



LEGAL NEWS

Intellectual Property

10 new trademark provisions in Vietnam's 2022



Intellectual property is regarded as a company's most important and valuable asset. In particular, it cannot be denied that a trademark is the industrial property object with the highest commercial exploitation value. Numerous amendments and additions have been made to Vietnam's 2022 Intellectual

Property Law in order to improve the effectiveness of the intellectual property protection mechanism and fulfill Vietnam's legal obligations under International intellectual property agreements to which Vietnam is a signatory, including CPTPP, EVFTA, and RCEP...

These amendments and supplements are akin to a complete overhaul of Vietnam's intellectual property law, helping to address legal loopholes that have persisted for many years since the 2005 IP law was promulgated and amended in 2009 and 2019. The following article gives an analysis and evaluation of the revised trademark regulations in the 2022 IP Law, assisting you in comprehending the applicable legislation to determine the appropriate actions, and the impact on your brand protection strategy in Vietnam.

1. Bad faith (Malicious) – a legal basis for trademark opposition or invalidation in Vietnam

"Bad faith" is a legal term that was added to Articles 96 and 117 of Vietnam's amended IP Law in 2022 in order to address the following issues:





- To close legal loopholes that had been identified from the "first-to-file" principle – a mechanism that grants protection titles to the those earliest filed trademark applications, including those made in bad faith and
- Effectively curbing trademark squatting – a growing trend in emerging economies like Vietnam. With the provision of "bad faith," a legitimate trademark owner has an additional important legal basis to challenge the validity of a trademark filed or registered by a third party in bad faith (with malicious intent) in order to regain its trademark rights under trademark opposition or invalidation proceedings.

The elements, criteria, and requirements that must be met to determine whether a trademark has been filed/registered with "bad faith" (malicious intent) will be detailed in legal documents such as decrees and/or guiding circulars of Vietnam. In fact, "bad faith" is a key legal basis in the laws of many jurisdictions throughout the world to prevent the abuse of the "first-to-file" principle for trademark squatting or trademark appropriation, intellectual property theft, particularly with respect to well-known and recognized trademarks.

An applicant is presumed to have filed a trademark application in bad faith/on a dishonest basis under the IP laws of numerous jurisdictions throughout the world under the following circumstances:

- Copying, imitating or translating another party's well-known trademark;
- Registration in bad faith of a trademark that has been utilized by another party and exerts certain influence;
- Registration of a trademark which violates the previous rights of another party;
- The organization or individual acting on behalf of the trademark proprietor files a trademark application in his or her own name with no authorization;
- Any natural person, entity or other organization wishing to gain the exclusive right to use the mark for its goods or services in the process of production and business activities needs to file a trademark application with the trademark office. An application for a trademark registration in bad faith filed with the intention of not being used is not allowed for protection.

Previously, Vietnam's IP legislation did not identify "bad faith" as a legal basis to refusing a trademark application or invalidating a registered trademark. Consequently, there is no ground for handling trademark applications in bad faith (e.g., abuse of reputation, unfair competition, etc.). Due to the lack of specific regulations on "bad faith", Vietnam's trademark opposition and/or invalidation rulings have become dubious.



In most circumstances, "bad faith" evidence is only accepted when there is clear proof that the applicant was aware of the legitimate owner's trademark through a business relationship (such as sales/purchase contracts, agency contracts, etc.). The proliferation of trademark squatting for illicit profit has been fueled by the absence of legislation against bad faith of the applicant. A person resident in Ho Chi Minh City, for instance, filed roughly 200 trademark applications, the majority of which were for well-known trademarks of foreign trademark owners, and many of the applied-for trademarks were granted protection. Obviously, the "first-to-file" principle has been abused negatively by third parties to register for trademark appropriation of the legitimate trademark owners, particularly for well-known brands. As a result, numerous trademark owners either lost their trademarks, were forced to purchase back their own brands, or were compelled to abandon the Vietnamese market.

2. Suspension of trademark examination in Vietnam

Suspension of trademark examination is a new regulation added for the first time in Article 117.3 of the 2022 IP Law. Accordingly, a trademark examination will be suspended if it falls into one of the three following cases:

- First, the applicant requests suspension of the application examination and invalidation of the cited marks because the applied-for mark is deemed to be similar to the cited marks under Article 74.2e.
- Second, the applicant submits a request to suspend the application examination and requests invalidation of the cited mark(s) because the applied-for mark is deemed to be similar to the cited mark(s) that have expired for less than three years in pursuant to Article 74.2h.
- Third, the applicant filed a lawsuit over the right to register an industrial property object or a trademark registered in bad faith.

Clause 3 of Article 117 of Vietnam's 2022 IP Law appears to be a closed regulation, as the suspension of trademark application examination added in Article 117.3 of the 2022 IP Law is limited to only three cases, whereas in practice there may be numerous cases in which the examination of a trademark application should be suspended.

Assume the following case: A legitimate trademark owner files a trademark application and later discovers that a third party has filed a trademark application identical to his mark, but with an earlier filing date, and then files an opposition against such a trademark with IP VIETNAM (but does not file a lawsuit in court). [More](#)



- Under the registration rights of an individual who is a Vietnamese citizen and permanently resides in Vietnam or of an organization established under Vietnamese law and
- Being applied for a patent application in Vietnam.

Clause 12a Article 4, Article 89a, Clause 3 Article 108, Point đ and Point e Clause 2 Article 109 are supplemented to the amended IP Law to explain the concept of “confidential invention” and prescribe the related procedures to create a basis for the establishment and enforcement of regulations on confidential invention and security controls for confidential invention.

2. Entitlement to registration of inventions in Vietnam

The legal provisions on the right to register IP subject matters which are created by using the state budget are mutually inconsistent and not entirely compatible with the provisions of the Law on Management and Use of Public Property, resulting in a lack of a real incentive for IP right holders in the exploitation and commercialization of IP subject matters.

To remedy this, Article 86a has been added, which stipulates that the right to register an invention which is the outcome of a state-funded scientific and technological task ***belongs to organization in charge of science and technology tasks and this organization will become the owner of the invention***, with the exception of inventions, industrial designs, layout designs in the field of national defense and security, which will be registered and owned by the State.

In addition, the 2022 IP Law has supplemented Article 133a, which establishes cases where the State assigns the right to register inventions as a result of state-funded scientific and technological tasks to other organizations and individuals, and cases where the State allows other organizations and individuals to use the invention, without the consent of the holder of the exclusive right. Besides, the 2022 IP Law also specifies the obligations that the owner must pay the inventor, the obligation to pay compensation when using the invention, and obligations of the state organization for inventions resulting from state-funded scientific and technological tasks.

Another important addition to the 2022 IP law is that organizations and individuals who are assigned to manage genetic resources and provide genetic resources and traditional knowledge about genetic resources under contracts for accessing genetic resources and sharing benefits, unless otherwise agreed between parties, shall have the right to register an invention.

[More](#)



Land - Housing

Conditions, procedure for capital contribution by land use rights

1. Conditions for contributing land use rights as capital

Clause 1, Article 188, Land Law 2013 prescribes that land users may exercise the rights to contribute land use rights as the capital when meeting the following conditions:

- Having the certificate, except the case prescribed in Clause 3, Article 186 and the case of receiving inheritance prescribed in Clause 1, Article 168 of Land Law 2013;
- The land is dispute-free;
- The land use rights are not distrained to secure judgment enforcement;
- Within the land use term.

Besides, it is necessary to note that the capital contribution must update the changes and modifications in the cadastral dossier and land database in accordance with law provisions on land.

2. Conditions for receiving the transfer contribution as the capital of agricultural land use rights

Besides the conditions for contributing land use rights as capital for the land users, in the case of receiving the transfer or contribution as the capital of, or leasing, agricultural land use rights to carry out investment projects on non-agricultural production and business must satisfy the conditions prescribed in Article 193, Land Law 2013.

Economic organizations, households, and individuals may receive the transfer or contribution as the capital of, or lease, agricultural land use rights to carry out investment projects on non-agricultural production and business when fully meeting the following conditions:

- Economic organizations may receive the transfer or contribution as the capital of, or lease, agricultural land use rights to carry out investment projects upon receiving written approval from a competent state agency;
- The use purpose for the land area of which land use rights are acquired, contributed as capital or leased must be consistent with the land use master plan and plans approved by competent state agencies;
- Land currently used for wet rice cultivation, shall pay a certain amount of money under the Government's regulations for the State to supplement the lost area of wet rice cultivation land or improve efficiency in using land for rice cultivation.



3. Dossier, procedure for updating the changes and modifications in capital contribution

3.1. Required dossiers

** Number of dossiers: 01 set*

** Dossier's components:*

Pursuant to Clause 1, Article 2, Circular No. 09/2021/TT-BTNMT, the dossier for capital contribution includes documents as follows:

- An application form for registration of change to land and land-attached assets, made according to the Form No. 09/DK

With regard to households and individuals receiving transfer of agricultural land use rights, land area over which land use rights are transferred must be specified at Point 4, Section I of the Form No. 09/DK (Reasons for change) as follows: “Receive ... (specify form of land use rights transfer) ... m² (specify land area over which land use rights are transferred); the total agricultural land area currently in use due to land use rights transfer and after land use rights transfer is registered from July 01, 2007 to July 01, 2014 is ... m² and from July 01, 2014 until now is ... m² (specify land area over which land use rights are transferred by type of land and province/central-affiliated city)”;

Agreement or document on exchange, transfer, lease, sublease, inheritance or donation of land use rights or ownership of land-attached assets.

- The original copy of the issued certificate;

- Written approval of competent agencies for the economic organization receiving the transfer of or capital contribution by or lease of agricultural land use rights to carry out an investment project;

3.2. Procedure for updating the changes and modifications in the capital contribution by land

Step 1: Submit the dossier

The land user submits the dossier at the land registration office; or at the single-door section for the localities having a single-window mechanism to receive and return the dossier. [More](#)



Tax – Fee – Charge

What is the personal income tax? Who must pay the personal income tax?

1. What is the personal income tax?

Although personal income tax is a very popular type of tax and there are many legal documents guiding the adjustment of this type of tax. However, this document has no explanation of the personal income tax.

Pursuant to the Law on Tax administration 20129, personal income tax can be prescribed as follows:



Personal income tax means an amount compulsorily payable to the state budget by an organization, a household, a business household, or an individual in accordance with the tax laws.

Besides, the personal income tax is applicable to business households and individuals that generate a turnover of over VND 100 million from production and business activities in a calendar year.

2. Subjects of the personal income tax

Pursuant to Article 2, Law on Personal Income Tax 2007, personal income taxpayers include residents who earn taxable incomes inside and outside the Vietnamese territory and non-residents who earn taxable incomes inside the Vietnamese territory.

- Resident means a person who satisfies one of the following conditions:

+ Being present in Vietnam for 183 days or more in a calendar year or 12 consecutive months counting from the first date of their presence in Vietnam;

+ Having a place of habitual residence in Vietnam, which is a registered place of permanent residence or a rented house for dwelling in Vietnam under a term rent contract.

- Non-resident means a person who does not satisfy any of the conditions

3. Who must pay the personal income tax?



Not all must pay the personal income tax in accordance with law provisions of the Law on Personal Income Tax, for both residents and non-residents.

Or speaking in other ways, individuals who are entitled to the tax must pay personal income tax, except for incomes from real estate and business (different conditions for these types of incomes).

(1) Incomes from salaries and wages

Reduction for the taxpayer without dependent, which is VND 11 million/month (VND 132 million/year);

Note:

- Above incomes are extracted from compulsory insurance premiums (including premiums of social insurance, health insurance, unemployment insurance, and occupational liability insurance for occupations subject to compulsory insurance); charity, humanitarian or study promotion donations.

-Reduction for each dependent of the taxpayer, which is VND 4.4 million/month for the income from salaries and wages is over VND 15.4 million.

(2) Incomes from business

In accordance with Clause 2, Article 4, Circular No. 40/2021/TT-BTC prescribes that business households and business individuals that generate a turnover of over VND 100 million from production and business activities in a calendar year must pay PIT and VAT

Note: For business households and business individuals that carry out business activities in groups, the turnover level of up to VND 100 million per year for identifying an individual exempt from VAT and PIT shall be determined for the sole (1) representative of the group of individuals or households in the tax year.

(3) Incomes from transfer of real estate

Incomes from the transfer of real estate include Incomes from the transfer of rights to use land and assets attached to land; Incomes from the transfer of right to own or use residential houses; incomes from the transfer of right to lease land or water surface; Other incomes earned from transfer of a real estate in any form.

Accordingly, the payable tax for taxpayers is 2%.

(4) Incomes from won prizes

Lottery winnings; Sales promotion winnings; Betting winnings; Winnings in prized games and contests and other forms of winning. [More](#)



LEGAL UPDATES

Export - Import

Motivate enterprises to directly join foreign distribution networks

On November 14, 2022, the Prime Minister issues Decision No. 1415/QĐ-TTg on approving the Scheme “Motivate enterprises to directly join in the foreign distribution network to 2030”.

Accordingly, the Scheme has direction on the export and import market, ensures stable development in the long term; methodical production organization; attracts domestic and foreign investment sources which bring high value to Vietnam’s exported goods.

The specific targets are:

- Vietnam’s goods are included in the distribution channels of all the countries under the Free Trade Agreement (FTA) with Vietnam;
- Support market information for 20,000 business turns;
- Support 5,000 business turns to get the capacity to attend in cross-border e-commerce;
- Organize 10,000 turns of connection and exchange with the foreign distribution network;
- Support over 10,000 directly imported products to the foreign distribution network;

In order to implement above objectives, the Scheme sets up a number of tasks and solutions as follows: Support enterprises on market information; support enterprises in adapting, and transferring the production to satisfy the stable consumption trend; support making and developing brands...

At the same time, encourage enterprises to transfer energy, and save energy in the production process; supports enterprises to register the trademark in the international market, and corporate with the corporation which helps to broadcast, and enhance the position and image of Vietnam...



Industry

The Government reorganizes the Ministry of Health

On November 15, 2022, the Government issues Decree No. 95/2022/ND-CP defining the functions, tasks, powers, and organizational structure of the Ministry of Health.

The Ministry of Health is a governmental agency, performing the function of state management: Medical examination and treatment, functional rehabilitation; medical assessment, forensic examination, and forensic psychiatry; traditional medicine and pharmacy; reproductive health; medical equipment and facilities; pharmacy and cosmetics; food safety; health insurance...

Decree No. 95/2022 changes the organizational structure of the Ministry of Health from 23 units to 21 units.

In particulars, Decree 95 still keeps 16 units performing the function of state management, including:

- The Health Insurance Department; The Maternal and Child Health Department; The Organization and Personnel Department; The Legal Affairs Department; The International Cooperation Department;
- The Ministry's Office; The Ministry Inspectorate.
- The Administration of Science, Technology, and Training; The General Department of Preventive Medicine; The Vietnam Administration of HIV/AIDS Control; The Health Environment Management Agency; The Medical Services Administration; The Traditional Medicine Administration; The Drug Administration of Vietnam; The Vietnam Food Administration.

At the same time, keep the Health Strategy and Policy Institute and the Health and Life newspaper as before. Re-organize a number of units as follows: The General Department of Population is changed to the Department of Population.

Maintain the Communication, Emulation, and Commendation Department. The Medical Equipment and Health Works Department, The Medicine and Pharmacy journal, and The Information Technology Department. Establish the Department of Infrastructure Organization and Medical Equipment and the Center of National Medical Information.

LIST OF UPDATED LEGAL NORMATIVE DOCUMENTS

Construction		
1	Resolution No. 148/NQ-CP dated November 11, 2022 of the Government promulgating the Government's Action Program for materialization of the Politburo's Resolution No. 06-NQ/TW of January 24, 2022 on planning, construction, management and sustainable development of Vietnamese urban centers up to 2030, the vision towards 2045	Issuing date: 11/11/2022 Effective date: 11/11/2022 Effect status: In force
Commerce – Advertising		
3	Circular No. 30/2022/TT-BCT dated November 04, 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. 57/2018/TT-BCT dated December 26, 2018, detailing a number of articles of Decrees related to tobacco business	Issuing date: 04/11/2022 Effective date: 20/12/2022 Effect status: Not yet applied
Electricity		
4	Circular No. 31/2022/TT-BCT dated November 08, 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. 57/2014/TT-BTC dated December 19, 2014, prescribing the method and order for formulation and promulgation of the electricity generation price bracket and the Minister of Industry and Trade's Circular No. 57/2020/TT-BCT dated December 31, 2020, on providing method to determine electricity generation prices and power purchase agreement	Issuing date: 08/11/2022 Effective date: 28/12/2022 Effect status: Not yet applied



Thank you for your reading!

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