

THE GOVERNMENT

Decree No. 99/2013/ND-CP dated August 29, 2013 of the Government on sanctioning of administrative violations in industrial property

Pursuant to the Law on Organization of Government dated December 25, 2001;

Pursuant to the Law on handling of administrative violations dated June 20, 2012;

Pursuant to the Law on Intellectual Property dated November 29, 2005; Law on amending and supplementing a number of articles of Law on intellectual property dated June 19, 2009 (hereinafter collectively referred to as Law on Intellectual Property);

Pursuant to the Law on Information Technology dated June 29, 2006;

Pursuant to the Law on competition dated December 03, 2004;

At the proposal of Minister of Science and Technology;

The Government promulgates Decree on sanctioning of administrative violations in industrial property.

Chapter 1.

GENERAL PROVISIONS

Article 1. Scope of adjustment

This Decree specifies acts of administrative violation, sanctioning forms and levels, remedies; procedures for filing written requests for handling of violations; competence and procedures for settling written requests for handling of violations; sanctioning competence and enforcement of decisions on sanctioning administrative violations in industrial property.

Article 2. Provisions on the maximum fine level, sanctioning competence for individuals, organizations

1. The fine levels for acts defined in Chapter 2 of this Decree will be the fine levels applicable to individuals. The maximum fine level for individuals will be VND 250,000,000.

For the same act of administrative violation, the fine level for organization will be twice as the fine level for individual. The maximum fine level for organizations will be VND 500,000,000.

2. The competence of sanctioning administrative violations of persons defined in Articles from 16 thru 21 of this Decree is competence applicable to an administrative violation of individual. In case of fine, sanctioning competence for organizations will be twice as sanctioning competence for individuals.

Article 3. Sanctioning forms, remedial measures

1. For each act of administrative violation in industrial property, infringing organizations and individuals must suffer either of principal sanctioning forms being warning or fine.

2. Depend on nature and severity of violations, infringing organizations and individuals may also be applied one or more of the following additional sanctioning forms:

a) Confiscation of material evidence and means used in the commission of administrative violations, including goods bearing counterfeit marks or geographical indications; raw materials, materials and means used mainly for producing or trading in those goods;

b) Deprivation of the right to use industrial property representation practice certificates; assessor cards; or certificates of eligibility for assessment practice, for between 01 and 03 months from the effective date of the sanctioning decision;

c) Suspension of the production, trading or provision of infringing products or services, for between 01 and 03 months from the effective date of the sanctioning decision.

3. Apart from principal sanctioning forms, additional sanctioning forms, infringing organizations and individuals may also be forced to apply one or more of the following remedies:

a) Forcible removal of infringing elements on their goods or means of business and destruction of infringing elements; forcible alteration or return of domain names; forcible alteration of enterprise names, removal of infringing elements in enterprise names;

b) Forcible use for noncommercial purposes of goods bearing counterfeit marks or geographical indications; raw materials, materials and means used mainly for producing or trading in these goods, after infringing elements on these goods are removed, provided such act does not affect the exercise of the industrial property rights by their holders;

- c) Forcible bringing out of the Vietnamese territory of transit goods infringing upon industrial property rights or forcible re-export of goods bearing counterfeit marks or geographical indications, or imported means, raw materials and materials used mainly for producing or trading in these goods after infringing elements on these goods are removed;
- d) Forcible destruction of goods bearing counterfeit marks or geographical indications, means, raw materials and materials used mainly for producing or trading in these goods, evidence and means involved in violations on which infringing elements cannot be removed; infringing goods which may cause harms to the health of humans, domestic animals, plants and the environment; stamps, labels, and articles bearing counterfeit marks or geographical indications; stamps, labels, packages and other articles bearing infringing elements; protection titles, certificates or other documents which are modified, erased or counterfeited;
- dd) Forcible modification or addition of indications on industrial property;
- e) Forcible public correction of errors, for acts of giving wrong indications on industrial property rights;
- g) Forcible confiscation of dispersed material evidence or means of violation;
- h) Forcible remittance of illicit earnings from the commission of administrative violations or forcible remittance of an amount equal to value of material evidence or means of administrative violation which have been sold, dispersed or destroyed in contrary to provisions of law.

Article 4. Valuation of infringing goods or services

1. The valuation of goods or services infringing the industrial property rights for use as a basis for determining the fine bracket and sanctioning competence shall be applied basing on one of grounds according to the priority order specified in Clause 2 Article 60 of the Law on Handling of Administrative Violations as follows:

- a) The price listed or stated in the contract or purchase invoices or import declaration;
- b) The price according to the notice of local financial agencies; in case of without price notice, the price shall be based on the market price in the localities at the time of happening administrative violations;
- c) The cost price of infringing goods if they are goods not yet been brought out for sale.

2. For material evidences being goods bearing counterfeit marks as prescribed in Clause 2 Article 213 of the Law on Handling of Administrative Violations, the valuation of such goods shall be conducted as valuation of goods infringing industrial property rights as prescribed in Clause 1 of this Article.

3. In case the grounds mentioned in Clause 1 of this Article cannot be applied for valuating material evidences being infringing goods or services to serve as a basis for determining the fine bracket or sanctioning competence, the competent persons settling case may issue a decision to temporarily seizure the infringing material evidences and establish a Council of valuation as prescribed in Clause 3 Article 60 of the Law on Handling of Administrative Violations.

Chapter 2.

ACTS OF ADMINISTRATIVE VIOLATIONS, SANCTIONING FORMS AND REMEDIES

SECTION 1. VIOLATIONS OF PROVISIONS ON MANAGEMENT OF INDUSTRIAL PROPERTY ACTIVITIES

Article 5. Violations of provisions on procedures for establishment, exercise and protection of industrial property rights

1. A fine of between VND 3,000,000 and VND 5,000,000 for acts of modifying, erasing, falsifying content of protection titles or documents proving industrial property rights.

2. A fine of between VND 3,000,000 and VND 5,000,000 for acts of providing false information and evidence in the process of carrying out any of the following procedures:

a) Carrying out procedures for establishment, recognition, certification, amendment, maintenance, extension, request for termination or cancellation of the validity of industrial property rights protection titles;

b) Requesting competent state agencies to issue decisions on compulsory licensing of inventions.

3. A fine of between VND 15,000,000 and VND 20,000,000 for acts of forging papers in the cases specified in Clause 2 of this Article.

4. Remedial measures:

Forcible destruction of counterfeit papers, documents for acts of violation specified in Clause 3 of this Article.

Article 6. Violations of provisions on indications on protection of industrial property rights

1. A warning or a fine of between VND 500,000 and 1,000,000 for any of the following acts:

- a) Providing wrong indications on objects or elements subject to industrial property rights protection, industrial property rights holders, and authors of inventions, industrial designs or layout designs;
- b) Providing wrong indications on the legal status and scope of protection of industrial property rights;
- c) Providing wrong indications or no indication on goods produced under licensing contracts.

2. Remedial measures:

- a) Forcible removal of infringing elements on goods or means of business, for violations specified in Clause 1 of this Article;
- b) Forcible public correction of errors, for violations specified at Points a and b, Clause 1 of this Article;
- c) Forcible modification or addition of indications, for violations specified at Point c, Clause 1 of this Article.

Article 7. Violations of provisions on industrial property representation

1. A fine of between VND 2,000,000 and VND 5,000,000 for any of the following acts:

- a) Failing to notify in writing a state agency competent to establish and protect industrial property rights of a change in their names, addresses or legal status of industrial property representation, or a change related to the parties authorizing and authorized to conduct industrial property representation;
- b) Failing to notify or untruthfully notify industrial property representation items, charges and fees at the request of a competent agency;
- c) Failing to perform procedures for deleting name in the National register of industrial property representation when ending operation at organizations of industrial property representation;
- d) Failing to perform again procedures for recording in the National register of industrial property representation when operate at other organization of industrial property representation.

2. A fine of between VND 5,000,000 and VND 10,000,000 for any of the following acts:

- a) Concurrently representing parties to a dispute over industrial property rights;
- b) Withdrawing applications for protection titles, disclaiming the protection, withdrawing complaints or taking other acts in the establishment of industrial property rights without permission of the representation authorizing person;

- c) Failing to notify, provide contents of requests of a state agency competent to establish industrial property rights, settle industrial property disputes or handle industrial property violations to the representation authorizing person;
- d) Failing to deliver protection titles, documents proving industrial property rights, certificates and other decisions to the representation authorizer in time limit prescribed by law without any plausible reason;
- dd) Failing to implement or respond to requests of competent state agencies for establishment of industrial property rights or settlement of industrial property disputes or handling of industrial property violations without any plausible reason;
- e) Modifying or falsifying contents of industrial property representation practice certificates;
- g) Deliberately advising or notifying wrongful information on provisions of the industrial property law or information on industrial property activities;
- h) Deliberately obstructing the establishment, exercise and protection of industrial property rights, causing damage to parties with related rights and interests;
- i) Abandoning the industrial property representation activities when not yet transferred legally the unfinished representation job to other industrial property representation organization.

3. A fine of between VND 10,000,000 and VND 20,000,000 for any of the following acts:

- a) Providing industrial property representation services without satisfying the practice conditions specified by law;
- b) Forging papers and documents or providing untruthful information to competent state agencies in the process of registration and inspection of industrial property representation operations, application for industrial property representation practice certificates or request for recognition of industrial property representation service providers.

4. A fine of between VND 20,000,000 and VND 40,000,000 for any of the following acts:

- a) Disclosing information not yet permitted for disclosure of competent state management agencies relating to the process of receipt, appraisal and processing of various registration applications, complaints and requests for handling of industrial property violations;
- b) Committing serious errors or violations in the course of practicing representation, causing damage to the interests of the State or society.

5. Additional sanctions:

Deprivation of the right to use industrial property representation practice certificates for between 01 and 03 months from the effective day of decision on sanction, for violations specified in Clause 4 of this Article;

6. Remedial measures:

Forcible destruction of counterfeit papers, documents for acts of violation specified in Point b Clause 3 of this Article.

Article 8. Violations of provisions on industrial property assessment

1. A warning or a fine of between VND 500,000 and VND 1,000,000 for any of the following acts:

- a) Violating provisions on assessment order, procedures and time limit;
- b) Failing to be present when summoned by assessment-requesting agencies without any plausible reason, or failing to explain assessment conclusions when requested by assessment-requesting agencies.

2. A fine of between VND 2,000,000 and VND 5,000,000 for acts of modifying, falsifying content of assessor cards or certificates of eligibility for industrial property assessment.

3. A fine of between VND 5,000,000 and VND 10,000,000 for any of the following acts:

- a) Conducting industrial property assessment without satisfying the practice conditions specified by law;
- b) Disclosing secret information acquired while conducting assessment without permission of concerned parties;
- c) Failing to compile assessment dossiers or failing to preserve exhibits and documents related to cases subject to assessment;
- d) Using industrial property assessor cards of other persons or letting other persons use their own industrial property assessor cards to practice assessment.

4. A fine of between VND 10,000,000 and VND 20,000,000 for any of the following acts:

- a) Taking advantage of the assessor status and assessment activities for self-seeking purposes;
- b) Deliberately making untruthful assessment conclusions;
- c) Modifying, erasing or otherwise falsifying assessment documents without permission;
- d) Forging or using forged papers or supplying untruthful information to competent state agencies in the process of registration and inspection of industrial property

assessment operations, application for industrial property assessor cards or request for recognition of industrial property assessment organizations.

dd) Conducting assessment in cases in which assessment must be refused as prescribed by law.

5. Additional sanctions:

Deprivation of the right to use assessor cards or certificates of eligibility for industrial property assessment for between 01 and 03 months, for violations specified at Points a and b Clause 4 of this Article.

6. Remedial measures:

a) Forcible destruction of documents modified, falsified content or forged for violations specified in Clause 2, Point c, Point d Clause 4 of this Article;

b) Forcible remittance of illicit earnings from the commission of administrative violations specified in Point a Clause 4 of this Article.

Article 9. Violations of provisions on sealing, temporary seizure of infringing material evidence and means in the course of inspection and examination

1. A fine of between VND 2,000,000 and VND 5,000,000 for acts of removing or breaking seals of material evidence and means of industrial property administrative violations subject to sealing or temporary seizure.

2. A fine of between VND 5,000,000 and VND 10,000,000 for acts of altering quantity or category of material evidence and means of industrial property administrative violations subject to sealing or temporary seizure.

3. A fine of between VND 15,000,000 and VND 30,000,000 for acts of selling, dispersing or destroying material evidence or means of industrial property administrative violations subject to sealing or temporary seizure.

4. Remedial measures:

Forcible recovery of dispersed material evidence and means, or forcible remittance of an amount equal to value of material evidence and means sold, dispersed, or destroyed for violations specified at Clause 3 of this Article.

SECTION 2. INFRINGEMENT OF RIGHTS AND UNFAIR COMPETITION IN INDUSTRIAL PROPERTY

Article 10. Infringement of rights to inventions, utility solutions and layout designs

1. A fine of between VND 500,000 and VND 2,000,000 shall be imposed for any of the following acts with business purpose in case where infringing goods are valued up to VND 3,000,000:

a) Selling, offering for sale; transporting, included transiting; storing; displaying for sale of products infringing upon rights to inventions, utility solutions or layout designs, or products produced from a process infringing upon rights to inventions or utility solutions;

b) Utilizing products infringing upon rights to inventions or utility solutions or products produced from a process infringing upon rights to inventions or utility solutions;

c) Placing orders to, assigning or hiring other parties to commit violations specified at Points a and b of this Clause.

2. A fine of between VND 2,000,000 and VND 4,000,000 for any violation specified in Clause 1 of this Article in case infringing goods are valued at between over VND 3,000,000 and 5,000,000.

3. A fine of between VND 4,000,000 and VND 8,000,000 for any violation specified in Clause 1 of this Article in case infringing goods are valued at between over VND 5,000,000 and 10,000,000.

4. A fine of between VND 8,000,000 and VND 15,000,000 for any violation specified in Clause 1 of this Article in case infringing goods are valued at between over VND 10,000,000 and VND 20,000,000.

5. A fine of between VND 15,000,000 and VND 25,000,000 for any violation specified in Clause 1 of this Article in case infringing goods are valued at between over VND 20,000,000 and 40,000,000.

6. A fine of between VND 25,000,000 and VND 40,000,000 for any violation specified in Clause 1 of this Article in case infringing goods are valued at between over VND 40,000,000 and VND 70,000,000.

7. A fine of between VND 40,000,000 and VND 60,000,000 for any violation specified in Clause 1 of this Article in case infringing goods are valued at between over VND 70,000,000 and 100,000,000.

8. A fine of between VND 60,000,000 and VND 80,000,000 for any violation specified in Clause 1 of this Article in case infringing goods are valued at between over VND 100,000,000 and VND 200,000,000.

9. A fine of between VND 80,000,000 and VND 110,000,000 for any violation specified in Clause 1 of this Article in case infringing goods are valued at between over VND 200,000,000 and VND 300,000,000.

10. A fine of between VND 110,000,000 and VND 150,000,000 for any violation specified in Clause 1 of this Article in case infringing goods are valued at between over VND 300,000,000 and VND 400,000,000.

11. A fine of between VND 150,000,000 and VND 200,000,000 for any violation specified in Clause 1 of this Article in case infringing goods are valued at between over VND 400,000,000 and VND 500,000,000.

12. A fine of between VND 200,000,000 and VND 250,000,000 for any violation specified in Clause 1 of this Article in case infringing goods are valued at between over VND 500,000,000.

13. A fine of equal to 1.2 times the fine levels specified in Clauses 1 thru 12 of this Article, which must not exceed VND 250,000,000, shall be imposed for any of the following violations with business purposes:

a) Conducting production, including stages of: designing, building, manufacturing, processing, assembling and packaging products or goods infringing upon rights to inventions, utility solutions or layout designs;

b) Applying processes infringing upon rights to inventions, utility solutions;

c) Importing products infringing upon rights to inventions, utility solutions or layout designs or products produced from processes infringing upon rights to inventions or utility solutions;

d) Placing orders to, assigning or hiring other parties to commit violations specified at Points a, b and c of this Clause.

14. Additional sanctions:

Suspension of the production, trading of infringing goods, for between 01 and 03 months, for violations specified in Clauses 1 through 13 of this Article.

15. Remedial measures:

a) Forcible removal and destruction of infringing elements for violations specified in Clauses 1 thru 13 of this Article;

b) Forcible destruction of material evidence and means used in the commission of violations which infringing elements cannot be removed, for violations specified in Clauses 1 thru 13 of this Article;

c) Forcible bringing out of the Vietnamese territory of transit goods infringing industrial property rights for violations specified in Clauses 1 thru 12 of this Article;

d) Forcible remittance of illicit earnings from the commission of administrative violations specified in Clauses 1 thru 13 of this Article.

Article 11. Infringement of rights to marks, geographical indications, trade names or industrial designs

1. A warning or fine of between VND 500,000 and VND 2,000,000 shall be imposed for any of the following acts with business purpose in case where infringing goods or services are valued up to VND 3,000,000:

a) Selling, offering for sale; transporting, included transiting; storing: displaying for sale of products or services infringing upon rights to marks, geographical indications, trade names or industrial designs;

b) Placing orders to, assigning or hiring other parties to commit violations specified at Point a of this Clause.

2. A fine of between VND 2,000,000 and VND 4,000,000 for any violation specified in Clause 1 of this Article in case infringing goods or services are valued at between over VND 3,000,000 and VND 5,000,000.

3. A fine of between VND 4,000,000 and 8,000,000 for any violation specified in Clause 1 of this Article in case infringing goods or services are valued at between over VND 5,000,000 and VND 10,000,000.

4. A fine of between VND 8,000,000 and VND 15,000,000 for any violation specified in Clause 1 of this Article in case infringing goods or services are valued at between over VND 10,000,000 and VND 20,000,000.

5. A fine of between VND 15,000,000 and VND 25,000,000 for any violation specified in Clause 1 of this Article in case infringing goods or services are valued at between over VND 20,000,000 and VND 40,000,000.

6. A fine of between VND 25,000,000 and VND 40,000,000 for any violation specified in Clause 1 of this Article in case infringing goods or services are valued at between over VND 40,000,000 and VND 70,000,000.

7. A fine of between VND 40,000,000 and VND 60,000,000 for any violation specified in Clause 1 of this Article in case infringing goods or services are valued at between over VND 70,000,000 and VND 100,000,000.

8. A fine of between VND 60,000,000 and VND 80,000,000 for any violation specified in Clause 1 of this Article in case infringing goods or services are valued at between over VND 100,000,000 and VND 200,000,000.

9. A fine of between VND 80,000,000 and 110,000,000 for any violation specified in Clause 1 of this Article in case infringing goods or services are valued at between over VND 200,000,000 and VND 300,000,000.

10. A fine of between VND 110,000,000 and VND 150,000,000 for any violation specified in Clause 1 of this Article in case infringing goods or services are valued at between over VND 300,000,000 and VND 400,000,000.

11. A fine of between VND 150,000,000 and VND 200,000,000 for any violation specified in Clause 1 of this Article in case infringing goods or services are valued at between over VND 400,000,000 and VND 500,000,000.

12. A fine of between VND 200,000,000 and VND 250,000,000 for any violation specified in Clause 1 of this Article in case infringing goods are valued at between over VND 500,000,000.

13. A fine of equal to 1.2 times the fine levels specified in Clauses 1 thru 12 of this Article, which must not exceed VND 250,000,000, for any of the following violations:

a) Designing, manufacture, processing, assembling and packaging goods bearing signs infringing upon rights to marks, trade names, geographical indications or industrial designs;

b) Printing, sticking, attaching, molding or embossing or otherwise affixing stamps, labels or other articles bearing signs infringing upon rights to marks, geographical indications, industrial designs or trade names on goods;

c) Importing goods bearing signs infringing upon rights to marks, geographical indications, trade names or industrial designs;

d) Placing orders to, assigning or hiring other parties to commit violations specified at Points a, b and c of this Clause.

14. A fine of between VND 10,000,000 and VND 30,000,000 shall be imposed for acts of infringing upon rights to marks, geographical indications, trade names or industrial designs as specified in Clauses 1 and 13 of this Article in case the value of infringing goods or services cannot be determined.

15. A fine of between VND 10,000,000 and VND 20,000,000 shall be imposed for acts of using signs infringing upon rights to marks, geographical indications, trade names on signboards, business transaction papers, means of business or service, goods packages.

16. Additional sanctions:

Suspension of trading in infringing goods or services, for between 01 and 03 months, for violations specified in from Clauses 1 thru 15 of this Article.

17. Remedial measures:

a) Forcible removal and destruction of infringing elements for violations specified in from Clause 1 thru Clause 15 of this Article;

b) Forcible destruction of material evidence and means used in the commission of violations which infringing elements cannot be removed, infringing stamps, labels, packages and articles, for violations specified in Clauses 1 thru 15 of this Article;

c) Forcible bringing out of the Vietnamese territory of transit goods infringing industrial property rights for violations specified in Clauses 1 thru 12 of this Article;

d) Forcible change of enterprise name or removal of infringing elements in enterprise name, for violations specified in Clauses 1 thru 13 of this Article;

d) Forcible remittance of illicit earnings from the commission of administrative violations specified in Clauses 1 thru 15 of this Article.

Article 12. Production, import, trading, transportation or storage for sale of goods bearing counterfeit marks or geographical indications

1. A fine of between VND 4,000,000 and VND 8,000,000 for any of the following acts in case where infringing goods are valued up to VND 5,000,000:

a) Selling, offering for sale; transporting, included transiting; storing; displaying for sale of goods bearing counterfeit marks or geographical indications;

b) Placing orders to, assigning or hiring other parties to commit violations specified at Point a of this Clause.

2. A fine of between VND 8,000,000 and VND 12,000,000 for any violation specified in Clause 1 of this Article in case infringing goods are valued at between over VND 5,000,000 and VND 10,000,000.

3. A fine of between VND 12,000,000 and VND 20,000,000 for any violation specified in Clause 1 of this Article in case infringing goods are valued at between over VND 10,000,000 and VND 20,000,000.

4. A fine of between VND 20,000,000 and VND 35,000,000 for any violation specified in Clause 1 of this Article in case infringing goods are valued at between over VND 20,000,000 and VND 40,000,000.

5. A fine of between VND 35,000,000 and VND 55,000,000 for any violation specified in Clause 1 of this Article in case infringing goods are valued at between over VND 40,000,000 and VND 70,000,000.

6. A fine of between VND 55,000,000 and VND 85,000,000 for any violation specified in Clause 1 of this Article in case infringing goods are valued at between over VND 70,000,000 and VND 100,000,000.

7. A fine of between VND 85,000,000 and VND 120,000,000 for any violation specified in Clause 1 of this Article in case infringing goods are valued at between over VND 100,000,000 and VND 200,000,000.

8. A fine of between VND 120,000,000 and VND 180,000,000 for any violation specified in Clause 1 of this Article in case infringing goods are valued at between over VND 200,000,000 and VND 300,000,000.

9. A fine of between VND 180,000,000 and VND 250,000,000 for any violation specified in Clause 1 of this Article in case infringing goods are valued at between over VND 300,000,000.

10. A fine of equal to 1.2 times the fine levels specified in Clauses 1 thru 9 of this Article, which must not exceed VND 250,000,000, for any of the following violations:

- a) Manufacturing, processing, assembling and packaging goods bearing counterfeit marks or geographical indications;
- b) Printing, sticking, attaching, molding or embossing or otherwise affixing stamps, labels or other articles bearing counterfeit marks or geographical indications on goods;
- c) Importing goods bearing counterfeit marks or geographical indications;
- d) Placing orders to, assigning or hiring other parties to commit violations specified at Points a, b and c of this Clause.

11. A fine of between VND 10,000,000 and VND 30,000,000 for any violation specified in Clause 1 and Clause 10 of this Article in case the value of infringing goods cannot be determined.

12. Additional sanctions:

- a) Confiscation of material evidence and means used in the commission of violations, for violations specified in Clauses 1 thru 11 of this Article;
- b) Suspension of trading in infringing goods or services, for between 01 and 03 months, for violations specified in from Clauses 1 thru 11 of this Article.

13. Remedial measures:

- b) Forcible destruction or distribution or bringing into use without commercial purpose for goods bearing counterfeit marks or geographical indications; raw materials, materials and means used mainly for producing or trading in those goods, provided such act does not affect the exercise of the industrial property rights by their holders, for violations specified in Clauses 1 thru 11 of this Article;
- c) Forcible re-export of goods bearing counterfeit marks or geographical indications, or imported means, raw materials and materials used mainly for producing or trading in these goods after infringing elements on these goods are removed, for violations specified in Clauses 1 thru 10 of this Article;
- c) Forcible remittance of illicit earnings from the commission of administrative violations specified in Clauses 1 thru 11 of this Article.

Article 13. Production, import, trading, transportation or storage for sale of stamps, labels or articles bearing counterfeit marks or geographical indications

1. A warning or fine of between VND 500,000 and VND 1,000,000 shall be imposed for any of the following violations in case of stamps, labels, packages or

articles bearing counterfeit marks or geographical indications with quantity of 500 pieces, sheets or similar units (hereinafter abbreviated to units):

a) Selling; transporting, included transiting; supplying; storing; displaying for sale of stamps, labels, packages or articles bearing counterfeit marks or geographical indications;

b) Placing orders to, assigning or hiring other parties to commit violations specified at Point a of this Clause.

2. A fine of between VND 1,000,000 and VND 2,000,000 for any violation specified in Clause 1 of this Article in case quantity of stamps, labels, packages or articles bearing counterfeit marks or geographical indications is between over 500 units and 1,000 units.

3. A fine of between VND 2,000,000 and VND 4,000,000 for any violation specified in Clause 1 of this Article in case quantity of stamps, labels, packages or articles bearing counterfeit marks or geographical indications is between over 1,000 units and 2,000 units.

4. A fine of between VND 4,000,000 and VND 8,000,000 for any violation specified in Clause 1 of this Article in case quantity of stamps, labels, packages or articles bearing counterfeit marks or geographical indications is between over 2,000 units and 5,000 units.

5. A fine of between VND 8,000,000 and VND 15,000,000 for any violation specified in Clause 1 of this Article in case quantity of stamps, labels, packages or articles bearing counterfeit marks or geographical indications is between over 5,000 units and 10,000 units.

6. A fine of between VND 15,000,000 and 25,000,000 for any violation specified in Clause 1 of this Article in case quantity of stamps, labels, packages or articles bearing counterfeit marks or geographical indications is between over 10,000 units.

7. A fine of equal to 1.2 times the fine levels specified in Clauses 1 thru 6 of this Article shall be imposed for any of the following violations:

a) Producing included designing, printing; importing stamps, labels, packages or articles bearing counterfeit marks or geographical indications;

b) Placing orders to, assigning or hiring other parties to commit violations specified at Point a of this Clause.

8. Remedial measures:

a) Forcible destruction of stamps, labels, packages or articles bearing counterfeit marks or geographical indications, for violations specified in Clauses 1 thru 7 of this Article;

b) Forcible remittance of illicit earnings from the commission of administrative violations specified in Clauses 1 thru 7 of this Article.

Article 14. Unfair competition in the domain of industrial property

1. A warning or fine of between VND 500,000 and VND 2,000,000 for any of the following acts in case where infringing goods or services are valued up to VND 3,000,000:

a) Selling; transporting, included transiting; storing for sale of goods or services affixed with trade indications, thereby misleading as to business entities or activities, trade origin of goods or services or origin, method of production, utilities, quality, quantity or other features of goods or services or conditions for provision of goods or services;

b) Placing orders to, assigning or hiring other parties to commit violations specified at Point a of this Clause.

2. A fine of between VND 2,000,000 and VND 4,000,000 for any violation specified in Clause 1 of this Article in case infringing goods and services are valued at between over VND 3,000,000 and VND 5,000,000.

3. A fine of between VND 4,000,000 and VND 8,000,000 for any violation specified in Clause 1 of this Article in case infringing goods and services are valued at between over VND 5,000,000 and VND 10,000,000.

4. A fine of between VND 8,000,000 and VND 15,000,000 for any violation specified in Clause 1 of this Article in case infringing goods and services are valued at between over VND 10,000,000 and VND 20,000,000.

5. A fine of between VND 15,000,000 and VND 25,000,000 for any violation specified in Clause 1 of this Article in case infringing goods and services are valued at between over VND 20,000,000 and VND 40,000,000.

6. A fine of between VND 25,000,000 and VND 40,000,000 for any violation specified in Clause 1 of this Article in case infringing goods and services are valued at between over VND 40,000,000 and VND 70,000,000.

7. A fine of between VND 40,000,000 and VND 60,000,000 for any violation specified in Clause 1 of this Article in case infringing goods and services are valued at between over VND 70,000,000 and VND 100,000,000.

8. A fine of between VND 60,000,000 and VND 80,000,000 for any violation specified in Clause 1 of this Article in case infringing goods and services are valued at between over VND 100,000,000 and VND 200,000,000.

9. A fine of between VND 80,000,000 and VND 110,000,000 for any violation specified in Clause 1 of this Article in case infringing goods and services are valued at between over VND 200,000,000 and VND 300,000,000.

10. A fine of between VND 110,000,000 and VND 150,000,000 for any violation specified in Clause 1 of this Article in case infringing goods and services are valued at between over VND 300,000,000 and VND 400,000,000.

11. A fine of between VND 150,000,000 and VND 200,000,000 for any violation specified in Clause 1 of this Article in case infringing goods and services are valued at between over VND 400,000,000 and VND 500,000,000.

12. A fine of between VND 200,000,000 and VND 250,000,000 for any violation specified in Clause 1 of this Article in case infringing goods are valued at between over VND 500,000,000.

13. A fine of equal to 1.2 times the fine levels specified in Clauses 1 thru 12 of this Article, which must not exceed VND 250,000,000, for any of the following violations:

a) Affixing trade indications on goods or services, thereby misleading as to business entities or activities, trade origin of goods or services or origin, method of production, utilities, quality, quantity or other features of goods or services or conditions for provision of goods or services;

b) Producing or importing goods bearing misleading trade indications specified at Point a of this Clause;

c) Placing orders to, assigning or hiring other parties to commit violations specified at Points a and b of this Clause.

14. A fine of between VND 10,000,000 and VND 30,000,000 shall be imposed for acts of using misleading trade indications specified in Clause 1 and Clause 13 of this Article in case the value of infringing goods or services cannot be determined.

15. A fine of between VND 5,000,000 and VND 15,000,000 for any of the following acts:

a) Infringing upon rights to business secrets as prescribed in Article 127 of the Law on intellectual property;

b) Using on transaction papers or means of business, including also means of service, signboards and goods packages, trade indications which mislead as to business entities or activities or trade origin of goods or services or origin, method of production, utilities, quality, quantity or other features of goods or services or conditions for provision of goods or services.

16. A fine of between VND 5,000,000 and VND 20,000,000 for any of the following acts:

a) Registering or appropriating the right to use or using domain names identical or confusingly similar to protected marks, geographical indications or trade names of

other parties in order to appropriate domain names, taking advantage of or harming reputation of those marks, trade names or geographical indications;

b) Using marks protected in a country being contracting party to a treaty which bans representatives or agents of mark owners from using these marks and to which Vietnam is a contracting party, provided that users are representatives or agents of mark owners and this use is neither authorized by mark owners nor justifiable.

17. Additional sanctions:

Suspension of trading in infringing goods or services, included e-commercial activities, for between 01 and 03 months, for violations specified in from Clauses 1 thru 16 of this Article.

18. Remedial measures:

a) Forcible removal or forcible destruction of infringing elements, forcible destruction of infringing goods from which infringing elements cannot be removed, for violations specified in Clauses 1 thru 16 of this Article;

b) Forcible removal of information on infringing goods or services on means of business, services, or websites, for violations specified in Clauses 15 and 16 of this Article;

c) Forcible change of enterprise name or removal of infringing elements in enterprise name, for violations specified in Clauses 1 thru 15 of this Article; forcible change or withdrawal of domain names, for violation specified in Point a Clause 16 of this Article;

d) Forcible remittance of illicit earnings from the commission of administrative violations specified in Clauses 1 thru 16 of this Article.

Chapter 3.

COMPETENCE FOR ADMINISTRATIVE SANCTION

Article 15. Sanctioning competence

1. Scientific and technological inspectorates are competent to handle violations specified in Chapter II of this Decree.

2. Information and communications inspectorates are competent to handle violations specified in Point a, Clause 16, Article 14 of this Decree.

3. Market management offices are competent to handle the following violations:

a) Violations specified in Article 12 and Article 13 of this Decree in manufacturing, trading, transporting, storing goods at domestic market;

b) Violations specified in Articles 6, 9, 11 and 14 of this Decree in trading, transporting goods at domestic market. In case where facilities producing those

goods are identified when handling violations specified in point b Clause 3 of this Article, the competent Market management offices may continue handling violations at the production facilities.

4. Customs offices are competent to handle violations specified in Articles 6, 9, 10, 11, 12, 13 and 14 of this Decree in the transit or import of goods.

5. Police agencies are competent to detect, verify, collect information and evidence of acts infringing industrial property rights and provide them to agencies handling violations specified in Clauses 1, 2, 3 and 4 of this Article; and competent to handle violations specified in Articles 9, 12 and 13 of this Decree.

6. The provincial and district-level People's Committees are competent to handle violations in industrial property which are committed in their respective localities on the principle of determination and apportionment of competence sanctioning administrative violations provided in Article 38 and Article 52 of the Law on Handling of Administrative Violations.

Article 16. Sanctioning competence of scientific and technological inspectorates

1. Inspectors of the Inspectorate of Science and Technology Ministry, or Inspectorate of provincial-level Science and Technology Departments who are on duty may:

a) Impose warning;

b) Fine up to VND 500,000;

c) Confiscate material evidence or means used in the commission of administrative violations valued not exceeding the fine level specified in point b of this Clause;

d) Apply remedies specified at Point d Clause 3 Article 3 of this Decree.

2. Chief inspectors of provincial-level Science and Technology Departments, or heads of specialized inspectorate delegations of the provincial-level Science and Technology Departments may:

a) Impose warning;

b) Fine up to VND 50,000,000;

c) Deprive of the right to use practice permits or certificates for a definite period or suspend the business in infringing goods or services for a definite period;

d) Confiscate material evidence or means used in the commission of administrative violations valued not exceeding the fine level specified in point b of this Clause;

dd) Apply remedies specified at Clause 3 Article 3 of this Decree.

3. Chief inspector of the Science and Technology Ministry may:

a) Impose warning;

- b) Fine up to VND 250,000,000;
- c) Deprive of the right to use practice permits or certificates for a definite period or suspend the business in infringing goods or services for a definite period;
- d) Confiscate material evidence or means used in the commission of administrative violations;
- dd) Apply remedies specified at Clause 3 Article 3 of this Decree.

4. Heads of specialized inspectorate delegations of the Science and Technology Ministry may:

- a) Impose warning;
- b) Fine up to VND 175,000,000;
- c) Deprive of the right to use practice permits or certificates for a definite period or suspend the business in infringing goods or services for a definite period;
- d) Confiscate material evidence or means used in the commission of administrative violations valued not exceeding the fine level specified in point b of this Clause;
- dd) Apply remedies specified at Clause 3 Article 3 of this Decree.

Article 17. Sanctioning competence of information and communications inspectorates

1. Inspectors of the Inspectorate of information and communications Ministry or Inspectorates of provincial-level information and communications Departments who are on duty may:

- a) Impose warning;
- b) Fine up to VND 500,000;
- c) Confiscate material evidence or means used in the commission of administrative violations valued not exceeding the fine level specified in point b of this Clause;
- d) Apply remedies specified at Point a Clause 3 Article 3 of this Decree.

2. Chief inspectors of provincial-level Science and Technology Departments, or heads of specialized inspectorate delegations of the provincial-level Science and Technology Departments may:

- a) Impose warning;
- b) Fine up to VND 50,000,000;
- c) Deprive of the right to use practice permits or certificates for a definite period or suspend the business in infringing goods or services for a definite period;
- d) Confiscate material evidence or means used in the commission of administrative violations valued not exceeding the fine level specified in point b of this Clause;

d) Apply remedies specified at Point a Clause 3 Article 3 of this Decree.

3. Chief inspector of Information and Communications Ministry may:

a) Impose warning;

b) Fine up to VND 250,000,000;

c) Deprive of the right to use practice permits or certificates for a definite period or suspend the business in infringing goods or services for a definite period;

d) Confiscate material evidence or means used in the commission of administrative violations;

dd) Apply remedies specified at Point a Clause 3 Article 3 of this Decree.

4. Heads of specialized inspectorate delegations of the Information and Communications Ministry may:

a) Impose warning;

b) Fine up to VND 175,000,000;

c) Deprive of the right to use practice permits or certificates for a definite period or suspend the business in infringing goods or services for a definite period;

d) Confiscate material evidence or means used in the commission of administrative violations valued not exceeding the fine level specified in point b of this Clause;

dd) Apply remedies specified at Point a Clause 3 Article 3 of this Decree.

Article 18. Sanctioning competence of market management officers

1. Heads of market management teams may:

a) Impose warning;

b) Fine up to VND 25,000,000;

c) Confiscate material evidence or means used in the commission of administrative violations valued not exceeding the fine level specified in point b of this Clause;

d) Apply remedies specified at Points a, b, d, dd, e, g and h Clause 3 Article 3 of this Decree.

2. Directors of market management sub-departments of the provincial Departments of Industry and Trade, Heads of anti-smuggling divisions and anti-counterfeits divisions under the market management departments may:

a) Impose warning;

b) Fine up to VND 50,000,000;

c) Deprive of the right to use practice permits or certificates for a definite period or suspend the business in infringing goods or services for a definite period;

d) Confiscate material evidence or means used in the commission of administrative violations valued not exceeding the fine level specified in point b of this Clause;

dd) Apply remedies specified at Clause 3 Article 3 of this Decree.

3. Directors of the provincial market management Departments may:

a) Impose warning;

b) Fine up to VND 250,000,000;

c) Deprive of the right to use practice permits or certificates for a definite period or suspend the business in infringing goods or services for a definite period;

d) Confiscate material evidence or means used in the commission of administrative violations;

dd) Apply remedies specified at Clause 3 Article 3 of this Decree.

Article 19. Sanctioning competence of customs officers

1. Heads of professional operation teams of Customs sub-Departments or Post-Customs Clearance Inspection Sub-Departments may:

a) Impose warning;

b) Fine up to VND 5,000,000,000;

2. Directors of Customs Sub-Departments or Post-Customs Clearance Inspection Sub-Departments, heads of control teams of provincial, inter-provincial or municipal Customs Departments (below referred to as provincial-level Customs Departments), heads of anti-smuggling control teams, heads of customs procedures teams, heads of intellectual property right control and protection teams and captains of sea patrol flotillas of the Anti-Smuggling Investigation Department of the General Department of Customs may:

a) Impose warning;

b) Fine up to VND 25,000,000;

c) Confiscate material evidence or means used in the commission of administrative violations valued not exceeding the fine level specified in point b of this Clause;

d) Apply remedies specified at Points a, b, d, dd, g and h Clause 3 Article 3 of this Decree.

3. The directors of the Anti-Smuggling Investigation Department and the Post-Customs Clearance Inspection Department of the General Department of Customs and directors of provincial-level Customs Departments may:

a) Impose warning;

b) Fine up to VND 50,000,000;

- c) Deprive of the right to use practice permits or certificates for a definite period or suspend the business in infringing goods or services for a definite period;
- d) Confiscate material evidence or means used in the commission of administrative violations valued not exceeding the fine level specified in point b of this Clause;
- dd) Apply remedies specified at Points a, b, c, d, dd, g and h Clause 3 Article 3 of this Decree.

4. General Director of the General Department of Customs may:

- a) Impose warning;
- b) Fine up to VND 250,000,000;
- d) Confiscate material evidence or means used in the commission of administrative violations;
- d) Apply remedies specified at Points a, b, c, d, dd, g and h Clause 3 Article 3 of this Decree.

Article 20. Sanctioning competence of People's Public Security officers

1. Heads of border-gate and processing and exporting zone police stations may:

- a) Impose warning;
- b) Fine up to VND 2,500,000;
- c) Confiscate material evidence or means used in the commission of administrative violations valued not exceeding the fine level specified in point b of this Clause;
- d) Apply remedies specified at Point d Clause 3 Article 3 of this Decree.

2. District-level police chiefs, heads of police sections for investigation of crimes related to economic management order and positions may:

- a) Impose warning;
- b) Fine up to VND 25,000,000;
- c) Deprive of the right to use practice permits or certificates for a definite period or suspend the business in infringing goods or services for a definite period;
- d) Confiscate material evidence or means used in the commission of administrative violations valued not exceeding the fine level specified in point b of this Clause;
- dd) Apply remedies specified at Points b, d, dd, and g Clause 3 Article 3 of this Decree.

3. Directors of provincial-level Police Departments may:

- a) Impose warning;
- b) Fine up to VND 50,000,000;

- c) Deprive of the right to use practice permits or certificates for a definite period or suspend the business in infringing goods or services for a definite period;
- d) Confiscate material evidence or means used in the commission of administrative violations valued not exceeding the fine level specified in point b of this Clause;
- dd) Apply remedies specified at Points b, d, dd, g and h Clause 3 Article 3 of this Decree.

4. Director of the Police Department for Investigation of Crimes related to Economic Management Order and Positions may:

- a) Impose warning;
- b) Fine up to VND 250,000,000;
- c) Deprive of the right to use practice permits or certificates for a definite period or suspend the business in infringing goods or services for a definite period;
- d) Confiscate material evidence or means used in the commission of administrative violations;
- dd) Apply remedies specified at Points b, d, dd, g and h Clause 3 Article 3 of this Decree.

5. Apart from persons defined in Clauses 1, 2, 3 and 4 of this Article, competent persons of People's Public Security forces who detect acts of administrative violations in industrial property under their competence and management localities may sanction as prescribed in Article 39 of the Law on handling of administrative violations and this Decree.

Article 21. Sanctioning competence of chairpersons of district- and provincial-level People's Committees

1. Chairpersons of district-level People's Committees may:

- a) Impose warning;
- b) Fine up to VND 50,000,000;
- c) Deprive of the right to use practice permits or certificates for a definite period or suspend the business in infringing goods or services for a definite period;
- c) Confiscate material evidence or means used in the commission of administrative violations valued not exceeding the fine level specified in point b of this Clause;
- dd) Apply remedies specified at Points b, d, dd, e, g and h Clause 3 Article 3 of this Decree.

2. Chairpersons of provincial People's Committees may:

- a) Impose warning;

- b) Fine up to VND 250,000,000;
- d) Confiscate material evidence or means used in the commission of administrative violations;
- c) Deprive of the right to use practice permits or certificates for a definite period or suspend the business in infringing goods or services for a definite period;
- dd) Apply remedies specified at Clause 3 Article 3 of this Decree.

Chapter 4.

HANDLING OF VIOLATIONS

Article 22. Right to request handling of violations and competence to take the initiative in detecting and handling violations

1. Industrial property rights holders that may request handling of violations in the domain of industrial property include:

- a) Industrial property rights holders that suffer damage caused by violations, including also organizations authorized to manage geographical indications currently protected in Vietnam;
- b) Persons licensed to use industrial property objects who suffer damage caused by violations, provided their right to request handling of violations are not restricted by industrial property rights holders.

When exercising the right to request handling of acts infringing upon industrial property rights provided at Point a, Clause 1, Article 211 of the Law on Intellectual Property and acts of unfair competition specified in Article 130 of the Law on Intellectual Property, organizations and individuals defined in this Clause shall clearly indicate the nature and severity of violations in their requests and supply documents and evidence specified in Clause 2, Article 26 of this Decree.

2. Organizations and individuals that detect acts infringing upon industrial property rights, thus causing damage to consumers or the society, violations related to goods, stamps, labels or articles bearing counterfeit marks or geographical indications; organizations and individuals that suffer damage or are likely to suffer damage caused by acts of unfair competition in the domain of industrial property may notify and request competent agencies to carry out procedures for verifying and sanctioning violations.

Upon receiving notices of organizations and individuals defined in this Clause, agencies competent to handle violations shall inspect and coordinate with industrial property rights holders in verifying and handling violations under Clause 3 of this Article.

3. Agencies competent to handle violations shall take the initiative in inspecting, examining, detecting and coordinate with industrial property rights holders in verifying and handling violations related to the following objects:

a) Goods, stamps, labels, packages and other articles bearing counterfeit marks or geographical indications;

b) Infringing goods or services related to food, foodstuffs, pharmaceuticals, cosmetics, livestock feed, fertilizers, veterinary drugs, plant protection drugs, construction materials, means of transport, chemicals for medical, agricultural or environmental use, and other items identified by competent persons while conducting periodical or irregular inspection or examination.

Article 23. Authorization to request handling of violations

1. Industrial property rights holders defined in Clause 1, Article 24 of this Decree that do not directly file their requests for handling of violations may authorize heads of their representative offices, branches or agents or industrial property representation service providers in Vietnam to carry out all procedures for requesting handling of violations under this Decree.

2. Authorization must be made in writing in the form of power of attorney or authorization contract.

A power of attorney of organization or individual in Vietnam must bear a signature of legal representative of the authorizing party and confirmation seal of the authorizing party, in case of possessing a legally-registered seal.

A power of attorney made by a foreign organization or individual must be certified by a notary public, consular office or local administration or other form considered as being lawful as prescribed by law of where it is made.

3. A power of attorney enclosed with the request for handling of violations must be original. A power of attorney made in a foreign language must be enclosed with its Vietnamese translation certified by local administration or bearing guarantee and certification by an industrial property representation service provider being the authorized.

In case a copy of a power of attorney refers to the original power of attorney already included in a dossier previously filed with the same violation-handling agency, such copy is also considered valid, provided that the applicant must specify number code of the filed dossier and the original is still valid and consistent with contents of authorization.

4. A power of attorney which is valid in procedures for establishing rights under Article 107 of the Law on Intellectual Property and clearly indicates contents of authorization including enforcement and protection of industrial property rights in

Vietnam is also legally valid in procedures for requesting handling of violations under this Decree.

5. Time limit of authorization is defined under time limit inscribed in the power of attorney. If a power of attorney fails to inscribe time limit, the time limit of authorization will be defined according to Clause 3 Article 107 of the law on intellectual property.

Article 24. Requests for handling of violations

1. A request for handling of a violation must be made in writing, under form of application for handling of violation, clearly indicating the date of making, name(s) of request-receiving agency(ies), information on the requesting organization or individual; lawful representative or authorized organization or individual; concerned industrial property object; goods or service showing signs of infringement; name and address of infringing organization or individual; proposed handling measure(s); signature of the lawful representative of the requesting organization or individual or the authorized organization or individual, and the seal for signature certification (if any). If such a request has been previously filed with another agency, it must clearly indicate the name of this agency and the filing date.

2. A written request for handling of a violation must be enclosed with documents evidencing the right to request handling of violation; documents describing or photos of infringing act, goods or service; place in which the infringing act is committed or infringing goods or service exists.

The requester may supply other documents, samples or evidence to help the competent agency identify the infringing act and goods or service.

Article 25. Receipt and examination of written requests for handling of violations

1. When receiving a written request for handling of a violation, a violation-receiving agency shall implement the following jobs:

a) Determine the competence to handle the violation; if the written request for handling of a violation falls under the handling competence of another agency, guide the requester to file this request with that agency;

b) Examine documents and evidence enclosed with the written request.

2. Examination of a written request for handling of a violation shall be conducted as follows:

a) Within 10 working days after receiving the written request, the violation-handling agency shall consider the validity of the written request and enclosed documents and evidence;

- b) When documents or evidence supplied by the requester are insufficient, the violation-handling agency shall request the requester to supplement documents and evidence or give explanations within 30 days after being requested;
- c) The agency competent to accept the case for handling may request the alleged violator to furnish information, evidence and give explanations; solicit expert opinions of the state management agency in charge of industrial property or request industrial property assessment to clarify circumstances of the case;
- d) Within 30 days after receiving the complete dossier which satisfies the requirements, the competent person shall notify the requester of the projected time of handling, procedures and measures and request cooperation and support of the industrial property rights holder in the inspection, examination, verification and handling of the violation.

3. Rights and responsibilities of parties requested to be handled for their violations:

- a) In the course of handling a case, the party requested to be handled may, at his/her/its own will or the request of a competent person, provide information, documents and evidence and give explanations, in case of disagreeing with the requester, within 10 days after the date fixed in the notice of the competent person currently handling the violation or the date of making a minutes of inspection, minutes of administrative violation. If there is a plausible reason, the party requested to be handled may request in writing the competent person currently handling the case to prolong that time limit for not more than 30 days after the date fixed in the notice or the date of making a minutes of inspection or minutes of administrative violation;
- b) The party requested to be handled may authorize another organization or individual under Article 23 of this Decree to provide information, documents and evidence and give explanations under Point a of this Clause;
- c) To prove that his/her/its act does not infringe upon the right to an invention or a utility solution being a process, the party requested to be handled is obliged to prove that the product believed to be produced from the process infringing upon the right to that invention or utility solution has, in fact, not been produced from the process protected as an invention or a utility solution and satisfied the relevant conditions specified in Clause 4, Article 203 of the Law on Intellectual Property;
- d) In case the party requested to be handled fails to provide or provides insufficient information, documents, evidence and explanations to prove his/her/its lawful act, the competent person shall decide to handle the case based on inspection and examination results and information, documents and evidence provided by the requester, for issuing a handling decision.

Article 26. Provision of evidence and information to identify violations

1. A requester for handling of a violation may request industrial property assessment or request the state management agency in charge of industrial property to give its expert opinions for identifying the protection scope and infringing elements, or take the initiative in providing documents and evidence to prove the infringing act or to clarify circumstances of the case.
2. The agency competent to handle the violation may request the requester to provide documents, evidence and explanations or clarify circumstances of the case within a given time limit; request the industrial property rights holder to provide information, documents and samples to identify signs of violation, genuine goods and counterfeit or infringing goods, source of supply or place of consumption of lawful goods, grounds for identifying goods produced beyond the scope of licensing of industrial property object or imports other than parallel imports.
3. The agency competent to handle the violation may conduct at its own with inspection, verification, collection of evidence, determination of the scope of industrial property rights protection and identification of the act of violation under the Law on Intellectual Property. When necessary, it may request a functional agency to conduct verification, collect evidence of violation, request the state management agency in charge of industrial property to give its expert opinions or request industrial property assessment to identify the scope of protection and infringing elements.
4. The person competent to handle the violation may base him/herself on the industrial property rights holder's written confirmation of goods or service bearing a counterfeit mark or geographical indication, written expert opinions of the state management agency in charge of industrial property and written assessment conclusion to identify the violation but shall take legal responsibility for his/her violation conclusion and violation-handling decision.
5. The agency competent to handle the violation may provide relevant information on the place of production, consumption channel and source of supply of counterfeit or infringing goods and circumstances of the case at the request of the industrial property rights holder or a person competent to settle disputes or sanction violations of another agency or organization, provided that such supply of information and documents does not affect the effectiveness of the concerned case handling and is not confidential as prescribed by law.
6. The agency competent to handle the case may request the party requested to be handled for his/her/its violation and parties with related rights and benefits in the case to provide information, documents and evidence to prove their requests and arguments or to disprove requests and arguments of other parties; request the party currently keeping or controlling evidence and documents related to the case of violation to furnish such evidence and documents as a basis for handling the case.

7. The industrial property rights holder or his/ her/its authorized representative may request the agency competent to handle the violation to permit his/her/its participation and assistance in the inspection, examination, verification, collection of evidence, identification of genuine goods, counterfeit or infringing goods and infringing elements on goods, articles, raw materials, materials and means of business, and determination of measure(s) to handle the infringing goods or service. The agency competent to handle the violation shall decide to permit the participation as requested as prescribed in this Clause, unless it is necessary to protect a trade secret at the justifiable request of the handled party.

Article 27. Handling of violations involving disputes

1. In case a complaint, denunciation or dispute arises concerning the registration right, ownership right, right to request handling of violation, conditions or scope of protection of concerned industrial property rights after a written request for handling of a violation is accepted, the agency competent to accept the case for handling shall take the following handling measures:

- a) Requesting involved parties to carry out procedures for requesting settlement of the complaint, denunciation or dispute by a competent agency under the law on intellectual property;
- b) Requesting the industrial property rights holder to give explanations or make commitment or to request the state management agency in charge of industrial property to clarify the legal status of industrial property rights subject to the complaint, denunciation or dispute.

Within 30 working days after receiving a written explanation or commitment of the industrial property rights holder or a written reply of the state management agency in charge of industrial property, the agency competent to accept the case for handling shall reply the requester of whether it will carry out handling procedures or refuse to handle the violation.

2. In case a written request for handling of a violation has been accepted but parties involved in the case reach an agreement and propose a handling measure in compliance with the law on intellectual property which does not affect the rights and interests of a third party, consumers and the society, the agency competent to handle the violation shall recognize such handling measure and terminate the handling of the case.

Article 28. Refusal to handle or termination of handling of violations

1. A violation-handling agency shall refuse to handle a violation in the following cases:

- a) The written request for handling of the violation is filed when related industrial property rights are disputed;

b) The requester fails to meet requirements of the violation-handling agency on explanation about or addition of evidence proving the status of the industrial properly rights holder and the violation under Point b, Clause 2, Article 25 of this Decree;

c) The statute of limitations for sanctioning the administrative violation has expired under Clause 1, Article 6 of the Law on Handling of Administrative Violations;

d) Results of verification by the violation-handling agency or a police- office disprove the violation as described in the written request for violation handling;

dd) There's a conclusion, decision or notice of a competent agency on the lack of grounds for carrying out procedures for handling the violation;

e) The act is neither regarded as a violation under the law on intellectual property nor subject to any administrative sanction specified in this Decree.

2. A person accepting a written request for handling of a violation shall cease procedures for handling the violation in the following cases:

a) Arising a complaint, denunciation or dispute after the request is accepted and pending results of handling by a competent agency defined in Clause 1, Article 27 of this Decree;

b) Lack of grounds to identify act infringing industrial property rights after having accepted the written request for handling of the violation;

c) The requester requests in writing withdrawal of the written request for violation handling;

d) The involved parties can reach agreement on the handling of the case under Clause 2, Article 27 of this Decree.

3. In case a violation is related to the production of or trading in a goods or its package, stamp, label or other articles bearing a counterfeit mark or geographical indication, a person with sanctioning competence shall still carry out procedures for administratively sanctioning this violation even after receiving a notice of withdrawal of the written request for violation handling under Point c, Clause 2 of this Article.

Article 29. Coordination in the handling of violations

1. Requirements for coordination in the handling of violations:

a) For a violation involving complicated circumstances or different organizations and individuals, the agency competent to accept a written request for violation handling may request a competent agency and the state management agency in charge of industrial property in the concerned locality to coordinate in handling the violation. A request for coordination in the handling of a violation must contain

brief information on the case, propose issues which require coordinated handling and indicate a time limit of 15 days for the request-receiving agency to reply;

b) The agency receiving the request for coordination shall reply within the indicated time limit, unless it refuses to coordinate. In case of refusal to coordinate, it shall clearly state the reason.

2. Use of results of examination and handling of written requests for violation handling from other agencies:

a) A violation-handling agency may use results of identification of violations or determination of the value of infringing goods conducted by another competent agency (if any) to ensure uniformity of handling measures and sanctioning levels applicable to the same or similar violations or related to the same industrial property object of the same industrial property rights holder;

b) When competent agencies have different opinions, conclusions and decisions on the identification of the violation, measures and extent of handling of the violation, the person competent to handle the violation may set up an advisory council composed of experts prestigious in relevant professional domains to assist the competent person in making conclusions on the violation.

Article 30. Sanctioning procedures

1. When detecting a violation in domain of industrial property, persons with sanctioning competence defined in Articles from 16 thru 21 of this Decree and civil servants and public employees on their duty shall make a minutes of administrative violation.

2. Order of and procedures for sanctioning the administrative violation shall comply with provisions in section 1 Chapter III of the Law on Handling of Administrative Violations.

Article 31. Execution of sanctioning decisions and enforcement of executing sanctioning decisions

1. Execution of sanctioning decisions and enforcement of executing sanctioning decisions comply with Law on Handling of Administrative Violations.

2. For decisions on sanctioning administrative violations which apply remedial measure of forcible change or removal of infringing elements from enterprise name, infringing organizations and individuals shall conduct procedures for changing enterprise name, removing infringing elements from enterprise name at business registration agencies within 60 days after the effective day of decisions on sanctioning administrative violations.

After the time limit mentioned above, if infringing organizations and individuals fail to carry out procedures for changing enterprise name, removing infringing elements

from enterprise name, agencies issuing decisions on sanctioning administrative violations shall request the business register agencies to withdraw certificate of business register. The business register agencies shall withdraw certificates of business register as prescribed by law.

3. For decisions on sanctioning administrative violations which apply remedial measure of forcible change of information about domain names or return of domain names, organizations and individuals shall conduct procedures for changing information of domain names or returning domain names at agencies managing domain names, within 30 days after the effective day of decisions on sanctioning administrative violations.

After the time limit mentioned above, if infringing organizations and individuals fail to carry out procedures for changing information about domain names, or returning domain names, agencies issuing decisions on sanctioning administrative violations shall request the agencies managing domain names to revoke such domain names. The agencies managing domain names shall revoke domain names as prescribed by law.

4. Credit institutions and State Treasuries shall collect fines, remit or refund collected fine amounts based on handling decisions of persons with sanctioning competence as prescribed by law.

Article 32. Modification, cancellation or invalidation of administrative sanctioning decisions

1. In case a decision on the settlement of a dispute on industrial property is issued by a competent agency within 90 days from the date of issuance of an administrative sanctioning decision, leading to a change in grounds and contents of the administrative sanctioning decision, a person with sanctioning competence shall issue a decision to modify, invalidate or cancel partially or wholly the validity of the issued administrative sanctioning decision to make it consistent with the dispute settlement decision.

2. In case an administrative sanctioning decision has been complied with by the sanctioned organization or individual, a person with sanctioning competence shall take any of the following measures:

a) Requesting the State Treasury that has collected the fine to refund partially or wholly the fine amount remitted under the decision on modification, cancellation or invalidation of the sanctioning decision at the request of the organization or individual that has paid the fine. The request for fine refund may be accepted within 90 days after the date of issuance of the decision on modification, cancellation or invalidation;

b) Returning the goods, article or means of business which has been seized or confiscated but not yet handled. In case such goods, article or means of business has been handled, the organization or individual that has requested the violation handling shall pay a compensation to the handled organization or individual according to the commitment realized upon requesting the violation handling, if any;

c) Other handling measures as reasonably proposed by involved parties.

3. In case the issuance of an administrative sanctioning decision is detected involving a violation of issuing competence, procedures or grounds, such decision shall be handled under Article 15 of the Law on Handling of Administrative Violations and the provisions of the law on settlement of complaints and denunciations.

Chapter 5.

IMPLEMENTATION PROVISIONS

Article 33. Effect

1. This Decree takes effect on October 15, 2013.
2. The Government's Decree No. 97/2010/ND-CP dated September 21, 2010 on sanctioning of administrative violations in industrial property cease to be effective on the effective date of this Decree.

Article 34. Transitional provisions

For acts of administrative violations in domain of industrial property happened before July 01, 2013, then detected or currently being considered and handled, provisions beneficial for infringing organizations and individuals will be applied.

Article 35. Implementation organization

1. The Ministry of Science and Technology shall guide implementation of this Decree.
2. The Ministry of Planning and Investment, and Ministry of Science and Technology shall guide the processes of and procedures for changing enterprise name, removing infringing elements from enterprise name, and revoking certificates of business register in case where enterprise names infringe law on intellectual property.
3. The Ministry of Information and Communications, and Ministry of Science and Technology shall guide processes of and procedures for changing, revoking domain names infringing law on intellectual property.
4. The ministers, the heads of the ministerial-level agencies, the heads of the agencies attached to the Government, the presidents of the People's Committees of

the provinces and centrally-run cities shall, in their functions and tasks, organize implementation of this Decree.

On behalf of the Government

Prime Minister

Nguyen Tan Dung