
**THE MINISTRY OF INDUSTRY
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CIRCULAR

GUIDING THE ORDER OF AND PROCEDURES FOR THE MARKET MANAGEMENT OFFICES TO RECEIVE AND ACCEPT FOR SETTLEMENT WRITTEN REQUESTS FOR HANDLING OF ADMINISTRATIVE VIOLATIONS IN THE FIELD OF INTELLECTUAL PROPERTY

Pursuant to the Government's Decree No. 189/2007/ND-CP of December 27, 2007, defining the functions, tasks, powers and organizational structure of the Ministry of Industry and Trade;

Pursuant to the November 29, 2005 Intellectual Property Law and the Government's Decree No. 100/2006/ND-CP of September 21, 2006, detailing the implementation of a number of articles of the Civil Code and the Intellectual Property Law regarding copyright and related rights; Decree No. 103/2006/ND-CP of September 22, 2006, detailing and guiding the implementation of a number of articles of the Intellectual Property Law regarding industrial property; Decree No. 105/2006/ND-CP of September 22, 2006, detailing and guiding the implementation of a number of articles of the Intellectual Property Law regarding protection of intellectual property rights and regarding state management of intellectual property; Decree No. 106/2006/ND-CP of September 22, 2006, on sanctioning of administrative violations in the domain of industrial property; and Decree No. 56/2006/ND-CP of June 6, 2006, on sanctioning of administrative violations in the domain of culture and information;

Pursuant to the 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;

The Ministry of Industry and Trade guides the order of and procedures for the Market Management Offices to receive and accept for settlement cases of administrative violation in the field of intellectual property as follows:

I. GENERAL PROVISIONS

1. Scope and subjects of application

a. Scope of application:

This Circular guides the order of and procedures for the Market Management Force to receive and accept written requests for handling of infringements and cases of infringement of intellectual property rights or cases involving goods bearing counterfeit marks or geographical indications or illegal reproduction of copyrighted materials in the domestic market under Article 27 of the Government's Decree No. 105/2006/ND-CP, detailing and implementation of a number of articles of the Intellectual Property Law regarding protection of intellectual property rights and regarding state management of intellectual property; and Articles 20, 21, 22 and 23 of the Government's Decree No. 106/2006/ND-CP, on sanctioning of administrative violations in the field of industrial property.

b. Subjects of application:

The Market Management Offices at all levels, officers and public employees of the market management force who conduct the inspection, control and handling of administrative violations in the field of intellectual property, and other concerned agencies, organizations and individuals.

2. Principles for inspection and handling of administrative violations in the field of intellectual property

a. Regarding infringements of rights:

Acts infringing upon intellectual property rights shall only be handled in the following cases:

- Rights holders or their lawful representatives (below collectively referred to as rights holders) request the handling of these acts under Point c, Clause 1, Article 198 of the Intellectual Property Law and Clause 4, Article 21 of Decree No. 105/2006/ND-CP;

- Organizations or individuals that suffer damage caused by or detect acts infringing upon intellectual property rights, which cause damage to consumers or the society and involve food, foodstuffs, preventive and curative medicines, livestock feed, fertilizers, veterinary drugs, plant protection drugs, plant varieties and animal breeds, request the handling of infringing acts under Point a, Clause 1, Article 211 of the Intellectual Property Law.

b. Regarding counterfeit goods:

Acts of trading in goods bearing counterfeit marks or geographical indications or illegally reproducing cultural and information products (below collectively referred to as counterfeit goods) shall be handled in the following cases:

- Rights holders make petitions or denunciations against acts of manufacturing or trading in counterfeit goods, requesting the handling thereof under Clause 1, Article 198 of the Intellectual Property Law;

- Organizations or individuals that suffer from damage or detect acts of manufacturing or trading in counterfeit goods which cause damage to consumers or the society denounce these acts under Clause 2, Article 198, and Points c and d, Clause 1, Article 121 of the Intellectual Property Law;

- The Market Management Offices may take the initiative in inspecting and handling acts of trading in counterfeit goods without requests of rights holders or individuals or organizations with related rights and interests as specified in Article 24 of Decree No. 106/2006/ND-CP.

3. Regarding the responsibility to direct and the competence to decide on the inspection and handling of infringements

a. The Market Management Department shall provide professional guidance to and direct Market Management Sub-Departments of provinces or centrally run cities (below referred to as provincial-level Market Management Sub-Departments) in inspecting and handling acts infringing upon rights or trading in intellectual property counterfeit goods.

The director of the Market Management Department shall decide on the inspection and handling of acts infringing upon rights or trading in intellectual property counterfeit goods falling under his/her competence nationwide.

b. Provincial-level Market Management Sub-Departments shall direct and professionally guide their attached Market Management Teams in conducting the inspection of acts infringing upon rights or trading in intellectual property counterfeit goods;

Directors of provincial-level Market Management Sub-Departments shall decide on the inspection and handling of acts infringing upon rights or trading in intellectual property counterfeit goods falling under their competence.

c. Heads of Market Management Teams shall decide on the inspection and handling of acts of administrative violation falling under their competence specified at Point b, Clause 2, Section I; Article 24 of Decree No. 106/2006/ND-CP; Clause 3, Section II, for acts causing damage to consumers and the society, and Point a, Clause 4, Section II;

Heads of Market Management Teams shall enforce inspection decisions of provincial-level Market Management Sub-Departments and sanction administrative violations according to their competence.

d. Presidents of provincial- or district-level People's Committees are competent to sanction administrative violations in the domain of industrial property in their respective localities under Article 19 of Decree No. 106/2006/ND-CP.

4. Cases in which written requests are not accepted

The Market Management Offices at all levels may refuse to receive, accept and settle written requests for handling of acts infringing upon rights or trading in intellectual property counterfeit goods in the following cases:

- a. Cases of infringement have been accepted for handling by other agencies competent to handle infringements with administrative, criminal or civil measures, unless rights holders are instituting or have instituted legal actions at a civil tribunal only to claim for damages;
- b. Cases involve disputes over or complaints about rights holders, the protectability and scope of protection of intellectual property rights;
- c. Cases show signs of crime, dossiers of which must be transferred to competent agencies for criminal investigation and prosecution;
- d. The statute of limitations for sanctioning acts of infringing upon rights (two years after these acts are committed) has expired;
- e. Cases fall beyond the Market Management Office's competence;
- f. Requesters for handling of infringements fail to additionally supply documents or evidence necessary for proving the capacity of rights holders and infringement-handling requesters and acts of infringement specified in Article 21 of Decree No. 106/2006/ND-CP within 30 days after receiving notices of the Market Management Office requesting these additional documents or evidence.

5. Time limit for acceptance and handling of cases of violation

The time limit for acceptance and handling of cases of violation complies with Articles 66, 67 and 71 of the Law on Complaints and Denunciations.

6. Reporting responsibility

Within 2 working days, market management offices shall duplicate and send their decisions on sanctioning of first-time administrative violations in the field of intellectual property to their superior for monitoring, supervision and professional guidance. For deep-lying and remote localities, that time limit is five working days.

II. ORDER OF AND PROCEDURES FOR RECEIVING AND ACCEPTING WRITTEN REQUESTS

1. Requirements on preliminary dossiers

- a. A dossier filed by a rights holder requesting the handling of an infringement comprises:
 - A written request for handling which contains all the details specified in Article 22 of Decree No. 105/2006/ND-CP;
 - The business registration certificate (if the requester has made business registration in Vietnam);
 - Documents and evidence required to be supplied by the organization or individual requesting the handling and those concerning the contents of the request specified in Articles 23, 24 and 25 of Decree No. 105/2006/ND-CP;
 - Assessment results (if any);
 - If the case involves a recidivist who has been handled by a criminal tribunal or another competent agency, the dossier must be enclosed with a notarized copy of the effective court ruling or judgment or the sanctioning decision of another competent agency.
- b. A dossier filed by an organization or individual suffering damage caused by or detecting an act of infringing upon rights comprises:
 - A denunciation and a written request for handling which contains all the details specified in Article 22 of Decree No. 105/2006/ND-CP;

- The business registration certificate (if the requester has made business registration in Vietnam);

- Evidence proving the damage specified at Point d, Clause 1, Article 23 of Decree No. 105/2006/ND-CP;

- Results of damage assessment (if any).

c. A dossier of denunciation against an act of manufacturing or trading in intellectual property counterfeit goods comprises:

- A denunciation and a written request for handling which contains all the details specified in Article 22 of Decree No. 105/2006/ND-CP;

- Evidence and exhibits being counterfeit goods specified at Point e, Clause 1, Article 23 of Decree No. 105/2006/ND-CP.

d. A dossier prepared by the Market Management Office for an act of manufacturing or trading in intellectual property counterfeit goods comprises:

- A written petition supplying uncovered information on and evidence of the act of manufacturing or trading in intellectual property counterfeit goods;

- Results of verification and supply of evidence by the Police (if any);

- Results of assessment and consultation between the Market Management Office and the Intellectual Property Office (if any);

e. A dossier transferred from a subordinate office comprises:

A preliminary dossier transferred from a market management office to its superior office to request the handling of a case of infringement must satisfy the requirements guided at Point a, b, c or d, Clause 1, Section II for each type of case and be enclosed with a dossier transfer paper and a written petition of the market management office.

f. In case the Market Management Office detects acts infringing upon rights:

- The Market Management Office that detects acts infringing upon intellectual property rights shall notify rights holders thereof and guide them in carrying out the specified procedures. If rights holders request the handling of these acts, it shall handle them under Point a, Clause 1, Section II;

- The Market Management Office that detects acts infringing upon intellectual property rights and causing damage to the society and consumers as specified at Point a, Clause 1, Article 211 of the Intellectual Property Law and involving infringing goods listed at Point d, Clause 1, Article 23 of Decree No. 105/2006/ND-CP shall collect evidence to prove the damage and make preliminary dossiers under Point b, Clause 1, Section II (excluding denunciations, handling requests and business registration certificates).

2. Order of receipt and processing of dossiers and issuance of inspection decisions

a. Responsibility to receive dossiers of request for handling of violations:

The Market Management Offices at all levels, including the Market Management Department (under the Industry and Trade Ministry), provincial-level Market Management Sub-Departments (under provincial-level Industry and Trade Services) and Market Management Teams, shall receive dossiers of request for handling of acts infringing upon rights and intellectual property counterfeit goods in the following order:

- For first-time infringing acts:

A first-time infringing act means an act infringing upon rights to a certain goods and subject to the handling requested for the first time by a rights holder.

In case a rights holder files a dossier to request a Market Management Team to handle a first-time infringing act, the latter shall guide the rights holder in filing a dossier of request for handling of the infringing act with the provincial-level Market Management Sub-Department or receive the rights holder's dossier before transferring it to the provincial-level Market Management Sub-Department.

In case the Market Management Team receives the dossier, it shall transfer, within 2 working days, the whole dossier to the provincial-level Market Management Sub-Department and, at the same time, notify the rights holder of the dossier transfer. For Market Management Teams in deep-lying and remote areas, the time limit for dossier transfer is 5 working days.

- For cases of intellectual property counterfeit: Market Management Teams shall receive dossiers and accept these cases for handling under Article 24 of Decree No. 106/2006/ND-CP.

For violations already handled and infringing acts causing damage to consumers or the society: Market Management Teams shall receive dossiers and accept these cases for handling under Clause 4, Section II and Point a, Clause 5, Section II.

- The Market Management Department and provincial-level Market Management Sub-Departments shall receive and handle all preliminary dossiers of request for handling of acts infringing upon rights and intellectual property counterfeit goods.

b. Examination of dossiers:

Upon receiving dossiers, the Market Management Office shall check and examine them under Clause 1, Article 20 of Decree No. 106/2006/ND-CP. Within 10 days after receiving a dossier of request, the Market Management Office shall examine and:

- Guide the requester in filing his/her/its written request with a competent agency, or transfer the received dossier to a competent agency for handling if the preliminary dossier filed by a rights holder contains a request for handling of an infringing act and counterfeit goods which fall beyond its handling competence;

After transferring the dossier to another competent agency, it shall notify the rights holder of such transfer.

- Notify in writing the rights holder of the fact that his/her/its preliminary dossier is invalid under Clause 1, Section II of this Circular, requesting the additional supply of necessary documents and evidence;

When the rights holder supplements the dossier as requested, it shall check and record the list of supplied documents and evidence according to the procedures it has prescribed.

- Reject the dossier and guide the rights holder in filing the request with another competent agency for handling in case the preliminary dossier filed by the rights holder contains documents and evidence showing a dispute between the rights holder and an organization or individual requested to be handled or a dispute between the rights holder and a third party on the capacity of the rights holder, the protectability and scope of protection of intellectual property rights, on which no final conclusion has been made by a competent agency;

- Check and record the list of documents and evidence in the preliminary dossier according to the procedures it has prescribed in case this preliminary dossier is transferred from a subordinate Market Management Office which is professionally incapable to complete the dossier;

- Check and record the list of documents and evidence in the dossier according to the procedures it has prescribed in case this dossier is transferred from another competent agency and falls under its handling competence;

- Notify, upon receiving the dossier, the rights holder of the receipt so that the latter can make a request for handling of a violation and additionally supply evidence of the violation in the dossier, for dossiers specified at Points b, c, d and e, Clause 1, Section II.

c. Processing of valid dossiers by provincial-level Market Management Sub-Departments or Market Management Teams

Based on a valid dossier of request for handling of an infringing act or counterfeit goods, a provincial-level Market Management Sub-Department or Market Management Team shall carry out the following steps:

- In case of dossier processing by a provincial-level Market Management Sub-Department: After receiving the dossier, the Sub-Department shall examine and add evidence or request the dossier submitter to add evidence; invite experts to make assessment (if any); exchange professional opinions with concerned agencies or the state management agency in charge of intellectual property (when necessary), complete the dossier, issue an inspection decision and

organize the enforcement of this decision or authorize a Market Management Team to organize the enforcement;

- In case of dossier processing by a Market Management Team: After receiving the dossier, the Market Management Team shall examine and add evidence or request the dossier submitter to add evidence; invite experts to make assessment (if any); exchange professional opinions with concerned agencies or the state management agency in charge of intellectual property (when necessary), complete the dossier, issue an inspection decision and organize the enforcement of this decision.

- Inspection at the infringing establishment: The provincial-level Sub-Department or the Market Management Team shall conduct the inspection according to the order and procedures specified in the Ordinance on Handling of Administrative Violations, the Government's Decrees No. 134/2003/ND-CP, No. 105/2006/ND-CP and No. 106/2006/ND-CP, and the professional procedures of the Market Management Office;

For infringing acts committed or counterfeit goods found in other localities, which have been accepted and handled in their localities, provincial-level Market Management Sub-Departments shall send copies of complete dossiers to provincial-level Market Management Sub-Departments in other localities for coordinated inspection and handling;

For infringing acts or counterfeit goods falling beyond their sanctioning competence, provincial-level Market Management Sub-Departments shall transfer dossiers to provincial/municipal People's Committees or the Market Management Department for sanctioning.

- Cases in which copies of case dossiers shall be transferred to superior Market Management Offices:

+ For first-time violations accepted for handling by Market Management Teams: Within five working days after issuing an inspection decision, a Market Management Team shall send a certified copy of the inspection decision and the case dossier to the provincial-level Market Management Sub-Department (the Market Management Team shall certify the dossier with its own seal).

On a case-by-case basis, the provincial-level Market Management Sub-Department shall, within 20 working days, issue a written notice of infringement and direct the inspection in its province or city or in the locality where the infringement was committed. At the same time, it shall notify the infringement to other enforcement agencies for coordinated handling when finding it necessary.

+ For first-time infringements accepted for handling by provincial-level Market Management Sub-Departments or transferred from Market Management Teams: Within 10 working days after issuing an inspection decision, a provincial-level Market Management Sub-Department shall send a certified copy of the inspection decision and the case dossier to the Market Management Department (the provincial-level Market Management Sub-Department shall certify the dossier with its own seal).

Depending on each case specified at Point d, Clause 2, Section II (cases in which an infringing act is committed or counterfeit goods is found in many provinces or cities), the Market Management Department shall, within 30 working days, issue an inspection decision or a written notice of infringement or a document to direct the inspection throughout the country or in localities where the infringement was committed. At the same time, it shall notify the infringement to other enforcement agencies for coordinated handling when finding it necessary;

- Cases in which a provincial-level Market Management Sub-Department transfers the whole dossier of a case of infringement to the Market Management Department for acceptance and handling:

+ The case of infringement or the counterfeit goods involves many complicated circumstances;

+ Opinions on the case are divergent;

+ The case involves many agencies or is committed in many provinces or cities;

+ The case has insufficient elements to constitute a violation and after the involved parties have been guided to bring the case to court the rights holder still lodges a complaint requesting the issuance of a sanctioning decision.

A dossier must comprise written opinions on the case and proposals of the director of the provincial-level Market Management Sub-Department and be enclosed with copies of relevant documents.

d. Processing of valid dossiers by the Market Management Department:

- Inspection decisions: The Market Management Department shall examine dossiers it directly receives or transferred by provincial-level Market Management Sub-Departments and add evidence or request dossier submitters to add evidence; invite experts to make assessment (if any); exchange professional opinions with concerned agencies or state management agencies in charge of intellectual property (when necessary), complete dossiers and issue inspection decisions;

- Inspection: The Market Management Department shall assign provincial-level Market Management Sub-Departments to enforce its director's inspection decisions in provinces or cities where infringing establishments operate:

- The Market Management Department shall issue a document to direct the inspection or a decision on inspection in many provinces or cities or throughout the country in case of an infringing act committed or counterfeit act found in many provinces or cities and assign concerned provincial-level Market Management Sub-Departments to conduct the inspection;

- For cases requested to be handled as infringements or counterfeit goods but concluded by the Market Management Office as involving no infringing elements or being not counterfeits and if there are insufficient grounds for sanctioning administrative violations but involved parties still lodge complaints and request the sanctioning of violations, the Market Management Department shall guide involved parties to bring their cases to court for handling.

3. In case infringements cause damage to consumers or society

In case the Market Management Office detects infringing acts causing damage to consumers or society specified at Point a, Clause 1, Article 211 of the 2005 Intellectual Property Law (infringing goods are food, foodstuffs, preventive and curative medicines, livestock feed, fertilizers, veterinary drugs, plant protection drugs, plant varieties and animals harmful to human health, livestock or the environment), the Market Management Office shall handle acts of administrative violation under relevant current regulations. For acts infringing upon rights, the Market Management Office shall inspect and handle them without having to send prior notices to rights holders. In case of necessity to collect information on and evidence of infringements, the Market Management Office may request rights holders or concerned agencies to supply them.

4. Cases of suspension of handling

The Market Management Office shall temporarily suspend the processing of valid dossiers, issuance of inspection decisions, conducting of inspection or preparation for issuance of decisions on sanctioning of administrative violations in the field of intellectual property in the following cases:

a. Rights holders and other persons who have filed valid written requests for handling notify in writing the Market Management Office of their wishes to withdraw their requests or that involved parties have agreed to apply other measures to settle infringement cases (except cases of manufacture of or trading in goods bearing counterfeit marks or geographical indications which cause damage to consumers and society);

b. Any dispute specified at Points a and b, Clause 4, Section I of this Circular arises.

In case of a decision on suspension of the inspection specified at Points a and b, Clause 4, Section I of this Circular: the Market Management Office currently handling the case shall make a written record of the number and actual conditions of exhibits as a basis for the handling after obtaining a final handling decision of a competent agency.

The handling of temporarily seized exhibits upon issuance of a decision on suspension of inspection and handling is as follows:

In case the Market Management Office has decided on the temporary seizure of exhibits, these exhibits shall be returned to their owners after the jobs specified at this Point are performed.

In case the Market Management Office has decided on the temporary seizure of exhibits at the request of parties that have filed written requests for handling, these exhibits shall continue to be kept in custody if handling requesters file further written requests for handling and commit to bear material responsibility for handling consequences. If handling requesters file no further

written requests for handling, exhibits shall be returned to their owners after the jobs specified at this Point are performed;

- c. The two-year statute of limitations has expired;
- d. No infringing act described in written requests for handling is found through inspection;
- e. Competent agencies make written conclusions that there are not enough grounds for handling.

5. Procedures for handling cases of infringement of rights or intellectual property counterfeit which have been handled

- a. For infringements which have been handled:

An infringement which has been handled is an act infringing upon rights or counterfeiting intellectual property to a certain goods and having been handled for the first time by the Market Management Office or by a court under a judgment or by another enforcement agency.

If the Market Management Office at a level detects that infringing acts involved in cases of infringement of rights which have been handled are still committed in the market, it may inspect and apply measures to sanction administrative violations under current regulations.

The Market Management Office shall handle cases of infringement which have been handled and involve acts of trading in intellectual property counterfeit goods under Article 24 of Decree No. 106/2006/ND-CP.

- b. When detecting that acts of trading in goods bearing counterfeit marks or geographical indications or being unauthorized copies of copyrighted materials show signs satisfying the conditions guided in Joint Circular No. 01/2008/TTLT-TANDTC-VKSNDTC-BCA-BTP of February 29, 2008, of the Supreme People's Court, the Supreme People's Procuracy, the Public Security Ministry and the Justice Ministry, guiding the examination of acts infringing upon intellectual property rights for penal liability, the Market Management Office shall transfer dossiers to investigative agencies.

- 6. Handling of establishments producing infringing goods:

- a. In case the Market Management Office accepts and handles a case at the stage of goods circulation and has grounds to believe that the production establishment has put infringing goods into circulation or on sale, it shall accept the case for handling according to its competence.

In case this production establishment's act of manufacturing infringing goods is accepted and currently handled by another competent agency:

- The Market Management Office shall refuse to receive, accept and handle acts of manufacturing infringing goods as guided in Clause 4, Section I.

- It shall transfer the case dossier to and coordinate with a competent agency.

- b. If there are insufficient grounds to identify the act of putting the infringing goods into circulation, it shall transfer the dossier or coordinate with a competent agency in accepting and handling the case.

III. ORGANIZATION OF IMPLEMENTATION

- 1. This Circular takes effect 15 days after its publication in "CONG BAO."

- 2. The Market Management Offices at all levels shall fully comply with the provisions of Section II on the order of and procedures for receiving and accepting for handling requests for handling of administrative violations against intellectual property counterfeit goods and acts infringing upon rights specified in this Circular.

- 3. The director of the Market Management Department shall organize and direct the implementation and inspect the observance of the provisions of this Circular in order to ensure the uniform implementation within the sector and in accordance with law.

- 4. Immediate superiors of persons competent to handle administrative violations shall inspect the handling of administrative violations by their subordinates.

Provincial-level Market Management Sub-Departments and Market Management Teams shall monitor, guide and inspect the implementation of procedures for them to receive and accept for handling requests for handling of administrative violations in the field of intellectual property.

5. Follow-up activities after the handling of administrative violations:

- After completing the handling of cases, heads of Market Management Teams or directors of provincial-level Market Management Sub-Departments shall direct market management officers in directly accepting the cases and keeping dossiers of handling of administrative violations under law;

- The destruction of invalid documents shall be conducted only under written decisions of competent persons.

6. Any problems arising in the course of implementation should be reported by concerned organizations and individuals to the Ministry of Industry and Trade for timely study, consideration and adjustment.

**FOR THE MINISTER OF INDUSTRY AND TRADE
VICE MINISTER**

Nguyen Cam Tu
