

## Change in the regulations on sanctions against administrative IP-related violation in Vietnam

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Statistics over the years have consistently shown that more than 90 per cent of IP-related violations in Vietnam are settled through the so-called administrative proceedings, which involve some State enforcement authorities, such as the Inspectorate of the Ministry of Science and Technology, provincial People's Committees, or the Market Surveillance Force. This makes Vietnam's practice in IP enforcement somewhat "unique" and disparate from that of other countries, regionally and internationally.

Debates and discussions on changing that practice have been ongoing for decades with an aim to make Vietnam's IP enforcement in line with the international customs, and accordingly, more easily accessible to overseas holders.

Following that trend, on 1 July 2021, a vigorous proposal was submitted to the Government of Vietnam concerning the issue. According to this proposal, the scope of IP violations/ infringements subject to the administrative proceedings is drastically cut down to the extent that the administrative proceedings would apply to a small group of violations/ infringements of copyright and related rights, trademarks, geographical indications and plant variety, while other violations/ infringements relating to patents, industrial designs, designs of integrated circuits, trade names, trade secrets and acts of unfair competition (including domain name disputes) would be handled by relevant courts under the civil proceedings. It is reported that a majority of the Government members agreed to this proposal. The matter will be decided by the National Assembly in their next meetings.

In another development, Decree No. 99/2013/ND-CP dated 29 August 2013, the key legislation of Vietnam on sanctions against administrative violations in the field of industrial property, is currently under revision. Although the latest draft dated 18 June 2021 ("**draft Revised Decree 99**") does not reflect the possible change to the scope of violations subject to the administrative proceedings as discussed, it comprises some note-worthy points, which are shown below:

- The act of exportation of products bearing marks that infringe or otherwise imitate protected trademarks, geographical indications, trade names, industrial designs, and exportation of products or services, which are affixed with commercial indications that cause confusion to the public as to holders, business or commercial origins, shall be considered an act of administrative violation subject to sanctions under the (revised) Decree 99.

Of note, under the current Decree 99, the act of "exportation" is not included in those subject to the sanctions. The addition of the "exportation" to the scope of Decree 99 is made in conformity with Vietnam's commitments under the CPTPP and EVFTA, the two major treaties that Vietnam entered into last year (2020).

- The monetary fine for the act of inappropriate use of indications relating to protection of industrial properties (for example, "R in circle") is increased from a small sum of "VND500,000" to VND1,000,000 (roughly from US\$20 to US\$43) to a rather significant amount of "VND10,000,000 to VND20,000,000" (roughly from US\$430 to US\$860).
- The acts of manufacture of products that infringe other trademarks, geographical indications, trade names, industrial designs are clearly defined to include various acts of "designing, producing,

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processing, assembling, packaging the products that bear infringing elements against other trademark, trade names, geographical indications and industrial designs”.

- The current Decree 99 specifies “transiting” IP-infringing products through Vietnam ports as an sanctionable act. However, it appears from the draft Revised Decree 99 that sanctions against this act are proposed to be removed. Nonetheless, the draft Revised Decree 99 does not include any explanation as to the reason for this change.
- To reinforce the autonomy of complainants and respondents in an IP-related administrative proceedings, the draft Revised Decree 99 explicitly adds a clause on rights of parties to an administrative proceeding to request for cessation or suspension of the proceeding, and such requests can serve as a ground for the enforcement authorities to cease or suspend the case.

The draft Revised Decree 99 has been submitted to the Government for approval and is expected to be issued late this year, which means it will likely take effect early next year (2022).

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