

Trade Names-Trade Secrets-Unfair Competition

On 3 October 2000, the Government issued Decree 54/2000/ND-CP on the protection of the industrial property rights related to trade secrets, geographical indications, trade names and unfair competition.

The Decree, effective on 18 October 2000, guided in detail the protection of industrial property rights of “other objects” as specified in Article 780 of the Civil Code of Vietnam; which include: trade secrets, geographical indications, trade names and protection of the right against unfair competition. This was a step towards harmonization of Vietnam’s legal framework and towards bringing this legal framework into compliance with TRIPS and the trade pact Vietnam had signed with the United States. The Decree provided definitions for trade secrets, geographical indications, trade names and also provided the scope of protection of those objects. The rules for anti-unfair competition were also included in the Decree, for the purpose of protection of the rights and benefits of the manufacturers and traders.

In addition to addressing the main subject matters of IP protection such as patent, trademark, industrial design, copyrights and related rights, and layout designs of semiconductor integrated circuits, as demanded by the TRIPS Agreement, IP Law 50/2005 explicitly addresses protection for trade secrets, geographical indications, and trade names, and anti-unfair competition. IP Law 50/2005, which replaces Decree 54/CP, came into effect on 1 July 2006.

5.1 Trade secrets

Trade secrets are defined as information obtained from financial or intellectual investment activities, which has not been disclosed and is applicable in business, when they satisfy in full the following criteria:

- (i) The information is neither common knowledge nor easily obtained; and
- (ii) They can be applied in business and, when used, will enable the holders of such information to have more favorable advance than other people who do not have or use such information in production, business; and
- (iii) They are confidentially kept by the holders with necessary measures so that such information will neither be disclosed nor easily accessible.

Under IP Law 50/2005, the following confidential information shall not be protected as trade secrets:

- (i) Personal status secrets;
- (ii) State management secrets;
- (iii) Security and national defense secrets;
- (iv) Other confidential secret information irrelevant to business

The holders of the trade secrets are all organizations and individuals

who have legally acquired the trade secrets the trade secrets and keep it confidential. A trade secret acquired by an employee or a party carrying out the assigned duty during performance of assigned duties shall belong to the employer or the duty assignor, unless otherwise agreed by the parties. The holders of the trade secrets are entitled to use their trade secrets by applying them to manufacture products, supplying services or trade in goods or selling, advertising for sale, storing for sale and importing a product obtained by applying the trade secret. Such rights shall be protected during the time such trade secrets still satisfy the said criteria of the trade secrets.

Under the IP Law 50/2005, the following acts shall be considered as an infringement of the rights to a trade secret:

- (i) Accessing or acquiring information embodied in a trade secret by taking acts against security measures taken by the lawful controller of the trade secret;
- (ii) Disclosing or using information embodied in a trade secret without permission of the holder the trade secret;
- (iii) Breaching security contracts or deceiving, inducing, bribing, forcing, seducing or abusing the trust of persons in charge of security in order to access, acquire or disclose a trade secret;
- (iv) Accessing to or acquiring information embodied in a trade secret, that is submitted by another person under procedures for granting a license of business or marketing in respect of a product, by actions against security measures taken by competent agencies;
- (v) Using or disclosing trade secret, while knowing or being obliged to know that it has been acquired by another person engaged in one of the acts referred to in items # i, ii, iii and iv;
- (vi) Failure to perform the obligation of security.

For the first time, limitations of the rights of an owner of a trade secret has been introduced in the law, including exemption from rights for (i) disclosure or use of a trade secrets acquired without knowing or having reason to know that it has been illegally acquired by others; (ii) disclosure of the trade secrets in order to protect the public; (iii) use of secret data for non-commercial purposes; (iv) disclosure or use of a trade secrets created independently; and (v) disclosure or use of trade secrets generated by analyzing or evaluating a legally distributed products; unless otherwise agreed between the analyzers or evaluators and the owner of the trade secret or the sellers of the product.

The IP Law 50/2005 also introduce the obligations to maintain secrecy of date of tests during the course of work of the competent authorities to maintain secrecy of the date submitted thereto by the applicant.

5.2 Trade name

Trade names mean the name of the organizations, individuals which is used in business activities to distinguish the business entity bearing such a name from other business entities engaging in the same field and locality of business and which satisfy the following criteria:

- (i) It consists of a proper name, except where it has been widely

known as a result of use; and

(ii) It is not identical with or confusingly similar to another person's trade name prior used in the same field and locality of business; and .

(iii) It is not identical with or confusingly similar to another person's trademark or a geographical indication having been protected prior to the date such trade name is used.

Name of administrative, political, social, professional agencies and organizations or of the subjects which do not relate to the business activities shall not be protected as trade name.

The holders of the trade names are the organizations, individuals that legally uses such trade names in the course of business. The holders are entitled to use the trade names for the business purposes, reflecting the trade names in the transaction papers, documents, signboards, products, goods, commodities, package and advertisement.

The trade names are protected when the holders of such names still maintain their business activities under such names.

The IP Law 50/2005 also stipulates the acts of using commercial indications identical with or similar to another person's trade name prior used for the same or similar goods/services that causes confusion as to business entities, business premises or business activities under the trade name shall be considered as infringement of the rights to the trade name. The holder of such trade name thereby shall have the right to request the infringers to stop the infringement acts, apologize, publicly rectify and pay for damage compensation and/or to request the competent state agencies to handle acts of infringement or initiate a lawsuit at a competent court or an arbitrator for protection their legitimate rights and interest.

5.3 Anti-Unfair competition

Unfair competition acts related to the industrial property as defined under IP Law 50/2005 include the acts:

(i) Using commercial indications that cause confusion as to business entities, business activities or commercial origins of goods or services.

(ii) Using commercial indications that cause confusion as to the origin, production method, feature, quality, quantity or other characteristics of goods or services; or as to the conditions for the provision of goods and services;

(iii) Using a trademark protected in a country that is a member of an international treaty, to which the Socialist Republic of Vietnam is a party, which prohibits the representative or agent of the owner of the trademark from using the owner's trademark, if the user is such a representative or agent and the use is without the owner's authorization and without reasonable grounds;

(iv) Registering or possessing the right to use or using a domain name identical with or confusingly similar to another person's protected trademark or trade name, or a geographical indication that one does not have the right to use, for the purpose of possessing the domain name, taking advantage of or prejudicing the reputation and goodwill or the respective trademark, trade name or geographical indication.

Apart from IP Law 50/2005, Law on Competition of Vietnam also introduces unfair competitive acts including any of the following:

- (i) Misleading instructions;
- (ii) Infringement of trade secrets;
- (iii) Coercion in business;
- (iv) Defamation of another enterprises;
- (v) Causing disruption to the business activities of another enterprise;
- (vi) Advertisement aimed at unfair competition;
- (vii) Promotion aimed at unfair competition;
- (viii) Discrimination by an association;
- (ix) Illegal multi-level selling of goods;
- (x) Other unfair competitive acts stipulated by the Government.

Organizations, individuals which suffer damage or would be damageable due to unfair competition acts in the field of industrial property are entitled to request the competent State authorities to compel the person having unfair competition acts to stop conducting such acts, pay compensation for damage, or to impose administrative or criminal measures upon such person.