

Preliminary Assessment Summary

PRAKAS Registration of Name of Enterprise, Name of Association and Its Protection

Ministry of Commerce

Reference no: 0000013 (system no xx)
Date started: 10 Dec 2012
Date finished: 27 January 2013

The Prakas requires a request to be made to the Department of Intellectual Property Rights (D/IPR) to check the proposed trade name for all new commercial enterprise (business), association and organization registrations against currently pending and registered marks. This must be done before submitting an application for registration at the Department of Business Registration or other competent authority. The name check is a preventive procedure to avoid disputes over infringement of intellectual property (IP) rights and supports Cambodia's commitments under the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).

The PA also examines an alternative option of providing an online database for the public to self-check the availability of company names before submitting an application for registration. Further options of encouraging private name searches of publicly available data and encouraging applicants to avoid imitation or adaptation of existing and well-known marks/company names have been assessed to be infeasible.

The Prakas proposal involves small additional costs for the private sector to complete the required application form. In exchange, they gain greater certainty that they will not be forced to change their name because an infringement is identified after they have begun operating and made substantial investments. The alternative of self-checking an online public database could potentially be quicker than the government checking procedure proposed by the Prakas, or more time consuming, depending on the skills of the individual. However, the online database would involve substantial development costs and the benefit is considered to be smaller than for the Prakas, due to less reliability of results and no official confirmation of the acceptability of the selected name. Therefore, the Prakas has been assessed to deliver the greatest net benefit. Nevertheless, the Prakas should be reviewed when there is greater ability to make use of the online public database option.

Preliminary Assessment

Prakas on the Registration of Name of Enterprise, Name of Association and Its Protection

Ministry of Commerce

Reference no: 0000013

Date started: 10 December 2012

Date finished: 29-Jan-2013

Contacts:	Name	Phone	Email
Ministry-primary	Mr. MengSongkheang	012 824948	Mengkheang06@yahoo.com
Ministry-backup	Ms. Hang Socheata	097 95 99 992	Hang.socheata@ymail.com
ORIA-primary	Ms. SimRotha	012 948 465	srothakh@yahoo.com
ORIA-backup	Mr. Heng Sophakpangha	016 847 749	Pangha.h@gmail.com

A brief description of the proposal

This Prakas has objectives to define the requirements and procedures to control the proposed names of enterprises before granting permission for using them in company registration, and to provide protection to those names in accordance with the law concerning marks, trade name and acts of unfair competition, law on commercial enterprises, law on commercial rules and register, and law on the amendment of law on commercial rules and register.

This Prakas requires all natural persons and/or legal entities who wish to register a company to apply to have a name check at the Department of Intellectual Property Rights before submitting this name for company registration at the Department of Business Registration.

D/IPR shall review all requested names for commercial enterprises, associations, and organization in comparison with existing pending or registered marks, based on the procedures and formalities as prescribed in the law and Sub-Decree Concerning Marks, Trade Name and Acts of Unfair Competition, and other related regulations. This Prakas imposes a time limit of three working days for D/IPR to conduct its evaluation of the availability of a requested name and issue a written confirmation to allow the use of this name for company, association or organization registration. This confirmation is valid for 7 days and can be extended once subject to a valid reason.

Is this proposal regulatory in nature? Yes

Law	Royal Decree	Sub Decree	Prakas	X	Decision		Circular	Other (describe)
-----	--------------	------------	---------------	---	----------	--	----------	------------------

Does this proposal impact on business? Yes

1. Problem – Why are we making this regulation?

Common themes	Addressed by this regulation	Evidence
Public health and safety	No	
Environmental protection & conservation	No	
Social, gender equity & cultural conservation	No	
Promote competition	May be	Protection of IP rights can encourage greater non-price competition through better products and services.
Collection of information	Yes	Need for better utilization of collected data between concerned departments and for the sake of the public.
Comply with WTO and international agreements	Yes	The WTO TRIPS Agreement requires member countries to have adequate remedies/procedures to prevent infringement of / protect trade name/trade mark/services mark.

If there is any other problem, describe and provide evidence

Businesses are registering names similar or identical to well-known marks and unfairly appropriating the brand value. For example, Sheraton Company/Hotel has been advised to stop using this name as a company name because Sheraton is a well-known mark internationally.

A conflict may occur between the mark owner and the enterprise owner over the use of a name identical or similar to a registered mark or well-known mark. This kind of dispute can be protracted and cost a lot of time and money where there are no preventive remedies/procedures in place.

Consumers/service receivers and the public can be confused about the exact relationship between a company/association name and the mark of a product. This can jeopardize consumer confidence in the quality and reputation of concerned products of the legitimate mark owner who has invested in building the 'brand'.

State how the regulation will improve the situation

- This Prakas provide assurance to avoid duplication of the name used as enterprise/association name and mark of a product or service if the two are not related.
- Provide a preventive measure to avoid the infringement of a trademark/service mark owner's rights through the use of a similar/identical name for company/association registration. Currently, the Ministry of Commerce can only take action after the conflict between two names has occurred.

- Provide effective protection of well-known marks, which are normally the target for use as a company/enterprise name.

2. Objective – What do we want to achieve?

- To effectively control the use of names for company/association registration and to protect the rights of trademark owners and well-known marks owners.
- To facilitate the business registration process.
- To avoid conflicts that will be time and money consuming.

3. Options - Consider all alternatives

3A List any (existing) regulations that are related or similar?

1. The Law Concerning Marks, Trade Names and Acts of Unfair Competition
2. Law on Commercial Enterprises
3. Law on Commercial Rules and Register
4. Law on the Amendment of Law on Commercial Rules and Register

State why these regulations are inadequate?

The above regulations do not clearly define any preventive procedure concerning name checks for company/association registration in relation to pending/registered marks or well-known marks, which Cambodia has an obligation to protect under its commitments to international IP laws/regulations. The Prakas defines a preventive measure to respond to the present situation that many pending/registered marks and well-known marks are used for company/association names in registration.

Alternatives

3B. Feasible alternatives (for impact analysis)

- 1- The proposed Prakas.
- 2- Using name check under company registration procedure (Status quo).
- 3- Provide on line database for public self-checking or database on selected websites.

3C. Alternatives which are theoretically possible, but unlikely to be feasible (no further analysis required, unless the status changes during the RIA process)

- Encourage private consultation and name selection based on available data in public websites and other reliable sources. This option is not feasible as it would be unreasonably time-consuming for applicants to search all possible public sources. In addition, because internet search engines cannot

be relied on to identify 100% of cases, the applicant still could not be certain if a name or mark is already registered or pending registration and, therefore, unavailable.

- Education of applicants to discourage imitation or adaptation of existing names and marks when creating a company/association name. This option is not feasible as self-interest may cause businesses to choose to use a well known trademark or another company name as their company name, because they can gain a commercial benefit from the confusion caused for consumers or trade customers.

4. Preliminary estimate of compliance costs and competition impacts

4.1 Identification of tasks and cost-categories

Description of option	Tasks and cost-categories that may be incurred by the public sector to develop, implement and to enforce the option.	Tasks and cost-categories that may be incurred by the industry to comply with the option.
Option # 1: Prakas	(One off) Establishment of new procedure in D/IPR. (Ongoing) D/IPR checks proposed company, etc. name and advises applicant of approval/rejection. Processing extension requests.	Complete application form for name check procedure.
Option # 2: Status quo	No new tasks.	No new tasks.
Option #3: Online public database for self-checking	(One off) Create database and website. (Ongoing) Web hosting and administration/maintenance of database.	Businesses, etc. need to conduct own online database searches. Where individuals lack skills in using, or access to, IT equipment they may need to employ professional services, e.g. company registration agents.

4-2 Scope of the options

Options (see s 4.1)	Business Sector	No of business	Reference
#1: Proposed Prakas	All business entities, natural persons who wish to register in commercial registration. All association/organizations who wish to use the name to register	All new business registrations (approximately 3600 per year) and new association/	MoC data.

	their identities.	organization registrations	
#2: Existing procedure	As above	As above	As above
#3: Online database	As above	As above	As above

4.3 Estimate the level of compliance cost increases for business & government

BUSINESS	Level of incremental compliance cost	Justification
Proposal	Not-significant	Relatively low cost of compliance for business, as is a simple, one-off application.
Option 2: Status quo	Not-significant	No change in costs.
Option 3: Self-checking online public database	Not-significant	Potentially low costs, but it requires capable staff to check online data and may be more time consuming than using professional check in the government procedure.
GOVT		
Proposal	Not-significant	Low cost. Anticipate around 10 full time equivalent staff.
Option 2	Not-significant	No new costs.
Option 3	Significant	Higher cost, because of costs of developing an online public database and the ongoing requirement for data upload and maintenance, and expenses for web-hosting.

4.4 Estimate the level of benefits

Option	Level of benefit	Reasons
Proposal	Significant	Reliable results to avoid dispute on IP Rights and help to facilitate company registration.

Option 2	Not-significant	Result of name check conducted under this procedure is not reliable to prevent future dispute.
Option 3	Not-significant	Result is not reliable and no proper confirmation on the selected name.

4.4 Is there any competition impact? **NO**

The procedure proposed by the Prakas assists in protecting IP rights from unfair competition and can potentially promote non-price competition to the benefit of consumers through the provision of high quality products and services.

4.5 Is there any gender impact? **NO**

5. Initial consultation

Group	Firms	Method	Summary of views
Businesses	Various firms	No specific consultation, but businesses have volunteered feedback on the existing situation	Businesses have complained that not enough action has been taken to protect existing trademarks and business names and called for further government action.
Consumers		Not consulted	
Govt.	Departments within MoC	Direct interview	The requirements laid down by this Prakas are necessary. It helps to facilitate company registration process and also increase the protection of applied/registered mark and well-known marks in line with international requirement.

6. Conclusion

6-1: Summary of incremental costs and benefits

Option	Costs to the industry	Costs to the public sector	Benefits
Option 1: Prakas	Not-significant	Not-significant	Significant
Option 2: Status quo	Not-significant	Not-significant	Not-significant
Option 3: Self- checking online public database	Not-significant	Significant	Not-significant

6-2 Is a RIS required? NO

A RIS is not required on this proposal because the Assessment shows that benefit is significant and cost is not significant.

6-3: Selected option (*Describe the option*)

The proposed Prakas will provide assurance on the use of name for Company/association registration and also help to avoid future conflict/dispute related to the infringement of IP rights. It requires a name check/clearance to be done at the Department of Intellectual Property Rights before proceeding for company/association registration. This Prakas also imposes a time line for the working process to ensure effectiveness and confirmation of validity to avoid any possible loophole.

Criterion		Reason
Is this the least cost option to industry and community?	Yes	It requires a simple application process.
Does this option offer the greatest benefit?	Yes	It provides greatest benefits in term of preventive measure and effective protection of IP rights in relation to the use of names for company/association registration.

Is this the least risk option to public?	Yes	Through government checking of names the risks of confusion to the public and conflict between businesses are minimized.
--	-----	--

7 – Implementation


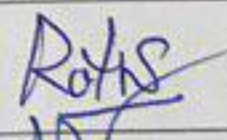
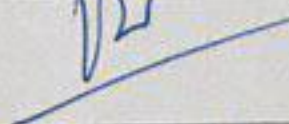
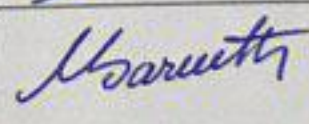
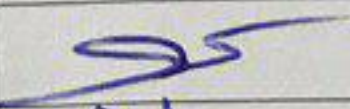

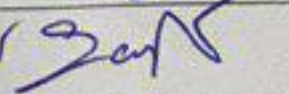
If a regulatory option was selected:

7.1 What measures will be adopted to enhance transparency and good governance during the implementation stage?

There will be a process of regular exchange of data between the two departments in order to increase the effectiveness of the process. Also, the imposition of a time limit for clearance of names and confirmation of validity will help to elevate the necessity of prompt responses and benefits of this process.

7.2 Should this regulation be reviewed post implementation? If so when and how should it be reviewed?

This Prakas is designed to respond to the present situation where many trademarks/well-known marks are being used as company/association names. It is a preventive measure to provide assurance to avoid dispute/conflict on IP rights. Therefore, it will remain as a required procedure used to facilitate company/association registration. It will be reviewed when the ability to use option 3 is available. The MoC would also respond as necessary to any complaints from businesses about the new procedure.

PROCESS	Name	Position	Signature	Date
Prepared by (line ministry)	PENN SOVICHEAT	CHIEF RIA/MOC		29/01/2013
Checked by (ORIA)	SIM Rotha	Member of RIA Unit		4/2/2013
	Eng Ratmsni	chief RIA/RIA		1-2-2013
	Mam Sarith	chief CBA ORIA		01.02.2013
Approved by (ORIA)	Pech Sokha	Manager		01.02.2013
Entered the database	SIM ROTHIA	Member of RIA Unit		04/02/2013
Uploaded on website	Eng Rotha	Member of T-Center		01/02/2013