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Intellectual Property

How to solve with domain name dispute in Vietnam?

By Nguyen Thi Nhu Hoa

Now that the Internet has developed from a mere means of communication to a mode of conducting commercial activity, domain name, therefore shall serve not only the original role of an electronic address but also a business identifier. As a result, the number of disputes over domain names is expected to increase with the popularity and bloom of e-commerce in Vietnam and all over the world, in general.

Under the prevailing regulations, there are currently four ways to solve with domain name disputes in Vietnam: (i) through the Vietnam National Internet Center (VNNIC) with administrative procedure; (ii) through the Courts with civil procedures; (iii) through an arbitration with arbitral procedure; or (iv) through the competitive management bodies via competitive procedure.

However, in practice, among all the mentioned methods, it seems that only administrative proceedings through VNNIC attract disputants most. Within the scope of this article, we would like to describe and comment on the main steps of this procedure.

VNNIC, an unit under the Ministry of Post and Telematics, is a governmental agency whose functions are of managing, supervising, promoting and supporting the use of Internet resources in Vietnam and thereby also responsible for hearing and settling disputes related to .vn domain name. The procedure shall follow Decision No.27/2005/QĐ-BBCVT, dated August 11, 2005, promulgating the regulation on management and use of Internet resources (the Decision No. 27) that replaces Decision No.92/2003/QĐ-BBCVT of May 26, 2003 of the Ministry of Post and Telematics (the Decision No. 92).

Under this procedure, when dispute (on domain name), arise, the concerned parties may send a request to VNNIC and this center shall encourage and create favorable conditions for the two parties to proceed with a conciliation and reach an agreement on the dispute. Failure to this negotiation (meaning that they cannot reach a consensus), VNNIC shall subsequently handle and settle the case within 45 days from the date of acceptance of the complaint.

Practically, upon receipt of a request from concerned parties, in most cases, VNNIC shall request the two parties to take negotiation action as a compulsory administrative procedure. This practice to some extent, is not reasonable and appropriate. That is because in some cases, the registration of domain name of a party infringes legitimate rights and interest of others, (for instance, the registered

domain name is identical with a protected trademark or trade name of a business or a domain name insulting or damaging the others' reputation/ business operation), hardly a compromise on this can be made by the injured party. Another case is that when a person intentionally register a domain name that is another company or individual's trademark/trade name for the purpose of stealing the name or assigning/selling it to make money. In this case, the trademark owner tends to request the domain owner to voluntarily withdraw the registered domain name to receive only the compensation of only expenses for registration prescribed by law, or even, try to defend his legitimate rights. As the result, a consensus in this conflict of interest – circumstance seems impossible. In addition, accumulators, who aim to register “profitable” domain names can take advantage of this time-consuming proceeding to make the other side feel tired to secure their benefit target (i.e the trademark/ tradename owner decides to pay money to the accumulator to save the time instead of trying to claim for his legitimate rights). Besides, some victims of these accumulators always select a tough way to treat the matter: never negotiate with those appropriated his domain name. It is also noteworthy that under this very Decision No.27, “it is strictly prohibited any transaction of sale, lease, re-sale of Internet resources (including domain name) by any means”.

When VNNIC considers the case and issues the decision, the involved parties shall have right to complain with the Minister of Post and Telematics or initiate a lawsuit within 30 days if the parties disagree with the VNNIC's decision.

Within 10 days from the date of receiving a proper complaint, the Ministry of Post and Telematics shall have to accept and settle the case and notify the complainant thereof in writing within 45 days from the acceptance date. This decision of Minister of Post and Telematics shall be the final one on the case settlement.

There are some new points on the regulations of solving domain name dispute under the Decision No. 27 in comparison with those of the Decision No. 92. Formerly, there was just a very general on complaint settlement, “*when claims on Internet resources management and usage arise, related parties can send a written complaint to VNNIC for settlement. Upon receipt of such requests, VNNIC is responsible for considering and resolving the claims according to the current regulations. In case claims are related to domain name dispute resolution among parties, VNNIC shall encourage and create favorable conditions for parties to come to an consensus. If failure to reach mutual conciliation, VNNIC shall make decision according to the current laws. In case disagreement with the VNNIC's decision, related parties may lodge documents to competent authority for resolution*”. Whereas, the Decision No. 27 prescribes in detailed the order, procedure and time-limit for solving the dispute.

Also, under the Decision No. 27, for the purpose of creating an effective legal mechanism and enhancing the quality of decisions on settlement of domain name disputes via administrative procedure, a Consultative Panel can be set up by VNNIC or Ministry of Post and Telematics to hear the case. The Consultative

Panel shall include experts with at least 5 years of experience in the field of law and with knowledge of Internet resources to consider and advise on the complaint settling decisions.

In addition, to improve the settlement process as well as provide detailed guidance for parties, the VNNIC's Director has recently signed the Decision No.93/QD-VNNIC promulgating Rules on establishment and operation of Consultative Panel on solving domain name disputes of .vn (the Rules).

According to the Rules, the members of Consultative Panel shall be odd number, no less than 3 members and having no kith and kin relationship with either involving parties as well as interests in respect of the dispute. Related parties may oppose the list of Panel Members in some certain circumstances prescribed by the Rules.

The Panel shall be set up within 10 days from the date of accepting the complaint and VNNIC shall send invitations to the two parties for participation in the dispute consideration progress of the Panel basing on voluntary principle. The parties are obligated to respond with acceptance or refuse to participate within 5 days from the date of addressing the invitation. In case they fail to response, they shall have no right to oppose the list of Panel Members. The hearing of the Panel should be hold within 35 days from the date accepting and the parties shall be informed of the hearing within 30 days from the accepting date in all cases. Also, the Panel shall ensure that the Parties are treated equally and that each Party is given a fair opportunity to present its arguments and evidences. The Panel's conclusion shall be made by a majority principle.

Basically, the above regulations of the Rules is rather appropriate with and similar to the Rules for Uniform Domain Name Dispute Resolution Policy issued by ICANN, a non-profit corporation that was formed to assume responsibility for the IP address space allocation, that provided to guide on the administrative proceedings for the resolution of disputes under the Uniform Domain Name Dispute Resolution Policy. And it can be said that current regulations of Vietnam on solving domain name dispute via administrative procedure initially meet requirements on this matter.

From the foregoing regulations on settlement of domain dispute, it is expected that the activity of solving domain name dispute via administrative shall be improved that create a comprehensive legal framework for the protection of legitimate rights and benefits of subjects in respect of domain name for the purpose of development of their business activities in Vietnam.

Other Sectors

Accounting – Auditing

- Decision 15/2006/QD-BTC, dated March 20, 2006, of the Ministry of Finance, promulgating business accounting policy.
- Decision 19/2006/QD-BTC, dated March 30, 2006, of the Ministry of Finance, promulgating career administrative accounting policy.
- The Prime Minister issued Decision 71/2006/QD-TTg, on April 03, 2006, on the List of Top Secret of State in the field of state auditing.

Finance

- On March 28, 2006, the Ministry of Finance issued Circular 18/2006/TT-BTC, regulating the assessment fee of technology transfer contract.

Insurance

- Decision 700/QD-BHXH, dated March 31, 2006, of Vietnam Social Insurance, promulgating the regulation on granting, management and using of health insurance card.

Taxation

- The Prime Minister issued Decision 69/2006/QD-TTg, on March 28, 2006, on the import tax of used automobile.
- The Ministry of Finance issued Decision 16/2006/QD-BTC, on March 24, 2006, on the import tariff of garment and textile, which originate from the EU, the USA and Australia.

Trading

- Decision 15/2006/QD-BTM, dated March 23, 2006, of the Ministry of Trade, on the approval of National Trading Promotion Program in 2006.
- On March 31, 2006, the Government issued Decree 35/2006/ND-CP, on commercial concession.
- On April 04, 2006, the Government issued Decree 37/2006/ND-CP, with detailed regulation of the Trading Law on trading promotion activity.
- Circular 04/2006/TT-BTM, dated April 06, 2006, of the Ministry of Trade, guiding the international trade activity.
- The Ministry of Trade issued Circular 06/2006/TT-BTM, on April 11, 2006, guiding the procedure for stamp registration of businessman trading in commercial assessment service.

Import – Export

- On March 31, 2006, the Ministry of Trade, Ministry of Transportation, Ministry of Finance, Ministry of Security issued Interministerial Circular 03/2006/TTLT-BTM-BGTVT-BTC-BCA, guiding the import of used automobile, the kind of under sixteen seat.
- On April 07, 2006, the Ministry of Industry issued Decision 05/2006/QD-BCN, promulgating the list of chemical substances, which are not allowed to import, export according to Government's Decree 12/2006/ND-CP.
- The Ministry of Trade issued Circular 08/2006/TT-BTM, on April 17, 2006, guiding the way to determine the origin of import, export goods, which are of unknown origin.

Labor

- Interministerial Circular 03/2006/TTLT/BLDTBXH-BNG, dated March 31, 2006, of the Ministry of Labor, War Invalid and Social Affairs, Ministry of Foreign Affairs, guiding the implementation of a number of articles of Government's Decree 141/2005/ND-CP, dated November 11, 2005, on the management of Vietnamese employees working oversea.

Construction

- Circular 18/2006/TT-BNN, dated March 20, 2006, of the Ministry of Agriculture and Rural Development, guiding the implementation of Government's Decree 16/2005/ND-CP, dated February 07, 2005, on the management of construction investment projects (using state budget capital), which are managed by the Ministry of Agriculture and Rural Development.

Science and Technology

- The Ministry of Science and Technology issued Circular 08/2006/TT-BKHCN, on April 04, 2006, guiding intellectual property service.

Telecommunication

- On April 07, 2006, the Prime Minister issued Decision 74/2006/QD-TTg, on the Program of public telecommunication service supply to the year of 2010.

Fishery

- Circular 02/2006/TT-BTS, dated March 20, 2006, of the Ministry of Fishery, guiding the implementation of Government's Decree 59/2005/ND-CP, dated

May 04, 2005, on the condition for manufacturing, trading of some fishery industry.

Miscellaneous

- Interministerial Circular 03/2006/TTLT-BTNMT-BVHTT, dated March 15, 2006, of the Ministry of Resources and Environment, the Ministry of Culture and Information, guiding the management of map publishing.
- On April 04, 2006, the Prime Minister issued Decision 73/2006/QD-TTg, on the approval of general project on the development of Vietnamese industries divide into regions to the year of 2010, orientation to the year of 2020.

Contact Details

Hanoi Head Office

Mr. Pham Nghiem Xuan Bac

Managing Partner

Mr. Pham Minh Hai

Partner, Consulting Practice

Ms. Le Quynh Anh

Partner, Legal Practice

Ms. Le Thi Kim Dzung

Partner, Intellectual Property Practice

Unit 308-310, 3rd Floor, Hanoi Towers

49 Hai Ba Trung, Hanoi, Vietnam

Tel: 84-4 934-0629 / 826-4797 Fax: 84-4 934-0631

E-mail: vision@hn.vnn.vn

Ho Chi Minh City Office

Mr. Dang The Duc

Partner, HCMC office

Unit 8A1, 8th Floor, Han Nam Office Building

65 Nguyen Du, District 1, Ho Chi Minh City, Vietnam.

Tel: 84-8 823-6495 / 823-6501 Fax: 84-8 823-6496

E-mail: hcmvision@hcm.vnn.vn

www.vision-associates.com