

Decision on Trademarks and Trade Names

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LAO PEOPLE'S DEMOCRATIC REPUBLIC
Peace Independence Democracy Unity Prosperity

Ministry of Science and Technology

No.
Vientiane,

/MOST
, 2012

Decision
on
Trademarks and Trade Names

- Based on Law No. 01/NA dated December 20, 2011 on Intellectual Property;
- Based on requirements for interpretation of this Law; and
- Based on the proposal of the Intellectual Property Department;

The Minister of Science and Technology issues the following Decision:

SECTION I
General Provisions

Article 1. Objective.

This Decision implements the Law on Intellectual Property and provides procedures relating to trademarks and geographical indications to uniformly set up the rules relating to the filing of applications, implementation, and enforcement for trademarks throughout the Lao People's Democratic Republic.

Article 2. Competent Authority.

1. The Department of Intellectual Property in the Ministry of Science and Technology shall be the competent authority for determining whether an application for protection of a trademark meets the legal requirements set forth in the Intellectual Property Law and this Decision. The Department shall have such other duties as may be provided by Law or Decision.
2. The Department shall maintain the record book on trademarks. Records defined in these Decisions shall be recorded in those record books.
3. The Department shall publish in the official industrial property gazette information as defined in this Decision. An official industrial property gazette may be established separately for each

type of intellectual property if necessary.

Article 3. Definitions.

In addition to definitions defined in Article 3 of the Law on Intellectual Property No. 01/NA dated December 20, 2011, for purposes of the Intellectual Property Law and this Decision, the following terms shall have the meanings given below, unless the context otherwise requires:

Applicant means a person, group of persons, or legal entity that has applied to register a trademark, or such person's successor in interest, or for purposes of an objection or cancellation, the person, group of persons, or legal entity that has filed the objection or applied for the cancellation, or such person's successor in interest.

Application means a request to register a trademark, or for purposes of an objection or cancellation, a request to cancel or modify all or part of a trademark registration.

Assign means to transfer all rights in an item of intellectual property to another person.

Assignment means the legal document by which an assignment is made.

Cancellation is a proceeding under which any interested person may request that a trademark registration be canceled in whole or in part.

Class means, in the context of trademarks, the class of the Nice Classification.

Commercial purpose, as used in the Intellectual Property Law, means that an act is carried out to receive money or any other thing of value or that an act is carried out in connection with an undertaking to increase the value or profitability of the undertaking.

Court means,

- 1) for purposes of filing a civil action to enforce intellectual property rights, the Commercial Chamber of a regional People's Court, provincial People's Court, or capital People's Court, where the right holder of the intellectual property rights may file in accordance with the Civil Procedure Law.
- 2) for purposes of appealing any decision related to enforcement of intellectual property rights, the relevant Appeals Court or People's Supreme Court where an appeal has been filed in accordance with the Civil Procedure Law.
- 3) for purposes of filing an administrative appeal from a holding of the Industrial Property Department or one of its units, the Commercial Chamber of the capital People's Court.

Department means the Department of Intellectual Property of the Ministry of Science and Technology.

Director General refers to the Director General of the Department of Intellectual Property.

Disclaim or **disclaimer** means a statement that applicant does not claim rights to a portion of a mark except in the form shown in the application or registration.

Divide or **division**, in the context of an action with regard to an application, means a procedure by which the applicant converts a single application into two or more applications, each of which relates to a portion of the original application. A **divisional application** is an application that results from such procedure.

Effective filing date means, for purposes of examination or determining which party is entitled to rights, the earlier of an application's actual filing date in the Lao PDR; its priority date or date of temporary protection based on the display of goods at an internationally recognized exhibition, as applicable; or where an application is a divisional application or is otherwise entitled to the filing date of an earlier application, such filing date, priority date, or date of exhibition of such earlier application, as applicable.

The terms **holder** or **owner, or rights holder** or **rights owner**, are used interchangeably to refer to the person who has legal rights to a trademark, geographical indication, or other intellectual property, or to an application therefor, or who is legally entitled to rights in the intellectual property, regardless of whether such intellectual property has been registered or subject to other legal proceedings before the Department.

Individual means a natural person.

Legal entity or organization means an entity of a type that is legally recognized to transact business in the place of its origin and includes a company, state or governmental entity, association or collective organization, or other legal person.

International application means, for trademarks, an international application to register a trademark filed under an international agreement that provides for such international filing and of which agreement the Lao PDR is a member.

License means an agreement granting permission to carry out one of the exclusive rights of an intellectual property owner and includes an agreement not to bring legal action against the person receiving the license for such acts provided they are consistent with the terms of the agreement.

Licensee means the person or persons to whom the intellectual property owner grants a license.

Licensor means a person who grants a license.

Trademark refers to a mark for use on goods or in connection with. The term **mark** refers to any type of mark including a trademark, collective mark, or certification mark.

Minister refers to the Minister of Science and Technology.

Objection is a proceeding under which any interested person may raise objections to the registration of a published trademark.

Paris Convention means the Paris Convention for the Protection of Industrial Property.

Pending and **pendency** refer to the period between the filing of an application or other proceeding and the registration, abandonment, or other final action thereon.

Power of attorney means a written document by which a principal authorizes one or more person to act on his or her behalf.

Practitioner means an attorney or agent who regularly engages in practice before the Department.

Principal means a person who executes a power of attorney designating one or more persons to act on his or her behalf in connection with an application or other proceedings before the Department. .

Prosecution refers to all acts intended to lead to registration.

Regular national filing means any filing that is adequate to establish the date on which an application was filed in the country concerned, whatever may be the subsequent fate of the application.

Related as used in the Intellectual Property Law means that the use of a mark in connection with the goods or services of one undertaking would tend to indicate a connection with the goods and services of another undertaking.

Representation Address means the correspondence address for all practitioners authorized in a single power of attorney.

Representative means an attorney or agent who is authorized to represent an applicant or intellectual property owner or other person with regard to one or more proceedings before the Department.

Restrict or **restriction** in the context of an application refers to an action limiting the subject matter of the application.

Revoke means, in connection with a Power of Attorney, the cancellation by the principal of the authority previously given to a practitioner or other person to act on behalf of the principal.

Article 4. Protection Available; International Agreements.

1. Protection for any trademark shall be available in accordance with the Intellectual Property Law and procedures set forth in this Decision.

2. In case of any conflict between the provisions of this Decision and those of any treaty or international agreement to which the Lao PDR is a party or has mutually signed, the provisions of the international treaties or agreements shall be implemented.

3. Requirements in connection with international applications shall be as provided in this Decision except as otherwise provided in an international agreement of which the Lao PDR is a member.

Article 5. Persons Eligible for Protection.

1. The persons described in Article 26 of the Intellectual Property Law are eligible to obtain protection for trademarks, to file an application for registration for a trademark, to receive a registration certificate and to renew the same, to enforce their rights administratively or through the courts, and to undertake any other actions pursuant to the Law on Intellectual Property or this Decision.

2. An applicant without business premises or residence in the Lao PDR shall appoint a representative in the Lao PDR in accordance with the requirements of this Decision.

Article 6. Language.

1. The language requirements of Article 37 of the Intellectual Property Law shall be deemed to have been complied with for purposes of an application where the application is made on the relevant form, provided that documents that accompany the application form must satisfy the language requirements of the Intellectual Property Law. Application forms for trademarks are available in the Lao and English languages. The Department may apply the same provision to any other standard form.

2. Any material accompanying an application may be filed in either the Lao language or in the English language. Such filing will be sufficient to establish a filing date or date of submission for the application or other materials, provided however, that for any application or document filed or submitted in English, the applicant must, within 90 days of such filing or submission, supply a translation into the Lao language. Such translation must be certified by the translator, or by another person who has personally reviewed the translation, to be a true and correct translation of the translated document.

3. Any other correspondence with the Department and accompanying material shall be in the Lao language or the English language, provided that where correspondence is submitted in the English language, a translation into the Lao language shall be submitted within 90 days of the submission, or not less than 30 days from notification by the Department to supply a Lao translation, whichever period is longer. For correspondence and documents submitted under this

paragraph, the Department shall have the authority to grant extensions of time in appropriate circumstances and on such conditions as may be determined by the Department.

5. Where translation would lead to confusion or be unhelpful, the Department may waive the translation with regard to specific portions of a document, such as names of persons, organizations, trade names or trademarks, technical terms, or street names that would not be readily recognizable in translation.

SECTION II

Application Procedures

Article 7. Initial Procedures; Filing Date.

1. Any person who wishes to protect a trademark in the Lao PDR, and who is eligible for protection as provided under Article 5 of this Decision, may file an application for registration as provided in this Decision.

2. An application is filed by presenting to the Department a copy of the application on the prescribed form, together with any required documents. The Department will conduct an initial review of the papers submitted to determine the nature of the application being submitted, that is, whether it appears to relate to a trademark or geographical indication, and whether the papers contain all of the documents required for the relevant application.

3. If the Department finds that the papers contain all of the required documents, or that it meets the minimum requirements for obtaining a filing date, as described in this Decision, the Department will provisionally accept the application for filing, issue a filing number, and provide the applicant or the applicant's representative with a filing receipt that shows the name and address of the applicant and applicant's representative if applicable; the nature of the application, that is, whether it is an application to register a trademark or geographical indication; a brief indication to identify the trademark to which the receipt relates; date of submission; and the filing number.

4. Where the procedures of paragraph 2 have been completed, the applicant or applicant's representative shall present the receipt to the Finance Division under the Cabinet of the Ministry of Science and Technology and pay the applicable fee in accordance with the Presidential Decree on Fees. The Finance Division shall accept the fee and issue a receipt showing payment of the fee, the date and amount paid, and other information sufficient to associate the fee payment with the application and its filing number. It is the responsibility of the applicant to ensure that the proper fees are paid, as no refunds will be made for an applicant where filing procedures are not completed or where the applicant mistakenly pays a fee in an incorrect amount.

5. If the Department finds that some of the minimum elements required for a filing date are missing, the Department will immediately notify the applicant or applicant's representative in writing to supply the missing items. The procedures of paragraph 2 of this article will be suspended until applicant submits the missing items. When such items are submitted, the

Department will issue the receipt provided in paragraph 2 of this article as of the date that it receives all of the items that constitute the minimum requirements for a filing date.

If applicant fails to submit the missing items within 90 days, the application will be considered to be abandoned, without prejudice to applicant's right to re-file.

6. Once fees have been paid in accordance with paragraph 3 of this article, the applicant or applicant's representative shall present the fee receipt from the Finance Division to the Department, which shall accord a filing date to the application.

7. An application that is accorded a filing date and application number must also meet other requirements prescribed by Intellectual Property Law and this Decision. It is the applicant's responsibility to ensure that an application complies with all requirements for protection.

Article 8. General Requirements Relating to Applications.

1. To be registered, the applicant, the application, and its subject matter must satisfy all requirements of the Intellectual Property Law and of this Decision.

2. The Department will not issue advisory opinions regarding the likelihood that a particular trademark, geographical indication, or application therefor will satisfy the requirements of the Intellectual Property Law and this Decision, and the Department will not provide legal advice to applicants. However, the Department will perform a search of previously registered trademarks upon request and subject to the payment of the relevant fee. An applicant who wishes to obtain information relevant to the likelihood of being able to obtain a registration is advised to obtain a search prior to filing and to consult an attorney or other representative regarding other issues relevant to registrability.

3. As provided in Article 28 of the Intellectual Property Law, where more than one application is filed for the same subject matter, the trademark or geographical indication registration, as applicable, shall be awarded on the basis of the application with the earliest effective filing date, provided such application otherwise satisfies the requirements for the protection requested.

4. Where more than one application is filed for the same or a similar mark and the same, similar, or related goods, the Department will continue procedures for all such applications until it is determined whether the application with the earliest effective filing date will be registered, at which time the Department will issue a refusal to the application or applications with the later effective filing date on the basis of the registration of the application with the earlier effective filing date. If procedures for the application with the later effective filing date are completed before that time and it appears that such application is otherwise entitled to registration, the Department shall suspend procedures on such application until procedures are completed for the application with the earlier effective filing date.

5. Where the subject matter of an application is the same as a well-known mark or geographical indication, or is otherwise evaluated in relation to a well-known mark or geographical indication, rights shall be determined, as applicable, with reference to whether the mark was well-known at

the effective filing date of the application, or where the geographical indication was protected in its country of origin and otherwise entitled to protection in the Lao PDR at the effective filing date of the Lao application, because it is registered or meets the requirements of the Law and is perceived as a geographical indication by relevant sector in Lao PDR.

Article 9. Examination for Formal Requirements.

1. An application that has been received as described in Article 7 of this Decision and for which the fee has been paid shall be examined to determine whether it is complete and complies with all formal requirements for the application as set forth in Article 15 of this Decision.
2. If the application is not complete or does not satisfy the formal requirements as described herein, the Department will notify the applicant of any requirements not satisfied and the period of time in which the applicant must meet the requirements.
3. If formal requirements are supplied to the Department within the time provided, the application will be accepted for substantive examination. If formal requirements are not satisfied within 60 days, the applicant will be advised that the application is considered to be abandoned.

Article 10. Substantive Examination.

1. An application to register a trademark that has satisfied formal requirements shall be subject to a substantive examination to determine whether the application meets the requirements for protection set forth in the Intellectual Property Law and in this Decision.
2. The Department shall conduct a substantive evaluation of the application in accordance with the relevant provisions of the Intellectual Property Law and this Decision and shall notify the applicant of any conditions, objections, or grounds for refusal of part or all of the rights for which the applicant has applied, or any conditions or restrictions thereon. The applicant will be given an opportunity to respond and, subject to any limitations provided in this Decision, to amend the application or provide supplementary information to respond to the communications from the Department. The Department may require additional information as needed. If the applicant fails to comply with this provision within 60 days from such notification, the application will be deemed to be abandoned, provided however that the Department may extend the time for complying with this provision for good cause shown by the applicant.
3. The time for responding to any communication from the Department is 60 days from the date such communication is sent unless otherwise provided. If an applicant fails to respond satisfactorily to any requirement or ground for refusal within the stated time for action, the Department will take final action on the application 90 days from the date of the requirement or other communication unless the applicant files an appeal within this period.

Article 11. Amendment During Examination.

As provided in Article 42 of the Intellectual Property Law, at any time an application is pending with the Department but before the Department has granted registration thereon, and before the

abandonment, final rejection, or other termination of proceedings on the application, the applicant may amend the application without fee, provided that any such amendment shall not introduce new goods or services to which the application applies, expand the number of classes to which the application applies, or change the essential nature of the trademark or that is the subject of the application.

Article 12. Registration; Publication.

1. Where the Department finds that an application complies with the requirements for protection as provided in the Intellectual Property Law and this Decision, the Department shall register the trademark, record the relevant information in the official industrial property gazette, and publish the application as provided in Article 44 of the Intellectual Property Law.

2. Where an application has been assigned, an applicant may, subject to paying the applicable fees and providing the relevant information, request that the publication include the assignee's name and address.

3. Where a publication contains a mistake, an applicant may request republication with corrected information, without additional fee, provided that such request must be filed within two months from the date of the earlier publication.

Article 13. Objection and Cancellation.

Any interested party may file an objection or cancellation proceeding against a registered trademark as provided in Article 44 of the Intellectual Property Law or may file a cancellation action with the Courts pursuant to Article 136 of the Intellectual Property Law. Such actions shall be consistent with Section VIII of this Decision. An objection or cancellation brought before the Department must be filed within five years from the date of publication in the official industrial property gazette, or such longer time as may be provided under an international agreement to which the Lao PDR is a party. A cancellation proceeding filed with the Court may be brought at any time during the term of the trademark registration or may be raised thereafter during any proceeding relating to the enforcement of rights under the trademark.

SECTION III Application Requirements

Article 14. Minimum Requirements for Filing Date.

1. The Department will accept an application for filing as provided in Article 7 of this Decision where the application contains, at a minimum, the name, address and nationality of the applicant; a drawing or photograph or specimen that appears to be a mark. The Department will provide a receipt in such case and will assign a filing date to the application when the fee for such application is paid.

2. If it appears that the application does not include an indication of the goods or services to which the trademark relates, the Department will inform the applicant that a trademark can only be registered with regard to specific goods or services and allow the applicant to amend its documents before issuing a receipt for the application allowing the applicant to pay fees therefor. While the Department will accept and assign a filing date for an application that does not specify one or more goods or services to which the mark applies, such an omission is a fatal defect in the application that cannot be corrected after the filing date is assigned and for which the applicant will not be able to obtain a refund of its payment of fees.

3. Where the application refers to more than one class of goods or services, a separate filing fee shall be paid for each class. No application will be assigned a filing date except upon showing that the fee has been paid for at least one class of goods or services.

4. Where the application is later found to include goods or services in more than one class, or in more classes than those for which the fee has been paid, the Department shall promptly notify the applicant to take one of the following actions:

- 1) Restrict the application to include only the number of classes for which the fee has been paid;
- 2) Pay the additional application fee or fees within sixty days of such notice; or
- 3) Divide the application and pay the relevant fees as provided in Article 26 of this Decision.

Where an applicant fails to take such action within the time set by the Department, the application will be considered to be abandoned.

3. While a power of attorney is not one of the minimum requirements for obtaining a filing date, the Department recommends that a power of attorney or copy of the power of attorney be filed when the application is submitted if such power of attorney is available since the applicant risks the possibility of losing rights to the mark if representation is mandatory under Article 26 of the Intellectual Property Law and the power of attorney is not timely submitted as provided in Section XI of this Decision.

Article 15. Application Requirements.

The application shall include the items enumerated in Article 33 of the Intellectual Property Law and other information as set forth below, in substantially the order shown below:

- 1) Application on the form provided, with a clear drawing of the mark affixed thereto, together with a receipt for payment of fees.
- 2) If not provided on the application form, the name, nationality and residence, if any, of an applicant who is a natural person, or of all such persons, if more than one, and for a legal entity, the country of incorporation and place where such entity has a real and effective industrial presence, if any; telephone and facsimile numbers and information for electronic communication with the applicant and the applicant's representative, to the extent such items are available.

- 3) If required, a brief description of the mark as described in Article 17 of this Decision.
- 4) Statement of the goods or services in connection with which the applicant uses or in good faith intends to use the mark, grouped according to the applicable class, as described in Articles 18 and 19 of this Decision.
- 5) Class or classes of goods or services pertaining to the mark, as described in Article 19 of this Decision.
- 6) If the application relates to a collective or certification mark, a statement of the manner in which the mark is used or intended to be used and the manner in which applicant exercises or will exercise control over the mark, as described in Articles 20 and 21 of this Decision.
- 7) Signature of the applicant or applicant's representative.
- 8) An electronic copy of the documents submitted for filing in a standard format that is accessible by the Department, provided, however, that the Department may waive this requirement for an applicant who is an individual or business with fewer than 10 employees. The Department may, from time to time, issue a Notice regarding acceptable electronic format for such documents.

Article 16. Drawing Requirements.

1. The application shall include a clear drawing of the mark. The drawing must show only one mark and should not contain any elements that are not part of the mark to be registered, such as background features or registration symbols.
2. Where a mark does not include design elements and where no particular font style, size, or color is associated with the mark, the applicant may submit a standard character drawing showing the mark in black and white and if desired or if required by the Department, a statement that the mark is in standard characters.
3. Where color is a feature of the mark, the drawing must indicate the color or colors and where they appear on the mark and state that the color or colors are a feature of the mark.
4. Where a mark has three-dimensional features, the drawing must depict a single rendition of the mark, and the applicant must indicate that the mark is three-dimensional.
5. The drawing as presented in the application must be on non-shiny paper of high quality and must be made by a process that will provide high definition when copied. The drawing must clearly show the mark. Lines must be clean, sharp, and solid and must not be fine or crowded. The drawing presented on the application form must be a minimum of 4 cm by 4 cm and shall not exceed 8 cm by 8 cm.
6. The applicant shall provide an electronic copy of the mark where available.
7. For examination purposes, the Department will accept a drawing that does not satisfy the requirements of paragraph 5 of this article, provided the drawing submitted is sufficiently clear to enable examination. Also for examination purposes, the Department will accept a photograph or specimen of the mark in place of the drawing referred to in paragraph 1 of this article,

provided that it is clear from the photograph or specimen what subject matter the applicant considers to be the mark. For examination purposes, a photograph or specimen should not show material that is not part of the mark, such as other elements on a label or background or environmental features that are not part of the mark.

8. Where a drawing, photograph, or specimen is submitted that does not satisfy the requirements of paragraph 1 of this article, the Department shall require the applicant to submit an amended drawing to remove any elements that are not part of the mark to be registered. If it is unclear whether elements in a drawing, photograph, or specimen are considered part of the mark, the Department will require the applicant to clarify which elements are parts of the mark and to submit an amended drawing with such other elements removed.

9. Where a drawing that does not satisfy the requirements of this article is accepted for examination purposes, or where other amendments to the drawing are required, the applicant will be required to submit substitute drawings that satisfy the requirements of this article.

10. No amendment will be permitted that changes the essential nature of the trademark.

Article 17. Brief Description of the Mark.

Unless the mark is in standard characters, the application shall include a brief description of the mark with the following information:

- 1) If the mark includes figurative elements, a brief statement describing such elements.
- 2) Where the mark includes words, letters, numbers, or symbols with a special appearance, a brief statement identifying that appearance.
- 3) If the mark is in a foreign language or contains foreign characters or words, a statement to that effect and a statement of the meaning of such foreign terms or characters, if any, and a transliteration of words or characters into the Lao language or other rendering from which the pronunciation can be ascertained.
- 4) If color is a feature of the mark, a statement to that effect and the colors of the mark and portions of the mark associated with each color.
- 5) If the mark is three-dimensional, a statement to that effect.

No description is required where the mark is limited to words, letters, numbers, or symbols, or a combination thereof, that are presented in standard characters and for which none of the above features is a feature of the mark.

Article 18. Statement of Goods and Services.

1. The applicant must specify the goods or services in connection with which the applicant uses or in good faith intends to use the mark, grouped according to the applicable class. A specification of goods and services that refers to “all goods”, “all services”, “all other goods”, or

“all other services,” or that merely identifies goods or services by the class number or the title of the class, will not be acceptable to specify the goods or services or both in respect of which registration is sought.

2. The goods or services or both must be grouped according to the appropriate classes as detailed in the Nice Classification and listed in the order of their class numbers.

3. So far as practicable, goods or services or both should be specified in terms appearing in the Nice Classification or as provided in Article 19 of this Decision. If any of the goods or services or both cannot be specified using such terms, the applicant must provide sufficient information to enable the Department to decide the classification of the goods or services or both.

4. In an application to register a certification mark, the goods or services are those of the party that will apply the mark, not the certifying services or other activities of the applicant, since the owner of a certification mark must not produce the goods or perform the services in connection with which the mark is to be used. In a certification mark application, the goods or services that are certified may be identified by indicating the general kinds of goods and services for which the certification is available, for example, food, agricultural commodities, electrical products, or the like, unless the applicant’s services are limited to more specific types of goods or services.

Article 19. Class.

1. Where an application relates to a trademark, the application must specify the Nice class for each good or service, or for each group of goods or services.

2. If the application relates to a collective mark, the application should specify the Nice classification for the goods or services in connection with which the collective mark is used. Where a collective mark identifies membership in a group, there are no goods or services associated with the mark. In such case, the applicant may designate Class M, Collective Membership Marks.

3. If the application relates to a certification mark, the application may designate the Nice class for the goods or services that are the subject of the certification or, since a single certification may apply to a large number of goods or services in multiple classes, making it impractical to designate all such classes, the application may instead designate Class C, Certification Marks.

4. Since the Nice Classification changes from time to time, an application shall specify the Nice class of goods or services applicable at the time of filing. Where the classification changes during the pendency of the application, the applicant shall amend the application to specify the applicable class at the time the application is to be published. Where a change in the Nice Classification causes the application to refer to additional classes, no additional fee is required for such additional classes, although renewal fees shall be required for each class of goods or services applicable at the time of renewal.

5. The designation of a Nice class shall not limit or extend the applicant’s rights for applications filed after the effective date of this Decision. In particular, the fact that an application refers to

goods or services in a particular class will not extend applicant's control over the use of its mark to dissimilar goods or services in the same class, nor will the fact that goods or services are in different classes negate a finding of likelihood of confusion.

Articles 20. Collective Marks.

1. A collective mark is a mark that is adopted by a collective organization, such as an association, union, cooperative, fraternal organization, chamber of commerce, or other organized collective membership organization, to indicate an affiliation with the collective organization. A collective mark is used by members of the collective organization but is not used by the collective organization itself. A collective mark may be

- 1) A collective trademark that is used by members of the collective organization to identify their goods or services and distinguish them from those of nonmembers of the collective organization.
- 2) A collective membership mark that is used to indicate membership in the collective organization.

2. A collective mark is distinguished from a trademark in that the collective organization does not itself sell goods or perform services under a collective trademark, although the collective organization may advertise or otherwise promote the goods produced or sold or services provided by its members under the mark. Since a collective mark is used by many persons, it does not perform the essential function of a trademark, which is to indicate the source of goods and services, that is, which produced or sold the goods or provided the services. Instead, the sole function of a collective mark is to indicate that the person displaying the mark is a member of the organized collective group. An application to register a collective mark should be reviewed to determine whether it is, in fact, a collective mark or whether it is more properly a trademark or certification mark.

3. Except as otherwise provided, the requirements of this Section apply to collective marks.

4. In addition to the requirements set forth in Article 15 of this Decision, an application to register a collective mark shall include, or be amended to include, a description indicating how the mark is to be used, as provided in Article 33 of the Intellectual Property Law. The description should indicate that the mark is used or intended to be used as a collective mark and specify the class of persons entitled to use the mark, indicating their relationship to the applicant, and the nature of the applicant's control over the use of the mark. The applicant may specify the nature of its control over use of the mark by stating that "Applicant controls (or intends to control) the use of the mark by the members in the following manner: [specify]." A statement that the applicant's bylaws or other written provisions specify the manner of control, or intended manner of control, will be sufficient.

Article 21. Certification Marks.

1. A certification mark is a mark that is adopted for use by a person other than its owner to certify that the user of the mark, or goods or services of the user of the mark, meet the standards or possess the characteristics that are the subject of the certification. A certification mark may be used to indicate, for example, that goods meet certain standards of safety or cleanliness, or that they were produced by persons with certain characteristics or qualifications.

2. A certification mark is distinguished from a trademark in that the owner of the mark does not itself sell the goods or perform the services to which the certification mark applies. Since a certification mark is used by many persons, it does not indicate the source of goods and services, that is, who produced or sold the goods or services. Instead, the sole function of a certification mark is to indicate that the goods or services in connection with which the mark is used, or the person providing such goods or services, have certain characteristics or have satisfied standards established by another person, that is, the party that provides the certification.

A certification mark is also distinguished from a collective mark by the fact that such marks have different purposes. A collective mark is used only by members of a collective organization, while there is no such requirement for a certification mark. The owner of a certification mark certifies compliance with certain standards, while no such certification is made by the owner of the collective mark. An application to register a certification mark should be reviewed to determine whether it is, in fact, a certification mark or whether it is more properly a trademark or collective mark.

3. Except as otherwise provided, the requirements of this Section apply to certification marks.

4. In addition to the requirements set forth in Article 15 of this Decision, an application to register a certification mark shall include, or be amended to include, a description indicating how the mark is used or is to be used, as provided in Article 33 of the Intellectual Property Law. The description should indicate that the mark is used or intended to be used as a certification mark and shall include the following items:

- 1) A statement identifying what the mark certifies, as further discussed in paragraph 5 of this article.
- 2) A statement that the applicant is exercising legitimate control over the use of the certification mark or has a good faith intention to do so, as further discussed in paragraph 6 of this article.
- 3) A statement that the applicant is not engaged in and will not engage in the production or marketing of the goods or services to which the mark is applied, as further discussed in paragraph 7 of this article.

5. A statement identifying what the mark certifies should identify as appropriate the characteristic, standard, or other feature that is certified or intended to be certified by the mark. The statement should begin with wording, “The certification mark, as used (or intended to be used) by authorized persons, certifies (or is intended to certify) . . .” and should indicate the characteristics or features certified.

Note that the statement of what the mark certifies is separate from the identification of goods and services as required under Article 18 of this Decision. However, the standards must cover the full scope of the goods/services identified in the application.

It is not required that a mark be limited to certifying a single characteristic or feature. Where the certification applies to more than one characteristic, the statement should include all of the characteristics or features that the mark certifies. The statement of certification in the application will be printed on the registration certificate.

The standards associated with a certification mark do not have to be original with the applicant. They may be standards established by another party, such as specifications promulgated by a government agency, or standards developed through research of a private research organization. Likewise, standards may certify any feature or characteristic of the goods or services or of those who produce or provide such goods or services. Responsibility for such certification lies with the certifier and does not bind a government agency or any other party.

While the statement of what the mark certifies should be reasonably specific, it is not required to include the details of the specifications of the characteristic being certified. If the Department finds the information insufficient for examination purposes, it may require the applicant to submit a more detailed statement of the standards to be certified or a copy of the standards, as appropriate.

6. The owner of a certification mark does not produce the goods or perform the services in connection with which the mark is used, and thus does not control nature or quality of the goods or services. Therefore, it is not appropriate to inquire about control over the nature and quality of the goods or services. However, the owner of the certification mark must control the use of the mark by others on their goods or services. This control consists of taking steps to ensure that the mark is applied only to goods or services or to persons that have the characteristics or meet the requirements that the certifier/owner has established or adopted for the certification. If there is doubt as to the existence or nature of applicant's exercise of control over the use of the certification mark, the Department may require an explanation and additional disclosure of facts or the filing of appropriate documents, to support the applicant's statement regarding the exercise of control over the use of the mark.

7. The requirement for a statement that the applicant is not engaged in and will not engage in the production or marketing of the goods or services to which the mark is applied means that the owner

- 1) Does not produce goods, or provide services, that are the subject of the certification, regardless of whether such goods bear the certification mark, and
- 2) Does not use, and will not use, the certification mark on or in connection with goods it provides or services it produces.

8. The use of a certification mark other than in accordance with the provisions of this article may serve as a ground for cancellation.

SECTION IV
Priority and Temporary Protection

Article 22. Priority

1. An application may claim priority on the basis of on an earlier-filed application pursuant to Article 29 of the Intellectual Property Law. A claim for priority is made by submitting a written statement that requests such priority and identifies the trademark application that can serve as a basis for a priority claim under the Paris Convention. The Department will determine whether the requirements are met to satisfy the priority claim. If the requirements are met, the priority date shall be the effective filing date in the Lao PDR for purposes of evaluating whether the requirements for protection have been met and for purposes of determining any third party claims or rights to the trademark. The effect of a declaration of priority shall be as provided in the Paris Convention and in the Intellectual Property Law.
2. A priority claim can only be based on a regular national filing of an application in a country, customs union, or intellectual property office that is a member of the Paris Convention or of a bilateral, regional, or other international agreement of which the Lao PDR is a member and which provides for a right of priority. The Department shall from time to time publish a notice identifying the countries and offices where such filing may serve as the basis for a priority claim.
3. Any person claiming the priority of a previous trademark application shall indicate the filing date of such application, the country in which it was made, and the number of that application, and shall provide a copy of the relevant priority document, certified as correct by the authority which received such application. The copy of the previous application may be filed with the Lao application or at any time within three months of the filing of the Lao application.
4. Where a claim for priority is made, but the required information or documents are not submitted with the claim, the Department shall inform the applicant to submit such information or documents, stating the time within which such documents must be received. Such documents shall be submitted in any event within three months from the filing date of the application in the Lao PDR.
5. Where the copy of an application, duly certified by the issuing office, is submitted within the time provided in paragraph 2 of this article, together with a translation of such document into the Lao language, it shall be considered to be timely filed and, if the Department finds the priority claim to be otherwise in order, a priority date awarded.
6. If the applicant fails to complete the requirements for priority within the time or times set, the priority declaration shall be considered to have been abandoned by the applicant and the application will be examined as though the priority declaration was not made.
7. The priority period for a trademark is six months beginning from the filing date of the application on which priority is based but excluding the filing date of such application and ending on the date that is six months later. Where the last day of the priority period is an official

holiday, or a day when the Department is not open for the filing of applications, the period shall be extended until the first following working day.

Article 23. Temporary Protection at Certain International Exhibitions

1. An applicant who wishes to claim the benefit of temporary protection under Article 30 of the Intellectual Property Law shall submit a written request for such protection. Such request may be filed with the application or at any time within six months from the date on which the goods were first exhibited or rendered at the exhibition and shall include information necessary for the Department to evaluate whether the applicant is entitled to the protection requested. Such information will usually include the following:

1. Name of the international exhibition, its purpose, and criteria for eligibility to participate in the exhibition;
2. Place where such international exhibition was held, and an indication of the places from which participants were drawn;
3. The name and address of the sponsors or organizers of the exhibition;
4. Explanation of the official nature of the exhibition, or of its official sponsorship, as applicable, and the name and address of the official body that sponsored or granted official recognition to such exhibition;
5. Dates during which the international exhibition was held, or if applicant's goods were not exhibited during the entire period of the international exhibition, dates during which applicant's goods were exhibited;
6. Applicant's goods that were exhibited at the international exhibition as relevant to the request for temporary protection, and a brief statement indicating how the goods were displayed.
7. A copy of documents that provide evidence of the exhibition, such as a flyer, program guide, official letter of invitation, or the like, where such documents tend to establish one or more of the facts mentioned above.

b) Temporary protection will be available only where the application is filed within six months from the date on which the goods were first exhibited or rendered at such exhibition.

c) If the Department finds that the conditions of Article 30 of the Intellectual Property Law have been satisfied, the application shall be deemed, for purposes of examination, to have been filed on the date on which the goods were first exhibited at such exhibition.

d) An applicant who is entitled to claim both priority and temporary protection under this article will be accorded the earlier of the two dates. Temporary protection under this article shall not be applied so as to extend a claim of priority.

SECTION V Formalities Examination

Article 24. Examination for Formalities.

1. An application for which a fee has been paid and that has been assigned an application number shall be examined to determine whether it contains all of the elements described in Articles 15 through 19 of this Decision, and whether such elements appear to satisfy formal requirements, for example, whether the application is presented on the proper form, whether a drawing is legible, and whether elements of the application are presented in the order required. The formalities examination shall not address the merits of each element or whether such element satisfies substantive requirements to allow registration. For an application to register a collective mark or certification mark, the examination for formalities shall also determine whether the application contains the elements described in Article 20 or 21, as appropriate.
2. An application that is found to satisfy formal requirements shall be accepted for substantive examination.
3. If the application is not complete or does not satisfy the formal requirements as described herein, the Department will notify the applicant of any requirements not satisfied and the period of time in which the applicant must meet the requirements.

Article 25. Application to Relate to One Mark.

An application shall relate to a single trademark. Where an application is found by the Department to relate to more than one trademark, or to a trademark and a geographical indication or other form of protection, the applicant must either restrict the application to a single trademark or geographical indication or divide the application into two or more divisional applications as described in Article 26 of this Decision.

Article 26. Division.

1. An application may be divided into two or more divisional applications by filing one or more subsequent applications that make reference to the application being divided. The second or other subsequent application shall be identical to the application on which it is based and shall be accompanied by a statement that the newly filed application is a division of such earlier application, which shall be identified by its application number, applicant, and filing date. Both the newly-filed application (or applications) and the earlier application are then amended to restrict their subject matter to a single trademark. Such amendment may be filed with the divisional application or within 60 days thereafter and is subject to the requirements of Article 11 of this Decision.
2. Each divisional application shall be entitled to the effective filing date of the initial application.
3. Where an application is divided, the applicant shall pay an additional filing fee for each divisional application that is in addition to the application that has been divided.
4. An application may be voluntarily divided as described in this article by the applicant either where the application contains more than one trademark or geographical indication or to separate

an application that indicates multiple classes into separate applications. Where the application includes more than one form of protection, the procedures of Article 28 shall apply.

Article 27. Amendment to Specify Form of Mark.

An application may be amended pursuant to Article 42 of the Intellectual Property Law and Article 11 of this Decision to specify that the application refers to a trademark, collective mark, or certification mark, or to change such designation. Where an application is amended to specify that it is a collective or certification mark, the applicant must promptly supply the items required in connection with such applications.

Article 28. Re-Filing to Claim Correct Form of Protection.

1. As provided in Article 42 of the Intellectual Property Law, at any time an application is pending before the Department but before the Department has granted registration thereon, and before the abandonment, final rejection, or other termination of proceedings on the application, the applicant may re-file the application together with any amendments by paying the application fee and amending the application to refer to the correct form of protection. In particular, this procedure may be used to convert an application to register a trademark into an application to register a geographical indication or the reverse. The applicable fee shall be that for the form of protection to which the application is converted. For example, a trademark application that is re-filed to claim protection for a geographical indication shall be subject to paying the fee applicable for a geographical indication.

2. The procedures for re-filing shall be as provided in Article 26 of this Decision, *mutatis mutandis*. An application that is re-filed and converted as provided in this article shall be entitled to the benefit of the filing date of the earlier-filed application (including any priority or temporary protection date or other effective filing date).

SECTION VI
Substantive Examination

Article 29. Search and Substantive Examination.

When an application has been found to satisfy the formal requirements set forth in this Decision, the Department shall conduct a substantive examination in accordance with this Section to determine whether registration would be barred pursuant to Article 16 or 23 of the Intellectual Property Law. As part of its substantive examination, the Department shall conduct a search to identify earlier marks, trade names, or geographical indications that may create a bar to registration pursuant to Article 16 or 23 of the Intellectual Property Law. An electronic search is permissible, provided however, that the Department must nevertheless evaluate information obtained from such search.

Article 30. Right to Require Additional Information.

Where serious doubts exist as to the correctness of any information or documents included in or annexed to an application, the Department may notify the applicant or agent to furnish, within a period not exceeding three months from the date of notification, evidence proving the correctness of such data or documentation.

Article 31. Refusal Based on False or Misleading Statements.

At any time during the pendency of an application, the Department may refuse an application that the Department has good reason to believe contains false or misleading information or with regard to which the Department has good reason to believe the applicant or applicant's representative is making false or misleading statements to the Department. In such case, the Department shall first notify the applicant of the Department's intended action and the grounds therefor and permit the applicant to withdraw or correct such information or statements, subject, however, to any limitations on new information set forth elsewhere in this Decision.

Article 32. Trademark Subject Matter.

1. As provided in Article 16 of the Intellectual Property Law, a trademark may be any sign or combination of signs capable of distinguishing the goods or services of one undertaking from goods or services of another. In particular, in addition to the signs mentioned in Article 16 of the Intellectual Property Law, a trademark may be a word or combination of words including a brief slogan; one or more letters, numbers or symbols alone or in combination; colors or combinations of colors; figurative elements including pictures or drawings; or a three-dimensional sign; provided that all such signs must satisfy other requirements of the Intellectual Property Law and this Decision. Unless an application claims color as a feature of the mark, or restricts words or symbols to their presentation in a specific form, it will be presumed that such restrictions do not apply to the mark.

2. A trademark for which an application is submitted after the effective date of this Decision will be protected with regard to the goods or services specified in the application and not to all goods or services in the class identified in the application unless the applicant, in good faith, states that it intends to apply the mark to all goods, or use the mark in connection with, all services in the class.

3. Note that Nice classes typically include a broad range of goods or services such that it is unlikely that all such goods or services would be made or provided by a single business entity. Where an applicant states that its mark will be used on or in connection with all goods or services in a class, or identifies its goods and services in broad terms that appear to encompass all or most of a class, the Department will normally request additional evidence to confirm such statement pursuant to Article 14 of this Decision.

Article 33. Proper Applicant.

1. An application should be filed by or on behalf of a person, organization, or legal entity that is

- 1) One or more natural persons acting on such persons' own behalf in connection with activities to be conducted by such person and in connection with which the mark will be used.
- 2) The owner of an organization or legal entity in connection with which the mark will be used.
- 3) An officer of such organization or legal entity or other person who is authorized to bind the entity for legal purposes.

2. For a collective mark, the proper applicant shall be determined as in paragraph 1 of this article in relation to the collective organization or if such collective organization is itself owned by another person, organization, or legal entity, by the owner thereof.

3. For a certification mark, the proper applicant shall be determined as in paragraph 1 of this article in relation to the person, organization, or legal entity that will make the certification, or if such certifying body is itself owned by another person, organization, or legal entity, by the owner thereof.

4. Where it appears that an application has been filed by an applicant who is not entitled to file such application, the Department may require the applicant either to correct the name of the applicant to identify the proper party or to secure such authorization from the proper person and shall suspend examination until such requirement is met within the time fixed. If such correction is not made within the time provided, the application shall be refused, without prejudice to the proper owner to file an application for the same subject matter.

Article 34. Identical and Similar Marks.

1. For purposes of Articles 16 and 23 of the Intellectual Property Law, a mark that is the subject of an application shall be considered to be

- 1) **Identical** where it cannot be distinguished in its essential aspects from a registered trademark, well-known mark, or trade name.
- 2) **Similar** where it resembles a registered trademark, well-known mark, or trade name as described below in such a way as to give the same overall commercial impression.

2. In determining whether a mark is identical or similar to a registered trademark, well-known mark, or trade name, the Department shall evaluate the marks, or the mark and trade name, with regard to the overall commercial impression of each, taken as a whole, based on the appearance of the mark, and taking into account its pronunciation and its meaning, if any. In conducting this evaluation, the Department may give more weight to prominent features of a mark and less weight to minor features. For purposes of this article, a well-known mark must have been well-known by the relevant sector of the public in the Lao PDR as of the effective filing date of the application.

3. The similarity or dissimilarity of two marks, or of a mark and trade name, or of a mark and a geographical indication, is determined on the basis of the commercial impression of each in its entirety. The addition or deletion of minor features or of merely descriptive terms normally is

not sufficient to change the commercial impression of a mark, nor is the use of color in a mark, where color is not a feature of the mark that is used for comparison.

4. Even though a mark must be visually perceptible, marks that include words or symbols are likely to be used in situations in which they are pronounced, for example, in television advertising or by placing an order. For purposes of Articles 16 and 23 of the Intellectual Property Law, homonymous marks (marks with the same pronunciation) will be considered to be identical or similar. The fact that a mark could be pronounced in some other manner will not be sufficient to avoid a refusal where an ordinary person reading the mark would reasonably expect to pronounce the mark in a way that is identical or similar to the pronunciation of a registered mark, well-known mark, or trade name.

Where a mark includes words or symbols that are equivalent in meaning to another mark, the Department may also judge such mark to be similar to another mark or trade name with the same meaning. Where such marks are presented in different languages, the marks will be considered similar or identical if likely purchasers of the goods would be expected to recognize the marks as having the same meaning.

5. For purposes of this Decision, images and words are considered to be interchangeable when both refer to the same object. Likewise, letters, numbers, and symbols, or combinations thereof, will be treated as interchangeable whether presented in such form or rendered phonetically this Decision.

Article 35. Same, Similar, or Related Goods or Services.

For purposes of Articles 16 and 23 of the Intellectual Property Law, goods and services are the same, similar, or related to each other where such goods are of the same type or same general type, or where such goods would commonly be used together, or used for the same purpose, or sold together in the same types of stores.

Article 36. Likelihood of Confusion; Permissible Exceptions.

1. A mark will be refused registration pursuant to Articles 16 and 23 of the Intellectual Property Law where the Department finds that

- 1) the mark is of such a nature as to create confusion with the establishment, the goods, or the industrial or commercial activities, of a competitor, or
- 2) the use of the mark, on or in connection with the goods or services stated in the application would tend to cause confusion as to the source of the goods or services.

Refusal under this paragraph shall be based on a preponderance of the evidence, that is, a mark will be refused registration where the Department finds it more likely than not that such confusion would occur

2. In evaluating the likelihood of confusion, the Department shall consider the following factors with regard to the mark that is the subject of the application and a registered mark, well-known mark, or trade name:

- 1) Their similarity or dissimilarity, taking into account the criteria of Article 34 of this Decision. If the marks are not identical or similar for purposes of Article 34 of this Decision, no further inquiry is needed.
- 2) The similarity, dissimilarity, or relatedness of the goods or services to which each applies, taking into account the criteria of Article 35 of this Decision. Even where similarity of the marks has been found under the criteria of Article 34 of this Decision, no further inquiry is normally required for purposes of this article if the goods or services are not similar and not related in accordance with Article 35 of this Decision.

In general, there is a greater likelihood of confusion when there is greater similarity between the marks, or between the mark and trade name, and when there is greater similarity between the goods or services of each. However, a greater similarity of one may require less similarity in the other to sustain a finding of likelihood of confusion.

3. Where the mark that is the subject of the application is identical or essentially identical to a registered mark, well-known mark, or trade name, and the goods and services are the same or essentially the same as those associated with the registered mark, well-known mark, or trade name, a likelihood of confusion shall be presumed and registration shall be refused.

4. Where the marks, or mark and trade name are found to have some similarity but are not identical or essentially identical, and the goods or services are found to be identical, similar, or related, the Department shall additionally take into account the following factors, as such factors are appropriate to the application, to determine whether there exists a likelihood of confusion:

- 1) Similarity or dissimilarity of the trade channels of the goods or services, including whether such goods are normally sold together or purchased in the same places, or otherwise encountered by the same persons. The use of similar channels of distribution increases the likelihood of confusion with similar or related goods sold under a similar mark.
- 2) Conditions under which the goods are encountered and the degree of care normally exercised in making a purchase. Less similarity is required to find a likelihood of confusion where it is likely that consumers will exercise a lower degree of care in making a purchase, while a likelihood of confusion may not exist for similar marks and similar goods that require special knowledge to purchase.
- 3) Fame of the earlier mark as determined by its length of use, advertising and promotion, revenues from sales, large number of different types of goods or services in connection with which the mark is used, or the like. The greater the fame of a mark, the likelier that purchasers will assume a relationship between the same or a similar mark with the more famous mark.
- 4) Number and nature of similar marks for the same or similar goods or services. Where a large number of unrelated persons use the same or essentially the same mark for the same or closely related goods or services, it indicates that the mark itself is weak, and a

likelihood of confusion will exist only when the Department finds that both the mark and goods and services associated with it are identical, or nearly identical, to those of the registered trademark, well-known mark or trade name. This situation most often arises in connection with marks that incorporate descriptive or geographical terms.

- 5) Nature and extent of any actual confusion. The criterion established by Articles 16 and 23 of the Intellectual Property Law is whether the later mark would tend to cause confusion, not whether such confusion has actually occurred. However, evidence of actual confusion may suggest a tendency to cause confusion if the number of instances is large relative to the number of opportunities for confusion, while a small number of such instances relative to the number of opportunities may suggest that no such tendency exists.
- 6) Length of time during and conditions under which the marks have been concurrently used without evidence of actual confusion. Co-existence of the marks or of the mark and trade name, in the same market for a reasonable time period without any known confusion may be evidence that there is no likelihood of confusion.
- 7) Intent of the later user. Generally, the intent of the applicant is not an element to be considered in evaluating the likelihood of confusion except where there is evidence that the applicant has adopted or is attempting to register a mark in order to create confusion or an association with the registered or well-known mark or trade name. Evidence of such intent can be inferred from facts showing the applicant's knowledge of the earlier mark or trade name, or where the applicant acknowledged an intent to use a similar mark, or advertises or promotes his or her goods or services in a way that strongly shows an intent to mislead consumers, for example, by copying other trade dress of the registered or well-known mark.

5. Where the Department finds a likelihood of confusion between the mark that is the subject of an application and another mark that is also owned by the applicant, the applicant may avoid a refusal under this article by amending the application and, if the cited mark is the subject of a registration or pending application, the registration or application of the cited mark to indicate that the two marks are commonly owned. Where the Department finds a likelihood of confusion between the mark that is the subject of an application and a trade name or well-known mark that is not the subject of an application or registration, the applicant may avoid such refusal by amending the pending application as stated herein and providing satisfactory evidence that the applicant is the owner of such mark or trade name. In such cases, ownership must be identical for the two applications, or for the application and registration, or for the application and well-known marks, or for the application and the trade name, as appropriate.

6. A refusal pursuant to this article may be avoided where the applicant submits a verified statement by the owner of an earlier registered mark, or of a mark that was well-known at the time of application, or of an earlier trade name, consenting to such registration concurrently with the earlier rights, together with a statement explaining how the two marks can exist concurrently without creating a likelihood of confusion, and further provided that the Department finds that approval of registration is unlikely to lead to confusion as set forth in paragraph 1 of this article. Such situations may exist, for example, where the goods and services of the parties are sold in different channels of commerce or in different geographical areas in a manner that is unlikely to result in sales or advertising to the same customers.

Article 37. False Impression of Association.

1. The Department shall refuse registration where the mark would tend to create false impression that the goods or services to which an application pertains are connected or associated with the goods or services of a registered or well-known mark or with a trade name. A false impression of connection or association may be created for purposes of Articles 16 and 23 of the Intellectual Property Law where a registered mark with an earlier filing date than the application, or a mark that is well-known in the Lao PDR before the effective filing date of the application, or a trade name that is used or known in the Lao PDR before the effective filing date of the application, meets one or more of the following criteria:

- 1) The marks are identical or similar and the goods or services identified in the application, even if not similar or related to those in connection with which the earlier mark or trade name is used, represent a likely area for expansion of the goods or services.
- 2) The marks are identical or similar and the earlier mark or trade name has such a degree of fame that the relevant sector of the public would be likely to assume a connection between the goods or services of the applicant and those of the owner of the earlier mark or trade name.
- 3) The mark of the applicant appears to be derived from a more famous mark or trade name.

2. The Department shall also refuse registration pursuant to Article 23 of the Intellectual Property Law where a mark consists of or contains material that falsely suggests a connection with persons, living or dead, or with institutions, beliefs, or national symbols. Such connection or association may be created by the use of a person's name or image; by the use of the name or symbol or mark of an institution; by the use of terms or symbols commonly used in reference to beliefs; and by the use of national symbols or of the names therefor.

3. The Department may find a tendency to create a false impression of connection or association in other circumstances where the evidence suggests that such a false association or connection is more likely than not to be created among the relevant sector of the public.

Article 38. Well-Known Marks.

For purposes of Articles 16 and 23 of the Intellectual Property Law, the relevant sector means that part of the public that would be expected to have knowledge of a mark and includes persons who have knowledge of a mark as a result of advertising or marketing. Such persons shall include, but are not necessarily limited to:

- 1) Actual and/or potential consumers of the type of goods and/or services to which the mark applies;
- 2) Persons involved in channels of distribution of the type of goods and/or services to which the mark applies; and
- 3) Business circles dealing with the type of goods and/or services to which the mark applies.

Recognition of a well-known mark in the Lao PDR does not require that the goods or services associated with the mark be sold or distributed in the Lao PDR.

Article 39. Lack of Distinctiveness.

A mark shall be refused registration where it is not of such a nature as to distinguish the goods or services of one undertaking from those of another. In particular, a mark that consists entirely of terms that are descriptive of the goods and services, or of the common names for such goods, shall be refused registration.

Article 40. Descriptive or Customary Terms.

Where a mark is capable of distinguishing the goods or services of one entity from those of another, but the mark includes terms that are descriptive or customary terms for the goods or services, the Department shall require the applicant to disclaim the descriptive or customary terms apart from the mark as shown in the application. A term is considered to be descriptive for purposes of this article if it describes the goods or services or some characteristic of the goods or services. Such terms must be disclaimed to preserve the right of other producers or providers to use the same terms in connection with their goods. Examples of descriptive terms include laudatory terms (best, tastiest, quality, and the like); terms that merely describe the location of the applicant; and terms that indicate some quality or characteristic of the goods or services (pain-free, home-cooked, prompt service, and the like). While a descriptive term must be disclaimed, a term that is merely suggestive may function as a mark or may be incorporated in a mark and need not be disclaimed.

Refusal is also appropriate where a mark consists exclusively of signs or indications designating the kind, quality, quantity, intended purpose, value, or place of origin of the goods, their time of production, or signs that have become customary in the current language or in the good faith and established practices of the trade in the Lao PDR.

Where a mark incorporates such terms but does not consist exclusively of them, the Department will require such terms to be disclaimed. If such terms appear on a drawing, the Department will inquire whether they are intended to be part of the mark, and if not, will require the drawing to be amended to delete the terms.

Article 41. Deceptive or Misleading Marks.

1. Registration shall be refused under Article 23 of the Intellectual Property Law where a mark falsely indicates that the goods or services identified in the application have a certain nature, quality, or characteristics, or that they are suitable for a particular purpose or originate from a particular place or are made by a certain process or to certain standards.

2. Registration shall also be refused under Article 23 of the Intellectual Property Law where the mark as a whole, when used on or in connection with the goods or services identified in the application, would tend to deceive or mislead the public as to the nature, quality, characteristics, or suitability of the goods or services, or their geographic origin. A refusal under this paragraph

is appropriate, for example, where the mark incorporates geographical terms that falsely suggest that the goods and services originate in a region from which they do not in fact originate. A refusal under this paragraph may also be appropriate where the mark contains elements that would tend to indicate the suitability of goods or services for a particular purpose or group if goods are not suitable for such purpose or group, for example, by incorporating a picture of a baby on goods not suitable for use with a baby.

3. The fact that a mark can be understood in a non-deceptive way is not a bar to refusal of registration. Where a mark is susceptible of more than one understanding, the Department should refuse the registration if it would be reasonable for a purchaser to understand the mark in its deceptive or misleading sense.

4. In case of doubt, or where a mark is susceptible of more than one understanding, the Department shall make an inquiry regarding the nature of the goods and services, their qualities, characteristics, or origin, as appropriate, to determine whether a mark may be descriptive or whether it may be deceptive or misleading.

Article 42. Marks Containing Elements Not Permitted or Authorized.

1. Pursuant to Article 23 of the Intellectual Property Law, the Department will refuse to register a mark that consists of, or contains, any of the following elements:

- 1) Flag, armorial bearing, or other emblems of a country or intergovernmental organization, official seals or symbols of state or international organizations, or symbols created by international conventions, except where such elements are authorized by the relevant governmental or intergovernmental entity. For purposes of this paragraph, such elements shall be determined as provided in the Paris Convention.
- 2) Abbreviations or full names of towns, municipalities, provinces or capital of the Lao PDR or foreign countries except as authorized by the relevant governmental entity, unless such abbreviations or names are disclaimed.
- 3) Official signs and hallmarks indicating control and warranty adopted by them, and any imitation thereof, where the marks in which they are incorporated are intended to be used on goods of the same or a similar kind, except where such elements are authorized by the relevant governmental entity.
- 4) The name, image, or likeness of a living person without such person's authorization.

2. Where the applicant claims authorized use, such authorization must be presented in writing.

3. Authorization is required for purposes of this article unless the applicant is the governmental or intergovernmental authority entitled to give such authorization or, for purposes of subparagraph 4 of paragraph 1 of this article, the person whose name, image, or likeness is used, or a person such as a parent or legal guardian who is authorized to act on such person's behalf.

Article 43. Trade Names.

1. Trade names shall be protected whether or not they are registered.

2. The same principles shall apply in evaluating whether a trademark application is identical with or similar to a trade name as apply in regard to a registered mark.
3. A trade name shall be entitled to protection against infringement in accordance with the same principles that apply to trademarks.

Article 44. Marks that Consist of or Incorporate a Geographical Indication.

1. Pursuant to Article 23 of the Intellectual Property Law, the Department shall refuse to register a mark that consists of or incorporates a geographical indication where the goods identified in the application, or any portion of such goods, do not in fact originate in the place associated with the geographical indication, unless the applicant amends the application so as to apply the mark solely to goods that originate in the place associated with the geographical indication.
2. Pursuant to Article 23 of the Intellectual Property Law, the Department shall also refuse registration of a mark that consists of or incorporates a geographical indication where the use of such geographical indication in connection with the goods identified in the application, or any portion of such goods, may be literally true as to the territory, region or locality in which the goods originate, but nevertheless falsely represent to the public that the goods originate in another territory. Such situation may occur, for example, where the name of the location where the goods actually originate is identical or similar to the name of a territory, region, or locality to which the geographical indication pertains.
3. The Department will refuse registration in accordance with this article where a mark, or element of a mark, is homonymous with a geographical indication.
4. For purposes of this article, a geographical indication is as defined in paragraph 18 of Article 3 of the Intellectual Property Law.
5. The Department will apply the provisions of this article to any geographical indication that is registered in the Lao PDR, or that may be entitled to protection in the Lao PDR even if not yet registered in this country. Where such conditions are not satisfied, for example, because a geographical indication is not yet protected in its country of origin, the Department may refuse registration to a mark that consists of or includes such geographical indication pursuant to Article 36 of this Decision if it finds that the use of the geographical indication would tend to deceive or mislead purchasers as to the true origin or characteristics, quality, or reputation of the goods.

Article 45. Marks that Disparage or Discredit Another.

1. The Department shall refuse registration of a mark pursuant to Article 23 of the Intellectual Property Law that consists of or contains elements that may disparage persons, living or dead, or institutions, beliefs, or national symbols.
2. Such disparagement may be created by the use of a person's name or image; by the use of the name or symbol or mark of an institution; by the use of terms or symbols commonly used in

reference to beliefs; and by the use of national symbols or of the names therefor, under circumstances, or in such manner as to ridicule, discredit, show contempt for, or bring into disrepute such person, institution, belief, or symbol.

3. The standard to be applied in evaluating whether a refusal is appropriate under this article is whether the mark, or element of the mark, as used in connection with the goods or services to which it applies, would be viewed by an ordinary Lao person as disparaging, discrediting, or showing contempt for such persons, beliefs, institutions, or symbols, or bringing them into disrepute.

4. In particular, the Department may refuse registration under this article when the mark is applied to goods relating to bodily functions, or where the use of the goods in connection with the mark would bring the mark into proximity with intimate parts of the body, or in any other manner where the use of the mark in connection with the goods or services would indicate contempt for the person, institution, belief, or symbol.

5. Note that a refusal may not be based on the nature of the goods for which a mark is applied. Goods or services relating to bodily functions or to goods the use of which may be objectionable on some ground may still be the subject of an application to register a mark. Such situation should be distinguished from a refusal based on the manner of use of the mark pursuant to paragraph 15 of Article 23 of the Intellectual Property Law. Note that in the general case, there is no objection to registration of a mark based on the nature of the goods or services, except as provided herein where it is the connection between the mark and its use with such goods or services that would disparage persons, institutions, beliefs, or national symbols that would disparage them or bring them into contempt or disrepute.

Article 46. Marks Contrary to Social Order and Fine Traditions of the Nation.

In accordance with Article 23 of the Intellectual Property Law, registration may be refused where a mark or its intended use is contrary to social order and the fine traditions of the nation. A mark will be considered to be contrary to social order and the fine traditions of the nation where it consists of, comprises, or includes material that is scandalous or obscene or otherwise offensive, where it includes disparaging material, or where publication of the mark would constitute a violation of national law. For purposes of interpreting Article 23 of the Intellectual Property Law, this provision shall be interpreted as being consistent with the terms *ordre public* or public order and morality as used in international agreements to which the Lao PDR is a party.

Article 47. Abandonment of Application.

Pursuant to Article 43 of the Intellectual Property Law, the Department shall determine that an application is abandoned as of the times given below:

- 1) Where the application is incomplete,
 - a. If the application deposited with the Department is incomplete so that it does not meet minimum requirements for obtaining a filing date, after the expiration of 90 days;

- b. If the application has been assigned a filing date and the applicant has been notified that the application is incomplete and given a time in which to make corrections or supply missing items, at the expiration of the period for such action.
- 2) Where the trademark does not meet the requirements for protection, at the conclusion of the substantive examination and the expiration of any period for response by the applicant where the applicant has not filed a response that will place the application in condition for allowance.
- 3) Where it appears that the applicant is not entitled to apply for registration, after notice to the applicant and the expiration of any period for response that will show that the applicant is in fact entitled to apply.
- 4) Where the applicant fails to pay the required fees for the application or to renew the registration within the time provided,
 - a. If the application deposited with the Department has not been assigned a filing date because the filing fee was not paid, after the expiration of 90 days;
 - b. If the fee relates to any other fee that is due in connection with the prosecution of the application before the Department, and remains unpaid sixty days after the Department notifies the applicant to pay such fee, at the expiration of such period.
 - c. Where a renewal fee remains unpaid after the period set forth in Article 53 of this Decision, six months after the anniversary of the filing date at the end of the period for which the registration is in effect.
 - d. Where the applicant did not comply with substantive examination provisions of Article 41 of the Intellectual Property Law after notification by the Department, at the expiration of the time set in such notification.

SECTION VII

Rights and Obligations

Article 48. Scope of the Rights of the Trademark Owner; Limitations on Rights.

1. It is a purpose of this Decision to provide a single standard for determining who is entitled to use a mark and any limitations on such use. Therefore, the provisions of this Decision shall apply to all proceedings relating to trademarks, including trademark registration procedures, appeals, cancellation proceedings, and issues relating to infringement, dispute settlement, and the enforcement of rights under the Intellectual Property Law. In particular, the rights of the trademark owner under Article 57 of the Intellectual Property Law shall be interpreted in accordance with the provisions of this Section, and the same standards and criteria applied for all purposes with regard to determining whether marks, or a mark and trade name, are identical or similar; whether the goods or services to which they apply are identical, similar, or related; whether such mark tends to disparage or suggest a false connection or association with another entity; and whether there exists a likelihood of confusion between two marks or between a mark and a trade name.

2. For purposes of Article 57 of the Intellectual Property Law, the scope of rights of the owner of a trademark shall be defined in accordance with that Article with reference to the mark and to the goods and services to which it applies.

3. The right of the trademark owner under Article 57 of the Intellectual Property Law shall extend to all use or sales as provided in that Article and to promotions for such purposes, except for:

- 1) The sale or resale of goods that were legitimately obtained from the trademark owner, or from another party in a way authorized by the trademark owner, and the equivalent provisions with respect to services, *mutatis mutandis*; and
- 2) Where the use involves a fair use of descriptive terms, taking into account the legitimate interests of the owner of the trademark and of third parties.

4. The rights described in this Article shall not prejudice any existing prior rights, and in particular shall not be used to prevent the continued use of a mark, or of a sign that is similar to the mark, by a party who adopted and used the mark in good faith for five consecutive years before the effective filing date of the registered mark.

Article 49. Scope of the Rights of the Owner of a Well-Known Mark or Trade Name; Limitations on Rights.

The rights described in Article 48 of this Decision shall apply *mutatis mutandis* to well-known marks and to trade names without regard to whether they are registered.

Article 50. Duty to Exercise Control.

1. The owner of a registered mark shall have the right and duty to exercise control over the use of the mark and in particular to prevent the use of the registered mark on or in connection with goods or services in a manner that is likely to deceive the public. Where the owner of the registered mark permits its use by others, for example, pursuant to a license, the owner shall exercise control to ensure that goods or services used in connection with the mark meet the same standards regardless of whether they are produced or provided by the trademark owner or a licensee. While there is no particular standard that must be achieved for use of a trademark, consumers should reasonably be able to assume that all goods or services provided in connection with a particular mark will meet the same standards as those produced or provided by the trademark owner.

2. For collective marks and certification marks, the registrant must adopt and apply standards to exercise control the use of the collective or certification mark by others. Notwithstanding Article 57 of this Decision, the registrant of a collective mark or certification mark shall not transfer any rights in the mark or license its use in a manner that would allow the mark to be used in a manner inconsistent with the requirements of Article 20 or 21 of this Decision, as applicable.

Article 51. Duty to Use Mark.

The trademark owner shall have the duty to make use of the mark. Such use shall be reasonable in the circumstances, taking into account the normal operations of the registrant and any obstacles to use arising independently of the will of the trademark owner. As provided in Article 64 of the Intellectual Property Law, a trademark shall be considered to be "used" if it is used on or in connection with the goods or services for which it is registered by the owner or by another with authorization and subject to the owner's control. A trademark owner who is not using and has no bona fide intention to use a mark on or in connection with some of the goods or services to which the registration applies may avoid non-use by amending the registration to narrow the description of goods and services to which the mark applies.

SECTION VIII Term, Renewal, and Post-Grant Procedures

Article 52. Term.

The term of protection shall be 10 years from the date of registration, provided that for registrations granted before the effective date of this Law, the term shall remain as provided in the registration certificate. For applications filed before the effective date of this law but pending as of that date, the term shall be 10 years from the date of registration.

Article 53. Renewal.

1. A trademark registration may be renewed for an additional term of 10 years by filing an application for renewal on the form provided and paying the fee therefor. A renewal application must be submitted, together with the required fee, within one year prior to the end of its term of registration.
2. Where a renewal fee remains unpaid after such date, the renewal may be effected by submitting the renewal application and paying the renewal fee and surcharge within six months after the end of the period for which the registration is in effect.
3. Where a registration is renewed as provided in this Decision, the term of the renewed registration will expire on the anniversary of the registration or on the anniversary of the expiration date of its most recently renewed term, whichever is later.

Article 54. Amendment after Registration.

After registration, a trademark registration may be amended to delete some of the goods and services to which the registration applies, to disclaim elements of the mark, to correct a mistake in the registration, or to provide a corrected drawing, for example, where the registration was granted on the basis of a specimen rather than a drawing. Such amendment may be entered provided it does not change the essential nature of the mark. Except as provided in paragraph 3

of Article 12 of this Decision, amendments after registration are subject to payment of the appropriate fee as set forth in the Presidential Decree on Fees.

Article 55. Objection and Cancellation Requirements.

1. Article 45 of the Intellectual Property Law fixes the times at which rights terminate, to the extent that such events apply, but the grounds for termination of rights to industrial property shall be solely as defined in the relevant Decisions. For purposes of paragraph 4 of Article 45 of the Intellectual Property Law, commercial exploitation shall include importation and sale.

2. Pursuant to Article 44 of the Intellectual Property Law, at any time within five years from the date of publication of a registered mark, any interested party who satisfies the requirements of Article 5 of this Decision may object to the registration of the mark or request its cancellation. For purposes of Article 44 of the Intellectual Property Law, a request to modify the registration shall be referred to as an objection, and a request to cancel the registration in its entirety shall be referred to as a cancellation.

3. An objection or cancellation request may be brought by filing an application to modify or cancel the registration and paying the fee therefor. The application shall indicate whether the application requests modification or cancellation and the relief sought. The application must be signed by the party or parties bringing the action or by their representative and shall include the following elements:

- 1) Name and address of the party or parties filing the objection or cancellation request and, if available, the telephone number and email address of each. If the application is filed by more than one party jointly and the parties are not represented, the application should designate one person and address for correspondence.
- 2) If the parties are represented, the name and address of the representative and, if available, the telephone number and email address of the representative.
- 3) A power of attorney if applicable.
- 4) The mark that is the subject of the action.
- 5) A brief statement of the grounds on which the action is filed, specifically pointing out the basis for the objection or cancellation of the registration and the relief sought, as set forth in paragraphs 3 and 4 of this article.
- 6) A statement of the party's interest in the objection or cancellation.
- 7) A summary of the evidence supporting the ground identified.
- 8) Reasonable evidence supporting the grounds alleged in item 5 of this paragraph.

4. An objection must include an allegation that registration of the mark interferes with, or reasonably can be expected to interfere with, the exercise of the rights of the objecting party.

5. An application for cancellation of a trademark registration can be brought on one of the following grounds:

- a) That the mark failed to meet one or more requirements for protection under Articles 16, 23, or 26 of the Intellectual Property Law as further implemented by this Decision at the

time the mark was registered or that it has ceased to meet one or more of such requirements for protection.

- b) That the registration is invalid because the application was granted on the basis of false or misleading information supplied by the applicant or the applicant's representative.

6. Either an objection or cancellation application may be based on an allegation of non-use of the mark pursuant to Article 64 of the Intellectual Property Law, as discussed in Article 57 of this Decision.

7. Formal requirements shall not form the basis for a complaint to object or to invalidate and cancel a trademark registration. In particular, it shall not be a ground for invalidation that the application related to more than one mark or class of goods.

8. Procedures for an action to object or cancel a registration shall be as provided in Articles 56 and 57 of this Decision.

9. Pursuant to Article 45 of the Intellectual Property Law, any interested person who believes that a trademark was registered in error may file a complaint to the Court in accordance with the Civil Procedure Law demanding the cancellation of the registration on grounds that the subject matter thereof failed to comply with one or more requirements for protection pursuant to Article 16 of the Intellectual Property Law or that it was ineligible for protection pursuant to Article 23 of the Intellectual Property Law. A cancellation action brought pursuant to Article 45 of the Intellectual Property Law may be brought at any time during the term of the registration of the trademark and any renewal thereof or thereafter in any action to enforce rights in such trademark. Upon the final decision of the competent court finding invalidity in accordance with this article, a trademark registration found to be invalid shall be considered void and shall have no legal effect from the date of registration. Upon communication of such decision to the Department, the Department shall cancel the registration and publish such cancellation in the official industrial property gazette.

10. Any party who puts into issue the validity of a trademark registration, whether in a special cancellation action or as part of a defense to a charge of infringement, shall notify the Department of such claim and, if the trademark registration is cancelled in whole or in part, shall deliver to the Department a copy of the relevant Court decision.

11. Where a cancellation proceeding is before the Court, the Department may, with consent of the Court, appoint one or more persons to serve as experts in cases relating to complaints brought under this article in relation to Articles 45 and 136 of the Intellectual Property Law.

12. No action may be brought to terminate rights in a trademark other than as provided in this article and Article 58 of this Decision.

Article 56. Procedures for Objection or Cancellation.

1. Except as otherwise provided, applications to object to or cancel a registration shall be subject to the procedures provided in Articles 8, 9, 10, and 47 of this Decision, *mutatis mutandis*.

2. Promptly upon receiving notice that the application has been accepted for filing, the applicant shall serve a copy of the application and any accompanying information on the registrant. Such notice may be served at the correspondence address on file with the Department. If the applicant is unable to serve a copy on the applicant at such address, service shall be attempted at one or more of the following addresses:

- 1) The correspondence address of applicant's representative in the Lao PDR.
- 2) If the registrant is a governmental entity, at an official address associated with such governmental entity.
- 3) At any other address at which the registrant may reasonably be expected to be reached, if such address is known to the applicant.

3. The applicant shall thereafter file with the Department a statement that the application was served on the registrant, together with evidence supporting such statement. If service has been attempted but is not successful, that applicant shall file a declaration that it has attempted to serve a copy of the application and its accompanying material on the registrant, detailing the means it has employed to effect service, but that after diligent efforts, the applicant has been unable to accomplish such service. Such declaration shall be filed together with supporting evidence.

4. Where the applicant files a declaration that it has unsuccessfully attempted service as provided in paragraph 3 of this article, the Department shall examine the evidence to determine whether it appears that a reasonable effort has been made to serve the registrant. If it finds such efforts to be insufficient, it shall notify the applicant to correct the deficiency within 60 days. If it finds such efforts to have been sufficient, the Department shall notify the registrant at the last correspondence address provided by the registrant that an application has been filed and the nature thereof and require the registrant to provide a response within 60 days. If the Department receives no response within the stated period, it shall publish notice to the registrant and shall proceed as though the applicant had received actual notice.

5. Upon receiving verification that the registrant has been served with a copy of the application and accompanying material, the Department shall examine the application for formalities. For an objection or cancellation, the application shall be examined to determine that it meets the requirements of Article 55 of this Decision.

6. An application that satisfies relevant formal requirements as described in paragraph 5 of this article shall be subject to a substantive examination by the Department to determine whether the application establishes a *prima facie* basis on which to grant the application. For purposes of this Decision, a *prima facie* basis is established where the application and evidence contained in the application, if not rebutted, would be sufficient to establish all elements required to satisfy paragraphs 3, 4, or 5 of Article 55 of this Decision, as appropriate.

7. If the Department finds that an application establishes a *prima facie* basis for granting the application, it shall notify the applicant and the registrant that the application has established a *prima facie* basis for further review and has been accepted for further consideration in

accordance with Article 57 of this Decision. An application that, after substantive examination, fails to establish a *prima facie* basis shall be refused and both parties shall be so notified.

8. The Department will not issue advisory opinions regarding the likelihood that a particular application will be canceled or other action taken and will not provide legal advice to applicants regarding the grounds or types of evidence needed to support applications therefor.

Article 57. *Inter Partes* Procedures for Objection or Cancellation.

1. Where an application establishes a *prima facie* basis for granting the relief requested in the application, the Department shall refer the application to a Board established to hear *inter partes* matters.

2. Within 60 days of notification that the application has been found to establish a *prima facie* basis for granting the application, the registrant shall file a response to the application, specifically admitting or denying each element of the application or, if the registrant is without sufficient information on which to evaluate an element, so stating, and submitting such evidence as the registrant believes will rebut the elements of the application. The registrant may, in this filing, present any defenses to the allegations in the application or the requested relief or submit any new information or evidence it believes is relevant to the application.

3. The applicant shall have a single opportunity to rebut any statements or evidence presented by the registrant pursuant to paragraph 2 of this article. Thereafter, the registrant shall have a single opportunity to respond to the rebuttal, provided however, that no new issues of fact or law shall be raised by either party in the course of the rebuttal proceedings.

4. The registrant and applicant shall each file such statements with the Department. Each party shall serve or attempt to serve a copy of all documents on the other party and shall submit evidence of such service or attempted service to the Department.

5. Each submission shall be made within 60 days of service of the previous document, provided, however, that the Department may, upon request and for good cause shown, extend such time by an additional 30 days.

6. When the documents referred to above have been received by the Department, or the time for their submission has expired, the Board will examine the application, response, and rebuttal statements, together with evidence submitted by each party, and render a decision as to whether to grant the application and the relief sought. The Board shall make its determination by preponderance of the evidence and shall be based solely on the information contained in the file.

8. The parties may compromise and settle any such proceeding at any point during the pendency of the application, provided however that such compromise and settlement must be reduced to writing and provided to the Department for review and approval. A compromise and settlement will be approved unless it is found to be contrary to the Intellectual Property Law as it relates to trademarks, for example, by granting a license that would result in misleading consumers as to the true source of goods.

Article 58. Non-Use of the Mark.

1. Use of a mark is not a requirement for obtaining a registration, but an applicant should have a *bona fide* intention to place the mark in use

- a) on or in connection with the applicant's goods and services;
- b) or for a collective mark, by authorized persons on or in connection with the goods or services of members of the collective organization;
- c) or for a certification mark, by authorized persons on or in connection with the goods or services certified.

2. Article 64 of the Intellectual Property Law defines *use* as "use on or in connection with the goods or services of the trademark for which it is registered." Therefore, the failure to use a registered mark on some or all of the goods or services identified in the registration may establish non-use of the mark and may serve as a basis for cancellation unless such non-use is excused as provided in Article 64 of the Intellectual Property Law. Article 64 of the Intellectual Property Law also defines *non-use* to include use that is merely token use and use that is not in good faith. Thus, the type of use that will prevent cancellation of a mark must be use in the ordinary course of an entity's business or other activities and must be use undertaken in good faith.

3. Trademark owners should review their registrations from time to time to ensure that their registrations actually reflect the goods or services for which they use the mark or have a *bona fide* intention to use the mark. Since previous practice allowed applicants to register a mark for an entire class of goods, some registrations may reflect a large number of goods or services that are unrelated to the goods or services on which the mark is actually used, and for which the trademark owner has no intention to use the mark. The owner of a trademark registration may remedy this problem at any time by amending the registration to narrow the list of goods and services to those for which the owner actually uses the mark or has a good faith intention to use the mark in its ordinary course of business or other activities for which an entity is organized.

3. Either an objection or cancellation action may be based on non-use of a mark.

4. An objection is the appropriate action where a party wishes to narrow the goods or services to which a trademark registration applies in order to file its own application to use goods or services in the class. Where, for example, a registration applies to a large number of goods or an entire class of goods, and the registrant has no plans actually to use the mark in connection with all of such goods or services, another party may wish to register the same or a similar mark for other goods and may propose narrowing of the list of goods and services in the registration. This may be acceptable where such narrowing would not so limit the rights of the registrant as to diminish the ability of the trademark registrant to accomplish an ordinary expansion of its areas of business. Note, however, that even where an objection successfully results in the narrowing of the goods or services to which a registered mark applies, such action does not necessarily mean that the objector will be able to secure the desired registration, as the objector's application to register the mark will also be subject to substantive examination, in particular, to ensure that the

registration would not lead to a likelihood of confusion between the goods or services of the applicant and those of the earlier-registered mark.

5. A cancellation action is the appropriate action where a party believes that the mark is not being used on or in connection with some or all of the registrant's goods or services and that the registration itself was obtained in bad faith, that is, without an intention to use the mark as provided in Article 64 of the Intellectual Property Law or to trade on the fame of a well-known mark.

6. A cancellation action for non-use may be brought at any time and is not restricted to the five-year limitation for bringing a cancellation action as set forth in Article 44 of the Intellectual Property Law.

7. Where an objection or cancellation action is brought on the ground of non-use, the owner of the registration shall have the right to present reasons excusing its non-use as provided in Article 64 of the Intellectual Property Law.

8. Except as provided in paragraphs 6 and 7 of this article, the procedures for objecting to or cancelling a mark for non-use shall be as set forth in Articles 56 and 57 of this Decision.

SECTION IX

Administrative and Judicial Review

Article 59. Policy; Preventing and Correcting Mistakes.

It is the policy of the Ministry to ensure that all actions taken comply with the Intellectual Property Law and other applicable laws, and that the laws are administered in an impartial, consistent, and transparent manner. Accordingly, the Department shall have the authority to provide for a review of any action taken by the Department and to take any administrative action as may be needed to prevent or correct a mistake or as may be helpful in ensuring that actions by the Department are of the highest quality. Such actions may be taken on the authority of the Director General or such person's designee or as a result of quality review that may be instituted by the Department.

Appeals and other actions provided in this Section are necessary and appropriate to the orderly administration of the Intellectual Property Law. A request made under these procedures is part of the administrative procedure of the Department and is without prejudice to any rights that may arise under the Petitions Law. Appeals, requests for reconsideration, and other actions provided in this Section shall be governed by the procedures set forth in this Decision.

Article 60. Administrative Review: How Initiated

1. Any applicant or other person who is a party to a proceeding with the Department and who believes the Department has made an improper requirement or decision in such proceeding may, within 90 days of notification of such requirement or decision, take one of the following actions:

- 1) File a written request for reconsideration of the decision or requirement, without payment of a fee, or
 - 2) File a written appeal to the Department and pay the relevant fee therefor.
2. Such request must identify the
- 1) Requirement or decision to be reviewed,
 - 2) Legal and factual basis on which the request is based, and
 - 3) Action requested by the applicant.
3. The request may also include any arguments or explanations that the applicant or other party believes supports the request for reconsideration or appeal.

Article 61. Request to Stay.

A request for administrative review initiated pursuant to Article 60 of this Decision may include a request to stay the implementation of the decision or requirement that is the subject of the request for reconsideration or of the appeal. Otherwise, such decision or requirement remains in effect until such time as it may be withdrawn by the Department. In *ex parte* matters, a stay shall be freely granted in the interests of justice, taking into account the interests of third parties. In *inter partes* matters, the Department shall additionally consider the interests of other parties to the matter and grant a stay where the interests of justice shall best be served.

Article 62. Reconsideration.

1. Where an applicant, registrant, or other party to an *ex parte* proceeding makes a reasonable showing that there is a reasonable basis on which to review the requirement or decision that is the subject of a request for reconsideration, the Department shall grant the request and reconsider the issue leading to the requirement or decision in view of the information and arguments or explanations offered by the applicant, registrant, or other party to the proceeding. Granting a request for reconsideration does not bind the Department to withdraw a requirement or render a different decision but rather to ensure that it gives the matter a new hearing. Since the Department's only interest in the outcome of its decisions is to ensure that they are correct, a request for reconsideration should not be viewed as an affront to the Department nor to any of its employees. A request for reconsideration is intended to create an informal mechanism allowing the Department to make corrections quickly.

2. The same principles shall apply in *inter partes* proceedings, provided, however, that in *inter partes* proceedings, the party requesting review must serve a copy of such request and any accompanying materials on the other party or parties to the proceedings. Such other party or parties shall be entitled to be heard on the request and to submit its own documents supporting or opposing such review, following the procedures provided in Article 57, *mutatis mutandis*. The Department shall weigh the interests of the parties in deciding whether to grant a request for reconsideration.

Article 63. Board of Appeals.

A Board of Appeals shall be constituted to resolve administrative appeals relating to the grant, refusal, or any requirement made by the Department in connection with an application or registration or other proceeding. The Board of Appeals shall be independent of any Division within the Department. The Board may have permanent or temporary existence, provided that no person shall take part in deciding an administrative appeal of such person's own decision.

Article 64. Appeal Procedures.

1. An administrative appeal is initiated by filing a written appeal as described in Article 60 of this Decision and paying the fee for such appeal.
2. The appeal must specifically identify the issue that is being appealed, for example, the Department's requirement to remove extraneous material from a drawing, the Department's requirement to disclaim a portion of a trademark, the Department's requirement to provide additional information, or the refusal of the application. The appeal shall identify the date of the decision or requirement being appealed and must comply with the requirements of this Decision regarding correspondence with the Department.
3. The appeal must also point out the legal basis for the appeal, referring specifically to relevant portions of the Intellectual Property Law or this Decision, and may include a statement by the applicant pointing out how the relevant legal basis supports the applicant's appeal.
4. Where the appeal relies in whole or in part on specific facts, the appeal shall identify such facts by reference to the application or previous correspondence with the Department.
5. Department personnel who participated in the decision being appealed may provide a similar statement of the legal and factual basis for the decision for consideration by the Board of Appeals. The person bringing the appeal shall have a single opportunity to submit a response to such statement, subject to the provisions of paragraphs 2, 3, and 4 of this article.
6. The Board of Appeals shall consider the appeal based on the written record as described in this article and shall render a decision in writing, which shall set forth the Board's decision and the legal and factual reasons therefor. Such decision shall be provided to the person bringing the appeal.
7. Where an appeal fails to provide the information required under paragraph 2, the Board of Appeals may summarily dismiss the appeal.
8. At the conclusion of the appeal, an application will be returned to the Department for such further action as may be appropriate, consistent with the holding of the Board of Appeals, unless the person bringing the appeal files an appeal to the Court within the time for filing such appeal as provided under the Civil Procedure Law.

Article 65. Further Appeals.

1. An applicant or other party who is dissatisfied with the Department's decision or requirement following a request for reconsideration may appeal to the Department as set forth above. Filing a request for reconsideration is not a requirement for filing an appeal with the Department.
2. An applicant or other party who is dissatisfied with the holding on the appeal to the Department may appeal to the court within such time as provided under the Civil Procedure Law.

Article 66. Files or Papers that Cannot Be Located.

In the event that the Department cannot, after a reasonable search, locate a file or other paper relating to an application or other proceeding, the Department shall attempt to reconstitute its records through other sources. In such case, the Department may request the applicant or owner to provide a copy of such person's record (if any) of the relevant paper or of correspondence in the relevant file, together with a statement that the copy is a complete and accurate copy of the applicant's or owner's record of all of the correspondence between the Department and the such person for the relevant paper or file, or that the applicant or owner is aware of but does not possess other records of such correspondence with the Department.

SECTION X
Dispute Settlement and Enforcement

Article 67. Enforcement and Resolution of Disputes Regarding Trademarks Interpreted with Reference Similarity of Mark and Goods and Services.

For purposes of the resolution of disputes or enforcement of rights pursuant to Section VIII of the Intellectual Property Law, the trademark owner shall have the right to enforce rights provided in Article 57 of the Intellectual Property Law. Any action with regard to the resolution of disputes or enforcement of rights shall be interpreted with reference to the mark and to the goods or services associated with the mark as set forth in Article 48 and Section VI of this Decision.

Article 68. Enforcement and Resolution of Disputes Regarding Trade Names

For purposes of the resolution of disputes or enforcement of rights pursuant to Section VIII of the Intellectual Property Law, the owner of a trade name shall have the right to prevent the registration of a mark as provided in paragraphs 11 and 12 of Article 23 of the Intellectual Property Law, and to enforce rights provided in Articles 57 of the Intellectual Property Law. Any action with regard to the resolution of disputes or enforcement of rights shall be interpreted with reference to the criteria for determining similarity of marks as set forth in Section VI of this Decision, taking into account, in the case of a trade name, the goods or services associated with the trade name.

SECTION X
Transfer of Rights

Article 69. Transfer of rights; Recordation Required.

1. Pursuant to Article 47 of the Intellectual Property Law, and subject to the requirements of this article, the owner of a trademark may transfer ownership to all or part of the rights to a trademark, to a trademark registration, or to an application for such registration. Likewise, an applicant to register a trademark may transfer ownership to all or part of the rights to an application to register a geographical indication

2. Rights to such property may also be transferred by inheritance or by gift.

3. A document that provides for the transfer of ownership of a legal entity in the Lao PDR may provide for the ownership of rights to a registered trademarks or application therefor, in which case the ownership of the trademark or application shall be as set forth in the document providing for such transfer of ownership. In the absence of such provisions, transfer of ownership a legal entity is presumed to include a transfer of any trademarks owned by the entity being transferred and rights relating to any applications therefor.

4. Any transfer of ownership shall be recorded with the Department, using the form provided. A transfer of ownership shall not be enforceable against a person who is not party to the transfer until such transfer is recorded unless such person has actual notice of the transfer.

5. Notwithstanding any provision to the contrary, no transfer of rights, including a transfer that occurs by virtue of the transfer of ownership of a legal entity, shall be valid where its effect is to authorize the use of a trademark, collective mark, or certification mark on or in connection with goods or services by persons or in a manner contrary to the Intellectual Property Law.

Article 70. Licenses; Continuing Obligation of Control.

1. As provided in Article 47 of the Intellectual Property Law, and subject to the requirements of this article, the owner of a trademark registration has the right to permit another person to exploit all or part of the owner's rights to the trademark. This is accomplished through a license agreement. A license does not constitute a transfer of ownership of the trademark.

2. Except as specifically prohibited in this Decision, the rights of the licensee shall be governed by the terms of the license agreement. A license agreement concluded outside the Lao PDR shall be enforceable in the Lao PDR only to the extent that it is enforceable in the jurisdiction applicable in the geographical territory where goods entitled to bear the geographical indication are produced.

3. The provisions of paragraphs 3, 4, 5, and 6 of Article 69 of this Decision shall apply to licenses, *mutatis mutandis*, provided however, that any such license transferred as provided in paragraphs 3 or 4 shall remain subject to the control of the owner of the registration. Where

rights to intellectual property are jointly held by multiple persons, a license shall be mutually agreed by all rights owners.

4. A license agreement may be recorded using the procedures of Article 71 of this Decision, in which case it shall be subject to the same requirements.

5. The terms of a license agreement shall be as agreed between the parties, subject however, to the requirements that

- 1) No license agreement shall provide or purport to provide for use of a trademark indication contrary to the obligation of the owner to exercise control, and
- 2) No license agreement shall permit or purport to permit any use of a mark on or in connection with goods or services goods by persons or in a manner contrary to the Intellectual Property Law.

Any such provision contrary to this paragraph shall be void and unenforceable in the Lao PDR.

6. Unless the license agreement otherwise provides, authorization to use a registered mark on or in connection with goods shall be presumed to authorize the following acts:

- 1) The sale or re-sale, advertising, importation, or export of goods bearing the mark in accordance with the authorization, whether by the producer or provider of such goods or by a party that has lawfully acquired such goods, provided that such goods remain in condition consistent with the original exercise of control by the owner of the registration and that such use is not otherwise deceptive or contrary to the Intellectual Property Law. The same provisions shall apply *mutatis mutandis* to marks used in connection with services and to collective and certification marks.
- 2) The same acts with regard to products made from such goods or services provided using such goods.
7. Where there is a transfer of ownership of a legal entity that is a licensee of one or more marks, it shall be presumed, unless the license agreement otherwise provides, that the transfer of ownership of the legal entity does not operate so as to transfer a license to use a registered trademark. An agreement for the transfer of such legal entity that contains terms purporting to transfer such license shall not be given legal effect in the Lao PDR unless the transfer of the license is authorized or confirmed by the owner of the trademark or registration.
8. Transfer of ownership of a legal entity shall not affect the validity of any license arrangement for which such entity is the licensor, unless otherwise specifically provided in the license agreement.

Article 71. Recordation Procedures.

1. A party wishing to record the transfer or license of a trademark registration or application shall submit an application to record such transfer, together with the recordation fee and a copy of the transfer document, certified to be true and correct. Procedures regarding the application to record a transfer or license shall be as provided in Article 7 of this Decision, *mutatis mutandis*.

The recordation may be filed by the party making the transfer, the party receiving the transfer, or by a third party with knowledge of the transfer.

2. The Department may require the person presenting a transfer for recordation to submit additional information or documents, or to supply authenticated documents, where needed for clarification or where the Department may reasonably doubt the veracity of any indication contained in any communication.

3. Where a single transfer relates to multiple files or applications, a single transfer document may be filed using the procedures of paragraph 4 of Article 84 of this Decision.

4. If the transfer is submitted for recordation by a person other than the owner of record, the Department shall send a written notification of the proposed transfer recordation and of the owner's right to object, to the owner of record at the latest address of record. An objection to the recordation of a transfer may be filed without fee at any time within 60 days of notification.

5. If the transfer appears to meet requirements for recordation, the Department shall publish a notice referring to the transfer.

SECTION XI Representation

Article 72. Persons Authorized to Appear before the Department.

1. Subject to the provisions of Article 14 of this Decision and paragraph 2 of Article 5 of this Decision, the following persons are authorized to appear before the Department:

- 1) An applicant, with regard to the applicant's own application;
- 2) Where more than one person jointly makes application, any one of such persons, subject to appointment by the other joint applicants;
- 3) An attorney who is authorized to practice law in the Lao PDR
- 4) A Practitioner as defined in this Section with regard to the subject matter for which such person is authorized to act; or
- 5) Where the applicant is an organization, the owner or an officer of such organization, or an attorney or agent employed by such organization.

2. Notwithstanding the provisions of paragraph 2 of Article 4 of this Decision, an assignee of an application, an applicant, owner or other interested person may act before the Department for purposes of

- (i) The filing of an application for the purposes of receiving a filing date and receiving a filing receipt;
- (ii) The mere payment of any fee and receiving a receipt for such payment.

Article 73. Appointment of Representative.

1. A representative is appointed by a power of attorney. The power of attorney must be signed by the applicant or other principal. Where an application is filed by joint applicants, the power of attorney must normally be signed by all of the joint applicants.
2. Subject to other requirements of this Section, a power of attorney may appoint more than one representative, provided that all such representatives have the same representation address.

Article 74. Power of Attorney.

1. A Power of Attorney authorizes a representative appointed in accordance with this Decision to act on behalf of the principal. Except where the signature of the applicant or other party to a proceeding is specifically required, an act, with respect to any procedure before the Department, by or in relation to a representative who complies with the requirements set forth herein, shall have the effect of an act by or in relation to the applicant, owner or other interested person who appointed that representative. In the absence of evidence to the contrary, a representative will be presumed to act in accordance with instructions of the principal or in accordance with such principal's wishes.
2. A Power of Attorney shall specify the nature and scope of the representation. A Power of Attorney may authorize the representative to represent the principal with regard to one or more matters before the Department, which shall be identified in the Power of Attorney, or it may relate to all matters before the Department including all existing and future applications or registrations for trademarks of that person, subject to any exception indicated by the appointing person. Likewise, a Power of Attorney may be given for an indefinite term or limited as to its duration. In all events, the Power of Attorney may be revoked by the principal at any time, without prejudice to the right of the representative to compensation for services rendered and expenses incurred on behalf of the principal during such representation.
3. The Department will give effect to the terms of the Power of Attorney except where it would be contrary to law or public policy to do so, for example, where a Power of Attorney purports to limit the ability of the principal to revoke the Power of Attorney or to provide terms of representation that are contrary to this Decision.
4. Where a Power of Attorney does not state the scope or duration of the representation, the Department will treat the Power of Attorney as applying solely to the single application or other proceeding in connection with which the Power of Attorney is originally submitted, and its duration will be treated as terminating when all matters related to such application or other proceeding are concluded and the time for further action thereon has expired.

Article 75. Requirements for Giving Effect to Power of Attorney.

1. To be given effect by the Department, a Power of Attorney shall be in writing and signed by the principal. Such signature shall be certified by a notary or attorney, at the option of the principal. Legalization is not required.

Where more than one person is principal, for example, in the case of joint applicants, the power of attorney shall be signed by all of them unless good reason is shown why one or more of such persons has not signed.

Where the principal is a legal entity, the power of attorney shall be signed by the owner of such entity or by an officer or other person with the legal authority to bind the legal entity.

2. Such document shall be identified as a Power of Attorney and shall

- 1) Give the representative power to act on behalf of the principal and
- 2) Name one or more representatives in accordance with Article 76.

5. Where there is reasonable doubt as to the authenticity of a Power of Attorney or as to a representative's authority to act, the Department may require such authentication or confirmation as it deems appropriate in the circumstances, including, for example, correspondence from the principal.

Article 76. Persons Eligible to Serve as Representative.

Subject to the provisions of Article 13 and paragraph 2 of Article 4 of this Decision, a representative may be

- 1) An attorney or other person authorized to practice before the Department;
- 2) An attorney or agent who is not so authorized but who is an employee of the applicant or assignee of the entire interest in the subject matter of the application; or
- 3) A joint applicant.

Article 77. Power of Attorney for Multiple Matters.

Where a Power of Attorney relates to multiple applications, files, or proceedings, it shall be sufficient to supply one Power of Attorney that satisfies the requirements of this Section and to submit a copy of such Power of Attorney with other applications, files, or proceedings, provided that the copy identifies the application number for the file where the original power of attorney is filed.

Article 78. Power of Attorney: When Presented; Effect of Failure to File.

1. A power of attorney, duly signed, shall be presented with the first application or other action to which it pertains.

2. Where an application or other paper is presented by a representative but the power of attorney, or where applicable, a copy thereof, is not submitted with such application or other paper, the Department shall provisionally accept such application or other paper and notify the representative to provide the power of attorney within 60 days from such notification.

3. Failure to present the power of attorney at such initial action shall not invalidate such filing where representation is not mandatory. Where representation is mandatory, failure to present the power of attorney shall not invalidate such filing provided the applicant or other party provides a power of attorney within the time provided in the Intellectual Property Law and this Decision.

4. If the Power of Attorney is not provided within 60 days of the notification, the Department shall change the correspondence address to that of the applicant or other principal and notify such person directly that it has 60 days in which to appoint a representative and provide the Power of Attorney, and the consequences of failing to comply with such requirements, which may include suspending action on the application or other matter or, if representation is mandatory, abandonment of the application or other filing.

5. The Department may refuse to accept further correspondence from the Representative in connection with such application or other proceeding until the Power of Attorney is submitted.

6. Correspondence from an agent or attorney who presents a new power of attorney with a different representation address is presumed to revoke the previous power of attorney unless the Department is promptly informed otherwise. Where the new power of attorney has the same representation address, the Department will assume that the previous power of attorney remains in effect unless the Department is promptly informed otherwise.

Article 79. Termination of Representation.

1. Representation terminates when a power of attorney is revoked by the principal, when the matter that is the subject of the representation is concluded as provided in the power of attorney or as otherwise provided in this Decision, or when the representative withdraws from the representation and such withdrawal is accepted by the Department as provided herein, whichever is earlier.

2. Where the Department receives a power of attorney appointing a different representative, it shall notify the representative of record unless it appears on the face of the new power of attorney that such notification has already been effected.

3. A representative who withdraws must notify the Department and the principal of such withdrawal. The Department will notify the principal of such withdrawal unless it appears on the face of the communication that such person has already been notified. Such withdrawal shall be accepted by the Department unless it occurs in an application or other matter on which action is due and insufficient time remains for the principal to take such action or, if representation is mandatory, for the principal to obtain other representation and take such action.

Article 80. Persons Authorized to Act as Representatives Before the Department.

1. Any person who is of good moral character and possesses the knowledge of intellectual property and the education to carry out the duties of representative, and who has an address in the Lao PDR, may be authorized to be a Practitioner and represent others before the Department, subject to other requirements of this article.

2. Any agent or attorney who, as of the effective date of this Decision, has practiced before the Department for at least one year shall be presumed to satisfy the qualifications of paragraph 1 of this article.

Article 81. Registration Required; Practitioner List Published.

1. Any person other than an attorney in the Lao PDR and who wishes to act as a representative before the Department shall register as a Practitioner. By registering, such person agrees to carry out his or her duties faithfully and in accordance with the provisions of this Decision and with other Decision issued by the Ministry of Science and Technology on requirements for carrying out the business of being a representative on intellectual property.

2. By appearing before the Department, an attorney or other person who is not registered as a Practitioner agrees to the same requirements a specified in paragraph 1 of this article.

3. To register, such person shall indicate his or her name and address; representation address if different from such person's address; telephone number or numbers, facsimile and email address, or other contact information as applicable; languages; website if applicable; and areas of practice. Where such person's representations address or other contact information changes, such person shall promptly inform the Department of the current information.

4. The Department shall maintain a list of Practitioners who are authorized to represent applicants or other persons in transacting business with the Department. The Practitioner List shall include such information as provided in paragraph 3 of this article. The Department shall publish such list annually and may provide a copy thereof to any person upon request but shall not recommend or aid in the selection of an attorney or other representative.

5. The provisions of this article shall take effect not later than three months from the effective date of this Decision.

Article 82. Implementation through Instructions and Notices.

Consistent with Article 147 of the Intellectual Property Law, the Department shall issue instructions and notices and take such other actions as may be necessary to carry out the provisions of this Section.

Article 83. Continued Requirements for Practitioners.

1. The Department may from time to time issue other requirements for Practitioners, including attendance at continuing education provided by the Department.

2. Practitioners who are registered as provided in this Section are under a continuing obligation to act in accordance with the Intellectual Property Law, this Decision, and any other applicable law, decisions, or notices. Any person found to act contrary to this paragraph may be advised to correct such acts and if not promptly corrected, or if repeated, may be subject to sanctions by the

Department. Such sanctions may include suspension or removal from the list of registered Practitioners.

SECTION XII Administrative Provisions

Article 84. Communication with the Department.

1. All business with the Department relating to a trademark, an application therefor, or any proceeding before the Department, should be transacted in writing. The action of the Department will be based exclusively on the written record in the Department, and no attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.
2. All persons are required to conduct their business with the Department with decorum and courtesy. Papers presented in violation of this requirement may be refused entry.
3. Since each file must be complete in itself, a separate copy of every paper to be filed in connection with a file for a trademark registration, or with an application therefor, or with any other proceeding, must be furnished for each file to which the paper pertains, even though the contents of the papers filed in two or more files may be identical. Duplicate correspondence should not be submitted except upon request of the Department. The Department may dispose of duplicate copies of correspondence in the file of an application, registration, or other proceeding.
4. Where the same document relates to more than one file, it shall be sufficient to provide a single original that complies with all applicable requirements for such document together with a copy of the original for each file and an indication on such copy of the file with which the original is associated.
5. The Department will correspond with only one person or entity. This person or entity may be the applicant or intellectual property owner or other party to a proceeding before the Department, or may be such person's authorized representative. Initial correspondence in any matter is required to include an address for correspondence, which address may be changed at any time. Where more than one address is presented, the Department will choose one of the addresses for correspondence. If the party is represented, the correspondence address will be presumed to be the correspondence address of the representative.
6. Where there is a change of correspondence address or the appointment of a new or substitute representative, the applicant or other party should promptly notify the Department of such change and should include a separate document of notification for each application or patent, petty patent, or registration to which the information relates.

Article 85. Access to Files.

1. Files and documents relating to applications for registered trademarks and industrial designs

shall be available for public inspection and copying during normal business hours, subject to payment of applicable fees. Where requests for inspection or copying involve a large number of documents or multiple files, the Department may make reasonable provisions, such as requiring an appointment or limiting the number of documents or files available on a single day, as needed to ensure its orderly conduct of business.

3. No files or documents therein shall be altered, destroyed, or removed from the premises of the Department. The Department may bar any person found to be violating this paragraph, or attempting to do so, from future access to documents and files of the Department.

Article 86. Identification of Documents.

1. Each item of correspondence relating to a patent, petty patent, industrial design, or application therefor, or to any proceeding within the Department, should bear on the top page in a conspicuous location an indication of the nature of the correspondence, for example, patent application, request for extension of time, amendment, response to Department communication, appeal, or payment of fees.

2. If the correspondence relates to an application that has already been filed or to an issued patent, petty patent, or registration, the correspondence should also bear the filing number of the application or number of the patent, petty patent, or registration, as applicable; the name of the applicant or inventor or designer, as applicable; and the title of the invention, utility innovation, industrial design, or integrated circuit layout-design, as appropriate. In addition, unless it is impractical, each page and each item enclosed with the correspondence should bear at least the filing number of the application or number of the patent, petty patent, or registration to which it refers, For items such as drawings or pictures, such information may be recorded on the reverse side of the item in pencil or on a label.

3. Correspondence relating to an application should ordinarily not be filed prior to receipt of the application number from the Department.

Article 87. Form of Correspondence.

1. Correspondence with the Department relating to patents, petty patents, industrial designs, integrated circuit layout-designs, or applications therefor, or to any proceeding within the Department, should be made on flat, non-shiny paper that is A4 in size and recorded in dark ink or its equivalent. Correspondence must be legible and subject to photocopying as needed. Bulky items should not be submitted except with the express permission of the Department.

2. Documents and drawings or photographs submitted to the Department should be clear and of suitable quality for publication. Where such items are not of suitable quality for publication, the Department may accept such items for purposes of examination but may require the submission of publication-quality documents, drawings, or photographs prior to final approval of the application.

3. Where needed to illustrate the subject matter of an application, the applicant should provide

high-quality drawings in black and white. Photographs or color images will be accepted for examination purposes but the applicant must submit corrected drawings prior to publication. Where photographs or color images are required for an understanding of the subject matter, for example, photographs of electrophoresis gels or cell cultures or an industrial design where color is an essential feature of the design, the application should so state, and the use of such photographs or color images is subject to the payment of a surcharge on the publication fee. Where photographs are used, the applicant must provide copies that are of sufficient quality so that all details in the photographs are reproducible in the publication and in the printed patent.

4. If items submitted are not legible or are not of sufficient clarity to enable the Department to conduct an examination, the Department shall so notify the applicant and provide an opportunity for the applicant to submit corrected documents. Where such new documents relate to the subject matter of the application, their acceptance will be subject to requirements related to changes in the content of an application.

Article 88. Times for Taking Action; Expiration on Saturday, Sunday or National Holiday.

1. Wherever the Law, this Decision, or communication by the Department specifies a time for taking action or paying a fee, such period shall be calculated as follows:

- a) If the period is stated in days, calendar days are intended, and the period shall be calculated by excluding the first day and including the final day. For example, 30 days from March 15 is April 14.
- b) If the period is stated in months or years, the period shall expire on the same date of the relevant month or year. For example, one month from March 15 is April 15.

2. If the last day of the period is an official holiday, or a day when the Department is not open for business, the period shall be extended until the first following working day.

3. The Director General may provide for an extension of time based on a delay or loss of mail service caused by war, revolution, civil disorder, strike, natural calamity or other like reasons.

4. Except as provided in this Article, the period for filing an application for registration shall not be extended.

**SECTION XIII
Registration Fees and Service Fees**

Article 89.

**SECTION XIV
Final Provisions**

Article 90. Implementation.

Article 91. Effective Date.

This Regulation shall enter into force on the date of its signature.