

**THE GOVERNMENT**

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No. 97/2010/ND-CP

**SOCIALIST REPUBLIC OF VIET NAM**

**Independence - Freedom – Happiness**

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*Hanoi, September 21, 2010*

**DECREE**

**ON SANCTIONING OF ADMINISTRATIVE VIOLATIONS IN INDUSTRIAL PROPERTY**

**THE GOVERNMENT**

*Pursuant to the December 25, 2001 Law on Organization of the Government;*

*Pursuant to the November 29, 2005 Law on Intellectual Property; and the June 19, 2009 Law Amending and Supplementing a Number of Articles of the Law on Intellectual Property (below collectively referred to as the Law on Intellectual Property);*

*Pursuant to the December 3, 2004 Law on Competition;*

*Pursuant to the June 29, 2006 Law on Information Technology;*

*Pursuant to the July 2, 2002 Ordinance on Handling of Administrative Violations; and the April 2, 2008 Ordinance Amending and Supplementing a Number of Articles of the Ordinance on Handling of Administrative Violations (below collectively referred to as the Ordinance on Handling of Administrative Violations);*

*At the proposal of the Minister of Science and Technology,*

**DECREES:**

**Chapter I**

**GENERAL PROVISIONS**

**Article 1. Scope of regulation**

This Decree specifies acts of administrative violation in industrial property, sanctioning forms and levels, remedies; procedures for filing written requests for handling of violations; competence and procedures for settling written requests for handling of violations; sanctioning competence and procedures and enforcement of decisions to sanction administrative violations in industrial property.

**Article 2. Subjects of application**

Vietnamese organizations and individuals, foreign organizations and individuals who violate regulations on the state management of industrial property and infringements of industrial

property rights or acts of industrial property-related unfair competition in Vietnam; and other organizations and individuals involved in administrative violations in industrial property.

### **Article 3. Sanctions and remedies**

1. Each act of administrative violation is subject to either of the principal sanctions, namely caution and fine.

a) Caution shall be applied to violations in the cases specified in Article 13 of the Ordinance on Handling of Administrative Violations and relevant articles and clauses of this Decree that permit application of the sanction of caution to such violations;

b) Fine shall be applied according to the fine bracket prescribed for each administrative violation specified in relevant articles and clauses of this Decree. The maximum fine level is VND 500,000,000.

2. Depending on the nature and severity of violations, violators may also be subject to one or more of the following additional sanctions:

a) Confiscation of materials and implements used in the commission of administrative violations, including goods bearing counterfeit trademarks or geographical indications; raw materials, materials and implements used mainly for producing or trading in those goods; stamps, labels, packages and other articles bearing infringing elements; means of business, including also means for service provision and advertisement media containing infringing elements; protection titles, certificates or other documents which are modified, erased or forged;

b) Deprivation for a definite or indefinite period of time of the right to use industrial property representation practice certificates; assessor cards; or certificates of eligibility for assessment practice;

c) Suspension for a definite period of time of the production, trading or provision of infringing products or services.

3. In addition to the principal and additional sanctions, violators may also be forced to apply one or more of the following remedies:

a) Forcible removal of infringing elements on their goods or means of business; forcible removal of information or indications on infringing goods or services on their means of business, including also advertisement, media and computer networks, or alteration or revocation of domain names or enterprise names containing infringing elements;

b) Forcible distribution or use for noncommercial purposes of goods bearing counterfeit trademarks or geographical indications or goods infringing upon industrial property rights; raw materials, materials and means used mainly for producing or trading in these goods, provided such act does not affect the exercise of the industrial property rights by their holders;

c) Forcible bringing out of the Vietnamese territory of transit goods infringing upon industrial property rights or forcible re-export of goods bearing counterfeit trademarks or

geographical indications, or imported means, raw materials and materials used mainly for producing or trading in these goods after infringing elements on these goods are removed;

d) Forcible destruction of infringing elements, goods, evidence and means involved in violations on which infringing elements cannot be removed or infringing goods which may cause harms to the health of humans, domestic animals, plants and the environment; stamps, labels, packages and other articles bearing infringing elements;

e) Forcible modification or addition of indications on industrial property;

f) Forcible public correction of errors, for acts of giving wrong indications on industrial property rights;

g) Forcible confiscation of dispersed materials or implements of violation;

h) Remittance into the state budget of illicit earnings from the commission of administrative violations.

4. Extenuating and aggravating circumstances are specified in Articles 8 and 9 of the Ordinance on Handling of Administrative Violations, together with the following extenuating circumstances:

a) First violations on a small scale;

b) Violations committed by persons who do not know or have no reason to know about the status of protection of relevant industrial property rights.

5. The time limit for sanctioning administrative violations in industrial property shall comply with Article 10 of the Ordinance on Handling of Administrative Violations.

#### **Article 4. Valuation of infringing goods or services**

1. The valuation of goods being evidence or implements of violation to use as a basis for determining the fine bracket and sanctioning competence shall be conducted by competent persons based on the grounds and principles specified in Article 34 of the Government's Decree No. 128/2008/ND-CP of December 16, 2008, detailing a number of articles of the Ordinance on Handling of Administrative Violations.

2. In case the grounds mentioned in Clause 1 of this Article cannot be applied for valuating infringing goods or services to serve as a basis for determining the fine bracket or illicit earnings from the commission of violations, persons with sanctioning competence shall value infringing goods or services based on the quantity of goods produced, sold or transported or amount of services provided which is indicated in payment invoices, contracts, orders, records of goods handover and receipt, ex-warehousing bills, warehousing bills, consignment bills, delivery bills, goods import declarations, written declarations to competent agencies and prices of infringing goods or services indicated in relevant documents. If no price is indicated in relevant documents, other documents indicating the prices of these goods or services, including also price advices,

documents on product introduction or advertisement of infringing goods or services, may be based on.

3. The value of detected infringing goods or services and documents and grounds used for determining such value shall be clearly recorded in minutes of administrative violations to be included in case files.

4. When impossible to value infringing goods or services under Clauses 1 and 2 of this Article, fines shall be imposed under Clause 13, Article 10; Clause 12, Article 11; Clause 11, Article 12; and Clause 8, Article 14 of this Decree.

## **Chapter II**

### **VIOLATIONS TO BE ADMINISTRATIVELY SANCTIONED**

#### **Section I**

#### **VIOLATIONS OF REGULATIONS ON MANAGEMENT OF INDUSTRIAL PROPERTY ACTIVITIES**

##### **Article 5. Violations of regulations on procedures for establishment, exercise and protection of industrial property rights**

1. A fine of between VND 5,000,000 and VND 10,000,000 shall be imposed on individuals or organizations that commit either of the following violations:

a) Modifying or erasing protection titles or documents proving industrial property rights;

b) Taking advantage of procedures for establishment, exercise and protection of industrial property rights to commit acts infringing upon the interests of the State, public interests or lawful rights and interests of other organizations or individuals.

2. A fine of between VND 10,000,000 and VND 15,000,000 shall be imposed on individuals or organizations that commit acts of providing false information and evidence in the process of carrying out any of the following procedures:

a) Carrying out procedures for establishment, recognition, certification, amendment, maintenance, renewal, request for termination or cancellation of the validity of industrial property rights protection titles;

b) Requesting competent state agencies for issuing decisions on compulsory license of inventions;

c) Lodging complaints or denunciations about the establishment, exercise and protection of industrial property rights;

d) Requesting termination of violations, handling of violations, industrial property assessment; or responding to requests of competent agencies in the settlement of disputes or handling of industrial property infringements.

3. A fine of between VND 15,000,000 and VND 20,000,000 shall be imposed on individuals or organizations that commit acts of forging papers in the cases specified in Clause 2 of this Article.

4. Additional sanction: Confiscation of modified, erased or forged papers, documents, protection titles or documents proving industrial property rights, for violations specified at Point a. Clause 1, and Clauses 2 and 3 of this Article.

#### **Article 6. Violations of regulations on indications on protection of industrial property rights**

1. A caution or a fine of between VND 3,000,000 and 5,000,000 shall be imposed on organizations or individuals that commit any of the following violations:

a) Providing wrongful indications on objects or elements subject to industrial property rights protection, industrial property rights holders, authors of inventions, industrial designs or layout designs;

b) Providing wrongful indications on the legal status and scope of protection of industrial property rights;

c) Providing wrongful indications or no indication on goods produced under licensing contracts (licensing indications).

2. Remedies:

a) Forcible removal of infringing elements on goods or means of business, for violations specified in Clause 1 of this Article;

b) Forcible public correction of errors, for violations specified at Points a and b, Clause 1 of this Article;

c) Forcible modification or addition of indications, for violations specified at Point c. Clause 1 of this Article.

#### **Article 7. Violations of regulations on industrial property representation**

1. A caution or a fine of between VND 2,000,000 and 5,000,000 shall be imposed on industrial property representatives that commit either of the following violations:

a) Failing to notify in writing a state competent agency to establish and protect industrial property rights of a change in their names, addresses or legal status or a change related to the parties authorizing and authorized to conduct industrial property representation;

b) Failing to notify or truthfully notify industrial property representation charges and fees and their rates at the request of a competent agency.

2. A fine of between VND 5,000,000 and VND 10,000,000 shall be imposed on industrial property representatives that commit any of the following violations:

a) Concurrently representing parties to a dispute over industrial property rights;

b) Arbitrarily withdrawing applications for protection titles, disclaiming the protection, withdrawing complaints or taking other acts in the establishment of industrial property rights without permission of the representation authorizer;

c) Failing to notify contents of requests of a state competent agency competent to establish industrial property rights, settle industrial property disputes or handle industrial property violations to the representation authorizer;

d) Failing to promptly deliver protection titles, documents evidencing industrial property rights, certificates and other decisions to the representation authorizer without any plausible reason;

e) Failing to notify concerned organizations or individuals of contents of requests of competent state agencies;

f) Failing to implement or respond to requests of competent state agencies for establishment of industrial property rights or settlement of industrial property disputes or handling of industrial property violations without any plausible reason;

g) Modifying or falsifying contents of industrial property representation practice certificates;

h) Deliberately advising or notifying wrongful information on provisions of the industrial property law or information on industrial property activities;

i) Deliberately obstructing the normal progress of the establishment, exercise and protection of industrial property rights, causing damage to parties with related rights and interests.

3. A fine of between VND 10,000,000 and 15,000,000 shall be imposed on organizations or individuals that commit either of the following violations:

a) Providing industrial property representative services without satisfying the practical conditions specified by law;

b) Forging papers and documents or providing untruthful information to competent state agencies in the process of registration and inspection of industrial property representative practices, application for industrial property representative practice certificates or request for recognition of industrial property representative service providers.

4. A fine of VND 15,000,000 and 20,000,000 shall be imposed on industrial property representatives that commit either of the following violations:

a) Disclosing information not yet permitted for disclosure of competent state management agencies relating to the process of receipt, examination and processing of registration applications, complaints and requests for handling of industrial property violations;

b) Committing serious errors or violations in the course of practicing representative, causing damage to the interests of the State or die society.

5. Additional sanctions:

a) Termination of the provision of infringing services, for violations specified at Point a, Clause 3 of this Article;

b) Deprivation of the right to use industrial property representative practice certificates for between 3 and 6 months, for violations specified in Clause 2 of this Article;

c) Deprivation for an indefinite period of time of the right to use industrial property representative practice certificates, for violations specified in Clause 4 of this Article.

### **Article 8. Violations of regulations on industrial property assessment**

1. A caution or a fine of between VND 2,000,000 and VND 5,000,000 shall be imposed on individuals or organizations functioning to conduct industrial property assessment that commit any of the following violations:

a) Violating regulations on assessment order, procedures and time limit;

b) Failing to be present when summoned by assessment-requesting agencies without any plausible reason, or failing to explain assessment conclusions when requested by assessment-requesting agencies;

c) Modifying or falsifying contents of assessor cards or certificates of eligibility for industrial property assessment.

2. A fine of between VND 5,000,000 and 10,000,000 shall be imposed on organizations or individuals that commit any of the following violations;

a) Conducting industrial property assessment without satisfying the practice conditions specified by law;

b) Disclosing secret information acquired while conducting assessment without permission of concerned parties;

c) Failing to compile assessment dossiers or failing to preserve exhibits and documents related to cases subject to assessment;

d) Using industrial property assessor cards of other persons or letting other persons use their own industrial property assessor cards to practice assessment.

3. A fine of between VND 10,000,000 and 20,000,000 shall be imposed on organizations or individuals that commit any of the following violations:

a) Taking advantage of the assessor status and assessment activities for self-seeking purposes;

b) Deliberately making untruthful assessment conclusions:

c) Modifying, erasing or otherwise falsifying assessment documents without permission;

d) Forging or using forged papers or supplying untruthful information to competent state agencies in the process of registration and inspection of industrial property assessment operations, application for industrial property assessor cards or request for recognition of industrial property assessment organizations:

e) Deliberately conducting assessment in cases in which assessment must be refused as prescribed by law.

4. Additional sanctions and remedies:

a) Termination of the provision of infringing services, for violations specified at Point a. Clause 2 of this Article;

b) Deprivation of the right to use assessor cards or certificates of eligibility for industrial property assessment for between 3 and 6 months, for violations specified at Points a and c. Clause 1 of this Article;

c) Confiscation of modified, falsified or forged documents, for violations specified at Point c, Clause 1 and Point d. Clause 3 of this Article:

d) Remittance into the state budget of illicit earnings, for violations specified at Point a, Clause 3 of this Article.

#### **Article 9. Violations of regulations on industrial property inspection and examination**

1. A caution or a fine of between VND 1,000,000 and VND 3,000,000 shall be imposed on organizations or individuals that commit either of the following violations:

a) Refusing to receive inspection or examination decisions or administrative sanctioning decisions without any plausible reason;

b) Failing to supply or providing insufficient or untruthful documents and data necessary for conducting inspection and examination or handling violations at the request of competent persons.

2. A fine of between VND 5,000,000 and 10,000,000 shall be imposed on organizations or individuals that commit either of the following violations:

a) Failing to abide by requests, conclusions or decisions of industrial property inspection or examination teams without any plausible reason;



b) Obstructing, causing difficulties to or shirking industrial property inspection or examination conducted by competent persons.

3. A fine of between VND 1 0,000,000 and VND 15,000,000 shall be imposed on organizations or individuals that commit either of the following violations:

a) Reviling, offending or humiliating persons competent to conduct industrial property inspection or examination;

b) Deliberately delaying, shirking or refusing the execution of administrative decisions of persons competent to inspect, examine and handle administrative violations in industrial property.

4. A fine of between VND 15,000,000 and VND 20,000,000 shall be imposed on organizations or individuals that commit either of the following violations:

a) Arbitrarily removing or breaking seals or altering scenes of incidents, quantity or category of goods which are material evidence of industrial property violations subject to inspection, examination, sealing or seizure;

b) Dispersing or destroying material evidence or means subject to inspection or examination.

5. Remedy: Forcible recovery of dispersed material evidence and means, for violations specified at Point b, Clause 4 of this Article.

## **Section 2**

### **INFRINGEMENT OF RIGHTS AND UNFAIR COMPETITION IN INDUSTRIAL PROPERTY**

#### **Article 10. Infringement of rights to inventions, utility solutions and layout designs**

1. A caution or a fine of between VND 2,000,000 and 4,000,000 shall be imposed on organizations or individuals that commit any of the following violations for business purposes in case infringing goods are valued at up to VND 5,000,000:

a) Selling, offering for sale; transporting; transiting; storing; displaying for sale products infringing upon rights to inventions, utility solutions or layout designs, or products produced from a process infringing upon rights to inventions or utility solutions;

b) Utilizing products infringing upon rights to inventions or utility solutions or products produced from a process infringing upon rights to inventions or utility solutions;

c) Placing orders to, assigning or hiring other parties to commit violations specified at Points a and b of this Clause.

2. A fine of between VND 4,000,000 and 8,000,000 shall be imposed on organizations or individuals that commit any violation specified in Clause 1 of this Article in case infringing goods are valued at between over VND 5,000,000 and 10,000,000.

3. A fine of between VND 8,000,000 and 15,000,000 shall be imposed on organizations or individuals that commit any violation specified in Clause 1 of this Article in case infringing goods are valued at between over VND 10,000,000 and 20,000,000.

4. A fine of between VND 15,000,000 and 30,000,000 shall be imposed on organizations or individuals that commit any violation specified in Clause 1 of this Article in case infringing goods are valued at between over VND 20,000,000 and 40,000,000.

5. A fine of between VND 30,000,000 and 50,000,000 shall be imposed on organizations or individuals that commit any violation specified in Clause 1 of this Article in case infringing goods are valued at between over VND 40,000,000 and 70,000,000.

6. A fine of between VND 50,000,000 and 80,000,000 shall be imposed on organizations or individuals that commit any violation specified in Clause J of this Article in case infringing goods are valued at between over VND 70,000,000 and 100,000,000.

7. A fine of between VND 80,000,000 and 160,000,000 shall be imposed on organizations or individuals that commit any violation specified in Clause I of this Article in case infringing goods are valued at between over VND 100,000,000 and 200,000,000.

8. A fine of between VND 160,000,000 and 240,000,000 shall be imposed on organizations or individuals that commit any violation specified in Clause 1 of this Article in case infringing goods are valued at between over VND 200,000,000 and 300,000,000.

9. A fine of between VND 240,000,000 and 320,000,000 shall be imposed on organizations or individuals that commit any violation specified in Clause 1 of this Article in case infringing goods are valued at between over VND 300,000,000 and 400,000,000.

10. A fine of between VND 320,000,000 and 400,000,000 shall be imposed on organizations or individuals that commit any violation specified in Clause 1 of this Article in case infringing goods are valued at between over VND 400,000,000 and 500,000,000.

11. A fine of between VND 400,000,000 and 500,000,000 shall be imposed on organizations or individuals that commit any violation specified in Clause 1 of this Article in case infringing goods are valued at over VND 500,000,000.

12. A fine equal to 1,2 times the fine levels specified in Clauses 1 through 11 of this Article, which must not exceed VND 500,000,000, shall be imposed on organizations or individuals that commit any of the following violations for business purposes:

a) Conducting production, including stages of designing, building, manufacturing, processing, assembling and packaging products or goods infringing upon rights to inventions, utility solutions or layout designs;

b) Applying processes infringing upon rights to inventions, utility solutions or layout designs;

c) Importing products infringing upon rights to inventions, utility solutions or layout designs or products produced from processes infringing upon rights to inventions or utility solutions;

d) Placing orders to, assigning or hiring other parties to commit the violation specified at Point a, b or c of this Clause.

13. A fine of between VND 10,000,000 and 90,000,000 shall be imposed on organizations and individuals that commit acts of infringing upon rights to inventions, utility solutions or layout designs as specified in Clauses 1 and 12 of this Article in case the value of infringing goods cannot be determined.

14. A fine of between VND 10,000,000 and 20,000,000 shall be imposed on organizations and individuals that commit acts of advertising products infringing upon rights to inventions, utility solutions or layout designs or products produced from processes infringing upon rights to inventions, utility solutions.

15. Additional sanctions:

a) Confiscation of material evidence or means used in the commission of administrative violations, for violations specified in Clauses 1 through 14 of this Article;

b) Suspension of the production of or trading in infringing goods for up to 3 months, for violations specified in Clauses 1 through 14 of this Article.

16. Remedies:

a) Forcible removal or forcible destruction of infringing elements, forcible destruction of goods, material evidence and means used in the commission of violations from which infringing elements cannot be removed, for violations specified in Clauses 1 through 14 of this Article:

b) Forcible distribution or use for noncommercial purposes of infringing goods, for violations specified in Clauses 1 through 13 of this Article;

c) Forcible bringing out of the Vietnamese territory of infringing transit goods or forcible re-export of infringing imported goods after infringing elements on these goods are removed, for violations specified in Clauses 1 through 13 of this Article;

d) Remittance into the state budget of illicit earnings from the commission of infringing acts, for violations specified in Clauses 1 through 14 of this Article.

**Article 11. Infringement of rights to trademarks, geographical indications, trade names or industrial designs**

1. A caution or a fine of between VND 3,000,000 and 5,000,000 shall be imposed on organizations or individuals that commit any of the following violations for business purposes in case infringing goods or services are valued at up to VND 5,000,000:

a) Selling, offering for sale; transporting, transiting; storing; displaying for sale products or services infringing upon rights to trademarks, geographical indications, trade names or industrial designs;

b) Placing orders to, assigning or hiring other parties to commit violations specified at Point a of this Clause.

2. A fine of between VND 5,000,000 and 10,000,000 shall be imposed on organizations or individuals that commit any violation specified in Clause 1 of this Article in case infringing goods or services are valued at between over VND 5,000,000 and 10,000,000.

3. A fine of between VND 10,000,000 and 20,000,000 shall be imposed on organizations or individuals that commit any violation specified in Clause 1 of this Article in case infringing goods or services are valued at between over VND 10,000,000 and 20,000,000.

4. A fine of between VND 20,000,000 and 40,000,000 shall be imposed on organizations or individuals that commit any violation specified in Clause 1 of this Article in case infringing goods or services are valued at between over VND 20,000,000 and 40,000,000.

5. A fine of between VND 40,000,000 and 70,000,000 shall be imposed on organizations or individuals that commit any violation specified in Clause 1 of this Article in case infringing goods or services are valued at between over VND 40,000,000 and 70,000,000.

6. A fine of between VND 70,000,000 and 100,000,000 shall be imposed on organizations or individuals that commit any violation specified in Clause 1 of this Article in case infringing goods or services are valued at between over VND 70,000,000 and 100,000,000.

7. A fine of between VND 100,000,000 and 200,000,000 shall be imposed on organizations or individuals that commit any violation specified in Clause 1 of this Article in case infringing goods or services are valued at between over VND 100,000,000 and 200,000,000.

8. A fine of between VND 200,000,000 and 300,000,000 shall be imposed on organizations or individuals that commit any violation specified in Clause 1 of this Article in case infringing goods or services are valued at between over VND 200,000,000 and 300,000,000.

9. A fine of between VND 300,000,000 and 400,000,000 shall be imposed on organizations or individuals that commit any violation specified in Clause 1 of this Article in case infringing goods or services are valued at between over VND 300,000,000 and 400,000,000,

10. A fine of between VND 400,000,000 and 500,000,000 shall be imposed on organizations or individuals that commit any violation specified in Clause 1 of this Article in case infringing goods or services are valued at over VND 400,000,000.

11. A fine equal to 1.2 times the fine levels specified in Clauses 1 through 10 of this Article, which must not exceed VND 500,000,000, shall be imposed on organizations or individuals that commit any of the following violations:

a) Conducting production, including stages of designing, manufacture, processing, assembling and packaging goods bearing signs infringing upon rights to trademarks, trade names, geographical indications or industrial designs;

b) Conducting affixture, including printing, sticking, attaching, molding or embossing or otherwise affixing stamps, labels or other articles bearing signs infringing upon rights to trademarks, geographical indications or trade names on goods;

c) Importing goods bearing signs infringing upon rights to trademarks, geographical indications, trade names or industrial designs;

d) Placing orders to, assigning or hiring other parties to commit violations specified at Points a, b and c of this Clause.

12. A fine of between VND 10,000,000 and 90,000,000 shall be imposed for acts of infringing upon rights to trademarks, geographical indications, trade names or industrial designs as specified in Clauses 1 and 11 of this Article in case the value of infringing goods or services cannot be determined.

13. A fine of between VND 10,000,000 and 20,000,000 shall be imposed for acts of using signs infringing upon rights to trademarks, geographical indications, trade names or industrial designs in advertisements or showing these signs on business transaction papers, signboards, goods packages, or means of business or service or advertisement media.

14. Additional sanctions:

a) Confiscation of material evidence or means used in the commission of administrative violations, for violations specified in Clauses 1 through 13 of this Article;

b) Suspension of production of or trading in infringing goods or services including also e-commerce activities, for up to 3 months, for violations specified in Clauses 1 through 13 of this Article.

15. Remedies:

a) Forcible removal or forcible destruction of infringing elements, forcible destruction of infringing goods from which infringing elements cannot be removed, for violations specified in Clauses 1 through 13 of this Article;

b) Forcible distribution or use for noncommercial purposes of infringing goods, for violations specified in Clauses 1 through 12 of this Article;

c) Forcible bringing out of the Vietnamese territory of infringing transit goods or forcible re-export of infringing imported goods after infringing elements on these goods are removed, for violations specified in Clauses 1 through 12 of this Article;

d) Forcible removal of information on infringing goods or services on advertisement media or websites or change or withdrawal of enterprise or domain names containing infringing elements, for violations specified in Clause 13 of this Article;

e) Remittance into the state budget of illicit earnings from commission of infringing acts, for violations specified in Clauses 1 through 13 of this Article.

**Article 12. Production, import, trading, transportation or storage for sale of goods bearing counterfeit trademarks or geographical indications**

1. A caution or a fine of between VND 4,000,000 and 8,000,000 shall be imposed on organizations or individuals that commit any of the following violations in case infringing goods are valued at up to VND 5,000,000:

a) Selling, offering for sale; transporting, transiting; storing; displaying for sale goods bearing counterfeit trademarks or geographical indications;

b) Placing orders to, assigning or hiring other parties to commit violations specified at Point a of this Clause.

2. A fine of between VND 8,000,000 and 15,000,000 shall be imposed on organizations or individuals that commit any violation specified in Clause 1 of this Article in case infringing goods are valued at between over VND 5,000,000 and 10,000,000.

3. A fine of between VND 15,000,000 and 30,000,000 shall be imposed on organizations or individuals that commit any violation specified in Clause 1 of this Article in case infringing goods are valued at between over VND 10,000,000 and 20,000,000.

4. A fine of between VND 30,000,000 and 60,000,000 shall be imposed on organizations or individuals that commit any violation specified in Clause 1 of this Article in case infringing goods are valued at between over VND 20,000,000 and 40,000,000.

5. A fine of between VND 60,000,000 and 100,000,000 shall be imposed on organizations or individuals that commit any violation specified in Clause 1 of this Article in case infringing goods are valued at between over VND 40,000,000 and 70,000,000.

6. A fine of between VND 100,000,000 and 150,000,000 shall be imposed on organizations or individuals that commit any violation specified in Clause 1 of this Article in case infringing goods are valued at between over VND 70,000,000 and 100,000,000.

7. A fine of between VND 150,000,000 and 300,000,000 shall be imposed on organizations or individuals that commit any violation specified in Clause 1 of this Article in case infringing goods are valued at between over VND 100,000,000 and 200,000,000.

8. A fine of between VND 300,000,000 and 450,000,000 shall be imposed on organizations or individuals that commit any violation specified in Clause 1 of this Article in case infringing goods are valued at between over VND 200,000,000 and 300,000,000.

9. A fine of between VND 450,000,000 and 500,000,000 shall be imposed on organizations or individuals that commit any violation specified in Clause 1 of this Article in case infringing goods are valued at over VND 300,000,000.

10. A fine equal to 1.5 times the fine levels specified in Clauses 1 through 9 of this Article, which must not exceed VND 500,000,000, shall be imposed on organizations or individuals that commit any of the following violations:

a) Conducting production, including stages of manufacturing, processing, assembling and packaging goods bearing counterfeit trademarks or geographical indications;

b) Conducting affixture, including printing, sticking, attaching, molding or embossing or otherwise affixing stamps, labels or other articles bearing counterfeit trademarks or geographical indications on goods;

c) importing goods bearing counterfeit trademarks or geographical indications;

d) Placing orders to, assigning or hiring other parties to commit violations specified at Points a, b and c of this Clause.

11. A fine of between VND 10,000,000 and 90,000,000 shall be imposed for violations specified in Clauses 1 and 10 (if this Article in case the value of infringing goods or services cannot be determined).

12. A fine of between VND 20,000,000 and 40,000,000 shall be imposed for acts of using signs imitating currently protected trademarks or geographical indications of other parties in advertisements or showing these signs on business transaction papers, signboards, goods packages, or means of business or service or advertisement media.

13. Additional sanctions:

a) Confiscation of material evidence or means used in the commission of administrative violations, for violations specified in Clauses 1 through 12 of this Article;

b) Suspension of trading in infringing goods or services, including also e-commerce activities, for between 3 and 6 months, for violations specified in Clauses 1 through 12 of this Article.

14. Remedies:

a) Forcible removal or forcible destruction of infringing elements, forcible destruction of infringing goods from which infringing elements cannot be removed, for violations specified in Clauses 1 through 12 of this Article;

b) Forcible distribution or use for noncommercial purposes of infringing goods, for violations specified in Clauses 1 through 11 of this Article;

c) Forcible bringing out of the Vietnamese territory of infringing transit goods or forcible re-export of imported goods bearing counterfeit trademarks or geographical indications, or imported raw materials, materials and means used mainly for producing goods bearing counterfeit trademarks or geographical indications after infringing elements on these goods are removed, for violations specified in Clauses 1 through 11 of this Article;

d) Forcible removal of information on infringing goods or services on advertisement media or websites or change or withdrawal of enterprise or domain names containing infringing elements, for violations specified in Clause 12 of this Article;

e) Remittance into the state budget of illicit earnings from the commission of infringing acts for violations specified in Clauses 1 through 12 of this Article.

**Article 13. Production, import, trading, transportation or storage for sale of stamps, labels or articles bearing counterfeit trademarks or geographical indications**

1. A fine of between VND 10,000,000 and 50,000,000 shall be imposed on organizations or individuals that commit any of the following violations:

a) Selling; transporting, transiting; supplying; storing; displaying for sale stamps, labels, packages or articles bearing counterfeit trademarks or geographical indications;

b) Placing orders to, assigning or hiring other parties to commit violations specified at Point a of this Clause.

2. A fine of between VND 20,000,000 and 70,000,000 shall be imposed on organizations or individuals that commit any of the following violations:

a) Conducting production, including stages of designing and printing; importing stamps, labels, packages or articles bearing counterfeit trademarks or geographical indications;

b) Placing orders to, assigning or hiring other parties to commit violations specified at Point a of this Clause.

3. Additional sanctions:

a) Confiscation of material evidence or means used in the commission of violations, for violations specified in Clauses 1 and 2 of this Article;



b) Suspension of the trading of infringing goods or provision of infringing services for up to 6 months, for violations specified in Clauses 1 and 2 of this Article.

4. Remedies:

a) Forcible removal of infringing elements; forcible destruction of stamps, labels or articles bearing counterfeit trademarks or geographical indications, for violations specified in Clauses 1 and 2 of this Article;

b) Remittance into the state budget of illicit earnings from the commission of infringing acts, for violations specified in Clauses 1 and 2 of this Article.

**Article 14. Unfair competition in the domain of industrial property**

1. A fine of between VND 2,000,000 and 4,000,000 shall be imposed on organizations or individuals that commit any of the following violations in case infringing goods or services are valued at up to VND 5,000,000:

a) Selling; transporting, transiting; storing for sale goods or services affixed with trade indications, including trademarks, trade names, business symbols or slogans, geographical indications, package designs of goods or labels, thereby misleading as to business entities or activities, trade origin of goods or services or origin, method of production, utilities, quality, quantity or other features of goods or services or conditions of provision of goods or services;

b) Placing orders to, assigning or hiring other parties to commit violations specified at Point a of this Clause.

2. A fine of between VND 4,000,000 and 8,000,000 shall be imposed on organizations or individuals that commit any violation specified in Clause 1 of this Article in case infringing goods or services are valued at between over VND 5,000,000 and 10,000,000.

3. A fine of between VND 8,000,000 and 15,000,000 shall be imposed on organizations or individuals that commit any violation specified in Clause 1 of this Article in case infringing goods or services are valued at between over VND 10,000,000 and 20,000,000.

4. A fine of between VND 15,000,000 and 30,000,000 shall be imposed on organizations or individuals that commit any violation specified in Clause 1 of this Article in case infringing goods or services are valued at between over VND 20,000,000 and 40,000,000.

5. A fine of between VND 30,000,000 and 50,000,000 shall be imposed on organizations or individuals that commit any violation specified in Clause 1 of this Article in case infringing goods or services are valued at between over VND 40,000,000 and 70,000,000.

6. A fine of between VND 50,000,000 and 70,000,000 shall be imposed on organizations or individuals that commit any violation specified in Clause 1 of this Article in case infringing goods or services are valued at over VND 70,000,000.

7. A fine equal to 1.2 times the fine levels specified in Clauses 1 through 6 of this Article, which must not exceed VND 70,000,000, shall be imposed on organizations or individuals that commit any of the following violations:

a) Affixing trade indications, including trademarks, trade names, business symbols or slogans, geographical indications, package designs of goods or labels, thereby misleading as to business entities or activities, trade origin of goods or services or origin, method of production, utilities, quality, quantity or other features of goods or services or conditions of provision of goods or services;

b) Producing or importing goods bearing misleading trade indications specified at Point a of this Clause;

c) Placing orders to, assigning or hiring other parties to commit violations specified at Points a and b of this Clause.

8. A fine of between VND 10,000,000 and 50,000,000 shall be imposed for acts of using misleading trade indications specified in Clauses 1 and 7 of this Article in case the value of infringing goods or services cannot be determined.

9. A fine of between VND 10,000,000 and 30,000,000 shall be imposed on organizations or individuals that commit either of the following violations:

a) Infringing upon rights to business secrets;

b) Advertising or using on transaction papers or means of business, including also means of service, signboards and goods packages, trade indications which mislead as to business entities or activities or trade origin of goods or services or origin, method of production, utilities, quality, quantity or other features of goods or services or conditions on provision of goods or services.

10. A fine of between VND 5,000,000 and 20,000,000 shall be imposed on organizations or individuals that commit either of the following violations:

a) Registering or appropriating the right to use or using domain names identical or confusingly similar to protected trademarks, geographical indications or trade names of other parties in order to appropriate domain names, taking advantage of or harming reputation of those trademarks, trade names or geographical indications;

b) Using trademarks protected in a country being contracting party to a treaty which bans representatives or agents of mark owners from using these trademarks and to which Vietnam is a contracting party, provided that users are representatives or agents of mark owners and this use is neither authorized by mark owners nor justifiable.

11. Additional sanctions:

a) Confiscation of material evidence or means used in the commission of administrative violations, for violations specified in Clauses 1 through 10 of this Article;

b) Suspension of trading in infringing goods or services, including also e-commerce activities, for up to 6 months, for violations specified in Clauses 1 through 10 of this Article.

#### 12. Remedies:

a) Forcible removal or forcible destruction of infringing elements, forcible destruction of infringing goods from which infringing elements cannot be removed, for violations specified in Clauses 1 through 10 of this Article;

b) Forcible distribution or use for noncommercial purposes of infringing goods, for violations specified in Clauses 1 through 10 of this Article;

c) Forcible removal of information on infringing goods or services on advertisement media or websites; forcible change or withdrawal of enterprise or domain names containing infringing elements, for violations specified in Clauses 9 and 10 of this Article;

d) Remittance into the state budget of illicit earnings from the commission of infringing acts for violations specified in Clauses 1 through 10 of this Article.

### **Chapter III**

#### **SANCTIONING COMPETENCE**

##### **Article 15. Competence to handle violations**

1. Scientific and technological inspectorates are competent to handle violations specified in Chapter II of this Decree, except those committed in the transit or import of goods.

2. Information and communications inspectorates are competent to handle violations specified in Article 9 and infringing acts specified at Point a, Clause 10, Article 14 of this Decree.

3. Market management offices are competent to handle violations specified in Articles 6 and 9 and infringing acts specified in Articles 11, 12 and 13 of this Decree in the trading or transportation of goods in the domestic market.

4. Customs are competent to handle violations specified in Articles 6 and 9 and infringing acts specified in Section 2, Chapter II of this Decree in the transit or import of goods.

5. Police offices are competent to handle violations specified in Article 9 and infringing acts specified in Article 9 and infringing acts specified in Article 12 and 13 of this Decree.

6. The Competition Management Department is competent to handle violations specified in Article 14 of this Decree.

7. Provincial- and district-level People's Committees are competent to handle violations in industrial property which are committed in their respective localities on the principle of determination of competence provided in Article 42 of the Ordinance on Handling of Administrative Violations.

## **Article 16. Sanctioning competence of scientific and technological inspectorates**

1. Inspectors of the Ministry of Science and Technology's Inspectorate or provincial-level Departments of Science and Technology's inspectorates who are on duty may:

a) Impose cautions;

b) Confiscate material evidence or means used in the, commission of administrative violations valued at up to VND 2,000,000;

c) Apply remedies specified at Points a, d, e. f and g, Clause 3 Article 3 of this Decree.

2. Chief inspectors of provincial-level Departments of Science and Technology may:

a) Impose cautions;

b) Impose fines of up to VND 30,000,000;

c) Confiscate material evidence or means used in the commission of administrative violations;

d) Deprive of the right to use industrial properly representation practice certificates for a definite period of lime;

e) Suspend for up to 3 months the trading of infringing goods or provision of infringing services;

f) Apply remedies specified at Points a. b, d, e, f, g and h. Clause 3, Article 3 of this Decree.

3. The Chief Inspector of the Ministry of Science and Technology may:

a) Impose cautions:

b) Impose fines of up to VND 500,000,000;

c) Deprive of the right to use industrial property representation practice certificates, assessor cards, certificates of eligibility for industrial property assessment for a definite or an indefinite period of time;

d) Suspend for up to 6 months of the trading of infringing goods or provision of infringing services;

e) Confiscate material evidence or means used in the commission of administrative violations;

f) Apply remedies specified at Points a. b, d, e. f. g and h. Clause 3, Article 3 of this Decree.

## **Article 17. Sanctioning competence of information and communications inspectorates**

1. Inspectors of the Ministry of Information and Communications Inspectorate or provincial-level Departments of Information and Technology's inspectorates who are on duty may:

a) Imposed cautions;

b) Confiscate material evidence or means used in the commission of administrative violations valued at up to VND 2,000,000;

c) Apply remedies specified at Point a, Clause 3, Article 3 of this Article.

2. Chief inspectors of provincial-level Departments of Information and Communications may:

a) Impose cautions;

b) Impose fines of up to VND 30,000,000;

c) Confiscate material evidence or means used in the commission of administrative violations;

d) Deprive of the right to use licenses falling within their competence as prescribed by law;

e) Suspend for up to 3 months the trading of infringing goods or provision of infringing services;

f) Apply remedies specified at Point a, Clause 3, Article 3 of this Decree.

3. The Chief Inspector of the Ministry of Information and Communications may:

a) Impose cautions;

b) Impose fines of up to VND 70,000,000;

c) Suspend for up to 6 months the trading of infringing goods or provision infringing services;

d) Deprive of the right to use licenses falling within his/her competence as prescribed by law;

e) Confiscate material evidence or means used in the commission of administrative violations;

f) Apply remedies specified at Point a. Clause 3, Article 3 of this Decree.

## **Article 18. Sanctioning competence of market management officers**

1. Heads of market management teams may:

a) Impose cautions;

b) Impose fines of up to VND 5,000,000;

c) Confiscate material evidence or means used in the commission of administrative violations valued at up to VND 30,000,000;

d) Apply remedies specified at Points a, d, e, f, g and h, Clause 3, Article 3 of this Decree.

2. Directors of district-level market management departments may:

a) Impose cautions;

b) Impose fines of up to VND 20,000,000;

c) Confiscate material evidence or means used in the commission of administrative violations;

d) Deprive of the right to use licenses falling within their competence as prescribed by law;

e) Apply consequence remedies specified at Points a, b, d, e, f, g and h, Clause 3, Article 3 of this Decree.

3. Directors of provincial-level market management departments may:

a) Impose cautions;

b) Impose fines of up to VND 70,000,000;

c) Confiscate material evidence or means used in the commission of administrative violations;

d) Deprive of the right to use licenses falling within their competence as prescribed by law;

e) Apply remedies specified at Points a, b, d, e, f, g and h, Clause 3, Article 3 of this Decree.

### **Article 19. Sanctioning competence of customs officers**

1. Heads of professional operation teams of district-level Customs Departments or Post-Customs Clearance Inspection Departments may: a) Impose cautions; b) Impose fines of up to VND 5,000,000.

2. Directors of district-level Customs Departments or Post-Customs Clearance Inspection Departments, heads of control teams of provincial, inter-provincial or municipal Customs Departments (below referred to as provincial-level Customs Departments), heads of anti-smuggling control teams and captains of sea patrol flotillas of the Anti-Smuggling Investigation Department of the General Department of Customs may:

a) Impose cautions;

b) Impose fines of up to VND 20,000,000;

c) Deprive of the right to use licenses falling within their competence as prescribed by law;

d) Confiscate material evidence or means used in the commission of administrative violations.

3. The directors of the Anti-Smuggling Investigation Department and the Post-Customs Clearance Inspection Department of the General Department of Customs and directors of provincial-level Customs Departments may:

- a) Impose cautions;
- b) Impose fines of up to VND 70,000,000;
- c) Confiscate material evidence or means used in the commission of administrative violations;
- d) Deprive of the right to use licenses falling within their competence as prescribed by law;
- e) Apply remedies specified in Clause 3 Article 3 of this Decree.

**Article 20. Sanctioning competence of people's public security officers**

1. District-level police chiefs, heads of police sections for investigation of crimes related to economic management order and positions, and heads of border-gate or export processing zone police stations may:

- a) Impose cautions;
- b) Impose fines of up to VND 10,000,000;
- c) Confiscate material evidence or means used in the commission of administrative violations;
- d) Deprive of the right to use licenses falling within their competence as prescribed by law;
- e) Apply remedies specified at Points a, d, e, f and g, Clause 3, Article 3 of this Decree.

2. Directors of provincial-level Police Departments may:

- a) Impose cautions;
- b) Impose fines of up to VND 30,000,000;
- c) Confiscate material evidence or means used in the commission of administrative violations;
- d) Deprive of the right to use licenses falling within their competence as prescribed by law;
- e) Apply remedies specified at Points a, b, d, e, f, g and h. Clause 3, Article 3 of this Decree.

3. The director of the Police Department for Investigation of Crimes related to Economic Management Order and Positions may:

- a) Impose cautions;
- b) Impose fines of up to VND 500,000,000;

c) Confiscate material evidence or means used in the commission of administrative violations;

d) Deprive of the right to use licenses falling within their competence as prescribed by law;

e) Apply remedies specified at Points a, b, d, e, f, g and h, Clause 3 Article 3 of this Decree.

**Article 21. Sanctioning competence of the director of the Competition Management Department**

1. Impose cautions;

2. Impose fines of up to VND 70,000,000;

3. Confiscate material evidence or means used in the commission of administrative violations;

4. Deprive of the right to use licenses falling within their competence as prescribed by law;

5. Apply remedies specified at Points a, b, d, e, f, g and h, Clause 3, Article 3 of this Decree.

**Article 22. Sanctioning competence of chairpersons of district- and provincial-level People's Committees**

1. Chairpersons of district-level People's Committees may:

a) Impose cautions;

b) Impose fines of up to VND 30,000,000;

c) Confiscate material evidence or means used in the commission of administrative violations in industrial property;

d) Deprive of the right to use licenses and practice certificates under law;

e) Apply remedies specified at Points a, b, d, e, f, g and h. Clause 3, Article 3 of this Decree.

2. Chairpersons of provincial-level People's Committees may:

a) Impose cautions;

b) Impose fines of up to VND 500,000,000;

c) Confiscate material evidence or means used in the commission of administrative violations;

d) Deprive of the right to use licenses and practice certificates under law;

e) Apply remedies specified in Clause 3, Article 3 of this Decree.



## **Article 23. Competence to apply deterrent and sanctioning assurance measures**

1. District-level police chiefs, heads of police sections for investigation of crimes related to economic management order and positions, heads of border-gate police stations, directors of district-level customs sub-departments, heads of control teams of provincial-level Customs Departments, heads of anti-smuggling control teams and captains of sea patrol flotillas of the Anti-Smuggling Investigation Department of the General Department of Customs, heads of market management teams, chief inspectors of provincial-level Departments of Science and Technology, and the Chief Inspector of the Ministry of Science and Technology may temporarily seize material evidence and means used in the commission of violations in industrial property under the conditions specified in Clause 1. Article 215 of the Law on Intellectual Property and according to the procedures specified in Article 46 of the Ordinance on Handling of Administrative Violations.

2. District-level police chiefs, heads of police sections for investigation of crimes related to economic management order and positions, heads of border-gate police stations, directors of district-level customs sub-departments, heads of control teams of provincial-level Customs Departments, heads of anti-smuggling control teams and captains of sea patrol flotillas of the Anti-Smuggling Investigation Department of the General Department of Customs, heads of market management teams, people's public security soldiers, market controllers, and specialized scientific and technological inspectors who are on duty may search vehicles or articles when having grounds to believe that material evidence in administrative violations in the domain of industrial property is hidden in these vehicles or articles, under the conditions specified in Clause 1, Article 215 of the Law on Intellectual Property and according to the procedures specified in Article 48 of the Ordinance on Handling of Administrative Violations.

3. District-level police chiefs, heads of police sections for investigation of crimes related to economic management order and positions, heads of border-gate police stations, directors of district-level customs sub-departments, heads of control teams of provincial-level Customs Departments, heads of anti-smuggling control teams and captains of sea patrol flotillas of the Anti-Smuggling Investigation Department of the General Department of Customs, and heads of market management teams may decide to hold in custody or search persons according to administrative procedures, search places in which material evidence or means used in the commission of administrative violations in the domain of industrial property are hidden, under the conditions specified in Clause 1. Article 215 of the Law on Intellectual Property and according to the procedures specified in Articles 45.47 and 49 of the Ordinance on Handling of Administrative Violations Article 17 of the Governments Decree No. 128/2008/ND-CP of December 16, 2008, detailing a number of articles of the Ordinance on Handling of Administrative Violations.

## Chapter IV

### PROCEDURES FOR HANDLING VIOLATIONS

#### **Article 24. Right to request handling of violations and competence to take the initiative in detecting and handling violations**

1. Industrial property rights holders that may request handling of violations in the domain of industrial property include:

a) Industrial property rights holders that suffer damage caused by violations, including also organizations authorized to manage geographical indications currently protected in Vietnam;

b) Persons licensed to use industrial property objects who suffer damage caused by violations, provided their right to request handling of violations are not restricted by industrial property rights holders.

When exercising the right to request handling of acts infringing upon industrial property rights provided at Point a, Clause 1, Article 211 of the Law on Intellectual Property and acts of unfair competition specified in Article 130 of the Law on Intellectual Property, organizations and individuals defined in this Clause shall clearly indicate the nature and severity of violations in their requests and supply documents and evidence specified in Clause 2, Article 26 of this Decree.

2. Organizations and individuals that detect acts infringing upon industrial property rights, thus causing damage to consumers or the society, violations related to goods, stamps, labels or articles bearing counterfeit trademarks or geographical indications; organizations and individuals that suffer damage or are likely to suffer damage caused by acts of unfair competition in the domain of industrial property may notify and request competent agencies to carry out procedures for verifying and sanctioning violations.

Upon receiving notices of organizations and individuals defined in this Clause, agencies competent to handle violations shall inspect and coordinate with industrial property rights holders in verifying and handling violations under Clause 3 of this Article.

3. Agencies competent to handle violations shall take the initiative in inspecting, examining, detecting and coordinate with industrial property rights holders in verifying and handling violations related to the following objects:

a) Goods, stamps, labels, packages and other articles bearing counterfeit trademarks or geographical indications;

b) Infringing goods or services related to food, foodstuffs, pharmaceuticals, cosmetics, livestock feed, fertilizers, veterinary drugs, plant protection drugs, construction materials, means of transport, chemicals for medical, agricultural or environmental use, and other items identified by competent persons while conducting periodical or irregular inspection or examination.

## **Article 25. Authorized request for handling of violations**

1. Industrial property rights holders defined in Clause 1, Article 24 of this Decree that do not directly file their requests for handling of violations may authorize heads of their representative offices, branches or agents or industrial property representation service providers in Vietnam to carry out all procedures for requesting handling of violations under this Decree.

2. Authorization must be made in writing in the form of power of attorney. Such a power of attorney enclosed with the request for handling of violations must be original and bear the signature of the lawful representative and seal for certification of the authorizer in case he/she/it has a lawfully registered seal or certification by a notary public, consular office or local administration or another form considered lawful under the law in the place in which this document is made. A power of attorney made in a foreign language must be enclosed with its Vietnamese translation certified by a notary public, consular office or local administration or bearing guarantee and certification by an industrial property representation service provider being the authorized. In case a copy of a power of attorney refers to the original power of attorney already included in a dossier previously filed with the same violation-handling agency, such copy is also considered valid, provided that the original is still valid and consistent with contents of authorization.

3. A power of attorney which is valid in procedures for establishing rights under Article 107 of the Law on Intellectual Property and clearly indicates contents of authorization including enforcement and protection of industrial property rights in Vietnam is also legally valid in procedures for requesting handling of violations under this Decree.

4. Conditions for authorization, rights and obligations and matters related to the job of authorized representatives, validity of sub-authorization or surrogate authorization comply with contents of powers of attorney and the Civil Code.

## **Article 26. Requests for handling of violations**

1. A request for handling of a violation must be made in writing, clearly indicating the date of making, name(s) of request-receiving agency(ies), information on the requesting organization or individual; lawful representative or authorized organization or individual; industrial property object in question; goods or service showing signs of infringement; name and address of infringing organization or individual; proposed handling measure(s); signature of the lawful representative of the requesting organization or individual or the authorized organization or individual, and the seal for signature certification (if any). If such a request has been previously filed with another agency, it must clearly indicate the name of this agency and the filing date.

2. A written request for handling of a violation must be enclosed with documents evidencing the right to request handling of violation; documents describing or photos of infringing act, goods or service; place in which the infringing act is committed or infringing goods or service exists. The requester may supply other documents samples or evidence to help the competent agency identify the infringing act and goods or service.

## **Article 27. Receipt and examination of written requests for handling of violations**

1. When receiving a written request for handling of a violation, a violation-receiving agency shall:

a) Determine the competence to handle the violation; if the written request for handling of a violation falls under the handling competence of another agency, guide the requester to file this request with that agency;

b) Examine documents and evidence enclosed with the written request.

2. Examination of a written request for handling of a violation shall be conducted as follows:

a) Within 10 working days after receiving the written request, the violation-handling agency shall consider the validity of the written request and enclosed documents and evidence;

b) When documents or evidence supplied by the requester are insufficient, the violation-handling agency shall request the requester to supplement documents and evidence or give explanations within 30 days after being requested;

c) The agency competent to accept the case for handling may request the alleged violator to furnish information and evidence and give explanations; solicit expert opinions of the state management agency in charge of industrial property or request industrial property assessment to clarify circumstances of the case;

d) Within 30 days after receiving the complete dossier which satisfies the requirements, the competent person shall notify the requester of the projected time of handling, procedures and measures and request cooperation and support of the industrial property rights holder in the inspection, examination, verification and handling of the violation.

3. Rights and responsibilities of parties requested to be handled for their violations:

a) In the course of handling a case, the party requested to be handled may, at his/her/its own will or the request of a competent person, provide information, documents and evidence and give explanations, in case of disagreeing with the requester, within 10 days after the date fixed in the notice of the competent person currently handling the violation or the date of making a minutes of administrative violation. If there is a plausible reason, the party requested to be handled may request in writing the competent person currently handling the case to prolong that time limit for not more than 30 days after the date fixed in the notice or the date of making a minutes of administrative violation.

b) The party requested to be handled may authorize another organization or individual under Article 25 of this Decree to provide information, documents and evidence and give explanations under Point a of this Clause;

c) To prove that his/her/its act does not infringe upon the right to an invention or a utility solution being a process, the party requested to be handled is obliged to prove that the product

believed to be produced from the process infringing upon the right to that invention or utility solution has, in fact, not been produced from the process protected as an invention or a utility solution and satisfied the relevant conditions specified in Clause 4, Article 203 of the Law on Intellectual Property;

d) In case the party requested to be handled fails to provide or provides insufficient information, documents, evidence and explanations to prove his/her/its lawful act, the competent person shall decide to handle the case based on inspection and examination results and information, documents and evidence provided by the requester, for issuing a handling decision.

#### **Article 28. Provision of evidence and information to identify violations**

1. A requester for handling of a violation may request industrial property assessment or request the state management agency in charge of industrial property to give its expert opinions for identifying the protection scope and infringing elements, or take the initiative in providing documents and evidence to prove the infringing act or to clarify circumstances of the case.

2. The agency competent to handle the violation may request the requester to provide documents, evidence and explanations or clarify circumstances of the case within a given time limit; request the industrial property rights holder to provide information, documents and samples to identify signs of violation, genuine goods and counterfeit or infringing goods, source of supply or place of consumption of lawful goods, grounds for identifying goods produced beyond the scope of licensing of industrial property object or imports other than parallel imports.

3. The agency competent to handle the violation may conduct at its own will inspection, verification, collection of evidence, determination of the scope of industrial property rights protection and identification of the act of violation under the law on intellectual property. When necessary, it may request a functional agency to conduct verification, collect evidence of violation, request the state management agency in charge of industrial property to give its expert opinions or request industrial property assessment to identify the scope of protection and infringing elements.

4. The industrial property assessment organization or assessor that makes a written assessment conclusion shall take legal responsibility for the impartiality, truthfulness and lawfulness of its/his/her assessment and conclusion stated in the written assessment conclusion. The person competent to handle the violation may base him/herself on the industrial property rights holder's written confirmation of goods or service bearing a counterfeit mark or geographical indication, written expert opinions of the state management agency in charge of industrial property and written assessment conclusion to identify the violation but shall take legal responsibility for his/her violation conclusion and violation-handling decision.

5. The agency competent to handle the violation may provide relevant information on the place of production, consumption channel and source of supply of counterfeit or infringing goods and circumstances of the case at the request of the industrial property rights holder or a person

competent to settle disputes or sanction violations of another agency or organization, provided that such information does not affect the effectiveness of the case handling and is not confidential as prescribed by law.

6. The agency competent to handle the case may request the party requested to be handled for his/her/its violation and parties with related rights and benefits in the case to provide information, documents and evidence to prove their requests and arguments or to disprove requests and arguments of other parties; request the party currently keeping or controlling evidence and documents related to the case of violation to furnish such evidence and documents as a basis for handling the case.

7. The industrial property rights holder or his/her/its authorized representative may request the agency competent to handle the violation to permit his/her/its participation and assistance in the inspection, examination, verification, collection of evidence, identification of genuine goods, counterfeit or infringing goods and infringing elements on goods, articles, raw materials, materials and means of business, and determination of measure(s) to handle the infringing goods or service. The agency competent to handle the violation shall decide to permit the participation as requested, unless it is necessary to protect a trade secret at the justifiable request of the handled party.

#### **Article 29. Handling of violations involving disputes**

1. In case a complaint, denunciation or dispute arises concerning the registration right, ownership right, right to request handling of violation, conditions or scope of protection of industrial property rights after a written request for handling of a violation is accepted, the agency competent to accept the case for handling shall take the following handling measures:

- a) Requesting involved parties to carry out procedures for requesting settlement of the complaint, denunciation or dispute by a competent agency under the law on intellectual property;
- b) Requesting the industrial property rights holder to give explanations or make commitment or to request the state management agency in charge of industrial property to clarify the legal status of industrial property rights subject to the complaint, denunciation or dispute.

Within 15 days after receiving a written explanation or commitment of the industrial property rights holder or a written reply of the state management agency in charge of industrial property, the agency competent to accept the case for handling shall notify the requester of whether it will carry out handling procedures or refuses to handle the violation.

2. In case a written request for handling of a violation has been accepted but parties involved in the case reach an agreement and propose a handling measure in compliance with the law on intellectual property which does not affect the rights and interests of a third party, consumers and the society, the agency competent to handle the violation shall recognize such handling measure and terminate the handling of the case.

### **Article 30. Refusal to handle or termination of handling of violations**

1. A violation-handling agency shall refuse to handle a violation in the following cases:

a) The written request for handling of the violation is filed when related industrial property rights are disputed;

b) The requester fails to meet requirements of the violation-handling agency on explanation about or addition of evidence proving the status of the industrial property rights holder and the violation under Point b, Clause 2, Article 27 of this Decree;

c) The statute of limitations for sanctioning the administrative violation has expired under Clause 1, Article 10 of the Ordinance on Handling of Administrative Violations;

d) Results of verification by the violation-handling agency or a police office disprove the violation as described in the written request for violation handling;

e) There's a conclusion, decision or notice of a competent agency on the lack of grounds for carrying out procedures for handling the violation;

f) The act is neither regarded as a violation under the law on intellectual property nor subject to any administrative sanction specified in this Decree.

2. A person accepting a written request for handling of a violation shall cease procedures for handling the violation in the following cases:

a) There arises a complaint, denunciation or dispute after the request is accepted and pending results of handling by a competent agency defined in Clause 1, Article 29 of this Decree;

b) The requester requests in writing withdrawal of the written request for violation handling;

c) The involved parties can reach agreement on the handling of the case under Clause 2, Article 29 of this Decree.

3. In case a violation is related to the production of or trading in a goods or its package, stamp, label or other articles bearing a counterfeit mark or geographical indication, a person with sanctioning competence shall still carry out procedures for administratively sanctioning this violation even after receiving a notice of withdrawal of the written request for violation handling under Point b, Clause 2 of this Article.

### **Article 31. Coordination in the handling of violations**

1. Requirements for coordination in the handling of violations

a) For a violation involving complicated circumstances or different organizations and individuals, the agency competent to accept a written request for violation handling may request a competent agency and the state management agency in charge of industrial property in the concerned locality to coordinate with one another in handling the violation. A request for

coordination in the handling of a violation must contain brief information on the case, propose issues which require coordinated handling and indicate a time limit of 15 days for the request-receiving agency to reply:

b) The agency receiving the request for coordination shall reply within the indicated time limit, unless it refuses to coordinate. In case of refusal to coordinate, it shall clearly state the reason.

2. Use of results of examination and handling of written requests for violation handling from other agencies:

a) A violation-handling agency may use results of identification of violations or determination of the value of infringing goods conducted by another competent agency (if any) to ensure uniformity of handling measures and sanctioning levels applicable to the same or similar violations or related to the same industrial property object of the same industrial property rights holder;

b) When competent agencies have different opinions, conclusions and decisions on the identification of the violation, measures and extent of handling of the violation, the person competent to handle the violation may set up an advisory council composed of experts prestigious in relevant professional domains to assist the competent person in making conclusions on the violation.

### **Article 32. Application of deterrent and administrative sanctioning security measures**

1. A person with sanctioning competence shall issue a decision to apply a deterrent and sanctioning security measure in the following cases:

a) The violation is likely to cause serious damage to consumers or the society: violation exhibits are in danger of dispersal;

b) The violator show signs of shirking his/ her/its liability to the violation;

c) The capability of the violator to comply with the sanctioning decision must be secured.

2. A requester for handling of a violation may request a person with sanctioning competence to take a deterrent and sanctioning security measure when a circumstance specified in Clause 1 of this Article occurs.

3. Measures to deter and secure administrative sanctioning of violations in the domain of industrial property include: holding of a person in custody; temporary seizure of a goods, material evidence or means used in the commission of a violation; search of a person, means of transport, article or place in which a goods, material evidence or means used in the commission of a violation is hidden.

4. Persons competent to issue decisions to apply deterrent and sanctioning security measures shall take legal responsibilities, including responsibility to pay compensations for



damage caused to organizations and individuals subject to these measures in case these measures are applied in contravention of regulations.

### **Article 33. Administrative sanctioning procedures**

1. When detecting a violation, a person with sanctioning competence shall immediately order termination of such violation, clearly explaining regulations on sanctioning of administrative violations in the domain of industrial property and relevant provisions of the law on industrial property to the violating organization or individual, requesting the latter to strictly observe the provisions of law.

2. When there are sufficient grounds and clear evidence for imposing a caution, a person with sanctioning competence is not required to make a minutes of violation but issue a sanctioning decision right at the place of violation commission and the caution must be issued in writing.

3. Unless simple procedures are applied, when a violation is subject to a fine, a competent person on duty shall make a minutes of administrative violation under Article 55 of the Ordinance on Handling of Administrative Violations. The minutes maker shall allow the violating individual or organization to present his/her/its opinions about the violation.

4. A sanctioning decision and its contents must comply with Article 56 of the Ordinance on Handling of Administrative Violations. It must be sent to the sanctioned organization or individual within 3 days after its issuance.

5. When a sanctioning decision covers also additional sanctions which require completion of procedures for establishment, modification, suspension, termination or cancellation of the validity of a relevant protection title, industrial property rights transfer registration certificate, industrial property representation practice card, industrial property assessor card or certificate of eligibility for assessment, it shall be sent by its issuer to the Inspectorate of the Ministry of Science and Technology and the National Office of Intellectual Property for coordination in monitoring and implementation.

6. When a sanctioning decision covers also additional sanctions or consequence remedies which require completion of procedures for deprivation of the right to use, revocation, suspension, invalidation or modification of a business registration certificate, domain name registration or goods label, it shall be sent to concerned state management agencies and organizations for implementation.

### **Article 34. Execution of sanctioning decisions**

1. The execution and enforcement of administrative sanctioning decisions comply with Articles 66, 66a, 67, 68 and 69 of the Ordinance on Handling of Administrative Violations.

2. Business management agencies, agencies and organizations managing domain names and advertisements shall satisfy requests in administrative sanctioning decisions for forcible termination of violations; removal of infringing elements; suspension for a definite period of time

of business activities, including also e-commerce activities related to infringing goods or services; forcible removal of infringing elements from advertisement media; forcible removal of information on infringing goods or services from websites; change or withdrawal of enterprise or domain names containing infringing elements.

3. Credit institutions shall collect fines, remit or refund collected fine amounts based on handling decisions of persons with sanctioning competence under the Ordinance on Handling of Administrative Violations and this Decree.

### **Article 35. Modification, cancellation or invalidation of administrative sanctioning decisions**

1. In case a decision on the settlement of a dispute on industrial property is issued by a competent agency within 3 months from the date of issuance of an administrative sanctioning decision, leading to a change in grounds and contents of the administrative sanctioning decision, a person with sanctioning competence shall issue a decision to modify, invalidate or cancel partially or wholly the validity of the issued administrative sanctioning decision to make it consistent with the dispute settlement decision.

2. In case an administrative sanctioning decision has been complied with by the sanctioned organization or individual, a person with sanctioning competence shall take any of the following measures:

a) Requesting the State Treasury that has collected the fine to refund partially or wholly the fine amount remitted under the decision on modification, cancellation or invalidation of the sanctioning decision at the request of the organization or individual that has paid the fine. The request for fine refund may be accepted within 90 days after the date of issuance of the decision on modification, cancellation or invalidation;

b) Returning the goods, article or means of business which has been seized or confiscated but not yet handled. In case such goods, article or means of business has been handled, the organization or individual that has requested the violation handling shall pay a compensation to the handled organization or individual according to the commitment realized upon requesting the violation handling, if any;

c) Other handling measures as reasonably proposed by involved parties.

3. In case the issuance of an administrative sanctioning decision is detected involving a violation of issuing competence, procedures or grounds, such decision shall be handled under Articles 118, 119 and 121 of the Ordinance on Handling of Administrative Violations and the provisions of the law on settlement of complaints and denunciations.

## **Article 36. Handling of material evidence and means used in the commission of violations**

1. Evidence or means used in the commission of a violation shall be handled with the following measures:

a) Forcible removal or destruction of infringing element(s);

b) Forcible removal of infringing element(s) and bringing out of the Vietnamese territory, for infringing goods in transit; forcible re-export of infringing imported goods;

c) Forcible distribution or use for noncommercial purposes under the conditions specified in Clause 2 of this Article;

d) Other handling measures as agreed upon or proposed by involved parties not in contravention of the Law on Intellectual Property, not affecting the interests of a third party, consumers and the society, and accepted by a person with sanctioning competence;

e) Forcible destruction of material evidence and means used in the commission of the violation in case infringing element(s) cannot be removed.

2. Conditions on application of the measure of forcible distribution or use for non-commercial purposes:

a) Goods and articles have utilities and are not parts, sections or details of products, stamps, labels or other articles bearing infringing elements;

b) Infringing elements have been removed;

c) The distribution or use is for noncommercial purposes, prioritizing humanitarian or charity purpose or for public interests;

d) Persons to whom goods are distributed or who receive goods for use are not potential customers of industrial property rights holders.

3. The measure of forcible destruction shall be applied on any of the following conditions:

a) Infringing elements cannot be removed from products, goods, stamps, labels, other articles, material evidence or means used in the commission of violations;

b) Goods have no utility and are harmful to the health of humans, domestic animals and plants.

4. The provisions of Clauses 1. 2 and 3 of this Article on conditions on application of measures to handle material evidence are also applicable to raw materials, materials and means used mainly for the production of or trading in infringing goods.

5. Persons with sanctioning competence shall decide on and clearly indicate in their sanctioning decisions measures to handle material evidence and means used in the commission of violations which must be taken within 30 days after sanctioning decisions are signed.

Administrative violators shall implement measures to handle material evidence and means used in the commission of violations specified in Clause 1 of this Article. If they fail to voluntarily implement these measures, they shall be forced to do so- They shall bear all expenses for application of forcible measures.

The handling of material evidence and means used in the commission of violations shall be conducted under supervision by representatives of agencies competent to handle violations. Industrial property rights holders and their authorized representatives may request persons with sanctioning competence to permit them to participate, witness or support the handling.

**Article 37. Procedures for confiscation and handling of goods, material evidence and means used in the commission of violations**

1. In case material evidence and means used in the commission of violations are goods bearing counterfeit trademarks or geographical areas: raw materials, materials and means used mainly for the production of or trading in goods bearing counterfeit trademarks or geographical areas; stamps, labels, packages or other articles containing infringing elements; raw materials, materials and means used mainly for the production of or trading in stamps, labels, packages or other articles containing infringing elements; papers and documents are modified, erased or forged, persons with sanctioning competence shall carry out procedures for temporarily seizing such goods, material evidence and means and applying the sanction of confiscation.

In case infringing goods, material evidence and means used in the commission of violations are bulky, difficult to transport or perishable, the measure of temporary seizure shall be applied in the form of scaling and handover to violators for preservation pending decisions of persons with sanctioning competence.

2. The sanction of confiscation and measures to handle confiscated goods, material evidence and means used in the commission of violations shall be decided by persons with sanctioning competence and clearly indicated in sanctioning decisions as follows.

a) In case infringing elements can be removed, persons with sanctioning competence shall organize the removal of these elements from goods, material evidence and means used in the commission of violations for auction or distribution or use for non-commercial purposes of these goods, material evidence and means, provided that such does not affect the capability of industrial property rights holders to utilize their rights, prioritizing humanitarian, charity and social welfare purposes:

b) In case infringing elements cannot be removed from goods, material evidence and means used in the commission of violations or conditions for application of the measure specified at Point a of this Clause are not fully satisfied, persons with sanctioning competence shall organize the destruction thereof under Article 61 of the Ordinance on Handling of Administrative Violations.

3. The handling of confiscated material evidence and means used in the commission of violations shall be conducted within 90 days after sanctioning decisions are signed. Persons with

sanctioning competence shall notify organizations and individuals requesting the handling of the measure, time and place for handling such goods, material evidence and means.

Industrial property rights holders and their authorized representatives may participate in or supervise and shall support competent agencies in handling confiscated goods, material evidence and means used in the commission of violations.

## **Chapter V**

### **IMPLEMENTATION PROVISIONS**

#### **Article 38. Transitional provisions**

Cases of administrative violation in industrial property accepted for handling on the effective date of the Law Amending and Supplementing a Number of Articles of the Law on Intellectual Property or afterwards but before the effective date of this Decree shall be handled under the Government's Decree No. 106/2006/ND-CP of September 22, 2006, on sanctioning of administrative violations in industrial property.

For administrative violations in industrial property which remain unhandled and for which this Decree specifies lighter sanctioning levels and remedies, this Decree will apply.

#### **Article 39. Implementation effect**

1. This Decree takes effect on November 9, 2010, and replaces the Government's Decree No. 106/2006/ND-CP of September 22, 2006, on sanctioning of administrative violations in industrial property.

2. The Ministry of Science and Technology shall guide the identification of violations, procedures for application of the measure of remittance into the state budget of illicit earnings from the commission of administrative violations and other issues related to the implementation of this Decree; collect, store and make statistics on information on the handling of violations of the law on industrial property, establish and manage the database and computer network on the enforcement of industrial property rights with administrative measures.

3. Ministers, heads of ministerial-level agencies, heads of government-attached agencies and chairpersons of provincial-level People's Committees shall, within the ambit of their functions and tasks, implement this Decree.

**THE GOVERNMENT  
PRIME MINISTER**

*(signed)*

**Nguyen Tan Dung**

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