

GOVERNMENT

SOCIALIST REPUBLIC OF VIETNAM

Independence - Freedom - Happiness

No. 54-2000-ND-CP

Hanoi, 3 October 2000

**DECREE
ON
PROTECTION OF
INDUSTRIAL PROPERTY RIGHTS
WITH RESPECT TO TRADE SECRETS,
GEOGRAPHICAL INSTRUCTIONS AND
TRADE NAMES AND PROTECTION OF
RIGHTS TO FIGHT AGAINST UNFAIR
COMPETITION RELATING TO
INDUSTRIAL PROPERTY**

The Government

Pursuant to the *Law on the Organization of the Government* dated 30 September 1992;

Pursuant to the *Civil Code* dated 28 October 1995;

Pursuant to the Resolution of Legislature IX of the National Assembly at its 8th Session on the implementation of the *Civil Code*;

Pursuant to the *Commercial Law* dated 10 May 1997;

To take part in strengthening full and effective protection of industrial property rights, protection of truthful business activities and protection of legal interests of consumers;

On the proposal of the Minister of Science, Technology and Environment;

Decrees:

CHAPTER I

General Provisions

Article 1 *Governing scope*

This Decree makes detailed provisions for protection of industrial property rights with respect to a number of other objects stipulated in article 780 of the *Civil Code* dated 28 October 1995, including trade secrets, geographical instructions and trade names, and for protection of rights to fight against unfair competition relating to industrial property.

Article 2 *Applicability*

1. This Decree shall apply to foreign and domestic organizations and individuals engaged in business activities within the territory of Vietnam.
2. This Decree shall also apply to foreign organizations and individuals in the following circumstances even if they do not engage in business activities within the territory of Vietnam:
 - (a) Any organization or individual having industrial property rights which are protected in accordance with the Paris Convention or the provisions of international treaties on mutual recognition and protection of industrial property to which Vietnam is a signatory or participant;
 - (b) Any organization or individual of a country or territory which has jointly accepted the principle of reciprocity with Vietnam in protection of industrial property for their organizations and individuals.

Article 3 *Application of legal instruments*

The protection of trade secrets, geographical instructions and trade names and the protection of rights to fight against unfair competition relating to industrial property shall comply with the provisions of this Decree and other relevant legal instruments of Vietnam.

Where an international treaty to which Vietnam is a signatory or participant contains provisions that differ from this Decree, the international treaty shall prevail.

Article 2 *Definitions and terms*

In this Decree, the following terms shall have the meanings ascribed to them hereunder:

1. *Trade instructions* means symbols or information which provide trade guidelines of goods or services, including trademarks, trade names, business logos, trade slogans, geographical instructions, designs of containers of goods, labels of goods, and so forth;
2. *Use of trade instructions* means act of applying trade instructions on goods, containers of goods, service facilities, trade documentation, advertising materials; of selling or advertising for sale, of storing for sale or of importing goods on which trade instructions are affixed;
3. *Investment achievement* means knowledge or information in the form of technology, inventions, utility solutions, technical know-how, trade secrets, and so forth, derived from financial or intellectual investment activities;
4. *Use of investment achievement* means act of using knowledge or information referred to in clause 3 of this article in order to manufacture products, to provide services or trade goods; of selling, advertising for sale, storing for sale or importing goods which were manufactured using such knowledge or information.

Article 5 *Conditions for creation of industrial property rights with respect to trade secrets, geographical instructions and trade names*

Industrial property rights with respect to trade secrets, geographical instructions and trade names shall be automatically created upon satisfaction of all of the conditions stipulated in articles 6, 10 and 14 of this Decree without registration with the authorized State body.

CHAPTER II**Industrial Property Rights With Respect to Trade Secrets,
Geographical Instructions and Trade Names****Article 6** *Trade secrets*

1. Protected trade secrets shall be investment achievements in the form of information that satisfies all of the following conditions:
 - (a) Information is not common knowledge;

- (b) Information is capable of application to trading, and when any entity holding such information uses such information, it shall gain an advantage over entities which do not hold or use such information;
 - (c) Information the confidentiality of which the owner maintains by necessary procedures in order that such information is not disclosed and such information is not easily accessible.
2. Other confidential information that does not relate to business, such as secrets in relation to personal status, State administration, national defence and security, shall not be protected as trade secrets.

Article 7 *Owners of industrial property rights with respect to trade secrets*

1. An owner of industrial property rights with respect to trade secrets shall be any organization or individual having invested in the creation or acquisition of investment achievements being trade secrets.
2. Where an employee or a party performing a contract creates or acquires trade secrets during the performance of assigned work, such trade secrets shall belong to the employer or the party assigning the work, unless otherwise agreed by the parties concerned.

Article 8 *Industrial property contents and duration of protection of industrial property rights with respect to trade secrets*

1. An owner of industrial property rights with respect to trade secrets shall have the right to possess, the right to use and the right of disposal of the trade secrets in accordance with law.
2. The rights of an owner of industrial property rights with respect to trade secrets shall be protected as long as the trade secrets satisfy all of the conditions stipulated in article 6.1 of this Decree.

Article 9 *Transfer of industrial property rights with respect to trade secrets*

1. Industrial property rights with respect to trade secrets may be transferred or bequeathed in accordance with law.
2. Industrial property rights with respect to trade secrets shall be transferred on the basis of a written contract in which the transferor shall specify the trade secrets transferred. Where the parties agree only to transfer the right to use the trade secrets (licensing of trade secrets), the transferee shall be obliged to take necessary measures to maintain confidentiality at the request of the transferor.

Article 10 *Geographical instructions*

1. Protected geographical instructions means information on the geographical origin of goods which satisfies all of the following conditions:
 - (a) Information is in the form of a word, symbol, logo or image used for the purpose of indicating a country or territory or locality of a country;
 - (b) Information is applied on goods, containers of goods or transaction documentation relating to purchase or sale of goods in order to indicate that such goods have the origin from a country, territory or locality where the typical quality, prestige, good reputation or other characteristics of such goods have been mainly created by such geographical origin.
2. Where a geographical instruction is an appellation of origin of goods, the protection shall be carried out in accordance with the applicable laws on appellations of origin of goods.
3. Information that has become the common name of goods and is no longer capable of providing instructions as to geographical origin shall not be protected as geographical instructions in accordance with this Decree.

Article 11 *Entities entitled to use geographical instructions*

Entities entitled to use geographical instructions shall be all organizations and individuals engaged in production of goods bearing such instructions within the territory of the relevant country, territory or locality provided that the goods produced by such entities must ensure the prestige or good reputation attributable to such goods.

Article 12 *Industrial property rights with respect to geographical instructions*

1. Entities having the right to use geographical instructions shall be entitled to apply such instructions on goods, containers of goods or documents for the purpose of purchasing, selling and advertising relevant goods.
2. The right to use geographical instructions may not be transferred.

Article 13 *Duration of protection of industrial property rights with respect to geographical instructions*

The rights to use geographical instructions shall be protected as long as all of the conditions for geographical instructions as stipulated in article 10.1 of this Decree and the conditions for production activities of entities entitled to use such geographical instruction as stipulated in article 11 of this Decree are fully satisfied.

Article 14 *Trade names*

1. A protected trade name is the name of an organization or individual that is used for business activities and satisfies all of the following conditions:
 - (a) The name is a group of alphabetical letters to which numerical figures may be attached and which can be pronounced;
 - (b) The name distinguishes the business entity bearing such name from other business entities in the same business sector.
2. The following names shall not be protected as trade names:
 - (a) Names of administrative bodies, political organizations, socio-political organizations, social organizations, socio-professional organizations or entities which do not relate to business activities;
 - (b) Names which are for the purpose of implementing functions of a trade name, but do not distinguish one business entity from other business establishments in the same sector;
 - (c) Trade names which cause confusion with any trade name of another entity which has been previously used in the same locality and in the same business sector or confusion with any trademark of another entity which has been protected prior to the commencement of the use of such trade name.

Article 15 *Owners of industrial property rights with respect to trade names*

The owner of industrial property rights with respect to a trade name shall be the organization or individual conducting business activities in such trade name.

Article 16 *Industrial property rights with respect to trade names*

1. The owner of industrial property rights with respect to a trade name shall have the right to use the trade name for business purposes, such as conducting business activities in such trade name or applying such trade name on transaction documentation, sign boards, products, goods, containers of goods and advertising materials.
2. The owner of industrial property rights with respect to a trade name shall have the right to transfer the trade name on the basis of a contract or bequeath such trade name to another entity provided that the trade name shall be transferred together with the whole business establishment and business activities in such trade name.

Article 17 *Duration of protection of industrial property rights with respect to trade names*

Industrial property rights with respect to a trade name shall be protected as long as the owner still maintains business activities in such trade name.

CHAPTER III

Protection of Industrial Property Rights With Respect to Trade Secrets, Geographical Instructions and Trade Names

Article 18 *Infringement of industrial property rights with respect to trade secrets*

Infringement of industrial property rights with respect to trade secrets shall comprise the following:

1. To access or collect information being trade secrets by way of non-compliance with measures for protection of confidentiality taken by the legal owner of such trade secrets;
2. To disclose or use information being trade secrets without the permission of the owner of such trade secrets;
3. To breach a contract for maintenance of confidentiality or to deceive or take advantage of the confidence of an entity which is obliged to maintain confidentiality or to take advantage of confidence to access, collect or disclose information being trade secrets of the owners of such trade secrets;
4. To access or collect information being trade secrets of another entity which is provided by such entity in accordance with application procedures for a licence relating to business or a licence for circulation of products, in particular, pharmaceutical products and agrochemical products, or by way of non-compliance with measures for protection of confidentiality taken by administrative bodies in the use of such information for business purposes, including for purpose of application for licences relating to business or circulation of products.

Article 19 *Infringement of industrial property rights with respect to geographical instructions*

Infringement of industrial property rights with respect to geographical instructions shall comprise the following:

1. To use any trade instructions which are identical or similar to any protected geographical instructions in order to mislead as to the geographical origin of goods;
2. To use any trade instructions which are identical or similar to any protected geographical instructions for identical, similar or relevant goods which do not ensure the prestige and good reputation of goods bearing such geographical instructions, including cases where they are used in conjunction with such words as "method of", "sort of", "type of", "adapted from" or similar words;
3. To use any geographical instructions in relation to wine or spirits to apply to wine or spirits the origin of which is not the origin referred to in the instructions, including cases where the actual origin of products has been clearly stated, where the geographical instructions are translated into other languages or used in conjunction with such words as "method of", "sort of", "type of", "adapted from" or similar words.

Article 20 *Infringement of industrial property rights with respect to trade names*

Infringement of industrial property rights with respect to a trade name is any act of using any trade instructions which are identical or similar to the trade name of another entity used for identical or similar products or services thereby causing confusion with the business entity or business establishment conducting business activities in such trade name.

Article 21 *Right to make requests for dealing with infringement of industrial property rights with respect to trade secrets, geographical instructions and trade names*

1. Owners of industrial property rights with respect to trade secrets or trade names and entities with the right to use geographical instructions shall be entitled to request the authorized State body to compel any entity which has infringed the rights of the owners to cease such infringement and to compensate for any damage.
2. Where any infringement of industrial property rights with respect to a trade name which has occurred or any incorrect information on a trade name or incorrect geographical instruction which has been published causes confusion for consumers, the consumers shall be entitled to request the authorized State body to compel any entity which has carried out the

above act to cease such act and compensate the consumers for any damage.

3. The time-limit for exercise of the right to made a request for dealing with infringements stipulated in clauses 1 and 2 of this article shall be one year from the date on which the infringement is identified, but shall not exceed three years from the date on which the infringement occurred.

Article 22 *Burden of proof*

1. When exercising the right to make a request for dealing with infringements stipulated in article 21.1 of this Decree, owners of industrial property rights with respect to trade secrets or trade names and entities with the right to use geographical instructions shall be obliged to prove the conditions for creation of rights and the scope of their rights; to specify the name and address of the entity which has committed the infringement; to provide evidence for the scope and seriousness of such infringement.

In the case of a request for compensation for any damage, owners of industrial property rights with respect to trade secrets or trade names and entities with the right to use geographical instructions shall prove the damage caused by the entity which has committed the infringement.

2. Where the entity making a request for dealing with infringements is a consumer, it shall specify the name and address of the entity that has committed the infringement and provide evidence of the infringement and prove damage (if any).

Article 23 *Order and procedures for dealing with infringements of industrial property rights with respect to trade secrets, geographical instructions and trade names*

Infringement of industrial property rights with respect to trade secrets, geographical instructions and trade names shall be dealt with in accordance with the order and procedures for dealing with infringement of other industrial property rights.

CHAPTER IV

**Protection of Rights to Fight Against Unfair Competition
Relating to Industrial Property****Article 24** *Unfair competition relating to industrial property*

Unfair competition relating to industrial property means:

1. Using trade instructions to mislead awareness of and information on the business entity, business establishment, business operation, goods or services aimed at:
 - (a) Taking advantage of the prestige or good reputation of another production or business entity during its own business or production;
 - (b) Causing any damage to the prestige or good reputation of another production or business entity during its own business or production;
 - (c) Confusing consumers as to the origin, method of manufacture, nature, quality or other specifications of goods or services; terms of supply of goods or provision of services, and so forth, when they are aware of, or choose, goods, services or business activities.
2. Appropriating or using any investment achievement of another entity without the permission of such entity.

Article 25 *Rights to fight against unfair competition relating to industrial property*

1. Any organization or individual suffering or likely to suffer any damage caused by unfair competition in relation to industrial property shall be entitled to request the authorized State body to compel any entity which has conducted the unfair competition to cease such unfair competition and to compensate for damage; to penalize administratively or prosecute the entity which has conducted the unfair competition for criminal liability.
2. Any consumer association or professional association of organizations and individuals shall be entitled to act as a representative of its members to exercise the rights referred to in clause 1 of this article.

Article 26 *Burden of proof of organizations and individuals making requests for dealing with unfair competition*

Any organization or individual exercising the right to make a request for dealing with unfair competition as stipulated in article 25 of this Decree shall be obliged

to prove the fact that the unfair competition damages or is likely to damage its legitimate rights or interests to the authorized State body.

Article 27 *Dealing with unfair competition*

Any organization or individual conducting unfair competition in relation to industrial property shall, depending on the nature and seriousness of such act, be penalized administratively or prosecuted for criminal liability; shall compensate for any damage in accordance with law.

CHAPTER V

State Administration of Protection of Industrial Property Rights With Respect to Trade Secrets, Geographical Instructions or Trade Names and Protection of Right to Fight Against Unfair Competition Relating to Industrial Property

Article 28 *State administration of protection of industrial property rights with respect to trade secrets, geographical instructions or trade names and protection of rights to fight against unfair competition relating to industrial property*

1. To promulgate policies, strategies, planning, plans for development of industrial property activities, laws relating to protection of trade secrets, geographical instructions and trade names and rights to fight against unfair competition;
2. To protect legitimate interests of the State, organizations and individuals in relation to industrial property rights with respect to trade secrets, geographical instructions and trade names and rights to fight against unfair competition;
3. To implement legal instruments and policies on industrial property rights with respect to trade secrets, geographical instructions and trade names and rights to fight against unfair competition;
4. To manage consultancy services and industrial property representative services relating to trade secrets, geographical instructions, trade names and rights to fight against unfair competition;
5. To train and foster a body of officials working in the industrial property sector relating to trade secrets, geographical instructions, trade names and rights to fight against unfair competition;

6. To conduct international co-operation in respect of industrial property rights with respect to trade secrets, geographical instructions and trade names and rights to fight against unfair competition;
7. To guide, inspect or examine the implementation of policies and compliance with the laws on industrial property relating to trade secrets, geographical instructions, trade names and rights to fight against unfair competition;
8. To receive and settle complaints and denunciations, to deal with breaches of the laws on industrial property relating to trade secrets, geographical instructions, trade names and rights to fight against unfair competition.

Article 29 *Responsibilities of authorized State bodies responsible for administration of protection of industrial property rights with respect to trade secrets, geographical instructions and trade names and rights to fight against unfair competition*

1. The Ministry of Science, Technology and Environment shall be the Government body responsible for unified State administration of industrial property relating to trade secrets, geographical instructions, trade names and rights to fight against unfair competition throughout the country and shall be responsible for organizing and directing the implementation of regimes, policies and laws on industrial property relating to trade secrets, geographical instructions, trade names and rights to fight against unfair competition.
2. The Industrial Property Office under the Ministry of Science, Technology and Environment shall be responsible for assisting the Minister of Science, Technology and Environment in performing the following duties:
 - (a) To co-ordinate with other State bodies and social organizations in taking measures to protect industrial property rights with respect to trade secrets, geographical instructions and trade names and rights to fight against unfair competition and to ensure strict implementation of the laws on industrial property relating to trade secrets, geographical instructions, trade names and rights to fight against unfair competition, including inspection of conditions for creation of rights and infringement of rights with respect to trade secrets, geographical instructions and trade names and rights to fight against unfair competition at the request of State bodies, organizations and individuals;
 - (b) To receive and resolve complaints and denunciations in respect of industrial property relating to trade secrets, geographical instructions, trade names and rights to fight against unfair competition relating to industrial property within its authority;

- (c) To examine professional qualifications of, to issue practising certificates to, and to undertake professional management of industrial property representative service organizations in relation to trade secrets, geographical instructions, trade names and rights to fight against unfair competition relating to industrial property;
 - (d) To direct professional operations and organize development of professional knowledge in industrial property relating to trade secrets, geographical instructions, trade names and rights to fight against unfair competition for bodies responsible for administration of industrial property under ministries, branches or local authorities and at the grass-roots level;
 - (e) Within its delegated authority, to conduct international co-operation activities in industrial property relating to trade secrets, geographical instructions, trade names and rights to fight against unfair competition.
3. Ministries, ministerial equivalent bodies, Government bodies, and people's committees of provinces and cities under central authority shall, depending their respective responsibilities and duties, be responsible for organizing, directing and assuming management of industrial property activities relating to trade secrets, geographical instructions, trade names and rights to fight against unfair competition within their respective branches or localities.

Bodies responsible for management of science, technology and environment under branches or local authorities shall be responsible for assisting heads of branches or local authorities in assuming the above responsibilities and performing the following duties:

- (a) To propose specific measures for implementation of State policies on industrial property relating to trade secrets, geographical instructions, trade names and rights to fight against unfair competition to the minister, heads of ministerial equivalent bodies or Government bodies or chairman of the people's committee of the province or city under central authority and to take such measures;
- (b) To organize management work for protection of industrial property relating to trade secrets, geographical instructions, trade names and rights to fight against unfair competition relating to industrial property within their respective branches or localities and to take measures aimed at strengthening the efficiency of such work;
- (c) To disseminate policies on industrial property relating to trade secrets, geographical instructions, trade names and rights to fight against unfair competition, to co-ordinate with social organizations in

taking measures in order to expedite competition and creation and industrial property activities;

- (d) To assist business entities which fall within the management of their respective branches or localities in providing conditions for creation of industrial property rights with respect to trade secrets, geographical instructions and trade names and rights to fight against unfair competition in Vietnam and overseas;
- (e) To co-ordinate with bodies in charge of ensuring compliance with the laws on protection of industrial property rights with respect to trade secrets, geographical instructions and trade names and rights to fight against unfair competition and to deal with breaches of the laws on industrial property relating to trade secrets, geographical instructions, trade names and rights to fight against unfair competition, including inspecting conditions for creation of rights, rights and infringement of rights with respect to trade secrets, geographical instructions or trade names and determining unfair competition relating to industrial property at the request of State bodies, organizations and individuals.

Article 30 *Dealing with administrative offences*

Administrative offences in relation to protection of industrial property rights with respect to trade secrets, geographical instructions, trade names and rights to fight against unfair competition relating to industrial property shall be dealt with in accordance with a separate decree of the Government.

Article 31 *Complaints and denunciations and settlement of complaints and denunciations*

1. Organizations and individual shall be entitled to lodge a complaint relating to any administrative decision or administrative breach of the laws on protection of industrial property rights with respect to trade secrets, geographical instructions and trade names and rights to fight against unfair competition relating to industrial property to the authorized body, organization or individual.
2. Individuals shall be entitled to lodge a denunciation relating to any breach of the laws on protection of industrial property rights with respect to trade secrets, geographical instructions and trade names and rights to fight against unfair competition relating to industrial property to the authorized body, organization or individual.
3. Upon receipt of the complaint or denunciation, the authorized body, organization or individual shall be responsible for resolving such complaint or denunciation in a timely manner and in accordance with the laws on complaints and denunciations.

CHAPTER VI

Implementation Provisions

Article 32 *Grandfather clause*

Trade secrets, geographical instructions and trade names which have existed prior to the date of effectiveness of this Decree and which continue to satisfy all of the conditions for protection stipulated in this Decree shall be protected in accordance with this Decree.

Article 33 *Implementation provision*

This Decree shall be of full force and effect after fifteen (15) days from the date of signing.

Ministers, heads of ministerial equivalent bodies and Government bodies, and chairmen of people's committees of provinces and cities under central authority shall be responsible for implementation of this Decree.

On behalf of the Government
Prime Minister

PHAN VAN KHAI