

Judicial Symposium on Intellectual Property 2021 (JSIP 2021)

Mr. Acksonesinh VIXAYALAI
**Judge, Criminal Chamber, People's Supreme
Court, Lao PDR**

Answer 1 (Q1)

- XBC can rise regarding trademark infringement; XBC can get the compensation for damages against the sale of the defendant's products

Answer 2 (Q2)

- YBCM can rise regarding trademark infringement; in case of non-similarity of the trademark

Answer 3 (Q3)

- Under the IP law of Lao PDR, the plaintiff (XBC) can raise the defendant (YBCM) regarding trademark infringement in to the people's court (commercial chamber) and the court will judge this case is the trademark infringement case; the plaintiff has the right to get the compensation for damages

Answer 3 (Q3) Con't

- 1).the main factors is the mark “ABCM” and the produce is in the same type, it can make the confuse for the client**
- 2). Yes, is the similarity regarding designated goods, the main factors was taken into account is the similarity of the alphabet of the “ABCM”**

Answer 4 (Q4)

- Under Lao Laws and Regulations were not determined on two different stages consideration of infringement and damages. That mean, the Court will consider of infringement and damages in the same time, if the Court can prove the infringers was infringed of trademark's owners, the Court will making the decision to infringers for payment of damages to trademark's owners.

Answer 5 (Q5)

- According to article 138 of the Intellectual Property Law of Lao PDR which is amended in 2017 determined that “the people’s Court will set damage award in an amount sufficient to compensate the party making the claim for its losses and to deprive the infringer or other violator of any profit from its unlawful act. The People’s Court may order recovery of profits and payment of damages even where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity”. Without that no other law and regulation determined of damage for trademark infringement calculated.

Answer 6 (Q6)

- Under the Intellectual Property Law of Lao PDR which is amended in 2017, article 65 determined that (1) the trademark has not been used for a consecutive period of five years (2) the trademark has been used merely token use or such use not been in good faith by the owner and, the last paragraph of (2) determined that “ A trademark is used if it is used on or in connection with the goods or services of the trademark for which it is registered, by the owner or by another with authorization of the owner and subject to the owner’s control. So, according to above, the decision has not defected because the trademark’s owner not actually been used the trademark registered within the period which is determined by Law.

Answer 7 (Q7)

- **The Law on Intellectual Property of Lao PDR which is amended in 2017, article 143 determined that: “The defendant may request the People’s Court to order a party as whose request measure were taken and who has abused enforcement procedures to provide to a party with the legal action, which may include attorney’s fees for the injury suffered because of such abuse”.**

In my opinion, if this case were filed in my country, I would like to give the suggestion to the parties following the stage of litigation. For example: The Parties shall Reconciliation, Mediation, Administration remedies, Remedy through Economic Dispute Resolution Committee before going to the Judicial Action to People’s Courts or International Dispute Settlement.

Answer 8 (Q8)

- Since 1990, Lao PDR has been used the Decrees and Regulations to resolving of the Intellectual Property disputes. Until 2007, the first Law on Intellectual Property law of Lao PDR was adopted and enacted. Then in 2011 the Intellectual Property Law is amended (1th amended), and in 2017 the Intellectual Property Law is amended again (2nd amended). The last Law on Intellectual Property of Lao is composed of: Industrial Property, New Plant Variety and Copyright and Related rights.

Answer 8 (Q8) Con't

- Industrial Property is composed of: (1) Patents, Utility patents, (2) Industrial Designs, (3) Trademarks, (4) Trade name, (5) Layout-Design of integrated Circuits, (6) Geographical Indications and (7) Trade Secrets.

- New Plant Variety is composed of: (1) Plant variety that exists generally and is derived from improvement to become a new plant variety, and (2) Plant variety that is discovered in the nature and then is developed to become a new plant variety.

- Copyright and Related Rights include: (1) Copyrights to the works in artistic domain, literary domain, and scientific domain including computer programs, and (2) Related rights to works of performers, producers of phonograms and broadcasting organization.

- Law on Intellectual Property in 2017 of Lao PDR, is covered and matched with International Agreements, Protocols and Conventions which the Lao PDR is a party.

THANK YOU