



Promoting Intellectual  
Property Rights in the  
ASEAN Region

## Session 6: Public policy, public order and morality, and Statutory Prohibitions

Mr. Nguyen Quang Tuan, Deputy Director of ID  
Examination Center, IP Vietnam  
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- ☐ PUBLIC POLICY, PUBLIC ORDER AND MORALITY
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- ☐ **PUBLIC POLICY, PUBLIC ORDER AND MORALITY**
- ☐ **SPECIFIC STATUTORY PROHIBITIONS**

## General considerations

- ❖ *'Public policy'* and *'public order'* refer to the general legal framework of a particular State, and to the rationale and purpose underlying that legal framework.
- ❖ *'Morality'* is a set of socially recognised principles that determine practices and rules of conduct within a particular society or community. These principles and rules are not cast in positive legislation or executive norms, and may vary over time. They may be quite different in different countries or within different regions and communities inside the same country.

## General considerations

- ❖ The examiner should raise an objection to the registration of a design when standards of public policy, public order and morality are offended, as determined by reference to the local perceptions and the context of the country where the application is examined.
- ❖ The determination of what is contrary to public order or to prevailing standards of morality will necessarily depend on the political, cultural and religious context prevailing in the country concerned.
- ❖ The examiner should not apply personal or foreign standards of good or bad taste, fashion or aesthetic acceptability to determine compliance with public policy or morality standards.

## General considerations

- ❖ When this ground for refusal or invalidation is invoked, it should refer to the nature of the design itself.
- ❖ However, this ground for refusal or invalidation will also apply where the commercial exploitation of the product embodying the design would be contrary to public policy, public order or morality
- ❖ This ground for refusal or invalidation will also apply where the nature of the product on which the design is applied is contrary to public policy, public order or morality.

## Nature of the design itself

Refusal should be based on the fact that the shape or pattern to be registered as a design is, in itself, contrary to public policy, public order or accepted principles of morality.





## Nature of the design itself





## Nature of the design itself



## The commercial exploitation of the product embodying the design

An objection on grounds of public policy, public order or morality may also be raised in cases where the problem does not lie with the design itself but with the use to which the article that embodies the design would be put.

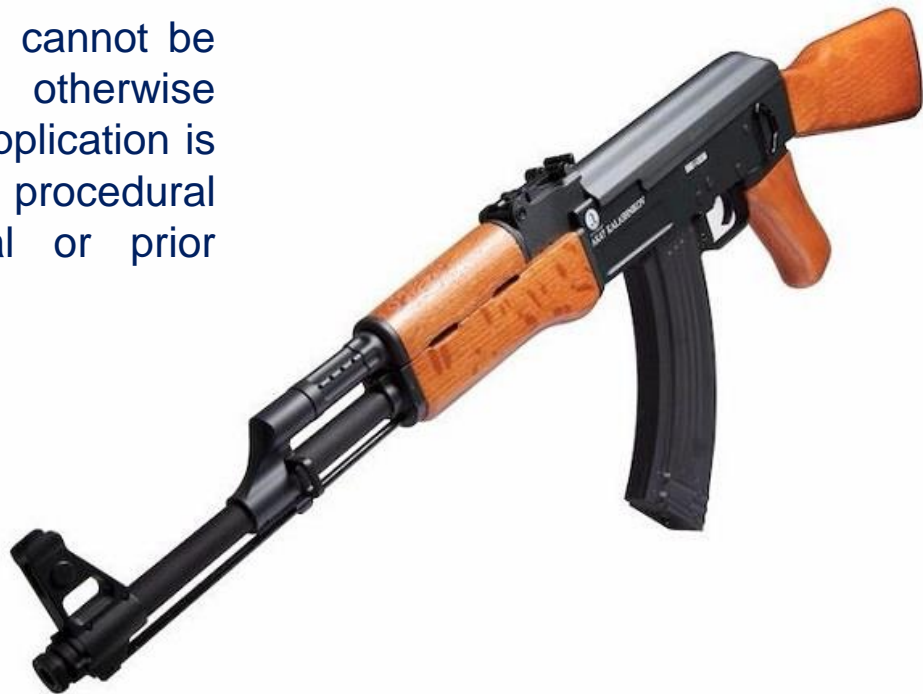


## The commercial exploitation of the product embodying the design



## Nature of the product on which the design is applied

Products in which the design is embodied cannot be produced, imported, distributed or otherwise commercialized in the country where the application is filed because of a legal or administrative procedural constraint, such as regulatory approval or prior marketing authorization.



## Nature of the product on which the design is applied

It may also happen that, in a particular country, the importation and distribution of particular goods, or the offering of certain services, is totally restricted or banned by law.

For example: Illegal drugs



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## Prohibitions provided by statute

- ❖ If the applicable national law or regulations provide for the exclusion of specified devices, images, representations or other objects from registration as industrial designs, the examiner should apply the exclusion ex officio and raise an objection to any application that contains the excluded matter.
- ❖ This ground for refusal is additional to any exclusion based on grounds of public order or public policy.
- ❖ Exclusions based on statutory prohibitions are established and published beforehand, unlike exclusions based on public order or public policy, which need to be interpreted and applied on a case-by-case basis.



## Prohibitions provided by statute

Brunei Darussalam and Singapore: Works of sculpture (other than casts or models used or intended to be used as models or patterns to be multiplied by any industrial process)





## Prohibitions provided by statute

Brunei Darussalam and Singapore: Wall plaques, medals and medallions



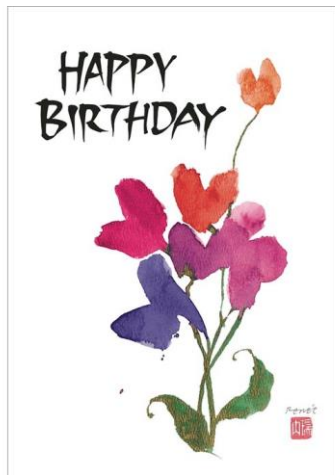
## Prohibitions provided by statute

Brunei Darussalam and Singapore: Printed matter primarily of a literary or artistic character



## Prohibitions provided by statute

Brunei Darussalam and Singapore: Printed matter primarily of a literary or artistic character





## Prohibitions provided by statute

The Philippines: Mere schemes of surface ornamentations existing separately from the industrial product or handicraft



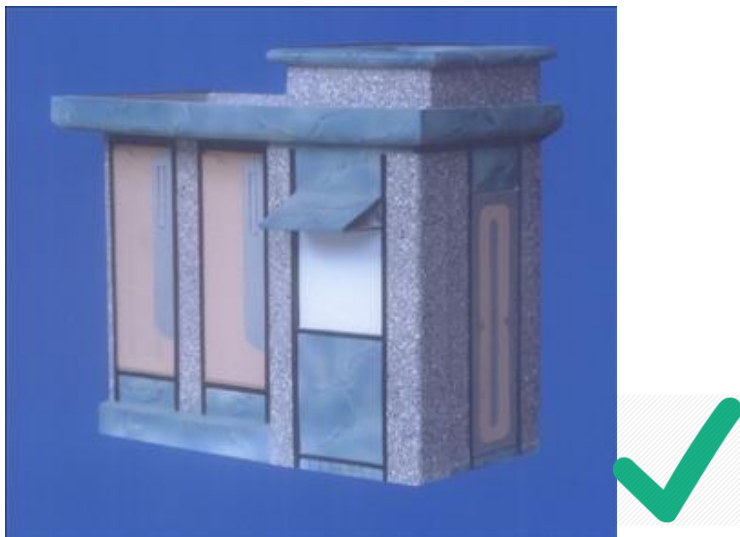
## Prohibitions provided by statute

- ❖ Vietnam: The appearance of civil or industrial construction works except for modular or prebuilt construction works



## Prohibitions provided by statute

- ❖ Vietnam: The appearance of civil or industrial construction works except for modular or prebuilt construction works



## State emblems and official signs

- ❖ The law may provide that an industrial design cannot be registered if it consists of or contains emblems, armorial bearings, insignia, orders of chivalry, decorations, flags or devices of any country, state, city, government body, statutory board, or other official institution.
- ❖ In these cases, the examiner must ex officio require the applicant to furnish proof of consent to the registration and use of the emblem or sign in question. The examiner must assess the reasonable likeliness that the document of consent is valid and the person giving consent is entitled to do so.

## State emblems and official signs





## Representations of persons and dignitaries

- ❖ The law may expressly exclude from registration an industrial design that reproduces or represents a living or recently dead person without duly authorization by the person concerned or their legal representatives.
- ❖ The examining authority should – either ex officio or at the request of an interested party in opposition proceedings – raise an objection to such registration and require that the applicant furnish evidence of the consent of the person or his legal representatives.



## Representations of persons and dignitaries

- ❖ The law may provide that the image or representation of certain public dignitaries may not be included in an industrial design.
- ❖ In this case the examining authority should ex officio require that the applicant furnish evidence of proper authorization from the competent authorities.





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# Q & A



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