

Special Alert

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Legislative Reforms in IPRs Enforcement under the New Circular

In 2024, the Minister of Science and Technology issued Circular No. 06/2024/TT-BKHCHN (“**Circular 06**”), amending a number of articles of Circular No. 11/2015/TT-BKHCHN dated 26 June 2015 (“**Circular 11**”), and providing guidelines for implementing a number of articles of Decree No. 99/2013/ND-CP dated 29 August 2013, on sanctioning administrative violations in the sector of industrial property (“**Decree 99**”).

Circular 06 amends, supplements, and abolishes 28 out of 32 articles of Circular 11, and takes effect on 11 November 2024, which clarifies certain rules in (i) applying measures for suspending business activities, (ii) clarifying violations relating to the indication of industrial property rights (“**IPRs**”) protection status and IPRs license, and (iii) applying sanctions for violations on the internet.

This article yields key and insightful updates.

Applying Measure of Suspending Business Activities as an Additional Penalty

Under Article 3.2(c) of Decree 99 (as amended by Decree No. 46/2024/ND-CP, dated 1 July 2024), depending on the nature and severity of the violation, the violator may be subject to the additional sanction of suspension of entire or a part of production, trading, or service activities for one (1) to three (3) months. Circular 06 clarifies that the penalty of suspension of entire production, trading, or service activities only applies in the case where all such activities are directly related to the violation being applied such penalty.

Clarifying Violations Relating to the Indication of IPRs Protection Status and IPRs License

As clarified under Circular 06, acts of labelling goods or attaching to the goods and/or business means the information which causes misleading about the status of IPRs protection for objects which have not been protected, including objects which are under pending applications, or whose protection titles have expired, been cancelled, or terminated. Such information may be the following description “*trademark has been granted registration certificate*”, “*protected trademark*”, “*exclusive trademark of ...*” or the like, including symbols ®, “P”, or “Patent”. However, there is an exception that the act of using symbol ®, “P”, or “Patent” is used on goods or goods packaging along with information about the accurate status of relevant IPRs protection in Vietnam shall not be considered as violation.

Regarding the indication of IPRs license, an act of indicating on goods that “*goods are manufactured under an IPRs license agreement with ...*” or the like in Vietnamese or foreign language shall be considered as violation if (i) the user has not been legally granted the relevant IPRs license; or (ii) the said indication contains incorrect name or agreement number as entered by parties. Regarding the IPRs license agreement, it is also worth noting that Circular 06 requires such agreement to include all principal contents as provided in Article 144.1 of the Law on Intellectual Property, and therefore, permission letter, letter of consent or the like, which shall not be considered as a legal IPRs license agreement if it does not meet such requirements.

Applying Sanctions for Violations on the Internet

Circular 06 introduces a penalty of seizure of rights to use domain names in cases where unfair competition in associated with the use of such domain names is concluded, wherein domain names subjected to this sanction include all ones under the management authority of Vietnam (including **the national domain name “.vn”** and **the international domain names** allocated and assigned by international organizations to agencies, organizations, enterprises, and individuals in Vietnam).

For identifying acts of unfair competition in association with the use of domain names, Circular 06 regulates conditions for determining unfair competition in domain name possession or use. These conditions include: (i) the domain name contains a string of characters identical or similar to a protected trademark, trade name, or geographical indication; (ii) the user lacks a legitimate right to use the domain name; and (iii) a third condition, which includes two scenarios: (a) exploitation of reputation or goodwill: the domain name is used to promote, offer, or sell goods or services that are identical, similar, or related to the protected trademark, trade name, or geographical indication, for unjust enrichment; (b) bad intention: the “bad intention” is defined as situations where the user knows or should know that the trademark, trade name, or geographical indication is protected in Vietnam and still uses the domain name for profit (e.g., selling or transferring registration rights); or the domain name's website harms the reputation or goodwill of the protected trademark, trade name, or geographical indication.

In addition, in certain cases, the holder of a domain name may be subject to application of relevant administrative sanction for a violation committed in Vietnam by person who has got permission to use the domain name from such holder, and the holder has been aware or has reasonable basis to be aware that the later one uses his/her domain name for committing the violation. In this connection, a

violation shall be considered occurring in Vietnam if it takes place on the Internet and meet any of the following conditions: (i) it is carried out on website with Vietnamese domain name, or (ii) it displays content in Vietnamese, or (iii) it targets consumers or users in Vietnam.

Conclusion

Circular 06 creates a tighter legal framework for protecting rights and imposing administrative penalties in the field of industrial property, especially in the online environment. These updates not only strengthen the responsibility of involved parties but also create conditions for resolving disputes in a more transparent and efficient manner. Individuals and organizations must familiarize themselves with these regulations to protect their rights in the best possible way.

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