

## VIETNAM

**New Law on Competition impacts IP**

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On June 12 2018, Vietnam passed a new Law on Competition that will take effect on July 1 2019, replacing the Law on Competition of 2004. The new law brings about several changes affecting intellectual property. Notably, it eliminates many of the discrepancies between the current 2004 Competition Law and the Intellectual Property Law in dealing with IP-related unfair competition.

**Acts of unfair competition**

A weakness of the 2004 Competition Law and its subordinate regulations (such as Decree No. 71/2014/ND-CP) is that they overlap with provisions on competition found in other laws. For example, both the 2004 Competition Law and the IP Law have provisions concerning acts of cybersquatting, the use of misleading trade indications, and the unauthorised use of a trade mark by an agent, and both provide that the infringement of trade secrets is an act of unfair competition. This has led to confusion for law enforcement agencies and rights holders as to which enforcement mechanisms should be employed in taking action against unfair competition relating to IP.

The new Competition Law no longer sets out acts of unfair competition that are already covered by the IP Law. Instead, the new law expressly states that when there are discrepancies between the Competition Law and the related unfair competition provisions of another law, the provisions of the other law will prevail. This is a big step towards clarifying enforcement of the laws on unfair competition in practice. When the new Competition Law takes force, rights holders can rely solely on the IP Law.

**Secrets in business**

The new Competition Law seems to introduce a new statutory term, “secrets in business” (bí mật trong kinh doanh). The new law considers infringement of these “secrets in business” to amount to unfair competition, but it does not define this term. The term is similar to the statutory term “trade secret” (bí mật kinh doanh) defined in the IP Law. However, given the principle that the new law does not repeat acts of unfair competition covered in other laws, it is uncertain whether the term “secrets in business” has an equivalent meaning to “trade secret” in the IP Law, or is something entirely new. As a matter of practice, the government will roll out decrees to guide the implementation of new laws. In these decrees, the government should clarify the meaning of this term.

**Court jurisdiction**

The prevailing competition laws defer to the Civil Code for resolving non-contractual damages related to unfair practices. If unfair practices cause damage to the lawful rights and interests of others, the offenders are required to compensate for such loss in accordance with the civil laws. Under the Civil Procedure Code, disputes over compensation for non-contractual damage fall under the jurisdiction of the civil court. To resolve these disputes, the court must assess the unfair competition acts as one of the bases for determining the damages.

The new Competition Law no longer expressly refers to the civil laws as the legal tools to deal with unfair competition, triggering concern about whether the civil court still has jurisdiction to rule on unfair competition. However, the new law does not expressly obviate the court’s jurisdiction over acts of unfair competition that cause harm to the legitimate rights and interests of competitors. In addition, the Law on Promulgation of Legal Documents prevents laws from repeating regulations that are mentioned in other laws. The civil laws already expressly allow companies to initiate suits to protect their rights and interests generally. Thus, the new Competition Law should be interpreted in a way that does not preclude the court’s power to deal with acts of unfair competition.

**Other changes**

The new law establishes a new state agency, the National Competition Commission, to be in charge of dealing with antitrust and unfair competition practices set out in the law. For unfair competition acts covered in other laws, the respective authorities empowered by such laws would deal with matters. As such, to curb unfair competition under laws relating to IP, companies can rely on administrative enforcement bodies, civil courts, or arbitration as set forth in the IP Law.

The new law also shortens the timeframe for administrative bodies, namely the National Competition Commission, to deal with unfair competition. Under the new law, the maximum time is just 60 days, with an option to extend another 45 days. This would only apply to unfair competition acts not falling under the IP Law.

On the whole, the new Competition Law marks progress in eradicating discrepancies between laws on competition and IP that have caused uncertainty for years. However, certain issues still need clarification, such as compulsory licensing and secrets in business, for the law to be easily implemented in practice.