

IP KNOWLEDGE EXTRACT



NAVIGATING TRADEMARK REFUSAL PROCEDURES IN CAMBODIA FROM OFFICE ACTION TO APPEAL

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Overview

When a trademark application in Cambodia encounters a provisional refusal from the Department of Intellectual Property (DIP), many trademark owners assume that this marks the end of their registration prospects. In reality, such a notice is not a final verdict but rather a procedural step in a multi-stage process designed to ensure that each application is given full and fair consideration. Understanding the sequence of actions following a refusal and how to respond strategically can make the difference between a rejected mark and a successfully registered one.

Cambodia's trademark system, governed by the Law Concerning Marks, Trade Names and Acts of Unfair Competition (2002) and its implementing regulations, provides applicants with structured mechanisms to respond, amend, and appeal. This framework aims to balance the public interest in maintaining a clear and fair trademark register with the private rights of applicants seeking brand protection.

Phase One: Responding to a Provisional Refusal by the DIP

A provisional refusal, whether issued under a national application or an international registration designating Cambodia, typically outlines specific grounds for rejection. These may include similarity with earlier marks, lack of distinctiveness, or non-compliance with procedural or formal requirements. Upon receipt of such a refusal, the applicant or their authorized representative must respond within the time limit specified, generally sixty days from the notification date for national filings, or as prescribed under the Madrid Protocol for international designations.

This initial response stage is critical. The applicant may submit written arguments disputing the examiner's findings, provide evidence of acquired distinctiveness through use, or propose amendments to limit or clarify the specification of goods and services. In practice, the DIP often allows continued dialogue through one or more rounds of examination before any final decision is rendered. It is not uncommon for two or even three notices of refusal to be issued, each inviting further clarification or refinement.

This iterative exchange reflects the pragmatic approach of the Cambodian DIP, which encourages applicants to resolve objections through reasoned legal argumentation rather than immediate rejection. During this stage, skilled counsel may engage directly with examiners to explain factual nuances or provide legal precedents from comparable jurisdictions. Each correspondence provides an opportunity to transform an adverse initial opinion into a favorable outcome. Therefore, this phase should be viewed not merely as a defense but as an advocacy process to establish the registrability of the mark under Cambodian law.

Phase Two: Final Decision of Refusal and Rights of Review

If, after the exchange of correspondence, the examiner remains unconvinced, the DIP issues a Final Decision of Refusal. This decision is significant because it formally concludes the administrative examination phase and triggers the applicant's rights to request confirmation and pursue appeal remedies as provided under Article 18 of the Sub-Decree on the Implementation of the Trademark Law.

The first procedural option available is to file a Request for Confirmation of the Grounds for Refusal within one month from the signing date of the decision. This step is highly advisable, as it compels the DIP to issue a written statement specifying the precise legal and factual grounds relied upon in reaching its conclusion. Such documentation provides transparency and establishes a record for subsequent appeal. It also allows the applicant to identify whether the refusal is based on misinterpretation of evidence, procedural oversight, or incorrect application of legal principles.

Once the written confirmation is received, the applicant may proceed to file a formal appeal within three months from the signing date of the decision. Under Cambodian administrative law, two principal avenues exist: filing an administrative appeal with the Appeal Board of the Ministry of Commerce or initiating judicial proceedings before a competent court. The former provides a specialized mechanism for review within the Ministry's structure, while the latter enables independent judicial scrutiny of the DIP's decision. The choice between these routes depends on strategic considerations such as the complexity of legal issues, the strength of the record, and the urgency of obtaining resolution.

Strategic Considerations and Practical Insights

Experience shows that success in challenging a refusal in Cambodia depends heavily on early preparation and clear argumentation. The DIP and the Appeal Board place considerable weight on the coherence of legal reasoning, the relevance of cited precedents, and the sufficiency of supporting evidence. Therefore, applicants are encouraged to provide comprehensive documentation, such as proof of foreign registrations, consumer recognition surveys, and affidavits of use, where relevant to demonstrate distinctiveness and eliminate confusion with prior marks.

Moreover, the appeal process is not adversarial in nature but corrective. The reviewing authorities seek to ensure that the examiner's decision was properly reasoned and consistent with Cambodian trademark law. A professional and respectful tone in submissions, coupled with precise references to legal provisions, can help demonstrate good faith and seriousness of purpose. Engaging local counsel experienced in DIP practice is indispensable, as procedural missteps, such as missing the statutory deadlines can result in irreversible loss of rights.

Another critical aspect is timing. Both the one-month period for requesting confirmation and the three-month period for filing an appeal are strictly enforced. Late filings are generally inadmissible. Applicants should therefore maintain close coordination with their representatives to ensure that all procedural steps are met in time. This vigilance not only preserves rights but also signals to the authorities that the applicant is committed to pursuing legitimate protection of its intellectual property.





Conclusion

In the Cambodian trademark system, a notice of refusal should not be seen as a final defeat. Rather, it marks the beginning of a strategic process through which applicants can strengthen their legal position, refine their applications, and ultimately secure brand protection. The combination of flexible examination practice, structured appeal mechanisms, and transparent legal remedies ensures that applicants are not deprived of due process.

By adopting a proactive and legally sound approach, supported by timely filings, persuasive reasoning, and well-documented evidence, the trademark owners can transform a refusal into an opportunity for greater clarity and stronger protection. As Cambodia continues to align its IP framework with international standards, the value of understanding and effectively navigating the post-refusal process cannot be overstated. Successful applicants are those who recognize that in trademark prosecution, persistence and legal precision often yield the most enduring protection.

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