The Doctrine Of Exhaustion Of Trade Marks In Cambodia

The exhaustion of trademark means that the trademark owner's intellectual property rights can't control the distribution or resale of goods (WebFinance Inc, 2018). Cambodia is also a country which export and import many categories of products. The product that we have export are such as rice, beans, corns, clothes, and shoes. The product that we import are motorbike, car, beer, clothes, shoes, smartphones, computer and tablet also. Cambodia has become a member of the WTO since September 2004 due to a long process of discussion and the act of attaining with cooperation (Hor Peng, Kong Phallack, Jorg Menzel (Eds.), 2012) 1. Cambodia has joined World Intellectual Property Organization in 1995 (WIPO, 2018). The parliament of Cambodia also adopted the national Law for protection Intellectual Property. We have "the Law concerning Marks, Trade names and acts of Unfair Competition" which was adopted by national assembly on December 6, 2001 and ratified by the senate on January 8, 2002. Cambodia adopts the national exhaustion of trademark rights where the owner of the trademark can't forbid the flow of the products or users from using the product when it was first sold on the market by the owner of trademark or any parties which were authorized by them. However, this activity has the restriction, because it does not extend to the action which relates to infringing of products that put on the market without consent or authorisation from the trademark owner. These are many types of product which are sold in Cambodia without consent from the owner of trademark but there is legal action due to the national exhaustion of trademark rights.

First, smartphone. The technology is very modern and smartphones are really important for people. They can provide many benefits to the people. There are many brands of smartphone which are exported to Cambodia such as iPhone, Nokia, Samsung, Sony, Huawei, Xiaomi, OPPO, VIVO, LG. These brands of smartphone are sold out to Cambodia by the cooperation company like iOne is a Company which get an authorize service provider from Apple company (iOne Service, 2018). Whatever, another phone shop can ask for an authorization from each electronics company for selling this product also like Sokly Phone Shop (SOKLY PHONE SHOP, 2018), Kouny Phone Shop (KOUNGY PHONE SHOP, 2018), or Hakse Phone Shop (HAKSE, 2018). Furthermore, when the consumers buy the smartphone product from these phone shops in Phnom Penh city, they become the owner of their products. According to Civil Code of Cambodia article 1http://www.bun-associates.com/wp- content/uploads/2013/02/BA_ECONOMIC_LAW_Intellectual_Property_Rights_Mr_Phin_Sovath.pdf 138 of Cambodia, the owner has three rights on their property such as using, getting benefit, and making transference. When the consumers would like to change or upgrade to another phone series, they can sell it to the secondhand phone shop without an agreement from Apple of Samsung company.

Second, the automobile. There are many cars which are imported to Cambodia with many brands such as Mercedez-Benz (Mercedez-Benz Asia, 2018), Ford (RMA-Ford, 2018), Toyota (Toyota (Cambodia) Co., Ltd, 2018), Mazda (Mazda Cambodia, 2018). These are sell the new cars, but it is not the secondhand cars. However, there are a lot of secondhand car shops such as Hak Car Shop (hakcarshp.com®, 2018), Phnom Penh 168.com (Phnompenh168.com, 2018), (iKnow.com.kh, 2018) . Most of them are imported from the USA (export.gov, 2018). There are two procedures of buying or selling the car. The new car, the consumers have to choose the kind of car that they want to buy. Then they have to provide the money and the

Cambodian identify card to the company. According to the Law on Land Traffic 2015 article 47, all of the vehicles before do the traffic on the road have to get the vehicles identification and number plate which are registered by Ministry of Public Works and Transport. Article 48, the seller or the car company have to register the car that they sell to their consumers. the Ministry of Public Works and Transport (Law on Land Traffic, 2015). After then, the consumers have to wait for the identify card which prove about the ownership of the consumers. It also mentions about their name, date of birth, address and the automobile identification. The old car, the seller and the buyer have to do the agreement by multilateral which mention two of witnesses in the contract. Than they have to change the name of the vehicle owner by the Ministry of Public Works and Transport. Finally, they have to pay the tax around 10 dollars to 25 dollars depend on the resident of the seller and buyer.

Third, clothes. In Cambodia, there are many cloth shops that sell famous brands like Mango (MANGO, 2018) , Zando (ZANDO, 2018), and Angkor Tep Group (ANGKOR TEP, 2018). Most of them sell cloth that has good quality which are popular in Cambodia and have the location Phnom Penh city. For buying cloth or selling cloth in Cambodia, the seller just provides the product to the customer and the customer provide the money to pay for the product. For example Mr. A buy a T-shirt from a Mango cloth shop in Phnom Penh city. When he arrives home, his friend who lives near his house offer to purchase the T-shirt from him. Mr. A decided to accept the request of his friend. Mr. A just provides the product to his friend, and his friend just provide the money for paying a T-shirt to him. So, the action of Mr. A that he sells the T-shirt to his friend is a legal activity even Mr. A didn’t ask for an agreement from Mango shop.

To sum up, the doctrine of the exhaustion of trademark has the limitation, and it doesn’t connect to infringement of the products. This activity has required the agreement or authorization from the trademark owner and it doesn’t provide a bad affect to the trademark owner. However, it is a legal action and it provide the benefit to the trademark owner for selling their product and get more income.

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