

LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

CONVENIENCE TRANSLATION - ACCURACY NOT GUARANTEED

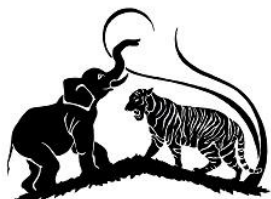
Republic of the Union of Myanmar
Ministry of Planning and Finance
Notification No. 50/2023
1385, 12th Waning Day of First Waso
(14 July 2023)

Customs rules concerning the protection of mark rights

The Ministry of Planning and Finance has issued these rules with the consent of the Union Government in exercise of the authority conferred by section 106(c) Trademark Law.

Chapter 1 Name and definitions

1. These rules shall be known as the customs rules concerning the protection of mark rights.
2. Expressions in these rules shall have the same meaning as in the Trademark Law. Furthermore, the following expressions shall have the following meanings:
 - (a) “**Law**” means the Trademark Law.
 - (b) “**Customs Department**” means the Customs Department under the Ministry of Planning and Finance.
 - (c) “**Director General**” means the Director General of the Customs Department under the Ministry of Planning and Finance.
 - (d) “**Goods for which a counterfeited mark is used**” means goods that were duplicated or imitated for commercial use by someone else without the consent of the right holder with regard to a mark, trademark, service mark, collective mark, certification mark, geographical indication, famous mark or trading name registered in accordance with the provisions of the Law.
 - (e) “**Suspension order**” means an order issued by the Director General to suspend the free entry into commercial circulation of goods for which a counterfeited mark is allegedly used if there is evidence or reliable information to suspect that they have been, are being, or are about to be imported into the Union.



- (f) **“Applicant”** means the right holder or his legal representative who submits an application to the Customs Department for recordation or the issuance of a suspension order as prescribed to protect mark rights.
- (g) **“Importer”** means a person who imports goods into the Union by land, sea, air, or any other means.
- (h) **“Form”** means a form specified in these rules.

Chapter 2

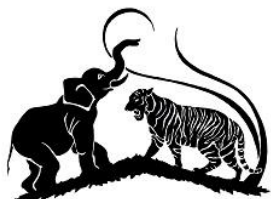
Application for recordation; review; amendment; withdrawal; and cancellation

Application

- 3. The applicant may apply to the Director General for recordation to protect mark rights.
- 4. When applying for recordation according to rule 3, the applicant shall fill in form 1 completely and submit the application together with any documentary evidence that the Customs Department may have separately specified.

Review

- 5. Concerning applications for recordation, the Director General:
 - (a) Shall review the application and if it is complete and correct, accept the application, assign a registration number to the recordation, and notify the applicant with form 2 within 15 days from the date of receipt of the application.
 - (b) Shall promptly request the applicant to submit missing information within 7 days from the date of the notice if he finds that information in the application is incomplete.
 - (c) Shall notify the applicant that the application has been accepted if the applicant completely and correctly reports back within the time specified in sub-rule (b). Shall reject the application without accepting it if the applicant fails to submit required information within the specified time.
 - (d) Shall within 7 days from the date of receipt of such application notify the applicant with form 2 that the application has been accepted if the information in the re-submitted application for recordation is complete and correct, or notify the applicant with form 3 that it has been rejected if it is not complete and correct.
- 6. The period of recordation is 2 years from the date of approval of the application.



7. The applicant may fill in form 4 completely and apply to the Customs Department for renewal for 2 years at a time within 30 days before the expiration date.

Amendment; withdrawal; and cancellation

8. If there is any change such as an amendment or withdrawal concerning information recorded with the Customs Department, the applicant shall, within 3 days on which government offices are open from the date of the amendment or withdrawal at the Intellectual Property Department, notify the Customs Department of his intention to amend or withdraw, together with documentary evidence of the amendment or withdrawal.
9. The Customs Department shall, upon finding that the applicant violated in any way the laws, orders, or directives related to marks or customs, cancel the recordation. Such cancellation shall be notified to the applicant.

Chapter 3

Application for a suspension order; review; and security deposit

Application

10. An applicant may apply to the Director General for an order to suspend the free entry into commercial circulation of goods for which a counterfeited mark is allegedly used if there is evidence to suspect that they have been, are being, or are about to be imported into the Union. The application may be filed irrespective of whether there is a recordation with the Customs Department.
11. When applying for a suspension order according rule 10, the applicant shall fill in form 5 completely and submit the application together with documentary evidence that the Customs Department may have separately specified.
12. In case of goods that are not recorded with the Customs Department, the applicant shall first undergo verification as required by the Customs Department as to the existence of his intellectual property right. If so requested by the Customs Department, the following shall be submitted:
 - (a) Power of attorney if the application is made by a representative;
 - (b) evidence of the right to import officially;
 - (c) plausible evidence that the imported goods are goods that infringe a mark right;
 - (d) other evidence as required.



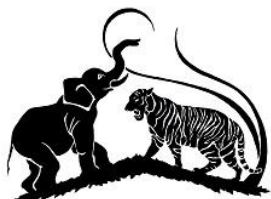
13. The applicant for a suspension order:
- (a) May write the application either in Burmese or English.
 - (b) Shall translate an application in Burmese to English and an application in English to Burmese if so requested by the Customs Department.
 - (c) Shall sign an acknowledgement that the translation according to sub-rule (b) is correct.
 - (d) May apply in person, electronically, or by post.

Review

14. Concerning applications for a suspension order, the Director General:
- (a) Shall review the application for a suspension order and if it is complete and correct, notify the applicant of the acceptance of the application with form 6 within 30 days from the date of receipt of the application.
 - (b) Shall promptly request the applicant to submit missing information within 15 days from the date of the notice if he finds that information in the application for a suspension order is incomplete.
 - (c) Shall notify the applicant that the application has been accepted if the applicant completely and correctly reports back within the time specified in sub-rule (b). Shall reject the application without accepting it if the applicant fails to submit required information within the specified time.
 - (d) Shall within 15 days from the date of receipt of such application notify the applicant with form 6 that the application has been accepted if the information in the re-submitted application for a suspension order is complete and correct, or notify the applicant with form 7 that it has been rejected if it is not complete and correct.

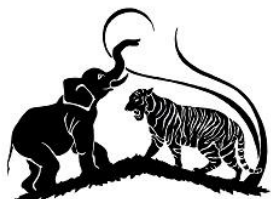
Security deposit

15. (a) The applicant shall submit the security deposit specified by the Director General to the Customs Department within 5 days on which government offices are open from the date on which the Director General issued the notice of acceptance of the application for a suspension order.
- (b) If the applicant does not submit the security deposit within the specified time, the application for a suspension order shall be deemed to have been rejected.



Chapter 4 **Protection of mark rights**

16. The Director General:
- (a) Shall issue a suspension order to suspend the free entry into commercial circulation of goods if, after accepting an application for a suspension order, or according to the inspection by the Customs Department concerning goods for which no application for a suspension order was filed, plausible evidence has been found that the goods are goods that are imported using a counterfeited mark.
 - (b) Shall immediately notify with form 8 the issuance of a suspension order under sub-rule (a) to the applicant and the importer in case of an application for a suspension order, or to the right holder and the importer in case of an inspection by the Customs Department.
 - (c) Shall, in case of an inspection by the Customs Department, notify the right holder within 15 days from the date of the suspension order to pay the security deposit specified by the Director General for goods subject to the suspension order.
 - (d) Shall lift the suspension order and allow the importer to withdraw the goods upon payment of the applicable customs duty if the right holder does not pay the security deposit within the specified time according to sub-rule (c).
17. If the importer is not satisfied with the suspension order, he may apply to the competent Intellectual Property Rights Court to have the suspension period modified or revoked. Such action shall be reported to the Director General within 15 days from the date of the notice of the suspension order.
18. The Director General shall proceed according to the decision of the Intellectual Property Rights Court if he was notified that the importer applied to the Intellectual Property Rights Court according to rule 17.
19. The Director General:
- (a) Shall, in order to prove that the goods are goods for which a counterfeited mark is used and without leaking confidential information, allow the applicant or the right holder and the importer to sufficiently inspect the goods at the same time under the supervision of the Customs Department.

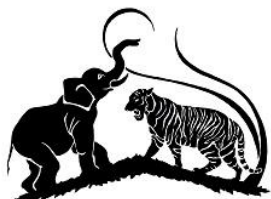


- (b) Shall be notified by the applicant or right holder within 3 days in case of perishable goods or within 15 days in case of other goods that the applicant or right holder has taken action to have the merits of the case decided or that the Intellectual Property Rights Court has delayed taking temporary measures to suspend the flow of the goods.
- (c) May extend the time by 15 days if there is an application for time extension before the expiry of the specified time or in other appropriate cases.
- (d) Shall proceed in accordance with the decision of the Intellectual Property Rights Court for these goods if he is notified within the specified time that action is taken according to sub-rule (b) with regard to goods for which a suspension order was issued.
- (e) Shall lift the suspension order and allow the importer to withdraw the goods upon payment of the applicable customs duty if he is not notified within the specified time according to sub-rule (b).

Chapter 5

Payment for costs; management of the security deposit

20. If the Intellectual Property Rights Court determines that a counterfeited mark was indeed used for the goods:
- (a) The importer shall pay the costs for storage, destruction, and removal from circulation of the goods under the supervision of the Customs Department.
 - (b) The Customs Department shall, after the importer has paid the costs according to sub-rule (a) to the Customs Department, refund the security deposit submitted by the applicant or right holder to the applicant or right holder.
 - (c) If the importer fails to pay the costs for storage, destruction, and removal of the goods:
 - (1) The applicant or right holder shall pay the costs to the Customs Department within 30 days from the date of being so ordered.
 - (2) If the Customs Department collects the costs in full from the applicant or right holder, the security deposit paid shall be refunded to the applicant or right holder.
 - (d) If the applicant, right holder or importer fails to pay the costs for the storage, destruction or removal of the goods, the Customs Department shall deduct such costs from the security deposit paid.



- (e) The applicant or right holder shall be entitled to recover from the importer the costs paid according to sub-rules (c)(1) and (d).
21. The Customs Department may suspend the refund of the security deposit until the Intellectual Property Rights Court issues an order.

Chapter 6 **Right to manage the goods**

22. The Customs Department shall manage the goods subject to a suspension order either according to the decision of the Director General or according to the order of the Intellectual Property Rights Court.

Chapter 7 **Miscellaneous**

23. The provisions of these rules shall not apply to the following imported goods:
- (a) Goods within the minimum value threshold of the Customs Department up to which they may be exempted from customs duty (de-minimis goods);
 - (b) goods imported for transshipment (transshipment cargo); goods imported into a customs control area that will be re-exported without being released for domestic consumption for various reasons (reshipment cargo); goods that are not landed at a domestic customs port and continue their journey to a destination abroad (retention cargo); goods traded through Myanmar from one neighbouring country to another country (transit trade cargo);
 - (c) goods permitted to be imported by the Union Government from time to time as needed for the benefit of the public or in an emergency.
24. The Director General may exchange information and cooperate with the directors general of the customs departments of other countries of the World Customs Organization regarding goods for which a counterfeited mark is used.

Win Shein
Union Minister

Letter No. Sa Ba / Finance-2 / 1 / 254 (4367/2023)

Date: 14 July 2023

Distribution list: *[Omitted.]*



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

Form 1

Application form for a mark right recordation [Rule 3]

To:

Director General
Customs Department
Yangon

Date: Year, Month, Day

Subject: **Application for recordation**

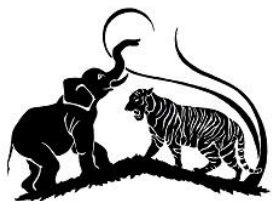
1. Concerning the above matter, I / my company ----- registered a mark with registration number (/) of the Intellectual Property Department for the goods ----
----- manufactured by company ----- situated in -----.
2. Therefore, I respectfully request that my/our marks be recorded with the Customs Department for mark right protection.
3. Concerning the goods for which the mark is registered, I have attached relevant documents, including information how to distinguish counterfeited from genuine goods.

Applicant

Signature: -----

Name: -----

Position: -----



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[The following part of the form is bilingual Burmese / English in the original.]

1. General information of the right holder:

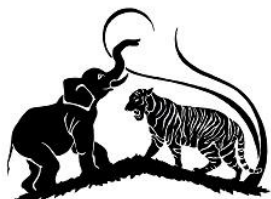
Right holder's name	-
Right holder's address	-
Company name	-
Registration no. and date	-
Company address	-
Phone / fax / e-mail	-

2. Personal data of the applicant:

Applicant's name	-
National scrutiny card number / passport number	-
Job title	-
Address	-
Phone / fax / e-mail	-

3. Company profile of the applicant:

Company name	-
Registration no. and date	-
TIN - taxpayer identification number	-
Company address	-
Phone / fax / e-mail	-



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4. Information about the goods for which the suspension order is applied:

Name of the goods for which the mark right was obtained	-		
Type of the goods	-		
HS Code	-		
Registration no. at the Myanmar IP Department	-		
Registration date at the Myanmar IP Department	-		
Duration of the right	-	From	To

5. Period of time for which the applicant seeks recordation with the Customs Department:

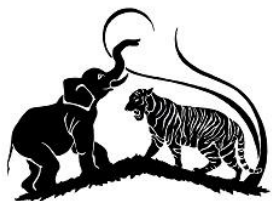
Period of recordation	-	From	To
-----------------------	---	------	----

6. Locally authorised person (attach additional sheets if there is more than one person):

Name	-
Company name	-
Address	-
Phone number	-

7. Documents to be attached:

Copy of the registration certificate from the Myanmar IP Department	
Prima facie evidence of the infringement	
Information and support materials with which counterfeited goods may be distinguished from genuine ones	



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Power of attorney	
Announcement in the newspaper to inform the public	
Other necessary documents	



**Notice of acceptance of an application for recordation
[Rule 5(a), (c)]**

To:

----- (Applicant)

Subject: Notice of acceptance of an application for recordation

1. In order to protect mark rights, upon application by ----- company to the Customs Department on ----- for recordation, the following marks were after review recorded with registration number ----- of the Customs Department from ----- to -----:
 - (a) -----
 - (b) -----
 - (c) -----
2. If the recordation period should be renewed, an application has to be filed within 30 days before the end of the recordation period.

Director General
Customs Department

Letter No. 17 Ka Ka / (Intellectual Property) /2023 ()

Date: Year 2023, Month, Day

Copies to:

All ports of Yangon

Airport

Airport warehouse office

All OSS inspection stations

All township offices

Office copy

Copy for circulation



**Notice of rejection of an application for recordation
[Rule 5(c)]**

To:

----- (Applicant)

Subject: Notice of rejection of an application for recordation

1. ----- company applied to the Customs Department on ----- for recordation of the following marks in order to protect mark rights:
 - (a) -----
 - (b) -----
 - (c) -----
2. When reviewing the application, it was found that required information was not submitted in full within the specified time, and it is hereby notified that the application for recordation was rejected.

Director General
Customs Department

Letter No. 17 Ka Ka / (Intellectual Property) /2023 ()

Date: Year 2023, Month, Day

Copies to:

All ports of Yangon

Airport

Airport warehouse office

All OSS inspection stations

All township offices

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Form 4

Application form for a renewal of a mark recordation [Rule 7]

To:

Director General
Customs Department
Yangon

Date: Year, Month, Day

Subject: **Application for renewal of the recordation period**

1. Concerning the above matter, company ----- had the following marks recorded with registration number ----- with the Customs Department from ----- to ----- in order to protect its mark rights.
 - (a) -----
 - (b) -----
 - (c) -----
2. We hereby apply to have the period of recordation of these marks with the Customs Department renewed.

Applicant

Signature: -----

Name: -----

Position: -----



**Application form for a mark right suspension order
[Rule 11]**

Date: Year, Month, Day

To:

Director General
Customs Department
Yangon

Subject: **Application for the issuance of a suspension order**

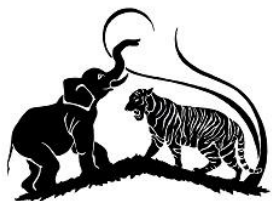
1. Concerning the above matter, I / my company ----- registered a mark with registration number (/) of the Intellectual Property Department for the goods ----- manufactured by company ----- situated in -----.
2. Now, it is known that the above registered mark has been counterfeited and is used for this type of goods which are imported into Myanmar by ----- company, and regarding these goods, ----- company will import on the estimated date of () from the town of ----- to the town of ----- with ----- from the country of -----.
3. Therefore, I hereby apply for the issuance of a suspension order to prevent their release in case these goods are imported.

Applicant

Signature: -----

Name: -----

Position: -----



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[The following part of the form is bilingual Burmese / English in the original.]

1. General information of the right holder:

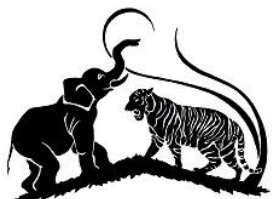
Right holder's name	-
Right holder's address	-
Company name	-
Registration no. and date	-
Company address	-
Phone / fax / e-mail	-

2. Personal data of the applicant:

Applicant's name	-
National scrutiny card number / passport number	-
Job title	-
Address	-
Phone / fax / e-mail	-

3. Company profile of the applicant:

Company name	-
Registration no. and date	-
TIN - taxpayer identification number	-
Company address	-
Phone / fax / e-mail	-



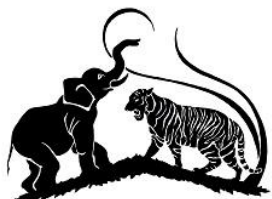
4. Information about the goods for which the suspension order is applied for:

Mark right	<div></div>		
Type of the goods	-		
HS Code	-		
Registration no. at the Myanmar IP Department	-		
Registration date at the Myanmar IP Department	-		
Duration of the right	-	From	To

5. Reasons for issuing the suspension order:

6. Importer of the goods for which the suspension order is sought:

Company name	-
Address	-
Phone number	-



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7. Exporter of the goods for which the suspension order is sought:

Company name	-
Address	-
Phone number	-

8. Documents to be attached:

Copy of the registration certificate from the Myanmar IP Department	
Prima facie evidence of the infringement	
Information and support materials with which counterfeited goods may be distinguished from genuine ones	
Power of attorney	
Announcement in the newspaper to inform the public	
Other necessary documents	



**Notice of acceptance of an application for a suspension order
[Rule 14(a) and (c)]**

To:

----- (Applicant)

Subject: Notice of acceptance of an application for a suspension order

1. On the day -----, the company applied to the Customs Department to suspend the free entry into commercial circulation of the following goods, for which a counterfeited mark might be used:
 - (a) -----
 - (b) -----
 - (c) -----
2. After reviewing the application, the application to issue a suspension order in case goods for which a counterfeited mark is allegedly used are imported into the Union is accepted.
3. A security deposit of MMK ----- shall be submitted to the Customs Department within 5 days on which government offices are open from the date of receipt of this notice.

Director General
Customs Department

Letter No. 17 Ka Ka / (Intellectual Property) /2023 ()

Date: Year 2023, Month, Day

Copies to:

All ports of Yangon

Airport

Airport warehouse office

All OSS inspection stations

All township offices

Office copy

Copy for circulation



**Notice of rejection of an application for a suspension order
[Rule 14(c)]**

To:

----- (Applicant)

Subject: Notice of rejection of an application for a suspension order

1. On the day -----, the company applied to the Customs Department to suspend the free entry into commercial circulation of the following goods, for which a counterfeited mark might be used:
 - (a) -----
 - (b) -----
 - (c) -----
2. When reviewing the application, it was found that required information was not submitted in full within the specified time, and it is hereby notified that the application for a suspension order was rejected.

Director General
Customs Department

Letter No. 17 Ka Ka / (Intellectual Property) /2023 ()

Date: Year 2023, Month, Day

Copies to:

All ports of Yangon

Airport

Airport warehouse office

All OSS inspection stations

All township offices

Office copy

Copy for circulation



Notice of issuance of a suspension order
[Rule 16]

To:

----- (Applicant/right holder)

----- (Importer)

Subject: Notice of issuance of a suspension order

1. Plausible evidence was found that the following goods that arrived on the day ----- from ----- in ----- are goods for which a counterfeited mark is used, so an order was issued to suspend their free entry into commercial circulation.

(a) -----

(b) -----

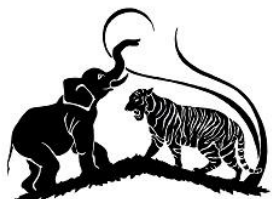
(c) -----

(d) -----

2. With respect to the goods suspended according to paragraph 1:

(a) If the importer is not satisfied with the suspension order, he may submit an application to the relevant Intellectual Property Rights Court with plausible evidence that no counterfeited mark is used for the imported goods. The importer shall within 15 days from the date of the notice of the suspension order notify the Director General of such action taken.

(b) Within 15 days from the notice of the suspension order, or within 3 days in case of perishable goods, the applicant or the right holder shall notify the Director General together with the relevant documents that he has taken action to have the merits of the case decided or that the Intellectual Property Rights Court has delayed taking temporary measures to suspend the flow of the goods.



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3. It is hereby notified that if the applicant or the right holder do not notify within the specified time according to paragraph 2(b), the suspension order will be lifted and the importer will be allowed to withdraw the goods on payment of the applicable customs duty.

Director General
Customs Department

Letter No. 17 Ka Ka / (Intellectual Property) /2023 ()

Date: Year 2023, Month, Day

Copies to:

Relevant person in charge of the port / airport / inspection station / office receipt for the township office

About Lincoln Legal Services (Myanmar) Limited

Lincoln Legal Services (Myanmar) Limited provides the full range of legal and tax advisory and compliance work required by investors. We pride ourselves in offering result-oriented work, high dependability and a fast response time at very competitive prices. Please do not hesitate to contact us:

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