

CONTACT DETAIL



Intellectual Property Office of Viet Nam (IP Viet Nam)

Address: No 386 Nguyen Trai Street, Thanh Xuan District, Ha Noi, Viet Nam
Phone number: (84) 02438583069
Website: ipvietnam.gov.vn

Other important agencies

Viet Nam Directorate of Market Surveillance

Address: No 91 Đinh Tiên Hoàng, Hoàn Kiếm District, Ha Noi, Viet Nam
Hotline: (84) 190088655
Website: dms.gov.vn

General Department of Viet Nam Customs

Address: No 9 Đường Dinh Nghe Street, Cầu Giấy District, Ha Noi, Viet Nam
Hotline: (84) 19009299 (Line 1)
Website: customs.gov.vn

The National Steering Committee for the Prevention and Control of Smuggling, Trade Fraud and Fake Commodities (The National Steering Committee 389)

Address: 14th Floor, General Department of Viet Nam Customs's Building, No 9 Đường Dinh Nghe Street, Cầu Giấy District, Ha Noi, Viet Nam
Hotline: (84) 0961389 389,
(84) 0981389389
Website: bcd389.gov.vn/

The Inspectorate of Science and Technology

Address: No 113 Trần Duy Hưng Street, Cầu Giấy District, Ha Noi, Viet Nam
Hotline: (84) 02435553906
Website: most.gov.vn/thanhtra/Pages/trangchu.aspx



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ARISE+ IPR

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IP ENFORCEMENT

What should I do when I realise that my IP rights have been violated?

It is advisable to first send a warning letter to the infringer requesting them to cease and desist from infringing your IP rights. If the infringer refuses to comply, more forceful action (see below) can be taken.

What enforcement agencies are responsible for protecting IP rights in Viet Nam?

- Courts
- Inspectorates of Science and Technology
- Market Surveillance Agencies
- Customs Agencies
- Economic Police
- People's Committees

What enforcement measures can be taken to prevent or stop IP infringement?

To prevent infringement, an IPR holder can employ technical measures such as anti-counterfeiting labels, and can record its IP rights with customs to seize infringing goods at the border.

To stop IP infringements that have been determined, possible enforcement actions include:

- sending warning letters (or cease-and-desist letters);
- calling on authorities for administrative actions;
- filing civil lawsuits;
- calling for criminal action (applicable only to counterfeit goods).

What legal remedies are available to IPR holders whose rights have been infringed?

The legal remedies will depend on the legal action that the IPR holder chooses, and include the following, among others:

Civil remedies: compulsory termination of the infringing acts; compulsory public apology and rectification; compulsory payment of damages for loss; compulsory destruction, distribution or use of goods, raw materials and materials, and facilities used principally for non-commercial purposes that will not affect the exploitation of the IP rights by the holders.

Administrative remedies: cautions; fines; seizure of counterfeit goods and associated materials; forced temporary suspension of business activities; compulsory destruction or other disposal of counterfeit goods.

Criminal remedies: fines and/or imprisonment.

Measures to control exported and imported goods: suspension of customs procedures; inspection and supervision of goods with signs of IPR infringement.

What procedures should be followed to request the handling of IP infringement?

In general, an IPR holder should consider the following steps to secure a successful enforcement action:

Step 1: Determine the goal of IPR enforcement. If the IPR holder wishes to stop the infringement in a short time, administrative measures are the priority. If the IPR holder wishes to claim for damages, civil action is more appropriate. An IPR holder can take administrative measures first to immediately stop the infringement, and then commence civil action to claim for damages. If the IPR holder wishes the infringer to be severely punished for the infringement (e.g. counterfeiting), initiating criminal action is the more appropriate course.

Step 2: Launch an investigation. This is recommended to determine the scope of infringement and to gather preliminary evidence of infringement for subsequent legal actions.

Step 3: Obtain expert opinions on infringement. Expert opinions are persuasive when adjudicating or handling an IPR holder's allegation.

Step 4: Choose the appropriate enforcement authorities. Each authority has its specific strengths and weaknesses.

What evidence is needed to demonstrate IP infringement?

A complaint against an IPR infringement should be filed with a competent enforcement authority and should include:

- documentary evidence of ownership of the infringed IP right;
- proof of the damage caused by the infringement;
- evidence of the infringement (e.g. samples or photographs of the counterfeit/infringing goods);
- expert opinions on infringement (if any);
- power of attorney (if the request is filed by an IP agent).

What alternative dispute resolution options are available, besides the court?

When you do not want to bring the dispute to court for settlement, you can use alternative dispute resolution options which include arbitration, mediation, and negotiation. As a prerequisite for arbitration and mediation, the two parties must consent to it.



HOW TO ENFORCE YOUR IP RIGHTS IN VIET NAM



The leaflet covers enforcement content for three types of IP rights, including trade marks, industrial designs and geographical indications.



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TRADE MARKS

What is a trade mark?

A trade mark is any sign used to distinguish the goods or services of different organisations or individuals from those of others.

To be eligible for trade mark registration, signs must be visible in the form of letters, words, numerals, pictures, images (including three-dimensional images) or their combinations, presented in one or more given colours.



According to international agreements of which Viet Nam is a signatory, the IP Law will protect sound trade marks in the future.

How can you protect your trade mark in Viet Nam, and what rights are conferred on the owner of a registered trade mark?

To be protected, a trade mark needs to be registered, except for marks recognised as 'well-known' (which are very rare). The trade mark owner must file an application with IP Viet Nam indicating the exact type of mark and the goods/services covered by the mark. IP Viet Nam will examine the mark and if it complies with the criteria for protection, the mark will mature to registration.

Some signs are ineligible for protection, such as those that are identical or confusingly similar to national emblems, names of famous personalities, or other registered marks; or those which may confuse or mislead consumers as to the origin, properties, quality, or other characteristics of the goods or services.

Local trade mark owners can file marks directly with IP Viet Nam or through a licensed IP agent. If the trade mark owners are from overseas, they must file through a licensed IP agent. In addition, you can also seek trade mark protection in Viet Nam by using the Madrid International Trade Mark System.

The owner of a registered trade mark has the exclusive rights to use, or authorise others to use, the trade mark; to prevent others from using the trade mark; and to dispose of (assign/license/abandon) the trade mark.

Criteria of protection for a trade mark are stipulated in Articles 73 and 74 of the Viet Nam IP Law.

The IP Law does not protect trade marks that are contrary to social ethics and public order, or prejudicial to defence and security according to Article 8 of the IP Law.

What acts are considered trade mark infringements?

Generally speaking, any use of a sign identical or similar to a registered mark that is used for goods or services identical, similar, or related to the goods or services protected by the registered mark, will be considered a trade mark infringement, if such use is likely to cause confusion as to the origin of the goods or services, and is performed without the permission of the registered trade mark's owner.

Acts of trade mark infringement are specified in Article 129 of the IP Law.

What constitutes 'use' of a trade mark?

Under the IP Law, use of a trade mark includes:

- affixing the mark on goods, packages, means of business, mean of service provision, or documents in business activities;
- circulating, offering, advertising or stocking for sale goods bearing the mark; or
- importing goods or services bearing the mark.

What types of contract exist for the use of trade marks?

A trade mark may be used by either the trade mark owner or its licensee. Use of a trade mark by a licensee should be under a trade mark licence agreement.

The terms of agreement and signing of licence contracts are subject to the IP Law.

INDUSTRIAL DESIGNS

What is an industrial design?

An industrial design is the exterior appearance of a product represented in shape, lines, colours or any combination thereof.



How can you protect your industrial design in Viet Nam?

Local industrial design owners can file application directly with IP Viet Nam or through a licensed IP agent. If the industrial design owners are from overseas, they must file through a licensed IP agent. In addition, you can also seek design protection in Viet Nam by using the Hague International Design System.

Which objects can and cannot be registered as industrial designs?

Industrial designs that cannot be registered include the appearance of a product that is dictated solely by the technical features of the product, the appearance of a civil or industrial construction work, and the appearance of a product that is invisible during the product's use.

The IP Law does not protect industrial designs that are contrary to social ethics and public order, or prejudicial to defence and security according to Article 8 of the IP Law.

In addition, a 'product' within the definition of an industrial design is understood to be tangible (physical). Therefore, intangible matter such as typefaces, icons, user interfaces, etc., are currently not patentable as an industrial design in Viet Nam.

The term 'product' in the protection of industrial design is specified in Point 33.2b of Circular No.16/2016/T-T-BKHCN of 30 June 2016.

What acts are considered industrial design infringements?

Industrial design infringements include the use of a protected industrial design – or another industrial design that is not substantially different from it – within the terms of protection of the registered industrial design without the owner's permission; or the use of a protected industrial design without paying compensation in accordance with the provisions on temporary rights.

GEOGRAPHICAL INDICATIONS

What is a geographical indication?

A geographical indication (GI) is a sign which identifies a product as originating from a specific region, locality, territory or country, and indicates that the product bearing the GI has a reputation, quality or characteristics mainly attributable to the geographical conditions of that place.

What are the differences between geographical indications and trade marks?

GI identify a product as originating from a particular place while trade marks identify a good or service as originating from a particular company or entity.

Due to the differences in the meanings and purposes of use of GIs and trade marks, there are differences in the criteria and terms of protection, and owners of these two rights.

What constitutes 'use' of a geographical indication?

Use of a GI means the performance of the following acts:

- (a) affixing the protected GI to goods or packaging, means of business and documents in business activities;
- (b) circulating, offering, advertising and storing for the purpose of selling goods bearing the protected GI; or
- (c) importing goods bearing the protected GI.

When does a geographical indication become a generic name?

A geographical indication may become a generic name when the indication has been widely used by the public as a common name for a type of product, regardless of the geographical origin of the product.

What acts are considered geographical indication infringements?

The following acts are infringements of the rights to protected GIs:

- a) using protected GIs for products that do not satisfy the criteria of peculiar characteristics and quality of GI-bearing products, even though such products originate from the geographical area bearing the GI;
- b) using protected GIs for products similar to products bearing GIs for the purpose of taking advantage of their reputation and reliability;
- c) using any sign that is identical or confusingly similar to a protected GI for products that do not originate from the geographical area bearing the GI which can mislead consumers of the origin of the products;
- d) using protected GIs of wines or spirits for those that do not originate from the geographical areas bearing the GIs, even where the real origin of goods is indicated or the GIs are used in the form of translations or transcriptions, or accompanied by words such as 'category', 'model', 'type', 'imitation'.

