



LEGAL NEWS

Intellectual Property

Improper use of registered trademarks in Vietnam – Risks and solutions

After a number of years of commercializing the branded products, many trademark owners wish to refresh the look of their brands by modifying certain elements to make the mark more noticeable and approachable to the general public. Most of them believe that because they have registered a trademark, they are






free to use it in whatever way they choose. This simplistic way of thinking results from a neglect for or insufficient understanding of the intellectual property requirements, which cost the trademark owner a hefty price.

Typical trademark disputes caused by improper trademark use

(#1) *ASANZO vs. ASANO*

Recently, the People's Court of Ho Chi Minh City has heard the trademark dispute between the plaintiff, Dong Phuong Trading and Manufacturing Co., Ltd and the defendant, Asanzo Vietnam Electronics Joint Stock Company. The plaintiff sued the defendant on the grounds that the defendant's use of the sign "ASANZO, device" violated the plaintiff's trademark "ASANO, device". Rejecting the plaintiff's claim of infringement, the defendant stated that the defendant's use of the trademark "ASANZO, device" is legal because Vietnam IPO has granted registration for the trademark "ASANZO". The relevant trademark images are provided in the below table.

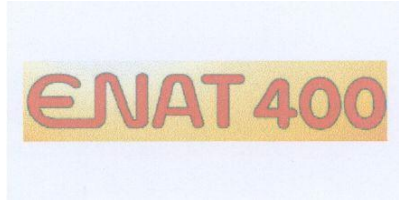




The plaintiff's registered mark	The defendant's mark	
	Registered mark	Mark in actual use
		

Although the defendant's trademark "ASANZO" was protected, the first instance court determined that the defendant's use of the sign "ASANZO, device" constituted an infringement of the plaintiff's protected mark, compelling the defendant to cease the infringement, publicly apologize and rectify, and pay VND 100,000,000.

(#2) ENAT 400 vs. E-NAT Plus

In a similar case, Mega Lifescience, a Thai pharmaceutical company, requested a Vietnamese Enforcement Agency to handle trademark infringement against Hiep Thuan Thanh Pharmaceutical Co., Ltd. under administrative proceedings. Below are the relevant trademark images.

Mega Lifescience's registered mark	Hiep Thuan Thanh Pharmaceutical Co., Ltd.'s mark	
	Registered mark	Mark in actual use
		

Taking the case into account, the Vietnamese Enforcement Agency determined that, while Hiep Thuan Thanh Company's trademark "E-NATPLUS" has been protected, this company's use of the mark "E-NAT Plus" for pharmaceutical products in Class 05 constitutes an infringement of Mega Lifescience's trademark "ENAT 400". Accordingly, the Vietnamese Enforcement Agency seized more than 700 boxes of the product "E-NAT Plus" during a raid at a pharmacy in Hapulico, [More](#)

Methods of customs valuation applicable to exported goods



Principles of customs valuation applicable to exported goods

Clause 3, Article 1, Circular No. 60/2019/TT-BTC prescribing principles and methods of customs valuation applicable to exported goods with the principles as follows:

- Customs value is the selling price of goods at the border gate of exportation, exclusive of international insurance cost (I) and international freight (F) and shall be determined by applying the methods provided in Clauses 2, 3, 4 and 5 of this Article (other methods shall be listed in the next part) one after another until a custom value is identified.
- Customs valuation must be based on objective and quantifiable documents and data.
- Cost distribution principle:

The costs prescribed in Clause 2 of this Article shall be calculated for exported goods of each category. In case a goods shipment contains goods of different categories but costs are not yet detailed for each category of goods, they shall be distributed by:

- + Selling price of goods of each category;
- + Weight or volume or quantity of goods of each category.

Methods of customs valuation applicable to exported goods

Pursuant to Clause 3, Article 1, Circular No. 60/2019/TT-BTC, the methods of determining the selling price of goods of exportation including:

1. The methods of determining the selling price of goods at the border gate of exportation

The selling price of goods at the border gate of exportation is a selling price written in the goods purchase and sale contract or commercial invoice plus costs related to exported goods at the border gate of exportation in conformity with relevant documents, provided that such costs are not yet included in the selling price of goods.



- Method of determination:

+ In case exported goods are delivered at the border gate of exportation: The selling price of goods at the border gate of exportation is a selling price written in the goods purchase and sale contract or commercial invoice plus costs related to exported goods at the border gate of exportation in conformity with relevant documents, provided that such costs are not yet included in the selling price of goods.

+ In case exported goods are not delivered at the border gate of exportation:

- If the place of goods delivery is outside the Vietnamese territory, selling price of goods at the border gate of exportation shall be determined on the basis of the selling price written in the goods purchase and sale contract or commercial invoice minus international insurance cost (I, if any) and international freight (F) for the distance from the border gate of exportation to the place of goods delivery;
- If the place of goods delivery is within the Vietnamese territory, selling price of goods at the border gate of exportation shall be determined on the basis of the selling price written in the purchase and sale contract or commercial invoice, plus the following costs:
 - Domestic freight and other costs related to the transport of exported goods from the place of goods delivery to the border gate of exportation, including also costs of gathering goods, hiring warehouses, loading and unloading goods to and from carrying vehicles, and transporting goods to the border of exportation;
 - Insurance cost of exported goods for the stretch of road from the place of goods delivery to the border gate of exportation (if any);
 - Other costs related to exported goods occurred an route from the place of goods delivery to the border gate of exportation.

- Documents used for customs valuation by this method include (one copy for each document):

+ Goods sale and purchase contract or commercial invoice;

+ Documents relating to costs of exported goods at the border gate of exportation (if any);

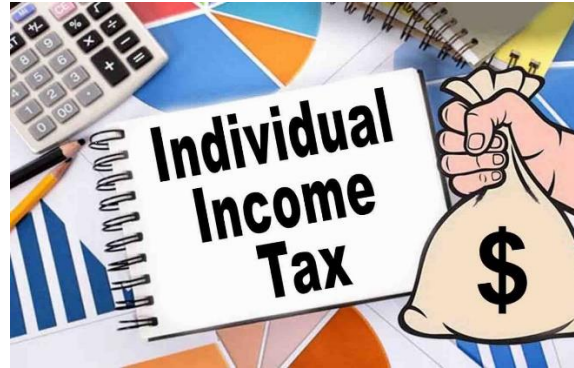
Other documents relating to selling price of goods at the border gate of exportation (if any);

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Does the personal income tax collection subject to monthly or quarterly declaration?

1. Does the personal income tax collection subject to monthly or quarterly declaration?

Clause 1 and Clause 2, Article 8, Decree No. 126/2020/ND-CP which prescribes the taxes subject to monthly, the quarterly or annual declaration make this problem clear as follows:



“1. Taxes and other state budget revenues the collection of which is managed by tax administration offices and which are subject to the monthly declaration include:

a/ Value-added tax and personal income tax. Taxpayers that satisfy the criteria specified in Article 9 of this Decree may make quarterly declarations.

...

2. Taxes and other state budget revenues subject to quarterly declaration include:

...

c/ Personal income tax, for income payers subject to tax withholding under the law on personal income tax that are subject to quarterly value-added tax declaration and choose to make quarterly personal income tax declaration; and individuals earning incomes from salaries or wages who directly make tax declaration with tax offices and choose to make quarterly personal income tax declaration.

...”

Therefore, taxpayers can make monthly personal income tax declarations and payments, in the cases that they can satisfy all the quarterly criteria, they can make quarterly personal income tax declarations and payments.

The quarterly declaration criteria is prescribed in Clause 1, Article 9, Decree No. 126/2020/ND-CP as follows:

“1. Criteria for quarterly tax declaration

a/ Quarterly declaration of value-added tax shall apply to:



a.1/ Taxpayers subject to monthly declaration of value-added tax specified at Point a, Clause 1, Article 8 of this Decree that have a total turnover of up to VND 50 billion from the sale of goods and provision of services in the preceding year. Turnover from the sale of goods and provision of services is the total turnover recorded in the value-added tax declarations of the tax periods in a calendar year.

...

a.2/ Taxpayers having just commenced operation or business activities; they may make monthly or quarterly value-added tax declaration...

b/ Quarterly declaration of personal income tax is specified as follows:

b.1/ Taxpayers subject to monthly declaration of personal income tax specified at Point a, Clause 1, Article 8 of this Decree that fully satisfy the conditions for quarterly declaration of value-added tax may make quarterly declaration of personal income tax.”.

In conclusion, taxpayers must be subject to the monthly declaration of personal income tax, except for the cases that satisfy the conditions for quarterly declaration as follows:

- Competent state agencies, state administrative agencies, specialized attached agencies of People's Committees at all levels, professional career units, Party agencies, social-political organizations...arising incomes from salaries, and wages but not generating incomes from goods and services.
- Taxpayers have a total turnover of up to VND 50 billion from the sale of goods and provision of services in the preceding year.
- Individuals earning incomes from salaries or wages who directly make tax declarations with tax offices
- Taxpayers having just commenced operation or business activities.

*Does the personal income tax collection subject to monthly or quarterly declaration?
(Illustration)*

2. Declaration and payment time for personal income tax withholding documents

Pursuant to Clause 1, Article 44 of the Law on tax administration 2019, the deadline for submitting tax declaration dossiers is as follows:

- For taxes declared and paid on a monthly basis: The 20th day of the month following the month in which the tax liability arises.
- For taxes declared and paid on a quarterly basis The last day of the first month of the quarter following the quarter in which the tax liability arises. [More](#)



LEGAL UPDATES

Information - Communications

The latest expenditure on compensation and relocation

On October 05, 2022, the Ministry of Finance issues Circular No. 61/2022/TT-BTC providing guidance on estimates, use, and final payment of budget for compensation, support, and resettlement due to the State's land expropriation

Accordingly, the expenditure on compensation, resettlement, and coercive expropriation as follows:

Payments whose amount, standard, and unit have been regulated by a competent agency: Implement in accordance with current regulations.

- With respect to working places, machines, and equipment for serving operations of authorized organizations and appraising agencies: These agencies shall take responsibility for allocating and arranging in the working office buildings and machinery to serve their operations.

If those agencies cannot arrange the space in their working places, they are allowed to rent working places and machines for compensation, support, and relocation.

The rental of working places, the rental and procurement of machines and equipment shall implement in accordance with law provisions on management and use of public assets, and bidding laws as well as relevant law provisions.

- Expenses for printing, photocopying documents, stationery, communications (post, telephone), fuel and transportation: Depending on the actual demands for each project and sub-project.

- Payments for service providers for compensation, support, and relocation Shall conform to contracts between authorized organizations and service providers.

Service providers are obliged to adequately implement the contract and relevant law provisions. Service providers shall be selected in accordance with legal regulations on bidding.

- With respect to contents not mentioned in above scope, People's Committees of provinces shall base on local situations, report to the specific and suitable payment amounts.

This Circular takes effect on November 20, 2022.



Tax – Fee – Charge

Revenue and buyers in e-commerce trading floor must be declared to tax agencies

On October 30, 2022, the Government issues Decree No. 91/2022/ND-CP on amending and supplementing a number of articles of Decree No. 126/2020/ND-CP detailing a number of articles of the Law on Tax Administration.

Decree 91 supplements the regulations that, the owners of the e-commerce trading floor shall supply the full and correct information of traders, organizations, and individuals who make part or full of goods and service trading in the e-commerce trading floor to the tax agencies, including

- Name of seller;
- Tax code or id personal identifier, or number of identity card or citizen identification or passports, address;
- Telephone number;
- Revenues from the online transactions of the e-commerce trading floor. Information supply is implemented quarterly, on the last day of the first month of the next quarter.

The information must be supplied by the electronic method via the electronic portal of the General Department of Taxation under the database format which is declared by the General Department of Taxation.

This Circular takes effect on October 30, 2022.

Enterprises temporarily pay 80% of enterprise income tax in 4 quarters

These are the new regulations prescribed in Decree No. 91/2022/ND-CP on amending and supplementing a number of articles of Decree No. 126/2020/ND-CP detailing a number of articles of the Law on Tax Administration.

In previous regulations, Decree No. 126/2020/ND-CP requires the temporarily paid for the first 3 quarters of a tax year must not be lower than 75% of the payable enterprise income tax amount.



From the above regulations, many enterprises find many difficulties in estimating the business performance of the quarter 3rd which cannot be exact. Enterprises can face the risk of being fined for late tax payments if having better business performance in the quarter 4th.

To overcome this condition, Decree 91/2022 prescribes:

The enterprise income tax, total after-tax profit left after the temporary set up of funds, the total enterprise income tax of foreign carriers of the first 4 quarters of a tax year must not be lower than 80% of the after-tax profit left after setting up funds stated in annual finalization statements.

Decree No. 91/2022 takes effect on October 30, 2022. Regulations on temporarily paying enterprise income tax applicable to the tax period of 2021 are as follows:

- To October 30, 2022, taxpayers who have temporary payments in the first 03 quarters of the tax year 2021 must not lower than 75% of the payable amount stated in annual finalization statements shall not be applicable with the temporary payment of 80% in 04 quarters.
- To October 30, 2022, taxpayers who have temporary payment in the first 03 quarters of the tax year 2021 must not lower than 75% of the payable amount stated in annual finalization statements shall be applicable with this temporary payment in 04 quarters in accordance with this Decree if having no arising late payment amount.

In the cases that competent agencies make the investigation and check the late payment in accordance with the points b, c, g, Clause 6, Article 8, Decree No. 126/2020/ND-CP on applying the temporary payment percentage in 04 quarters prescribed in Decree No. 91/2022 with the reduction for late payment must have the proposal for reducing late payment under the Form No. 01/GTCN in the Appendix of Decree No. 91/2022 to the tax agencies.

LIST OF UPDATED LEGAL NORMATIVE DOCUMENTS

Information - Communications		
1	Decree No. 87/2022/ND-CP dated October 26, 2022 of the Government defining the functions, tasks, powers and organizational structure of the Vietnam News Agency	Issuing date: 26/10/2022 Effective date: 01/11/2022 Effect status: In force
Agricultural - Forestry		
2	Decree No. 80/2022/ND-CP dated October 13, 2022 of the Government amending and supplementing a number of articles of the Government's Decree No. 35/2016/ND-CP of May 15, 2016, detailing a number of articles of the Law on Animal Health	Issuing date: 13/10/2022 Effective date: 13/10/2022 Effect status: In force

Thank you for your reading!

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