment and functioning of the Ministry of Commerce,
- Having seen Prakas N°211 MOC/SM 2007 issued on 18/09/2007 on the establishment and functioning of the Department of Intellectual Property Rights,
- Considering the necessity and urgency of the registration and protection of marks of goods which include a geographical indication in the Kingdom of Cambodia for preventing the misuse and defame the actual geographical indication products.

Article 1: Purpose

This prakas aims at managing the registration, recognition, and protection mark of goods which include a geographical indication in the Kingdom of Cambodia.

Article 2: Objective

This Prakas establishes the procedure for the management of registration, recognition, and protection of marks of goods which include a geographical indication in order to protect the intellectual property of producers, operators and users of products which include a geographical indication as well as the maintenance and strengthening of know-how, traditional knowledge and national identity for creation of employment in rural area, community development, reduction of poverty and attraction of tourists.

Article 3: Scope

Agricultural products, food, handicraft and other goods that are produced or transformed in the Kingdom of Cambodia in compliance with the content of this Prakas must be registered and protected as mark of goods which include a geographical indication in the Kingdom of Cambodia.

Article 4: Definitions

1. "Mark of goods which include a geographical indication "

Refers to the name, logo or other pictures which are used to designate or represent the geographical origin and can identify the goods originating from such geographical origin where the quality, reputation or other characteristic of the goods is attributable to the geographical origin.

2. "Application"

Refers to the application for the registration of mark of goods which include a geographical indication.

3. "Applicant"

Refers to natural or legal person which belong to "GI association" or representative group of producers or organizations representing producers and or operators that may have an interest in the Geographical Indication.

4. "Operator"

Refers to natural or legal person involved in the process of collection, processing, commercialization or distribution of goods which include a geographical indication.

5. "Official gazette"

Refers to the official gazette of the Department of Intellectual Property Rights of the Ministry of Commerce.

6. "Book of specifications"

Refers to the document issue by the applicant which defines clearly the geographical area of production, production conditions and control mechanisms for the Geographical Indication good(s).

7. "Control"

Refers to the verification of the compliance of goods with the Book of specifications by assigned organization or authority.

8. "Registration"

Refers to the registration of mark of goods which include a geographical indication.

9. "Day"

Refers to calendar day.

10. "Certification body"

Refers to the organization which issues the certificate that certify the conformity of the book of specifications.

Article 5: "Conferred rights"

When a mark of goods which include a geographical indication is registered by the Department of Intellectual Property Rights of the Ministry of Commerce, in accordance with the provisions of this Prakas, producers and/or operators who comply with the book of specifications are entitled to exclusive rights of use of this mark of goods which include a geographical indication. This rights are not transferable.

Article 6: "Duties of the Department of Intellectual Property Rights"

The Ministry of Commerce delegate to the Department of Intellectual Property Rights the right to manage, register, recognize and protect mark of goods which include a geographical indication in the Kingdom of Cambodia.

The Department of Intellectual Property Rights has the important duties as follows:

- to receive and to examine the application form for registration of mark of goods which include a geographical indication,
- to examine the book of specification,
- to receive opposition and counterstatement,
- to register mark of goods which include a geographical indication,
- to mediate the conflict related to mark of goods which include a geographical indication,
- to maintain the register of mark of goods which include a geographical indication,
- to publish mark of goods which include a geographical indication in the official gazette.

Article 7: "Filing application for registration"

1. The application for registration of a mark of goods which include a geographical indication shall be filed at the Department of Intellectual Property Rights of the Ministry of Commerce in the format attached in annex I.
2. The application shall be made in Khmer or English language. Any document constituting a part of the application and which is not in Khmer or English language shall be attached with its translation in Khmer or English.
3. The application for the registration of mark of goods which include a geographical indication shall include the following documents:
 - a) Application form, one copy,
 - b) Book of specifications one copy,
 - c) Authorization letter issued by the geographical indication association and endorsed by a lawyer or notary, or local public administration in the designated area of the Geographical Indication product.
 - d) And other related documents as required in the application form.

Article 8: Withdrawal of application

The applicant may withdraw his application at anytime by notifying in written to the Department of Intellectual Property Rights of the Ministry of Commerce.

Article 9 : Administration fees for application to register a mark of goods which include a geographical indication

The applicant for the registration of a mark of goods which include a geographical indication in the Kingdom of Cambodia shall pay administration fee for the registration of a mark of goods which include a geographical indication and related administration fees in compliance with the inter-ministerial Prakas N°457 SHV.BrKCMP issued on 08/06/2007 concerning administration fee for registration of mark and other related administration fees between Ministry of Commerce and Ministry of Economy and Finance.

Article 10: Examination of the application

- 1- The Department of Intellectual Property Rights shall prepare the formality check of the application within a maximum of ninety (90) days from the filing date.
- 2- The Department of Intellectual Property Rights shall verify whether the application meets the requirements as stipulated in the article 7, and shall issue an official letter of acknowledgement of application or rejection.
- 3- The letter of acknowledgement of application shall indicate the filing date and application number.
- 4- The rejection of an application shall be notified to the applicant with the explanation of the reason why it was rejected. The applicant can modify its application within a period of 6 (six) months. The application shall be dismissed if there is no modification or answer or explanation transmitted within the deadline above. The Department of Intellectual Property Rights can extend the delay for an additional period of 6 (six) months if there is a request from the applicant.
- 5- The following mark of goods which include a geographical indication shall not be registered in the register of mark of goods which include a geographical indication:
 - an indication that became generic,
 - an indication that conflicts with any plant variety or animal breed.
- 6- The registration of a mark of goods which include a geographical indication shall be published in the official gazette.

Article 11: Substantive examination of the application for the registration of a mark of goods which include a geographical indication

1. If necessary, the Ministry of Commerce is the competent authority to define additional rules for the substantive examination of the application for the registration of a mark of goods which include a geographical indication.
2. The Department of Intellectual Property Rights shall examine the effectiveness of the body in charge of the certification of the conformity of the book of specifications, with consent of the Ministry of Commerce.
3. The Department of Intellectual Property Rights may invite the applicant or interested person to provide explanations or additional evidences. If necessary, the Department of Intellectual Property Rights may seeking for advices from the expert in the related field of area for taking into a consideration and made a decision.
4. The control of the conformity of goods which include a geographical indication with the book of specification shall be guaranteed by a public authority competent and impartial or by a public or private organization officially accredited under the international standard ISO guide 65 or under the directive of an International Standard Organization which can replace or supplement or modify the ISO guide 65 and authorized by the Ministry of Commerce.

The annual report of the certification body shall be send every year to the Department of Intellectual Property no later than December 31 of the concerned year, and shall include the list of operators, products, quantities that has been recognized (certified) and severe sanction applied if any.

5. The applicant may select by himself the certification body. This choice is a part of the application and shall be approved by the Department of Intellectual Property Rights of the Ministry of Commerce.
6. In the case of non compliance with the book of specification by one or several producer(s) and/or operator(s), the certification body assigned to the control of the GI product shall take appropriate measures and sanctions against these producer(s) and/or operator(s), which can include measures as follows:
 - Remark and advice,
 - Warning,
 - Disqualify a batch of product,
 - Temporary cancellation of the producer or operator right to use the mark of goods which include a geographical indication,
 - Permanent cancellation of the producer or operator right to use the mark of goods which include a geographical indication.

Article 12: Validity and renewal of registration

The validity and renewal of mark of goods which include a geographical indication shall be implemented according to the article 12 of the law on mark, trade name and unfair competition and related regulations.

Article 13: Cancellation of mark of goods which include a geographical indication

The Ministry of Commerce has rights to cancel a registered a mark of goods which include a geographical indication before validity as follows:

- Non-implemented through the control plan which defined in the book of specifications,
- The applicant does not provide documents or provide additional information at the request for the Department of Intellectual Property Rights in terms of changing the procedures and regulation of the mark of goods which include a geographical indication.

Article 14: Other procedures for implementation and penalty

Procedure for appeal, Procedure for opposition, provisional measures, border measure, agent, and penalties related to mark of goods which include a geographical indication under this parkas shall be implemented according to related regulations defined in the law on mark, trade name and unfair competition.

Article 14: Validity

This Prakas comes into force starting from the date it is signed.

Phnom Penh, May 18, 2009
Senior Minister, Minister of Commerce

Cham Prasidth

Copy to:

- General Secretariat of Senate,
- General Secretariat of National Assembly,
- Cabinet of Samdech Prime Minister Hun Sen,
- Cabinet of the Deputy Prime Minister Sar Kheng,
- Cabinet of the Excellency Madam, Men Samoen
- Cabinet of Deputy Prime Minister Keat Chhuon,
- Council of Ministers,
- All concerned Ministries and institutions
- All provinces and municipalities,
- Archives.