RULES AND REGULATIONS IN THE EXERCISE OF ENFORCEMENT FUNCTIONS AND VISITORIAL POWER OF THE INTELLECTUAL PROPERTY OFFICE, AND CREATING THEREBY AN INTELLECTUAL PROPERTY RIGHTS (IP...

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WHEREAS, the State recognizes that an effective intellectual and industrial property system is vital to the development of domestic creativity, facilitates transfer of technology, attracts foreign investments, and ensures market access;

WHEREAS, the State recognizes that the use of intellectual property bears a social function and to this end, the State shall promote the diffusion of knowledge and information for the promotion of national development and the common good;

WHEREAS, it is the policy of the State to enhance the enforcement of intellectual property rights in the country and to protect and secure the exclusive rights of scientists, inventors, artists and other gifted citizens to their intellectual property and creations, particularly when beneficial to the people;

WHEREAS, it is the policy of the State to enhance the enforcement of intellectual property rights in the Philippines;

WHEREAS, Section 7 (c), (d) and (e) of the Intellectual Property Code, as amended by Republic Act 10372, expressly provides:

> "SEC. 7. The Director General and Deputies Director General. -"xxx
>
> “(c) Undertake enforcement functions supported by concerned agencies such as the Philippine National Police, the National Bureau of Investigation, the Bureau of Customs, the Optical Media Board, and the local government units, among others;
>
> “(d) Conduct visits during reasonable hours to establishments and businesses engaging in activities violating intellectual property rights and provisions of this Act based on report, information or complaint received by the office.
>
> “(e) Such other functions in furtherance of protecting IP rights and objectives of this Act."

NOW THEREFORE, considering the above premises and pursuant to the express provisions of Section 7 subsection (c). (d) and (e) of the Intellectual Property Code, as amended by Republic Act No. 10372. the following rules and regulations are hereby adopted and promulgated:

RULE I
GENERAL PROVISIONS

Section 1. Title. These Rules shall be known and cited as the "Rules of Procedure on Intellectual Property Rights (IPR) Enforcement"

Section 2. Applicability. These Rules shall govern the procedure in the exercise of enforcement functions of the

Intellectual Property Office of the Philippines (IPOPHL), and the exercise of visitorial power based on information, report, and complaint received by IPOPHL.

Section 3. Construction. These Rules shall be construed and interpreted consistent with the constitutional rights of a person against unreasonable search and seizure, and to due process of law.

Section 4. Definition of Terms.

- Administrative Action - is an official action taken by the Deputy Director General or an officer-in-charge for IPR Enforcement after the implementation of the visitorial order which may include, but not limited to the issuance of compliance orders and/or filing of appropriate charges before the local government units concerned, and/or other government agencies or tribunals.

- Complaint - is a verified written document signed by a right holder or authorized representative setting forth the nature of the violation of intellectual property rights and the enforcement action requested as defined under these Rules.

- Counterfeit Goods - shall mean any goods including packaging, bearing without authorization a trademark which is identical to the trademark vandly registered with the IPOPHL or a well-known mark declarer! as such by a competent authority m the Philippines in respect of such goods. or which cannot be distinguished in its essential aspects from, such a trademark, and which thereby infringes the rights of the owner of the trademark in question

- Enforcement Action - is any action taken by the IEO relative to the complaint or report with the end view of ensuring compliance with the provisions of the Intellectual Property Code, as amended by Republic Act No. 10372.

- IPR Enforcement Office (IEO) - is the office created under these rules to undertake enforcement functions and conduct visits as provided for under the Intellectual Property Code, as amended.

- IPR Enforcement Officer - is a duly designated personnel tasked to evaluate and validate the complaint or report filed before the IEO for recommendation of the appropriate action to the Deputy Director General or an officer-in-charge for enforcement.

- Mission Order - is an order issued by the Deputy Director General or an officer-in-charge to any IPOPHL personnel or detailed law enforcement officers to undertake specific enforcement actions.

- Pirated Goods - shall mean any goods which are made without the consent of the right holder or person duly authorized by the right holder and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right

- Report - is any information, written or verbal, received by IPOPHL pertaining to a violation of IPR.

- Visitorial Order- is the order issued by the Deputy Director General or an officer-in-charge relative to the conduct of visits to establishments and business premises subject of a complaint allegedly violating IPR and/or any provisions of the Intellectual Property Code, as amended.

RULE II
IPR ENFORCEMENT OFFICE

Section 1. IPR Enforcement Office. The IPR Enforcement Office (IEO) shall be headed by the Deputy Director General or an officer-in-charge for IPR Enforcement and assisted by duly designated IPOPHL personnel, and detailed/assigned law enforcement officers.

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Section 2. Functions of the IPR Enforcement Office. The IEO shall have the following functions, duties, and responsibilities:

a.) To receive and docket complaints or reports relating to IPR violations from right holders or authorized representatives, other government agencies, and the public in general;

b.) To evaluate the complaint or report and take appropriate action thereon to ensure enforcement of IPR:

c.) To coordinate with the right holders, industry associations and/or relevant government agencies in the conduct of its enforcement functions;

d.) To formulate policies and programs to ensure enforcement of IPR, and to prepare an annual report on the accomplishments, progress, and challenges of IPR enforcement in the country;

e.) To keep all records of enforcement such as, but not limited to, complaints, reports, minutes of enforcement meetings, post-operation reports, and other similar or related documents.

f.) To provide assistance in the enforcement of orders, writs, and processes issued by Bureau of Legal Affairs and the Office of the Director General.

Section 3. Deputy Director General for IPR Enforcement or the Officer-in-Charge for IPR Enforcement. The IEO shall be headed by the Deputy Director General or an officer-in-charge to handle IPR enforcement. He shall have the following powers and functions:

a) To designate an IPR Enforcement Officer to evaluate and validate complaints and/or reports of IPR violations;

b) To issue visitorial orders relative to any complaints or reports received by the IEO on IPR violations;

c) To issue compliance order to any business establish or entities inspected and noted to be violating IPR.

d) To issue necessary mission orders;

e) To initiate, file and maintain formal charge and/or complaints before appropriate government agencies and/or tribunals.

f) To exercise such others powers as may be necessary to ensure compliance of the provisions of the Intellectual Property Code, as amended.

Section 4. Assistance of Law Enforcement Agencies and other Government Offices. In the exercise of its enforcement functions, particularly in the conduct of visits to business establishments, IPOPHL, through IEO, shall be accompanied by the concerned law enforcement agencies. If necessary, the Deputy Director General or an officer-in-charge for IPR Enforcement may request from the concerned law enforcement agencies a detail of law enforcement officers in IEO to ensure the smooth implementation of its enforcement functions.

RULE III
IPR ENFORCEMENT ACTIONS

Section 1. Who May File a Complaint. Any right holder or authorized representative may file a verified complaint under these Rules.

Section 2. Form and Contents of the Complaint. The complaint shall be verified and shall contain the following:

- Name and address of the complainant;

- Power of attorney/authority of the authorized representative;

- A certificate of registration of the intellectual property involved from the issuing Philippine government agency, or a declaration/certification by a competent authority in the Philippines in cases of well-known marks or an affidavit of ownership in cases of copyright and related rights;

- Name and address of the respondent;

- Nature of the IPR violation;

- Complete details of the place or establishment to be subjected for visit;

- Certification against non-forum shopping.

Section 3. Covered Intellectual Property Rights Violations. For purposes of these Rules, only enforcement against manufacturing, production, importation, exportation, distribution, trading, and offering for sale, including other preparatory steps necessary to carry out the sale of counterfeit and pirated goods shall be covered by the exercise of IPOPHL's enforcement power and provided that there is no pending case before any office, tribunal, quasi judicial body, or court involving the same issue/s or subject matter.

The subsequent filing of a complaint by the right holder or representative involving the same issue or subject matter before any office, tribunal, quasi judicial body, or court shall immediately divest the IEO of its jurisdiction.

Section 4. Actions on the Complaint. A complaint for IPR enforcement under these Rules shall, upon payment of the required fees, be referred to an IPR Enforcement Officer who shall evaluate and validate the allegations of the complaint within thirty (30) days from referral of the case, and upon due evaluation thereof and finding of evidence of violation of IPR, recommend to the Deputy Director General or an officer-in-charge for IPR Enforcement any or all of the following enforcement actions:

- Issuance of notice/warning to the respondent/s to observe compliance with the provisions of the Intellectual Property Code, as amended;

- Issuance of visitorial order on the subject premises;

- Issuance of compliance order against the respondent/s; or

- Immediate filing of administrative complaint before the local government unit concerned, and/or other government agencies or tribunals

- Referral of the case to a law enforcement agency for case build-up;

- Recommendation of application for search warrant;

- Dismissal of the complaint;

- Referral of the case to other government agencies for filing of charges for violation of other laws, rules or regulations; or i. Such other actions necessary to ensure compliance with the provisions of the IP Code, as amended.

Section 5. Filing of Report. The IEO may receive any and all reports and information relative to intellectual property rights violations for the purpose of monitoring violations of the provisions of the IP Code, as amended, and possible case build-up thereof.

Section 6. Actions on the Report. Reports and information received by IEO shall be duly recorded and validated by the designated IPR Enforcement Officer. Upon recommendation of the IPR Enforcement Officer, the concerned right holder or authorized representative shall be required to coordinate with the IEO to pursue and

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maintain enforcement actions on the report. Failure of the right holder or authorized representative to initiate the necessary complaint within one (1) month from notice shall cause the dismissal of the report, and due notice thereof shall be relayed to the informant on the apparent lack of interest of the right holder to pursue the complaint.

Section 7. Confidentiality of Records. In order not to affect the outcome of the enforcement actions of the IEO, the records relating to the complaint and/or report as well as the recommendation of the IPR Enforcement Officer, shall be treated as confidential and shall not be divulged to any person until any enforcement action, as defined under Section 4 Rule III of these Rules, has been issued/conducted by the IEO.

Section 8. Issuance of Visitorial Order. After due evaluation, the Deputy Director General or an officer-in-charge may issue a visitorial order on the subject business establishment for the purpose of ensuring compliance with the provisions of the Intellectual Property Code, as amended. The visitorial order shall in no case be valid for more than ten (10) days from issuance thereof.

Section 9. Contents of Visitorial Order. The visitorial order shall contain the following:

a. Name and address of business establishment;
b. Name of respondent/s, if identified;
c. Nature of the complaint;
d. Subject intellectual property rights;
e. Names of authorized personnel;
f. Period of effectivity of the order.

Section 10. Procedure in the Service of Visitorial Order. In the conduct of visit to the subject business establishment, the authorized personnel thereof must act with courtesy to the owner/s, employee/s, and/or representative/s of the business establishment.

Upon arrival at the premises, the authorized personnel must identify themselves as such, and present to the owner/s employee/s, or representative/s of the business establishment the visitorial order. The nature of the visit and the complained IPR violation must be duly explained.

If upon arrival at the premises, the authorized personnel together with the product specialist or right holder or representative/s have seen in plain view the presence of counterfeit and/or pirated goods, and they have reasonable ground to believe that the business establishment is engaged in the manufacturing, production, importation, exportation, distribution, trading, and offering for sale, including other preparatory steps necessary to carry out the sale of counterfeit and/or pirated goods, the said determination shall be forthwith relayed to the owner/s, employee/s, or representative/s of the business establishment. Any objections or justifications by the owner/s, employee/s or representative/s of the business establishment shall be noted by the authorized personnel.

The said determination and objection, if any, must be duly stated in the post-operation report and shall serve as the basis of administrative actions under these Rules.

Section 11. Submission of Report and Recommendation. Within ten (10) days from the conduct of visit, a post-operation report together with the recommendation thereof must be submitted to the Deputy Director General or an officer-in-charge for IPR Enforcement for appropriate administrative action.

Section 12. Issuance of Compliance Order. The Deputy Director General or an officer-in-charge for IPR Enforcement may issue a compliance order to the concerned business establishment before the appropriate administrative action is initiated.

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Section 13. Compliance Period. Any person or business entity served with a compliance order relative to the complained violation of IPR or provisions of the IP Code may avail of the compliance period of not more than sixty (60) days to avoid being subjected to an administrative action.

Section 14. Filing of Administrative Action. If there is reasonable ground to believe that a violation of the relevant trade and consumer laws, or local government ordinances has been committed, the IEO may initiate the appropriate charges before the local government units concerned, or other government agencies and/or, tribunals.

RULE IV
FINAL PROVISIONS

Section 1. Separability Clause. - If any section or provision of these Rules shall be held to be invalid, the remaining provisions shall remain in full force and affect as completely as if the part held invalid had not been included therein.

Section 2. Furnishing of Certified Copies. -The IPOPHL Financial Management and Administrative Service (FMAS) is hereby directed to immediately file three (3)

certified copies of these Rules with the University of the Philippines Law Center, and one (1) certified copy each to the Office of the President, the Senate of the Philippines, House of Representatives, the Supreme Court of the Philippines, and the National Library.

Section 3. Effectivity. These Rules shall take effect after fifteen (15) days from publication in a newspaper of general circulation.

ATTY. RICARDO R. BLANCAFLOR
Director General

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