



LEGAL NEWS

Intellectual Property

Building up your brand in 20 years in Vietnam, but losing it in a few days. WHY?



It takes almost 2 years for their trademark application to be registered in Vietnam. However, developing a good brand may take five to ten years or even twenty years. If you do not have a system in place for managing your company's documentation, including Trademark Registration Certificates, you could lose your trademark rights within a few days.

1. "Trademark" story

In June 2022, Hoa Sen Co., Ltd., (HOA SEN) the owner of the "ZACOPE" trademark for pure drinking water products, complained to **KENFOX IP & Law Office**, "I don't understand why the company's sales in the first half of the year have dropped so drastically." HOA SEN did the investigation and found that rivals utilized similar labels bearing the trademark "ZACOP."

A check of the protection title, however, revealed that the registration of the trademark had expired. This occurs because the previous employee resigns and transfers the trademark to the new employee, who is unaware of the requirement to renew the trademark on its expiration date. After more than two decades of brand development, HOA SEN now risks brand extinction.

There are millions of existing trademarks on the register, making it difficult to select a mark to register and use without infringing on or being similar to other marks. Even if a **trademark is registered successfully**, it is still possible to lose it. When you lose a



trademark, you lose the right to use it exclusively, and if a third-party re-registers it, you face legal risks.

2. Successful registration of a trademark is only the beginning of your business in Vietnam

It goes without saying that there are no rights without responsibilities. The owners of protected trademarks are required to take proper action in order to maintain their trademark rights. In the absence of renewal, your registered trademark is susceptible to invalidity challenges based on non-renewal, and third parties have the right to initiate a cancellation action before the Intellectual Property Office of Vietnam (IP Vietnam).

The **Vietnam IP law of 2022** contains numerous important amendments and additions to trademark regulations. To avoid the risk of losing their rights, trademark holders are required to carry out at least the three responsibilities below.

First, to renew **trademark registrations in Vietnam** within 6 months before the expiry date of the validity term. The payment of the renewal fee may be delayed for no more than six months after the expiration of the current validity term. Otherwise, the trademark will expire;

Second, to use the protected trademark in commerce in Vietnam within 05 years computed from the registration date; if not, any third party may request IP Vietnam for non-use trademark cancellation.

Third, to use the trademark in its registered form. Some slight changes made to the registered trademarks are not risky, but substantial changes made to the nature of the marks may expose the trademark owner to legal risks that a mark used in commerce may be deemed not to be the registered trademark, resulting in cancellation of the trademark if initiated by a third party.

3. How should a trademark be used in commerce in Vietnam so as not to lose it?

IP law of Vietnam and other jurisdictions has established the regulations that, if the protected trademarks are not put in commercial use within 05 consecutive years since the registration date, any third parties are entitled to file a **request for cancellation for the trademark validity** with IP Vietnam.

IP law of Vietnam and other countries has established provisions that allow third parties to file a request for cancellation of the trademark validity if the protected trademarks are not used commercially within five consecutive years from the date of registration.

If you wish to maintain your trademark rights, you need to use your trademark in a proper way. You may refer to Clause 5, Article 124 of Vietnam's IP Law to learn the laws



governing the required actions for your trademark to be considered in use in Vietnam. Specifically, the following three actions constitute use of a mark:

1. Affixing the protected mark on goods, goods packages, business facilities, means of service provision or transaction documents in business activities;
2. Affixing the protected mark on goods, goods packages, business facilities, means of service provision or transaction documents in business activities;
3. Importing goods or services bearing the protected mark.

Vietnam's IP Law is silent regarding **the genuine use or token use of a mark**. Sporadic use in **the ordinary course of trade** for a certain period may still be considered as having used the mark against the cancellation action initiated by a third party.

4. What are the 4 most critical strategies to avoid losing trademark rights in Vietnam?

To avoid losing trademark rights in Vietnam, we would like to emphasize the following solutions for trademark owners' consideration:

- **First**, in order to use the trademark in a timely manner, you must have tools to track the expiration dates of each trademark registration in order to be notified when your brand is at risk of cancellation.

Our recommendation is that you seek the opinions and counsel of a professional IP service provider. Some law firms offering professional IP services have specialized software to manage their clients' IP portfolios.

As a typical example, KENFOX IP & Law Office possesses specialized software for managing the information and data of IP subject matters and IPR holders. Therefore, all information pertaining to trademark registration will be incorporated into the management software, and our IP attorneys will send you a reminder to remind you to take the necessary actions before the deadlines.

- **Second**, you must timely renew your trademark registration. Renewal of trademark registration in Vietnam is inexpensive, but if you fail to pay the renewal fee on time, your trademark will lose its validity. Then, a third party can register your trademark, and you may be at legal risk if you use your expired trademark.
- **Third**, you are obliged to use your registered trademark in commerce. Thus, if you are not prepared to use your registered trademark in Vietnam, **licensing others to use your trademark** is an option to prevent your registered trademark from being deemed non-use in commerce in order to avoid cancellation actions for non-use..



How old are the working ages in Vietnam?

1. How old are the working ages in Vietnam?

In accordance with Clause 1, Article 3, Labor Code 2019, Employee means a person who works for an employer as agreed upon between the two parties. He/she is paid a wage and is managed, directed, and supervised by the employer.

For the working age, Clause 1, Article 3, Labor Code 2019 points out clearly that:



The minimum working age prescribed for an employee is full 15 years, except in the cases prescribed in Section 1, Chapter XI of this Code.

Within that, the minimum working age of occupations and jobs is 15 years old. For some easy occupations and jobs on the list promulgated by the Minister of Labor, Invalids and Social Affairs, employers are allowed to use employees aged from full 13 years to under full 15 years (*In accordance with Clause 3, Article 143, Labor Code 2019*).

Employers may not recruit and employ persons aged under full 13 years, except the jobs in the fields of arts and physical training and sports, provided that such jobs are not harmful to the physical, intellectual, and personality development of these persons, and shall get the consent of specialized agencies in charge of labor under provincial-level People's Committees (*In accordance with Clause 3, Article 145, Labor Code 2019*).

The Labor Code 2019 only limits the minimum working age, not limits the maximum working age. Therefore, if the employee is not healthy enough to do the job, and at the same time, the employer has a demand for using the employee, two parties can sign the agreement to do the job.

2. What should pay attention to when using minor workers?

In accordance with Clause 1, Article 143, Labor Code 2019, the minor worker is a worker under full 18 years old.



Pursuant to Section 1, Chapter XI, Labor Code 2019, the employer must pay attention to the problems in the recruitment process as follows:

*** Agreed jobs:**

- Employees aged from full 15 years to under full 18 years may not perform the jobs or work in the places which are prohibited for employees aged under full 18 years.
- Employees aged from full 13 years to under full 15 years may only perform the easy jobs on the list promulgated by the Minister of Labor, Invalids, and Social Affairs.
- Employees aged under full 13 years may only perform the jobs in the fields of arts and physical training and sports, provided that such jobs are not harmful to physical, intellectual, and personality development.

*** Labor contract:**

- Entering into a labor contract with an employee aged between full 15 years and under full 18 years, with the written consent of his/her at-law representative;
- Entering into a labor contract with an employee aged under full 15 years and his/her at-law representative.

*** Working conditions:**

- Arrange a working time that does not affect the school hours of an employee aged under full 15 years;
- Obtain a health certificate issued by a competent health establishment stating that the health of this person is suitable to his/her job, and organize health checks at least once every 6 months for an employee aged under full 15 years.
- Ensure working conditions and occupational safety and health are suitable to the age of this employee.
- Working time for the employee aged under 15 years old: Must not exceed 4 hours per day and 20 hours per week; no overtime or night work is allowed.
- Working time for the employee aged between full 15 years and under full 18 years: Must not exceed 8 hours per day and 40 hours per week, may work overtime or at night for the occupations and jobs.

3. What should pay attention to when employing elderly workers?

In accordance with Clause 1, Article 148, Labor Code 2019, elderly workers can continue working after the age defined for retirement. [More](#)



LEGAL UPDATES

Finance – Banking

Banks promote the interest rate support program for enterprises

This is the content prescribed in the Official Dispatch No. 6221/NHNN-TD dated September 06, 2022, of the State Bank of Vietnam on the promotion of the interest rate support program in accordance with Decree No. 31/2022/ND-CP.

Accordingly, in order to implement the interest rate support in accordance with the Decree No. 31/2022/ND-CP loans of enterprises, cooperatives and business households, the State Bank of Vietnam shall direct the affiliated units, branches, transaction departments of commercial banks to implement the tasks as follows:

- Check the list of customers who are supported with the interest rate, having the loans from the agreement of lending and disbursement from January 01, 2022, and when the debt rises from May 20, 2022, in order to get the demands for support; inform and guide the customers for dossier and procedure for interest rate support program.
- Check the internal regulations and guidance; no more additional conditions and procedures which are different from the Government's regulations and Circulars of the State Bank of Vietnam in order to restrict the subjects of receiving the interest rate support; do not let the case of right subjects, satisfy all the conditions which are not supported with interest rate.
- Observe and encourage each branch and transaction office in the system to determine that this is a key political task, which needs to be urgently, drastically, and promptly implemented with the highest spirit and responsibility.
- Strengthen the information, communication, and propagation of interest rate support policies, help customers of corporate, cooperatives, and business households to understand clearly and fully policies, and soon catch information and forms to access interest rate support programs at commercial banks.
- Establish a hotline (telephone number, email) at the Head Office of commercial banks in order to get feedback from customers and timely process this feedback so that customers cannot reflect the state agencies and news agencies for not being able to approach the policies from the commercial banks.
- Proactively and promptly handle difficulties and problems in the system and promptly report to the State Bank of Vietnam, Ministries, and sectors on difficulties and problems over their competence; proposals, and recommendations in the course of implementation.



- Continue to effectively implement the tasks prescribed in Directive No. 03/CT-NHNN dated August 16, 2022, on the implementation of the interest rate support program of 2% from the state budget of VND 40,000 billion in accordance with the Decree No. 31/2022/ND-CP of the Government and the Circular No. 03/2022/TT-NHNN of the State Bank of Vietnam.

Amend the regulations on special loans to the credit institutions

On October 28, 2020, the State Bank of Vietnam issues **Circular No. 13/2022/TT-NHNN** on amending and supplementing a number of articles of Circular No. 08/2021/TT-NHNN dated July 06, 2021, of the Governor of the State Bank of Vietnam on grant of special loans to credit institutions placed under special control.

The new Circular includes 04 Articles, and 3 Appendices on amending, supplementing a number of points, clauses, and articles, and replacing a number of appendices of Circular No. 08/2022/TT-NHNN. In particulars:

For the value of collateral, the collateral conversion ratio is as follows: The valuable papers specified at Point a Clause 1 of this Article, TL shall be equal to the minimum ratio of the value of valuable papers and the loan amount secured by the pledge of valuable papers granted by the State Bank to the credit institution in accordance with regulations in each period; With regard to the types of collateral, the collateral conversion ratio shall be equal to 120% (in previous regulations: 170%).

Amend and supplement the cases where any type of collateral does not meet the requirements resulting in the total conversion value of eligible collateral being smaller than the outstanding principal of the special loan, the borrower shall be required that the total conversion value of eligible collateral shall not be smaller than the outstanding principal of the special loan within 10 working days.

Supplement the cases where the borrower has used up all the collateral, the borrower may use the following assets as collateral for the special loan, special loan extension, or special loans with outstanding debts:

- Mortgage of rights to claim credit extended by the borrower to its clients (except for credit institutions);
- Mortgage of property rights being interest receivable from the credit extended by the borrower to its clients (except for credit institutions).

Circular No. 13/2022/TT-NHNN takes effect on October 28, 2022.



Industry

Time limit for the license for industrial chemical production and business

On October 27, 2022, the Ministry of Industry and Trade issues Circular No. 17/2022/TT-BCT on amending and supplementing a number of Articles of the Circular No. 32/2017/TT-BCT specifying and providing guidelines for implementation of certain articles of the law on chemicals and the Government's Decree No. 113/2017/ND-CP guiding the Law on Chemicals.

Circular No. 17/2022/TT-BCT supplements the time limit of licenses for the production of, or trading in industrial chemicals restricted from production and trading as follows:

The new license has an effective time of 05 years from the issuing date. For persistent organic pollutants (POP), the time limit of the license is 05 years from the issuing date or equals the expiration of the time limit for POP exemption registration prescribed in Decree No. 08/2022/ND-CP.

The time limit for re-granted and adjusted licenses is the remained time of the issued licenses.

Besides, the Circular amends the regulations on the report on chemical operations of organizations, and individuals in the production of, or trading in the industrial chemical industry.

From February 15 of every year, organizations, and individuals in the production of, or trading in the industrial chemical industry shall take responsibility for reporting the chemical operations of the previous year to the Department of Chemical, Departments of Industry and Trade in provinces and cities where the head offices, production, and business plants are located in the Vietnam National Chemical Database System (<https://chemicaldata.gov.vn/cms.xc>)

Organizations, and individuals in the production of, or trading in the industrial chemical industry shall take responsibility to report when having accidents in the chemical activities or termination of operation of chemical activities to the Departments of Chemical, Departments of Industry and Trade in provinces and central-affiliated cities where the head offices, production and business plants.

Before March 01 of every year, the Departments of Industry and Trade of provinces and central-affiliated cities shall take responsibility to report the management of chemical activities to the Department of Chemical via the Vietnam National Chemical Database System.

This Circular takes effect on December 22, 2022.



Tax – Fee – Charge

Shall amend the regulations on tax and notary for real estate

On October 14, 2022, the General Department of Taxation issues Decision No. 1606/QĐ-TCT issuing the Plan detailing the implementation of solutions in the tax administration prescribed in the Scheme on strengthening the tax administration and anti-loss of revenues on lands and real estate.

Accordingly, in order to build, and improve the legal basis on lands, the Plan prescribes the tasks as follows:

- In 2022:

- Amend and supplement the guidelines on applying the land price coefficient to the enterprise income tax from real estate transfer activities prescribed in Circular No. 78/2014/TT-BTC.
- Amend and supplement the guidelines on applying the land price coefficient to the personal income tax from real estate transfer activities prescribed in the Decrees guiding the personal income tax.

Amend the regulations on tax and notary for real estate (Illustration)

- Before 2025:

- Amend and supplement the guidelines on applying the land price to the registration fee price from real estate transfer activities prescribed in Decrees guiding the registration fee.
- Improve the management regime on suitable land price, separate the regulations on land price for compensation, resettlement for the land price for defining financial responsibilities, issuing the criteria and sanctions to build land price list compilation which is suitable with the market principles in localities.
- Complete regulations on payment regulations via banks for real estate transfer activities; regulations on real estate trading by real estate trading floor.
- Amend the Civil Law and Law on Notarization with the regulations relating to the authorizations to avoid taking advantage of tax evasion from real estate transfer.
- Regulations on organization responsibility on notary practice on civil transactions on real estate transfer.
- Research on the higher tax rate in transferring in the case of real estate speculation and ownership in a short time...



Criteria for classifying the tax liabilities for the exported and imported goods

On October 24, 2022, the General Department of Vietnam Customs issues Decision No. 2317/QĐ-TCHQ issuing the Procedure for the management of tax liabilities and other incomes for exported and imported goods.

Accordingly, Article 4 of this Decision prescribes the criteria for classifying the tax liabilities as follows:

- Collectible debts: Include all the arising debts under the criteria as follows:

- Overdue tax liability of less than 90 days.
- Overdue tax liability of more than 90 days.
- Owned administrative fines Payable debt is over 10 days from the date of receiving the sanctioning decision for fine or over the implementation time in the sanctioning decision.
- Owned fines for late tax payments.
- Owned fines for administrative violations.
- Owned custom fees; fees for goods in transit, transit transports.

- Bad debts include:

- Debts of the taxpayers who are recognized by the law for being missed, die or losing civil act capacities and have not yet had proposals for debt-ridden or dossier for writing off debt.
- Debts of the taxpayers who are in the process of dissolution.
- Debts of the taxpayers who are in the process of making bankruptcy procedures.
- Debts of the taxpayers who are in the time of investigation and criminal prosecution.
- Debts of the importers of 2-wheel motorcycle components in accordance with the localization rate in 2001, and 2002.
- Debts of the taxpayers who have not yet operated in the registered address...

- Tax arrears that are frozen:

- Tax arrears are frozen in accordance with Article 83, Law on Tax administration.
- Tax arrears are frozen in accordance with Resolution No. 94/2019/QH14 for taxpayers who are no longer able to pay into the state budget...

LIST OF UPDATED LEGAL NORMATIVE DOCUMENTS

Investment		
1	Circular No. 15/2022/TT-BKHDT dated June 30, 2022 of the Ministry of Planning and Investment providing in detail the making of bidding dossiers for bidding packages on construction and installation	Issuing date: 30/06/2022 Effective date: 25/08/2022 Effect status: In force
2	Circular No. 12/2022/TT-BKHDT dated June 30, 2022 of the Ministry of Planning and Investment providing in detail the making of bidding dossiers for bidding packages on procurement	Issuing date: 30/06/2022 Effective date: 25/08/2022 Effect status: In force
Finance – Banking		
3	Circular No. 13/2022/TT-NHNN dated October 28, 2022 of the State Bank of Vietnam amending and supplementing a number of articles of the Circular No. 08/2021/TT-NHNN dated July 06, 2021 of the Governor of the State Bank of Vietnam on grant of special loans to credit institutions placed under special control	Issuing date: 28/10/2022 Effective date: 28/10/2022 Effect status: In force
Industry		
4	Circular No. 17/2022/TT-BCT dated October 27, 2022 of the Ministry of Industry and Trade amending and supplementing a number of articles of the Minister of Industry and Trade’s Circular No. 32/2017/TT-BCT detailing and guiding the implementation of a number of articles of the Law on Chemicals	Issuing date: 27/10/2022 Effective date: 22/12/2022 Effect status: In force
Agricultural - Forestry		
5	Decision No. 801/QĐ-TTg dated July 07, 2022 of the Prime Minister approving the Program on conservation and development of Vietnam’s craft villages in the 2021-2030 period	Issuing date: 07/07/2022 Effective date: 07/07/2022 Effect status: In force



Thank you for your reading!

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