

The Law Concerning Marks, Trade Names and Acts of Unfair Competition

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NS/RKM/0202/006**

WE

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THAMMIK MOHA REACHEATHIREACH BOROMANEAT BOROMBOPIT PREAH
CHAU KRONG KAMPUCHEA THIPDEY**

- **Seen the Constitution of the Kingdom of Cambodia;**
- **Seen the Royal Decree No. NS/RKT/1198/72 dated November 30, 1998 on the appointment of the Royal Government of Cambodia;**
- **Seen the Royal Decree No.02/NS/94 dated July 20, 1994 promulgating the Law on the Organization and Functioning of the Council of Ministers;**
- **Seen the Royal Decree No. NS/RKM/0196/16 dated January 24, 1996 promulgating the Law on the establishment of the Ministry of Commerce;**
- **Pursuant to the proposals of the Prime Minister of the Royal Government of Cambodia and the Minister of Commerce;**

HEREBY PROMULGATE

The Law concerning Marks, Trade Names and Acts of Unfair Competition which was adopted by the National Assembly on December 6, 2001 during the seventh plenary session of its second legislature and ratified

by the Senate as to its entire form and legality on January 8, 2002 during the sixth plenary session of its first legislature, the whole meaning of which shall be as follows:

Chapter 1

General Provisions

Article 1:

This law has the objective to protect the marks and trade names duly registered in the register of marks in the Kingdom of Cambodia and prevent the acts of unfair competition on the creation, the utilization of marks and trade names.

Article 2:

- a- "mark" means any visible sign capable of distinguishing the goods
(trademark) or services (service mark) of an enterprise;
- b- "collective mark" means any visible sign designated as such in the application for registration and capable of distinguishing the origin or any other common characteristic, including the quality, of goods or services of different enterprises which use the sign under the control of the registered owner of the collective mark;
- c- "trade name" means the name or/ and designation identifying and distinguishing an enterprise.

Article 3:

The exclusive right to a mark, as conferred by this Law, shall be acquired by registration in accordance with the provisions thereof.

Article 4:

A mark cannot be validly registered :

- a- if it is incapable of distinguishing the goods or services of one enterprise from those of other enterprises;
- b- if it is contrary to public order or morality or good custom;
- c- if it is likely to mislead the public or trade circles, in particular as regards the geographical origin of the goods or services concerned or their nature or characteristics;
- d- if it is identical with, or is an imitation of or contains as an element, an armorial bearing, flag and other emblem, a name or abbreviation or initials of the name of, or official sign or hallmark adopted by, any State, intergovernmental organization or organization created by an international convention, unless authorized by the competent authority of that State or organization;
- e- if it is identical with, or confusingly similar to, or constitutes a translation of, a mark or trade name which is well known in the Kingdom of Cambodia for identical or similar goods or services of another enterprise;
- f- if it is identical with, or confusingly similar to, or constitutes a translation of a mark or trade name which is well-known and registered in the Kingdom of Cambodia for goods or services which are not identical or similar to those in respect of which registration is applied for, provided that use of the mark in relation to those goods or services would indicate a connection between those goods or services and the owner of the well-known mark that the interests of the owner of the well-known mark are likely to be damaged by such use; or
- g- if it is identical with a mark belonging to a different proprietor and already on the Register, or with an earlier filing or priority date, in respect of the same goods or services or closely related goods or services, or if it so nearly resembles such a mark as to be likely to

deceive or cause confusion.

Chapter 2

Registration and Rights Conferred by Registration

Article 5:

- a- The applications for registration of a mark, recordal of change of applicant address and endorsement of affidavit of use or non-use shall be filed with the Ministry of Commerce.

The application for registration of mark shall contain a request, a reproduction of the mark and a list of the goods or services for which registration of the mark is requested, listed under the applicable class or classes of the International Classification as mentioned in the annex.

- b- The applications for registration of a mark, recordal of change of address, and endorsement of affidavit of use or non-use shall be subject to the payment of the prescribed application fees as mentioned in the joint declaration of the Ministry of Economy and Finance and the Ministry of Commerce.

Article 6:

Right of priority in the mark registration shall be granted based on the following conditions:

- a- The applicant may require the filing priority by attaching to the application a declaration claiming the priority of an earlier national or regional application filed by the applicant or his predecessor in title in any country member of the Paris Convention.
- b- The effect of the said declaration shall be as provided in the Paris Convention.

Article 7:

The applicant may withdraw the application at any time.

Article 8:

After receiving the application, the registrar shall :

- a- Examine whether the application complies with the requirements of Article 5 and the Regulations pertaining thereto.
- b- Examine and determine whether the mark is a mark as defined in Article 2.(a) and is unregistrable under Article 4 with the exception of item (g) thereof.

Article 9:

- a- Where two or more mark applications relating to identical or similar mark which are to be used on identical or similar goods or services are filed on different dates, the registrar may refuse to register any of them until the rights of those applicants have, upon application in the prescribed manners, been determined by him, or have been settled by agreement in a manner approved by him.
- b- Where two or more mark applications relating to identical or similar marks which are to be used on identical or similar goods or services are filed on the same date, only one applicant, agreed upon after mutual consultation among all the applicants, may obtain a registration for the mark.

Article 10:

- a- Where the Registrar finds that the conditions referred to in Articles 8 and 9 are fulfilled, he shall register the mark, issue to the applicant a certificate of registration, publish a reference to the registration in the Official Gazette of the Ministry of Commerce.
- b- Where the requirements under Article 8 are not fulfilled, the applicant may, within 45 days after receiving written notice from the Registrar, amend his application. In case the Registrar receives no positive response from the applicant during that

- period, he shall refuse the application.
- c- Within 90 days after the date of publishing the Official Gazette, any interested person may, in the prescribed manner, give notice to the Registrar of opposition to the registration of the mark on the grounds that one or more of the requirements of Articles 2.(a), 4 and 5 and the regulations pertaining thereto are not fulfilled.
 - d- The Registrar shall send forthwith a copy of such a notice to the applicant, and, within the prescribed period and in the prescribed manner, the applicant shall send to the Registrar a counter-statement of the grounds on which he relies for his application; if he does not do so, he shall be deemed to have abandoned the registration.
 - e- If the applicant sends a counter-statement, the Registrar shall furnish a copy thereof to the person giving notice of opposition and after hearing the parties, if either or both wish to be heard, and considering the merits of the case, shall decide whether the registered mark is legitimate.

Article 11:

- a- The use of a registered mark, in relation to any goods or services for which it has been registered, by any person other than the registered owner shall require the agreement of the latter.
- b- The registered owner of a mark shall, in addition to any other rights, remedies or actions available to him, have the rights to institute court proceedings against any person who infringes the mark by using without his agreement, the mark as aforesaid or who performs acts which make it likely that infringement will occur. The right shall extend 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 arise in the public.
- c- The rights conferred by registration of a mark shall not extend to

acts in respect of articles which have been put on the market in the Kingdom of Cambodia by the registered owner or with his consent.

Article 12:

- a- The registration of a mark shall be for a period of ten years from the filing date of the application for registration.
- b- The registration of a mark may, upon request, be renewed for consecutive periods of ten years, provided that the registered owner pays the prescribed renewal fee.
- c- On applying for renewal of a trademark registered before this law come into force, in respect of all goods or services in any class, the applicant in terms of the International Classification, shall clearly specify the kinds of goods or services for which protection is desired.
- d- A period of grace of six months shall be allowed for the late renewal of the registration of a mark.

Chapter 3 Invalidation and Removal

Article 13:

- a- Any interested person may request the Ministry of Commerce to invalidate the registration of a mark.
- b- The Ministry of Commerce shall invalidate the registration if the person requesting the invalidation proves that any of the requirements of Articles 2.(a) and 4 is not fulfilled;
- c- Any invalidation of a registration of a mark shall be deemed to have been effective as of the date of registration, and shall be recorded and a reference thereto published as soon as possible.

Article 14:

The Ministry of Commerce has the right to order the cancellation to the registered mark where:

- a- The applicant does not apply for renewal of the registered mark within the period prescribed under Article 12.(b) and (d).
- b- The owner of the registered mark requests the removal.
- c- The owner of the registered mark has not complied, within 90 days, with the conditions or restrictions prescribed under Article 8.
- d- The owner of the registered mark ceases to have an address for service in the Kingdom of Cambodia.
- e- It is convinced upon evidence that the owner of the registered mark is not the legitimate owner.
- f- It is convinced that the registered mark is similar or identical to a well known mark owned by third party.

Article 15:

Any interested person may request the Ministry of Commerce to remove a mark from the Register, in respect of any of the goods or services in respect of which it is registered, on the ground that up to one month prior to filing the request the mark had, after its registration, not been used by the registered owner or a licensee during a continuous period of five years, provided that a mark shall not be removed if it is shown that special circumstances prevented the use of the mark and that there was no intention not to use or to abandon the same in respect of those goods or services.

Chapter 4 Collective Marks

Article 16:

Subject to Articles 17 and 18, Articles 3 to 15 shall apply to collective

marks.

Article 17:

- a- An application for registration of a collective mark shall designate the mark as a collective mark and shall be accompanied by a copy of the regulations governing the use of the collective mark.
- b- The registered owner of a collective mark shall notify the Registrar of any changes made in respect of the regulations referred to in paragraph (a).

Article 18:

In addition to the grounds provided in Article 13.(a) and (b), the Registrar shall invalidate the registration of a collective mark if the person requesting the invalidation proves that only the registered owner uses the mark, or that he uses or permits its use in contravention of the regulations referred to in Article 17.(a) or that he uses or permits its use in a manner liable to deceive trade circles or the public as to the origin or any other common characteristics of the goods or services concerned.

Chapter 5

Licensing of Marks

Article 19:

- a- Any license contract concerning the registration of a mark, or an application therefor, shall provide for effective control by the licensor of the quality of the goods or services of the licensee in connection with which the mark is used. If the license contract does not provide for such quality control or if such quality control is not effectively carried out, the license contract shall not be valid.
- b- The registration of a collective mark, or an application therefor, may not be the subject of a license contract.

Chapter 6

Trade Names

Article 20:

A name or designation may not be used as a trade name if by its nature or the use to which it may be put, is contrary to public order or morality and if, in particular, it is liable to deceive trade circles or the public as to the nature of the enterprise identified by that name.

Article 21:

- a- Notwithstanding any laws or regulations providing for any obligation to register trade names, such names shall be protected, even prior to or without registration, against any unlawful act committed by third parties.
- b- Any subsequent use of the trade name by a third party, whether as a trade name or a mark or collective mark, or any such use of a similar trade name or mark, likely to mislead the public, shall be deemed unlawful.

Chapter 7

Acts of Unfair Competition

Article 22:

Any act of competition contrary to honest practices in industrial, commercial, service matters shall be considered as act of unfair competition.

Article 23:

The following acts, in particular, shall be deemed to constitute acts of unfair competition :

- a- all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial, commercial or service activities of a competitor;
- b- false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial, commercial or service activities of a competitor.
- c- indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity of the goods.

Chapter 8

Infringement and Remedies

Article 24:

Subject to Article 12, an infringement of a registered mark shall consist of the performance of any act referred to in Article 11 in Cambodia by a person other than the owner of the mark and without the agreement of the latter.

Article 25:

An infringement of a registered well-known Mark shall consist of the use of a sign identical with or confusingly similar to the well-known mark without the agreement of the owner of the well-known mark provided that the sign is used :

- a- in relation to goods and services identical with or similar to the goods and services for which the well-known mark has been registered, or
- b- in relation to goods and services which are not identical with or similar to those in respect of which the well-known mark has been

registered and the use of the sign in relation to these goods or services would indicate a connection between those goods and services and the owner of the well-known mark and that the interests of the owner of the well known mark are likely to be damaged by such use.

Article 26:

An infringement of an unregistered well-known mark shall consist of the use of a sign identical with or confusingly similar to the well-known mark without the agreement of the owner of the well-known mark provided that the sign is used in relation to goods or services identical with or similar to the goods or services for which the mark is well-known.

Article 27:

On the request of the owner of the mark or of a licensee if he has requested the owner of the mark to institute court proceedings for specific relief and the owner of the mark has refused or failed to do so, the court may grant an injunction to prevent infringement, an imminent infringement, or an unlawful act referred to Articles 21, 22, 23, award damages and grant any other remedy provided for in the general law.

Article 28:

On the request of any competent authority or any interested person, association or syndicate, in particular of producers, manufacturers or traders, the court may grant the same relief in case of an act of unfair competition referred to in Articles 22 and 23.

Chapter 9

Provisional Measures

Article 29:

On the request of the applicant, the Court shall order prompt and

effective provisional measures to prevent an infringement, an imminent infringement or to preserve relevant evidence in regard to the alleged infringement.

Article 30:

Where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder or where there is a demonstrable risk or evidence being destroyed, the Court may order provisional measures provided that the applicant has furnished :

- a- any reasonably available evidence satisfying the Court with a sufficient degree that the applicant is the right holder and that the applicant's rights are being infringed or that such infringement is imminent, and
- b- the required security or equivalent assurance sufficient to protect the defendant and to prevent abuse. This required security should be under the determination of the court.

Article 31:

Where a provisional measure has been ordered, the defendant shall be given notice of the decision at the time of the execution of the measures.

Article 32:

Where provisional measures have been ordered under Article 30 and 31, the defendant may file a request for review with the Court within 15 working days from the notification of the decision. In the review proceedings, the Court shall give the parties concerned an opportunity of being heard and shall review and confirm, modify or revoke its decision within a reasonable period, as specified by the law.

Article 33:

Where the applicant does not initiate proceedings leading to a decision

on the merits of the case within 20 working days, from the notification of the decision ordering provisional measures or within any other reasonable period determined by the Court in its decision, the Court shall revoke the provisional measures upon the request of the defendant.

Article 34:

Where the provisional measures are revoked or where the Court decides on the merits of the case in proceedings under Article 33 initiated by the applicant that there has been no infringement or threat of an infringement, the Court shall order the applicant upon the request of the defendant, to provide the defendant appropriate compensation for any injury caused by the execution of the provisional measures.

Chapter 10

Border Measures

Article 35:

The owner of any registered trademark may make application to the customs or the competent authorities or court to suspend clearance of goods suspected of being counterfeit by proving that he is the owner of the registered mark.

Article 36:

Any application under Article 35 should be presented in writing and should be accompanied by:

- a- an extract from the register of marks;
- b- a statement of the grounds for the application, and in particular the prima facie evidence showing that such trademark goods are counterfeit;
- c- a complete description of the goods on or in connection with which the trademark is used, together, where appropriate (or requested),

- with a sample of the bona fide product;
- d- the name and address of the applicant and of his representative (alternatively: full details of the applicant, as prescribed);
 - e- an authorization from the owner of the registered trademark, where the application is filed by an authorized representative, and
 - f- the prescribed fee in accordance with the determination of the Ministry of Economy and Finance.

Article 37:

Within 10 working days of the receipt of an application under Article 35, the customs or competent authorities shall notify the applicant whether the application has been granted or rejected or reserved for further consideration.

Article 38:

Customs or other competent authorities, specified by Sub-Decree, shall have authority to require the applicant to provide a security or equivalent assurance sufficient to protect the importer, consignee, exporter or owner of the goods and the competent authorities. Such security or equivalent assurance shall be determined in a manner which does not unreasonably deter recourse to this procedure.

Article 39:

Upon granting an application under Article 35, the customs shall suspend clearance of the goods referred to in the application. The suspension shall

remain in force for the initial period, and any extension thereof which is not more than 10 working days.

The customs shall immediately inform the importer and the applicant of the suspension of the clearance of the goods, and shall state the reasons of such suspension. The customs shall also notify the importer of the name and address of the applicant.

Article 40:

If, within a period not exceeding 10 working days after the applicant has been served notice of the suspension, the customs authorities have not been informed that proceeding leading to a decision on the merits of the case have been initiated by a party other than the defendant, or that the duly empowered authority has taken provisional measures prolonging the suspension of the release of the goods, the goods shall be released, provided that all other conditions for importation or exportation have been complied with; in appropriate cases, this time-limit may be extended by another 10 working days. If proceedings to a decision on the merits of the case have been initiated, a review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable period, whether these measures shall be modified, revoked or confirmed.

Article 41:

The relevant authorities shall have the authority to order an applicant to pay the owner, the importer, the exporter and the consignee of the goods appropriate compensation for injury caused to them through the wrongful detention of goods or through the detention of goods released pursuant to Article 39. In case of any party does not agree with this decision, that party has the right to file an appeal before the court.

Article 42:

The customs or other competent authorities may allow the right holder, importer or exporter to examine the goods, the clearance of which has been suspended in accordance with Article 39, and to remove samples for examination, testing and analysis, to determine whether the goods are counterfeit.

Where a positive determination has been made that the goods are counterfeit, the customs authorities may inform the right holder of the

names and addresses of the exporter, the importer and the consignee and of the quantity of goods in question. Without prejudice to the protection of confidential information, the customs or other competent authorities may, on request, provide the right holder with copies of documents lodged in respect of such goods or with any available information or documents relating to any previous importation or exportation of similar goods by the same importer or exporter.

Article 43:

The customs may, on its own initiative, suspend the clearance of goods in respect of which it has acquired prima facie evidence that importation of counterfeit trademark goods is taking place or is imminent.

Article 44:

The customs shall immediately inform the right holder of the place and date of the suspension of customs clearance and they may at any time seek from the right holder any information that may assist them to exercise these powers.

Article 45:

With respect to acts performed under Article 42, both public authorities and officials shall be exempted from liability to appropriate remedial measures where those actions are taken or intended in good faith.

Article 46:

The customs and competent authorities, through the decision of the court, shall have the authority to order the destruction of infringing goods. The customs shall not allow the re-exportation of counterfeit trademark goods or subject them to different customs procedure.

Article 47:

Counterfeit trademark goods of a non-commercial nature contained in travelers' personal luggage may be excluded from the application of this Law.

Chapter 11

Change in Ownership

Article 48:

Any change in the ownership of the registration of a mark or collective mark, shall be in writing and shall, at the request of any interested party, to the Registrar, be recorded and, published by the Registrar. Such change shall have no effect against third parties until such recording is effected.

Article 49:

Any change in the ownership of the registration of a collective mark, shall require previous approval of the Minister of Commerce.

Article 50:

Any change in the ownership of a trade name must be made with the transfer of the enterprise or part thereof identified by that name and shall be in writing.

Article 51:

Any change in ownership of the registration of a mark or a collective mark shall, however, be invalid if it is likely to deceive or cause confusion, particularly in regard to the nature, origin, manufacturing process, characteristics, or suitability for their purpose, of the goods or services in relation to which the mark or collective mark is intended to be used or is being used.

Article 52

Any license contract concerning a registered mark, or an application therefor, shall be submitted to the Registrar who shall keep its contents confidential but shall record it and publish a reference thereto. The license contract shall have no effect against third parties until such recording is effected.

Chapter 12
Maintenance of the Register of Marks

Article 53:

The Ministry of Commerce shall be entrusted with all functions relating to the procedure for the registration of marks and for the administration of registered marks as specified in this Law and the Regulations.

Article 54:

The Ministry of Commerce is the competent institution to maintain a Register for Marks. Collective marks shall be registered in a special section of the Register of Marks. All the recordings provided for in this Law shall be effected in the said Register.

The Register may be consulted by any person, and any person may obtain extracts therefrom, under the conditions prescribed in Regulations.

Article 55:

The Ministry of Commerce shall publish in the Official Gazette all the Registrations, Renewals, Refusals, Removal of Marks from the Register and other works as indicated in the Sub-Decree.

Article 56:

The Registrar may, subject to any provision in the Regulations, correct any error in any recording effected pursuant to this Law or the Regulations.

If the Registrar is satisfied that the circumstances justify it, he may, upon receiving a written request, extend the time for doing any act or taking any proceeding under this Law and the Regulations, upon notice to the parties concerned and upon such terms as he may direct. The extension may be granted though the time for doing the act or taking the proceeding has expired.

Article 57:

The Registrar shall give any party to a proceeding before him an opportunity of being heard before exercising adversely to that party any discretionary power vested in him by this Law or the Regulations.

Chapter 13

Agents

Article 58:

Where an applicant's permanent residence or principal place of business is outside the Kingdom of Cambodia, he shall be represented by an agent residing and practicing in the Kingdom of Cambodia.

Article 59:

The agent acting as representative in the application of registration of marks in the Kingdom of Cambodia shall have sufficient qualification as specified in the Declaration of the Ministry of Commerce.

Chapter 14

Application of International Treaties and Interpretation

Article 60:

The provisions of any international treaties in respect of industrial property to which the Kingdom of Cambodia is a party shall apply to matters dealt with by this Law and, in case of conflict with provisions of this Law, shall prevail over the latter.

Article 61:

In this Law:

"International Classification" means the classification according to the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, of June 15, 1957, as last revised;

"Paris Convention" means the Convention for the Protection of Industrial Property of March 20, 1883, signed in Paris, as last revised;

"Priority date" means the date of the earlier application that serves as the basis for the right of priority provided for in the Paris Convention;

"Regulations" mean Circulars or Declarations issued by the Ministry of Commerce;

"Counterfeit trademark goods" means any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation.

Chapter 15

Penalties

Article 62:

Any decision taken by the Ministry of Commerce may be the subject of an appeal by any interested party before the Courts and such appeal shall be filed within three months of the date of the decision.

Article 63:

Whoever makes a 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.

Article 64:

Whoever counterfeits a trademark, service mark, collective mark or trade name registered under Article 11.(b), 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.

Article 65:

Whoever imitates 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 enterprise as under Article 23, shall be liable to a fine of from five to ten million riels, or to imprisonment from one month to one year, or both.

Article 66:

Whoever willfully imports, sells, offers for sale or has for the purpose of sale goods bearing a counterfeit mark, under Article 64, shall be liable to the penalties provided in that Article.

Whoever willfully import, sells, offers for sale or has for the purpose of sale goods bearing an imitated mark under Article 65, shall be liable to the penalties provided in that Article.

Article 67:

The maximum penalty for a repeated offense under Articles 64 and 65 of this Law, shall be doubled in both of fine and imprisonment as stipulated in those Articles respectively.

Article 68:

In the event an offender liable under this Law 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 offence by the juristic person.

Article 69:

All goods which are imported, sold, offered for sale or had for the purpose of sale in violation of this Law, as stipulated in Article 66, shall be confiscated or/and destroyed, according to the decision of the court, whether or not anyone has been convicted of the offence.

Article 70:

Whoever has exploited or received anything in kind or in cash by using the influence of his/her position, shall be considered as committing offense and shall be punished in accordance with the law in force.

Chapter 16

Final Provisions

Article 71:

Trademarks thus registered shall be due for renewal within the same period as under Articles 11 and 12 and, upon renewal, shall be reclassified in accordance with the International Classification.

Notwithstanding the repeal of existing regulations, trademarks recorded thereunder shall remain in force but shall, subject to paragraph 1 of this Article, be deemed to have been registered under this Law.

Article 72:

Any Provisions that contradict this Law shall be considered as null and void.

Phnom Penh, February 07, 2002

Royal Signature
Norodom Sihanouk

Has informed to
His Royal Highness for Signature
Prime Minister
Signature
Hun Sen

Has informed to
Samdech Prime Minister
Minister of Commerce
Signature
Cham Prasidh

Commercial Laws & Intellectual

Property Rights Laws