

Legal news

July 2017

Contents

INTELLECTUAL PROPERTY LAW	2
Other Sectors.....	4
Finance	4
Banking.....	4
Trade	5
Labour	5
Health	6
Education.....	6
Transport.....	7
Construction - Land.....	7
Natural Resources - Environment.....	7
Culture - Sports - Tourism.....	8
Administration - Judiciary	8
Agriculture - Forestry - Fishery.....	9
Investment	9
Miscellaneous	10
Contact Details	11

This **Legal news** is published solely for our clients and other interested persons. It is intended to be used for general information purpose only and should not be relied upon as legal advice or opinion. Professional advice should be sought for any specific situation. Please direct your inquiries to our offices or persons listed at the end of this Legal news.

This **Legal news** is also available online at www.vision-associates.com

© Vision & Associates 2017. All rights reserved

INTELLECTUAL PROPERTY LAW

Protection of well-known trademarks in Vietnam

Nguyen Thi Hoang Phuc

The protection of well-known trademarks was first established under Paris Convention for the Protection of Industrial Property (Art. 6bis) with further clarification in accordance with the TRIPS Agreement (Art. 16.2 & 3), to both of which Vietnam is a party.

In Vietnam, well-known trademarks are defined as marks that are “widely known by consumers throughout the territory of Vietnam” [Article 4.20, the Intellectual Property Law 50/2005, amended and supplemented in 2009 (“the IP Law”)]. The criteria to establish the well-known status is further provided in the IP Law as follows:

Article 75. Criteria for evaluation of whether or not a mark is well known

The following criteria shall be taken into account when considering whether or not a mark is well known:

- 1. The number of relevant consumers who were aware of the mark by purchase or use of goods or services bearing the mark, or from advertising.*
- 2. The territorial area in which goods or services bearing the mark are circulated.*
- 3. Turnover of the sale of goods or provision of services bearing the mark or the quantity of goods sold or services provided.*
- 4. Duration of continuous use of the mark.*
- 5. Wide reputation of goods or services bearing the mark.*
- 6. Number of countries protecting the mark.*
- 7. Number of countries recognizing the mark as a well-known mark.*
- 8. Assignment price, licensing price, or investment capital contribution value of the mark.*

Unlike usual marks, the rights to a well-known mark are granted on the basis of intensive use to the extent that it is recognized as well-known. Once protected, a well-known mark enjoys broader protection than a usual one. For instance, a well-known mark can be cited to refuse trademarks even with dissimilar goods or services if the use of such marks may affect the distinctiveness of the well-known mark or the mark registrations were aimed at taking advantage of the reputation of the well-known mark (Article 74.2.i, the IP Law).

However, having a mark recognized as well-known has never been easy to trademark holders in Vietnam.

Major Obstacles

In fact, the number of marks recognized as well-known in Vietnam is still rather modest. Several factors may have contributed to this fact.

The first factor is the inconsistency in the definition of “well-known” status in the IP Law. Specifically, one of the criteria for evaluating the well-known status of a trademark is the number of consumers among the *relevant sector* of the public who are aware of the mark (Art. 75.2). However, a mark must be widely known to *all consumers* throughout the territory of Vietnam in order to be considered “well-known” (Art. 4.20). It is evident that no mark, even the most famous ones, is used for all types of goods or services so that it can be known to all consumers of different backgrounds, professions, hobbies and interests. Therefore, proving that a mark has been known to all consumers throughout the country might be an almost impossible mission to any trademark owner, especially those whose marks are used for professional goods or services such as industrial machinery or medical equipment. In light of this, knowledge of the relevant sector would be a more appropriate approach in recognizing well-known trademarks. However, currently the inconsistency in the definition makes the trademark holder get lost in trying to collect evidence to prove that its mark has been well-known.

The second factor is the strictness of the National Office of Intellectual Property of Vietnam (NOIP) in recognizing well-known marks. With the lack of specific quantitative standard for evaluating the well-known status of a trademark, the NOIP seems to be getting stricter and stricter in recognizing well-known marks. In practice, the NOIP often requires intensive evidence showing the use of a mark, especially in Vietnam, in assessing the well-known status of a trademark. Therefore, without evidence of use in Vietnam, a worldwide well-known mark can hardly be regarded as well-known in Vietnam. On the other hand, the vagueness in the definition and criteria of well-known marks sometimes result in arbitrary decision in recognizing or not recognizing well-known marks by the competent authority.

Last but not least, the lack of efficient system for recognizing and managing well-known trademarks is also worth mentioning. Currently, there is no official procedure for recognizing a well-known trademark in Vietnam. In practice, the NOIP can recognize the well-known status of a mark in any single proceeding such as examination, opposition or cancellation in relation to a specific case. Therefore, the recognition of a well-known mark is only recorded in that case without being systematically managed as a public source of reference. According to the law, well-known trademarks must be recorded in the List of Well-known Marks which is maintained by the NOIP (Rule 42.4, Circular 01/2007/TT-BKHHCN). In fact, however, the creation, maintenance and publication of such a list have yet to be known.

Recommendations

To effectively protect the legitimate rights of holders of well-known trademarks, it is hoped that these issues will be addressed in the foreseeable future. More transparency should be made to the process of assessing and recognizing well-known marks. A list of well-known trademarks should also be created and published shortly in order to systemize the management of well-known trademarks as well as to increase public awareness of well-known trademarks in Vietnam./.

Other Sectors

Finance

- Law on Management and Use of Public Properties 2017.
- Decree No. 87/2017/ND-CP dated 26 July 2017, providing for the functions, tasks, powers and organizational structure of the Ministry of Finance.
- Decision No. 32/2017/QD-UBND dated 31 July 2017 of the People's Committee of Ho Chi Minh City, promulgating Ho Chi Minh City's regulations on management and use of official development assistance (ODA) and preferential loans of foreign donors.
- Circular No. 07/2017/TT-NHNN dated 31 July 2017 of the State Bank, providing for supervision over destruction of money not qualified for circulation and money suspended from circulation, as well as destruction of defectively printed money defectively casted, defective paper for money printing, and defective metal for money casting;
- Resolution No. 03/2017/NQ-HDND dated 3 July 2017 of the People's Council of Hanoi, providing for a number of contents and expenditure levels under the authority of this People's Council.

Banking

- Resolution No. 59/NQ-CP dated 4 July 2017 of the Government, on simplification of administrative procedures related to population management within the scope of management functions of the State Bank of Vietnam.
- Decision No. 1583/QD-NHNN dated 27 July 2017 of the State Bank of Vietnam, promulgating the procedures for payment of Government bonds and bond guaranteed by the Government, and local government's bonds at the State Bank of Vietnam.
- Decision No. 1425/QD-NHNN dated 7 July 2017 of the State Bank of Vietnam, on the maximum interest rate applicable to short-term loans in Vietnamese Dong provided by credit institutions and foreign banks' branches to borrowing clients, in order to meet the demand for capital serving a number of economic sectors and branches according to the provisions of Circular No. 39/2016/TT-NHNN dated 30 December 2016.
- Decision No. 1424/QD-NHNN dated 7 July 2017 of the State Bank of Vietnam, on refinancing interest rate, rediscounting interest rate, and overnight lending interest rate in inter-bank electronic payments and lending to compensate the capital shortfall in clearing of payments by the State Bank of Vietnam to banks.
- Circular No. 06/2017/TT-NHNN dated 5 July 2017 of the State Bank of Vietnam, amending and supplementing a number of articles of Circular

No.03/2014/TT-NHNN dated 23 January 2014 of the Governor of the State Bank, providing for the Fund for ensuring the safety of the system of people's credit funds and Circular No. 04/2015/TT-NHNN dated 31 March 2015 of the Governor of the State Bank, on the people's credit funds.

Trade

- Decision No. 2596/QD-TCHQ dated 31 July 2017 of the General Department of Customs, promulgating the Regulation on amendments and supplements to the Regulation accompanying Decision No. 384/QD-TCHQ dated 4 March 2016 on exchange of information on e-customs declaration forms; tax collection, late payment, fines, charges, fees and other levies, and tax guarantees for exported or imported goods; and collection of fees, charges and other levies paid to the management agencies through the electronic payment gateway of the General Department of Customs.
- Circular No. 11/2017/TT-BCT dated 28 July 2017 of the Ministry of Industry and Trade, on activities of temporary import, re-export, temporary export, re-import, and transit of goods.

Labour

- Decision No. 1293/QD-BHXX dated 26 July 2017 of Vietnam Social Insurance, promulgating the Regulation on the operations of the Vietnam Social Insurance Portal.
- Decision No. 24/2017/QD-UBND dated 13 July 2017 of the People's Committee of Hanoi, on support to vocational training and job creation for labourers whose land has been recovered in the area of Hanoi.
- Decision No. 29/2017/QD-TTg dated 3 July 2017 of the Prime Minister, providing for the functions, tasks, powers and organizational structure of the General Department of Vocational Education directly under the Ministry of Labour, War Invalids and Social Affairs.
- Circular No. 20/2017/TT-BLDTBXH dated 26 July 2017 of the Ministry of Labour, War Invalids and Social Affairs, promulgating the National technical regulation on labour safety for steam and hot water pipelines.
- Circular No. 10/2017/TT-BCT dated 26 July 2017 of the Ministry of Industry and Trade, promulgating the Procedure for of technical verification of Occupational safety for Machines, equipment and supplies subject to strict requirements on occupational safety under the management authority of the Ministry of Industry and Trade.
- Circular No. 09/2017/TT-BCT dated 13 July 2017 of the Ministry of Industry and Trade, providing for the technical verification of occupational safety under the

management authority of the Ministry of Industry and Trade.

- Circular No. 19/2017/TT-BLDTBXH dated 3 July 2017 of the Ministry of Labour, War Invalids and Social Affairs, detailing and providing guidelines for implementation of occupational safety and hygiene training activities.

Health

- Decree No. 90/2017/ND-CP dated 31 July 2017, on sanctioning administrative violations in the field of veterinary medicine.
- Resolution No. 60/NQ-CP dated 6 July 2017 of the Government, on simplification of administrative procedures related to population management within the scope of management authority of the Ministry of Health.
- Decision No. 3421/QD-BYT dated 28 July 2017 of the Ministry of Health, promulgating the Regulation on management and use of the system of information on national immunization.
- Decision No. 3336/QD-BYT dated 20 July 2017 of the Ministry of Health, promulgating the Guidance document on technical procedures in Haematology - Blood Transfusion - Immunology - Genetics - Molecular Biology.
- Decision No. 3332/QD-BYT dated 19 July 2017 of the Ministry of Health, issuing the Guidance document on procedure for blood transfusion.
- Circular No. 32/2017/TT-BYT dated 28 July 2017 of the Ministry of Health, providing for medicine cabinets, medical equipment and facilities, medical guidance documents on sea vessels, and medical report forms.
- Circular No. 31/2017/TT-BYT dated 25 July 2017 of the Ministry of Health, promulgating the List of potentially unsafe products and goods within the scope of management assigned to the Ministry of Health.
- Resolution No. 06/2017/NQ-HDND dated 4 July 2017 of the People's Council of Hanoi, promulgating the regulation on the prices of medical examination and treatment services provided by medical examination and treatment establishments, which do not fall within the scope of payment of the health insurance fund, with respect to the State-owned medical examination and treatment establishments under the authority of Hanoi.

Education

- Decision No. 4663/QD-UBND dated 19 July 2017 of the People's Committee of Hanoi, issuing Hanoi's List of public non-business professional services funded by the State budget in the field of education and training.
- Decision No. 2233/QD-BGDĐT dated 4 July 2017 of the Ministry of Education and Training, promulgating the amended or supplemented administrative procedures within the management scope and functions of the Ministry of

Education and Training.

- Circular No. 16/2017/TT-BGDDT dated 12 July 2017 of the Ministry of Education and Training, providing guidelines for the frame list of positions and staff level for public institutions for general education.

Transport

- Decree No. 77/2017/ND-CP dated 3 July 2017, providing for management and protection of security and order at port border gates.
- Decision No. 2244/QD-BGTVT dated 31 July 2017 of the Ministry of Transport, announcing the list of administrative procedures implemented through public-use postal services within the scope of management function of the Ministry of Transport.
- Decision No. 25/2017/TT-BGTVT dated 28 July 2017 of the Ministry of Transport, providing for forms of technical safety and environmental protection certificates and books granted to sea vessels, means of inland waterway transport, and industrial products used for means of inland waterway transport.
- Circular No. 24/2017/TT-BGTVT dated 28 July 2017 of the Ministry of Transport, on amendment and supplement to Annexes III and V accompanying Circular No. 43/2015/TT-BGTVT dated 20 August 2015 of the Minister of Transport, prescribing the procedures for grant, approval and revocation of Maritime labour conformity declaration forms and the Maritime labour certificates.
- Circular No. 22/2017/TT-BGTVT dated 7 July 2017 of the Ministry of Transport, on amendment and supplement to a number of contents of Level of supplies for a maintenance cycle of the national railway infrastructure accompanying Circular No.58/2012/TT-BGTVT dated 28 December 2012 of the Minister of Transport.

Construction - Land

- Decree No. 83/2017/ND-CP dated 18 July 2017, on rescue and salvage work of fire prevention and fighting forces.
- Decree No. 81/2017/ND-CP dated 17 July 2017, providing for the functions, tasks, powers and organizational structure of the Ministry of Construction.
- Resolution No. 05/2017/NQ-HDND dated 4 July 2017 of the People's Council of Hanoi, on dealing with establishments which do not meet requirements on fire prevention and fighting in the area of Hanoi and have been put into use prior to effective date of Law on Fire Prevention and Fighting No.27/2001/QH10.

Natural Resources - Environment

- Decree No. 84/2017/ND-CP dated 18 July 2017, on amendment and supplement

to a number of articles of Decree No. 173/2013/ND-CP dated 13 November 2013, on sanctioning administrative violations in the field of hydrometeorology, metrology and cartography.

- Decree No. 82/2017/ND-CP dated 17 July 2017, on method of calculation and collection level of fees for grant of the right to exploit water resources.
- Decision No. 4052/QD-UBND dated 31 July 2017 of the People's Committee of Ho Chi Minh City, announcing administrative procedures within the scope of management function of the Department of Natural Resources and Environment, which are standardized in Ho Chi Minh City.
- Decision No. 4659/QD-UBND dated 18 July 2017 of the People's Committee of Hanoi, approving the price list for calculation of royalty in the area of Hanoi.
- Decision No. 26/2017/QD-TTg dated 3 July 2017 of the Prime Minister, providing for the functions, tasks, powers and organizational structure of the General Department of Natural Disaster Prevention and Control.
- Circular No. 16/2017/TT-BTNMT dated 25 July 2017 of the Ministry of Natural Resources and Environment, promulgating the Technical regulations and economic - technical norms for surveying and assessing the current status of exploitation and use of water resources.
- Circular No. 15/2017/TT-BTNMT dated 21 July 2017 of the Ministry of Natural Resources and Environment, promulgating the Economic - technical norms for formulation and adjustment in water resources planning.

Culture - Sports - Tourism

- Decree No. 79/2017/ND-CP dated 17 July 2017, providing for the functions, tasks, powers and organizational structure of the Ministry of Culture, Sports and Tourism.
- Decision No. 1288/QD-BTTTT dated 27 July 2017 of the Ministry of Information and Communications, providing for the functions, tasks, powers and organizational structure of the Press Bureau.
- Decision No. 2818/QD-BVHTTDL dated 19 July 2017 of the Ministry of Culture, Sports and Tourism, announcing the List of administrative procedures for which the dossier receipt and return of result can or cannot be made through public postal services.

Administration - Judiciary

- Law No. 20/2015/QH13 amending and supplementing a number of articles of Criminal Code.
- Law on Compensation Liability of the State 2017.
- Resolution No. 58/NQ-CP dated 4 July 2017 of the Government, on

simplification of administrative procedures and civil papers related to population management within the scope of management function of the Ministry of Justice.

- Decision No. 2587/QD-TCHQ dated 28 July 2017 of the General Department of Customs, issuing the customs agencies' Internal guidelines on the order of and procedures for participation in administrative proceedings at court.
- Circular No. 02/2017/TT-TANDTC dated 28 July 2017 of the Supreme People's Court, promulgating the Regulation on organization of trials.
- Circular No. 01/2017/TT-TANDTC dated 28 July 2017 of the Supreme People's Court, on courtrooms.

Agriculture - Forestry - Fishery

- Decision No. 30/2017/QD-TTg dated 7 July 2017 of the Prime Minister, repealing the legal documents in the field of Agriculture and rural development under the promulgation authority of the Prime Minister.
- Decision No. 27/2017/QD-TTg dated 3 July 2017 of the Prime Minister, providing for the functions, tasks, powers and organizational structure of the General Department of Fisheries directly under the Ministry of Agriculture and Rural Development.
- Decision No. 25/2017/QD-TTg dated 3 July 2017 of the Prime Minister, providing for the functions, tasks, powers and organizational structure of the General Department of Irrigation directly under the Ministry of Agriculture and Rural Development.

Investment

- Decree No. 86/2017/ND-CP dated 25 July 2017, providing for the functions, tasks, powers and organizational structure of the Ministry of Planning and Investment.
- Resolution No. 67/NQ-CP dated 31 July 2017 of the Government, on the execution of the Second Protocol amending the ASEAN Comprehensive Investment Agreement (ACIA).
- Circular No. 75/2017/TT-BTC dated 21 July 2017 of the Ministry of Finance, amending and supplementing a number of articles of Circular No. 55/2016/TT-BTC dated 23 March 2016, providing for a number of contents on financial management of investment projects in the form of public-private partnership and costs for selecting investors.
- Circular No. 14/2017/TT-BNNPTNT dated 5 July 2017 of the Ministry of Agriculture and Rural Development, providing guidelines for the implementation of a number of contents on investment in the form of public-private partnership in the agricultural and rural sector.

Miscellaneous

- Law on the Management and Use of Weapons, Explosives and Support Tools 2017.
- Decision No. 1078/QĐ-TTg dated 25 July 2017 of the Prime Minister, promulgating the List of documents to newly promulgate, amend and supplement the provisions of the law relating to land, construction, residential housing, investment and business under the authority of the Government, Prime Minister, Ministers and Heads of ministerial-level agencies.
- Circular No. 12/2017/TT-BCT dated 31 July 2017 of the Ministry of Industry and Trade, providing for order of and procedures for granting and withdrawing electricity licenses.
- Resolution No. 02/2017/NQ-HĐND dated 3 July 2017 of the People's Council of Hanoi, promulgating a number of regulations on collection of charges and fees in the area of Hanoi under the authority of its People's Council.

Contact Details

Hanoi Office

Mr. Pham Nghiem Xuan Bac

Managing Partner

Mr. Luu Tien Ngoc

Director, Business Development

Mrs. Le Quynh Anh

Executive Partner, Legal Practice

Mrs. Nguyen Nguyet Dzung

Partner, Intellectual Property Practice

Unit 308-310, 3rd Floor, Hanoi Towers

49 Hai Ba Trung, Hanoi, Vietnam

Tel: 84-24-3934 0629/ 3826 4797 Fax: 84-24-3934 0631

E-mail: vision@vision-associates.com

Ho Chi Minh City Office

Mr. Luu Tien Ngoc

Director, Business Development

Mrs. Nguyen Thi Van

Head of Ho Chi Minh City Office

Unit 905, 9th Floor, CitiLight Tower

45 Vo Thi Sau, District 1, Ho Chi Minh City, Vietnam

Tel: 84-28-3823 6495 Fax: 84-28-3823 6496

E-mail: hcmvision@vision-associates.com

www.vision-associates.com