

[IPO OFFICE ORDER NO. 13-170, October 04, 2013]

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

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.

- a. *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.
- b. *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.
- c. *Counterfeit Goods* – shall mean any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered with the IPOPHL or a well-known mark declared as such by a competent authority in 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.
- d. *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.
- e. *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.
- f. *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.
- g. *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.
- h. *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.
- i. *Report* – is any information, written or verbal, received by IPOPHL pertaining to a violation of IPR.
- j. *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.

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 establishments 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 other 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