

## DECEMBER 2008 / JANUARY 2009 Vietnam: Circulars add clarity to IP laws

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The year 2008 saw several developments in Vietnamese IP legislation that are expected to improve the country's enforcement regime. Notably, Vietnam finally issued long-awaited guidelines on handling IP crimes under *Inter-Ministerial Circular no 01/TANDTC-VKSNDTC-BCA-BTP* which was issued by the Supreme People's Court and other key agencies on February 29 2008.

The Circular clarifies a long unsettled issue relating to Article 213 of the Law on Intellectual Property by providing that an act of trade mark counterfeiting (an act of affixing a trade mark or a sign identical with or insubstantially distinguishable from a protected trade mark to goods in respect of which the protected trade mark is protected or their packaging without authorization of the trade mark owner), if consisting of sufficient elements to constitute a crime, shall be penalised under Article 171 of the Criminal Code which concerns crimes relating to IP infringements, rather than under Article 156 of the Criminal Code concerning the production of pure counterfeit goods.

The Circular underscores that wilfulness and commercial scale infringement are compulsory elements for criminal culpability. It also defines thresholds for "serious", "very serious" or "especially serious" intellectual property crimes under the Criminal Code. For example, copyright infringements meeting the following levels are "especially serious" and may result in up to three years imprisonment:

- Profits of D100,000,000 (\$6,060) or higher;
- material damage of D450,000,000 (\$27, 270) or higher; or
- infringing goods having a value of D500,000,000 (\$30,300) or more.

Circular 01 gives long awaited guidance on the disposal of items (infringing goods and means to produce the same) related to IP crimes. Specifically, when deciding on disposal, the provisions on disposal of items currently applicable for civil and administrative actions apply.

In other key developments, the *Ordinance Amending and Supplementing a Number of Articles of the Ordinance on Administrative Penalties* was amended in April 2008 to increase the maximum administrative fines for IP infringements from D200 million (\$12,100) up to D500 million (\$30,300). Additionally, on April 3 2008, *Inter-Ministerial Circular no 02/2008/TTLT-TANDTC-VKSNDTC-BVHTT&DL-BKH&CN-BTP Providing Guidelines on a Number of Articles of the Law in the Resolution of Disputes on Intellectual Property in the People's Court* was jointly issued by the Supreme People's Court and relevant agencies. This Circular provides guidelines regarding procedures and evidence for judges to observe in handling civil cases related to intellectual property disputes. Key issues covered include damages, emergency measures, and inter-agency cooperation.



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