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# Legal news

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## LAW ON INTELLECTUAL PROPERTY

### Local firms get EU trademark shield

*By Nguyen Tue Minh (Ms)*

*In October 1, 2004, the European Community acceded to the Madrid Protocol. As a consequence, a link between the Madrid Protocol system and the Community Trade Mark (CTM) system was established.*

On one hand, a CTM application or a registered CTM can be used as the basic mark for an international application. It means that an international application can be based on a registered community trade mark or an application for a community trade mark, and that such registrations/applications have the same role as the basic registrations/applications of normal international applications under the Madrid Protocol system.

The international application can be in any of the official languages of the European Union. However, a Madrid Protocol language (French, English or Spanish) must be indicated as the language of the international application. The international application must be filed directly by the trade mark owner or its representative at the Office of Harmonization for the Internal Market (OHIM) that registers the Community Trade Mark in the European Union.

The OHIM then verifies the content and completeness of the international application and electronically forwards the international application to the WIPO International Bureau. We found that the OHIM's role in this process is akin to that of an original office regarding an international application. An important requirement for an international application is that the CTM owner or applicant must be from a European Union country or must have a real and effective industrial or commercial establishment or domicile within the European Union. Furthermore, the OHIM must notify the WIPO International Bureau of any relevant changes that affect the CTM during the dependency period (five years following the date of the international application).

On the other hand, the European Community can be designated in an International Application. WIPO registers the international application and then electronically notifies the OHIM of the designation of the European Community. This notification triggers an 18-month time limit within which the OHIM must notify WIPO of any provisional refusal of protection based on absolute or relative grounds.

The designation of the European Community has the same effect as applying for a community trade mark. It means that when receiving the designation, the OHIM will treat the international application as a CTM. The procedure includes (i) automatically republication of the international registration by the OHIM in the CTM Bulletin; (ii) a parallel procedure for seniority claims and searches; (iii) absolute grounds for refusal and opposition procedure (if there is an absolute ground for refusal, the OHIM must send, within 6 months following the republication, a notice of

provisional refusal to WIPO); and (iv) publication of the international registration accepted for the European Community by the OHIM. The individual fee charged for an international application designating the EC is, in the case of an individual CTM, SFR2,229 (up to three classes) + SFR461 per additional class fee.

If the designation is refused, the OHIM shall refund the amount corresponding to the registration fee (SFR850 + SFR150 per additional class fee). If the designation of the European Community fails to be accepted by OHIM, it may be converted into trade mark applications for EU member states or designations of EU member states party to the Madrid Protocol.

Since July 11, 2006, the Madrid Protocol has come into force in Vietnam, giving Vietnam enterprises an incentive to protect their trademarks in foreign markets. With the combination of the Madrid Protocol and CTM, the benefit of protection can be even greater. Vietnam enterprises can now file international trademark applications under the Madrid Protocol, in which the EC is designated individually as with any other designated country. OHIM shall consider that designation via the above-mentioned procedure.

If they are successful, Vietnam enterprises can have their trademarks protected in the whole European market with lower cost and under more simple proceedings. At present, the cost for a CTM may still be high for Vietnam firms, which are mainly small or medium-sized. However, the trend of business expansion to the international market, makes investment in protection of trade names indispensable. Hence, the combination of CTM and Madrid Protocol shall make protection more and more effective.

## **Other Sectors**

### **Taxation**

- Decision 29/2007/QD-BTC, dated April 27, 2007, of the Ministry of Finance stipulating the rates of import duty for a number of items of Group 2710 in the List of preferential import duties;
- On May 7, 2007, the Ministry of Finance issued Decision 30/2007/CD-BTC on the rates of import duty for goods imported from Laos.
- Circular 32//2007/TT-BTC dated April 9, 2007, of the Ministry of Finance guiding the implementation of Decree 158/2003/ND-CP dated December 10, 2003, Decree 148/2004/ND-CP dated July 23, 2004 and Decree 156/2005/ND-CP dated December 15, 2005, with detailed implementation of the Law on

Value-added tax (VAT) and the amendment of and supplementation to a number of Articles of Law on VAT.

- On April 27, 2007, the Ministry of Finance issued Circular 42/2007/TT-BTC guiding the implementation of Decree 68/1998/ND-CP, dated September 3, 1998, with detailed implementation of the Ordinance on Natural Resources Tax (amended) and Decree 147/2006/ND-CP, dated December 1, 2006, on amendment of and supplementation to a number of articles of the above Decree 68/1998/ND-CP.
- Circular 45/2007/TT-BTC, dated May 07, 2007, of the Ministry of Finance guiding the implementation of the rates of special preferential import duty.
- Circular 55/2007/TT-BTC, dated May 07, 2007, of the Ministry of Finance guiding the exemption of personal income tax to foreign experts who implement the non-governmental Programme and aid projects in Vietnam.  
*[Accordingly, foreign nationals who are selected to enter Vietnam based on the agreements between NGOs and Vietnamese project management bodies in order to directly implement the actions in the Programme, and non-governmental aid in accordance with Programme documentation approved in accordance with prevailing regulations and TOR to foreign experts].*

## **Finance**

- On May 21, 2007, the State Bank of Vietnam issued Circular 02/2007/TT-NHNN on amendment of Section 5 in Circular 07/2006/TT-NHNN, dated September 7, 2006, of the State Bank of Vietnam guiding the operations of purchase and lease under the form of financial leasing as provided for in Decree 16/2001/ND-CP, dated May 2, 2001, and Decree 65/2005/ND-CP dated May 19, 2005.
- Circular 47/2007/TT-BTC, dated May 15, 2007, of the Ministry of Finance guiding the transfer of the rights of the owner representative for State capital invested in enterprises to the State Capital Investment Corporation.

## **Securities**

- On April 24, 2007, the Ministry of Finance issued Decision 27/2007/QD-BTC promulgating Regulations on organization and operations of securities companies.
- Decision 63/2007/QD-TTg, dated May 10, 2007, of the Prime Minister providing the functions, missions, competence and organizational structure of the State Securities Commission under the Ministry of Finance.

**Insurance**

- On April 9, 2007, the Ministry of Finance issued Decision 23/2007/QD-BTC stipulating the regime of compulsory insurance covering the civil liability of vehicle owners.
- Decision 28/2007/QD-BTC, dated April 24, 2007, of the Ministry of Finance issuing Rules and List of fees for compulsory fire and explosion insurance.
- Interministerial Circular 41/2007/TTLT-BTC-BCA, dated April 24, 2007, of the Ministry of Finance and the Ministry of Public Security guiding the implementation of a number of articles of Decree 130/2006/ND-CP dated November 8, 2006, providing the regime of compulsory fire and explosion insurance.

**Trading**

- On May 22, 2007, the Ministry of Trade issued Decision 11/2007/QD-BTM on amendment of and supplementation to a number of Articles of Regulations on agencies in the petrol and oil business, attached to Decision 1505/2003/QD-BTM, dated November 17, 2003, of the Minister of Trade.
- Decision 12/2007/QD-BLDTBXH, dated May 8, 2007, of the Ministry of Labour, War Invalids and Social Affairs on the assignment to the entity that performs inspections of quality of goods and products.

**Health-care**

- On March 29, 2007, the Ministry of Health issued Decision 23/2007/QD-BYT promulgating “Regulations on State examinations of quality of safety and hygiene for imported foods”.
- Decision 24/2007/QD-BYT of the Ministry of Health, dated April 5, 2007 on amendment of and supplementation to the functions and missions of the Drug Administration of Vietnam and the Department of Preventive Medicine in State management of vaccines and medical biologics.
- On April 19, 2007, the Ministry of Health issued Decision 27/2007/QD-BYT stipulating the roadmap for application of rules and standards of “Good Manufacture Practice” and “Good Storage Practice”.

**Transport**

- Decree 76/2007/ND-CP, dated May 9, 2007 on business in aviation transport and general aviation operations.

- On March 26, 2007, the Ministry of Transportation issued Decision 16/2007/QĐ-BGTVT promulgating “Regulations on passenger transport by vehicle with fixed schedule, on contractual basis and tourist transport by vehicle”.

### Land and Housing

- Interministerial Circular 04/2007/TTLT-BTNMT-BTC, dated February 27, 2007, of the Ministry of Natural Resources and Environment and the Ministry of Finance guiding the preparation of estimates for mapping and land management.
- On May 21, 2007, the Ministry of Justice, the Ministry of Construction, the Ministry of Natural Resources and Environment and the State Bank of Vietnam issued Interministerial Circular 05/2007/TTLT-BTP-BXD-BTNMT-NHNN guiding some aspects of the registration of residential house mortgages.

### Science and Technology

- Decree 71/2007/ND-CP, dated May 3, 2007, with detailed provisions and guidelines on the implementation of a number of Articles of the Law on Information Technology in relation to IT industry.
- On May 19, 2007, the Government issued Decree 80/2007/ND-CP on scientific and technological enterprises.
- Decision 56/2007/QĐ-TTg of the Prime Minister of Government, dated May 3, 2007, on approval of the Programme on development of digital contents of Vietnam until 2010.

### Miscellaneous

- On April 20, 2007, the Standing Committee of the National Assembly issued Ordinance 33/2007/PL-UBTVQH11 on the signing and execution of international agreements.
- Decree 77/2007/ND-CP, dated May 10, 2007 on the amendment of and supplementation to a number of Articles of Decree 150/2004/ND-CP, dated July 29, 2004 dealing with administrative violations in the field of minerals.
- Decree 78/2007/ND-CP, dated May 11, 2007, on investment under the form of Building – Operation – Transfer contract, Building – Transfer – Operation contract and Building – Transfer contract.
- On May 18, 2007, the Government issued Decree 79/2007/ND-CP on the production of a copy from an original copy, notarization of the copy of the original document and notarization of signature.
- On April 10, 2007, the Prime Minister issued Decision 48/2007/QĐ-TTg approving the convention between the Government of the Socialist Republic of

Vietnam and the Government of the Republic of Mozambique on mutual encouragement and protection of investments.

- Decision 13/2007/QD-BCN, dated March 13, 2007, of the Ministry of Industry stipulating the Process of settlement of incidents to the national electricity network.
- On April 25, 2007, the Ministry of Justice issued Circular 02/2007/TT-BTP guiding a number of Articles of Law on Lawyers, Decree providing guidelines of the implementation of a number of Articles of the Law on Lawyers.

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