

# DECREE No. 12/1999/ND-CP OF MARCH 6, 1999 ON SANCTIONS AGAINST ADMINISTRATIVE VIOLATIONS IN THE FIELD OF INDUSTRIAL PROPERTY

## THE GOVERNEMENT

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

*Pursuant to the Civil Code of October 28, 1995;*

*Pursuant to the Ordinance on Handling of Administrative Violations of July 6, 1995;*

In order to raise the effectiveness of the protection of industrial property rights of organizations and individuals, to protect the legitimate rights and interests of consumers, and contribute to the combat against the production and trading of fake goods and commercial fraudulence;

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

## DECREES:

### Chapter I

#### GENERAL PROVISIONS

##### *Article 1.* Definition of terms

The terms used in this Decree shall be construed as follows:

1. "Industrial property object" shall be understood as an invention, utility solution, industrial design, trademark (including service mark) or appellation of origin of goods.
2. "Industrial property owner" shall be understood as a holder of title of protection, owner of international registration of trademark or lawful transferee of industrial property right(s) to industrial property object(s) currently under protection.
3. "Title of protection" shall be understood as an invention patent, utility solution patent, industrial design patent, trademark registration certificate or certificate of the right to use appellation of origin of goods.
4. "Violation elements" shall be understood as:
  - Those signs which are identical or mistakenly similar to the trademarks or appellations of origin of goods under protection;
  - Those signs and/or indications which violate the regulations on indications for protection of industrial property rights and industrial property obligations;
  - Parts of products, products or product-manufacturing processes identical to the parts of products, products or product-manufacturing processes which are being protected as inventions or utility solutions;

- Parts of products or products with outer appearance being an industrial design or embodying a part or parts which are the substantial forming features of the industrial design under protection.

**Article 2.** Scope and objects of application:

1. This Decree specifies violation acts, sanctioning forms, level, procedures and competence against administrative violations in the field of industrial property protection and State management.
2. All organizations and individuals that intentionally or unintentionally commit violations of the regulations on industrial property protection and State management, which are not serious enough to be examined for penal liability, shall be sanctioned according to the Ordinance on the Handling of Administrative Violations and this Decree.
3. Foreign organizations and individuals that commit acts of administrative violation in the field of industrial property protection and State management in the territory of Socialist Republic of Vietnam shall also be sanctioned according to this Decree, unless otherwise provided for by international treaties which Vietnam has signed or acceded to.

**Article 3.** Principles of application of sanctioning forms and levels

1. For each act of administrative violation in the field of industrial property, the violating organization or individual shall be subject to either of the two main sanctioning forms: warning or fine.

Warning shall apply to unintentional violations: minor first-time violations with extenuating factors.

In case of fine, the fine level shall correspond to the nature and seriousness of the violation. A violation with extenuating factors may be subject to a lower fine but not lower than the minimum level in the fine bracket. A violation with aggravating factors may be subject to a higher fine but not higher than the maximum level in the fine bracket.

2. Depending on nature and seriousness of the violation, the violating individual or organization may also be subject to one or several forms of the following additional sanctions:
  - a) Stripping definitely or indefinitely the right to use the business license or the operation license for industrial property representation services;
  - b) Confiscating the exhibits and/or violation means.
3. In addition to the sanctioning forms prescribed in Clause 1 and 2 of this Article, and depending on specific cases, the violating organization or individual may be subject to one or all of the following measures:

- a) Compulsory removal of violation elements on products, goods or business facilities; compulsory rectification of false information causing the violation; compulsory addition of the industrial property indications;
- b) Compulsory destruction of articles with violation elements and goods of inferior quality that may cause damage to human health;
- c) Compulsory compensate for damage caused by the administrative violation.

The compensation for the damage caused by administrative violations in the field of industrial property shall be made according to the principle of mutual agreement between the damage causer and the damage sufferer. For the material damage caused by an administrative violation in the field of industrial property valued up to 1,000,000 VND, if the involved parties can not reach agreement on the compensation level, the person competent to sanction shall decide it. Damage valued at more than 1,000,000 VND, which the parties can not reach agreement on the level of compensation for, shall be settled according to the civil procedures.

Forms of additional sanction and measures prescribed in Clauses 2 and 3 of this Article shall be applied in cases of necessity so as to thoroughly handle the violations, do away with the causes of and conditions for continued violation and overcome the consequences of administrative violations in industrial property.

#### **Article 4.** The statute of limitations for sanction

1. The statute of limitations for sanction against an administrative violation in the field of industrial property is one year from the date the violation is committed. For acts of production of and/or trading in goods that infringe upon trademarks, appellations of origin of goods and industrial designs under protection, such statute of limitations shall be two years from the date the violation is committed. Upon expiry of the above-said time limits, the organization or individual that has committed the violation shall not be sanctioned, but may be subject to forcible destruction of violation articles and/or goods that cause damage to human health.

2. For an individual who violates the regulations on protection of industrial property rights and is prosecuted for the offense of making and/or trading in fake goods, or served with the decision to bring the case to court for trial according to the penal procedures, but then there was a decision to suspend the investigation or the case, the statute of limitations for sanction against such administrative violation shall be three months from the date of issuance of such suspension decision.

3. If within the time limits prescribed in Clauses 1 and 2 of this Article, the violating organizations or individuals commit new industrial property violations, they shall be sanctioned for each act of violation, and the statute of limitations shall be counted from the date on which such organizations or individuals terminate their evasion or obstruction act.

## **Chapter II**

### **ACTS OF VIOLATION, SANCTIONING FORMS AND LEVELS**

**Article 5.** Acts of violating the regulations on the procedures for establishing and exercising the industrial property rights, and the procedures for applying for licenses for industrial property representation services.

1. A warning or a fine of 200,000 to 1,000,000 VND shall be imposed on an organization or individual that commits one of the following acts:

- a) Carrying out the procedures for establishing or exercising the industrial property rights in order to avoid taking or take acts in other fields prohibited or restricted by laws;
- b) Carrying out the procedures for establishing or exercising the industrial property rights for the purposes of unfair competition, monopoly, illegal manipulation of market, abolishment of industrial property objects, limitation or restriction of scope of protection of industrial property rights of other persons, taking advantage or diminishing the commercial goodwill of other business establishments.
- c) Providing false information and/or evidences in the appeal procedures concerning industrial property rights.

2. A fine of 2,000,000 to 10,000,000 VND shall be imposed on an organization or individual that commits one of the following acts:

- a) Modifying, erasing or falsifying titles of protection, certificates of industrial property right protection, but not seriously enough to be examined for penal liability;
- b) Falsifying papers or committing dishonesty in the process of applying for the granting, extension or amendment of titles of protection, requesting the approval, registering industrial property right transfer contracts, or applying for non-voluntary licenses, but not seriously enough to be examined for penal liability;
- c) Falsifying papers or committing dishonesty in the process of applying for the granting or extension of certificate of industrial property representation service organization or card of industrial property attorney, but not seriously enough to be examined for penal liability.

3. Additional sanctioning forms:

- a) Stripping of the right to use the business licenses for 1 to 3 months for acts prescribed in Clause 1; 3 to 6 months for acts prescribed in Clause 2 of this Article;
- b) Confiscation of documents, materials, titles of protection, certificates of protection of industrial property rights, which are modified or falsified, for the acts prescribed in Clause 2 of this Article;
- c) Confiscation of titles of protection or certificates already granted to organizations or individuals that commit acts prescribed in Points a and b, Clause 1 of this Article.

**Article 6.** Acts of violating the regulations on indications of protection of industrial property rights

1. A warning or a fine of 500,000 to 2,000,000 VND shall be imposed on an organization or individual that commits one of the following acts:

- a) False indication (including symbol indication) on the industrial property owner;
- b) False indication (including symbol indication) on products or services bearing element(s) under industrial property protection;
- c) Use of trademark, appellation of origin of goods or industrial design not in conformity with the already registered sample, but with the indication that the said trademark, appellation of origin of goods or industrial design has been registered for industrial property protection;

- d) False indication that the products are produced or services provided under a license;
- e) False indication on the author of an invention, utility solution or industrial design.

2. A warning or a fine of 1,000,000 to 5,000,000 VND shall be imposed on an organization or individual that commits one of the following acts:

- a) Failing to indicate the manufacture of products or provision of services under a license with regard to products manufactured or services provided under a license;
- b) Failing to indicate, or unclearly and/or inadequately indicating on the products the inscription "Made in Vietnam" for products made in Vietnam under foreign licenses; the products made in Vietnam under trademarks that may cause a misunderstanding that the goods are from foreign countries or of foreign origin.

3. The additional sanctioning forms:

- a) Stripping of the right to use the business licenses for 1 to 3 months for acts prescribed in Clause 1 and 2 of this Article;
- b) Confiscation of exhibits and/or administrative violation means, for acts prescribed in Clause 1 and 2 of this Article.

4. In addition to the sanctioning forms prescribed in Clauses 1, 2 and 3 of this Article, the violating organization or individual may be subject to one or several of the following measures:

- a) Compulsory removal of the violation elements on the goods or business facilities, for acts prescribed in Clause 1 of this Article;
- b) Compulsory addition of indications, for acts prescribed in Clause 1 of this Article.

**Article 7.** Acts of violating the regulations on the industrial property consultancy and representation services

1. A warning or a fine of 500,000 to 2,000,000 VND shall be imposed on an industrial property representation service organization or industrial property attorney that commits one of the following acts:

- a) Deliberately providing false consultancy or notification on the legal regulations on industrial property or information on industrial property activities, thus causing damage to persons with lawful industrial property rights;
- b) Obstructing the routine process of establishment or exercise of industrial property rights, thus causing damage to persons with lawful industrial property rights;
- c) Providing false consultancy or instructions which lead to confusion, misunderstanding of the functions, scope of powers, responsibilities of the concerned industrial property representation service organization or industrial property attorney;
- d) collecting from clients national fee amounts and levels or service charges related to the procedures for establishment and protection of industrial property rights in contravention of the regulations;
- e) Deceiving or coercing clients to enter into industrial property representation service contracts, but not seriously enough to be examined for penal liability;
- f) Simultaneously representing the parties involved in a dispute over industrial property rights, thereby causing damage to the person who has lawful industrial property rights;

- g) Lending cards, using cards for the jobs outside the prescribed functions, or using invalid licenses or cards;
- h) Failing to provide information as requested by the competent State authorities, or providing false information on matters related to industrial property representation service activities.

2. A warning or a fine of 1,000,000 to 5,000,000 VND shall be imposed on an organization or individual that carries out consultancy activities, industrial property representation services in the establishment and exercise of the industrial property rights without any lawful operation license for industrial property representation services.

3. A fine of 2,000,000 to 10,000,000 VND shall be imposed on an organization or individual that commits act of modifying, erasing and/or falsifying certificate of industrial property representation service organization or card of industrial property attorney, which is not serious enough to be examined for penal liability.

4. A fine of 5,000,000 to 20,000,000 VND shall be imposed on an industrial property representation service organization or industrial property attorney that commits one of the following acts:

- a) Performing jobs relating to industrial property activities beyond its/his/her function, tasks and powers as permitted;
- b) Assuming wrongfully the name(s) of State management body(ies) in charge of industrial property to perform industrial property representation service activities, but not seriously enough to be examined for penal liability.

5. The additional sanctioning forms:

- a) Stripping of the right to use the business licenses for 1 to 3 months, for acts prescribed in Clause 2 of this Article;
- b) Stripping of the right to use the industrial property representation service operation licenses for 1 to 3 months, for acts prescribed in Clause 1; 3 to 6 months for acts prescribed in Clause 3 of this Article;
- c) Stripping of the right to use the industrial property representation service operation license for 6 months to 1 year or indefinitely, for acts prescribed in Clause 4 of this Article;
- d) Confiscation of the falsified documents, for acts prescribed in Clause 3 of this Article.

6. In addition to the sanctioning forms described in Clauses 1, 2, 3, 4 and 5 of this Article, the violating organization or individual may be subject to one or several of the following measures;

- a) Compulsory rectification of false information, for acts prescribed in Points a and c, Clause 1 of this Article;
- b) Compulsory compensation for the damage caused by the administrative violations, for acts prescribed in Clauses 1, 2 of this Article.

**Article 8.** Acts of violating the regulations on industrial property obligations

1. A warning or a fine of 1,000,000 to 5,000,000 VND shall be imposed on an organization or individual that commits one of the following acts:

a) Failing to perform the obligation to make or register contracts for industrial property right transfer with the form, content and procedures prescribed by industrial property legislation.

b) Failing to perform the obligation to register trademarks for the products and/or services in the fields where the trademark registration is required.

2. A fine of 2,000,000 to 10,000,000 VND for an organization or individual that uses signs which make consumers misunderstand or confuse or deceive them about the origin, properties, utility, quality and value of goods and services bearing trademarks.

3. A warning or a fine of 500,000 to 2,000,000 VND shall be imposed on an organization or individual that fails to perform the obligation to pay remuneration to authors of inventions, utility solutions or industrial designs under the decisions of the competent State authority(ies) on granting of non-voluntary licenses.

4. The additional sanctioning forms:

a) Stripping of the right to use the business licenses for 1 to 3 months, for acts prescribed in Clause 1; 3 months to 1 year or indefinitely for acts prescribed in Clause 2 of this Article.

b) Confiscation of exhibits and administrative violation means, for acts prescribed in Point b, Clauses 1 and 2 of this Article.

5. In addition to the sanctioning forms prescribed in Clauses 1, 2, 3 and 4 of this Article, the violating organization or individual may be subject to one or all the following measures:

a) Compulsory performance of the industrial property obligations, for acts prescribed in Points a and b, Clause 1 and 3 of this Article; compulsory removal of the violation elements on goods and business facilities, for acts prescribed in Clause 2 of this Article;

b) Compulsory compensation for the damage caused by the administrative violations, for the acts prescribed in Clauses 1, 2 and 3 of this Article.

**Article 9.** Acts of violating the regulations on protection of industrial property rights

1. A warning or a fine of 5,000,000 to 20,000,000 VND shall be imposed on an organization or individual that is not an industrial property owner or a prior-user (for an invention, utility solution or industrial designs) but carries out one of the following acts for commercial purposes without the industrial property owner's permission or the use license granted by the Minister of Science, Technology and Environment (non-voluntary license):

a) Producing (manufacturing, processing, assembling, packaging) products or parts of products which are currently protected as inventions, utility solutions or industrial designs;

b) Applying the process which is currently protected as an invention or utility solution;

c) Exploiting products or parts of products, which are currently protected as inventions or utility solutions;

- d) Putting into circulation (sale and/or transportation) and/or on advertisement (on media, sign-boards, business facilities, other products and goods, service facilities, goods offer, sale promotion, business transaction materials) in order to sell, offer for sale or store for sale products or parts of products which are currently protected as inventions, utility solutions or those produced under the process currently being protected as an invention or utility solution;
- e) Importing or exporting products or parts of products which are currently protected as inventions, utility solutions or those produced under the process being currently protected as an invention or utility solution;
- f) Putting into circulation (sale and/or transportation) and/or advertisement (on media, sign-boards, business facilities, other products and goods, service facilities, goods offer, sale promotion, business transaction papers) in order to sell, offer for sale or store for sale the following products:
  - Products or parts of products with outer appearance protected as an industrial design or embodying a part or parts which are the basic shaping components of the industrial design under protection.
  - Products or parts of products bearing signs or with packages bearing signs identical or mistakenly similar to trademarks or appellations of origin of goods which are currently protected for the goods of the same kind or similar to such products, including the cases of using appellations of origin of goods which have been translated into other languages or accompanied by such words as "type", "model", "adaptation" or the like;
- g) Importing or exporting products prescribed in Point f of this Clause;
- h) Affixing (by all forms such as printing, pasting, attaching, molding, stereotyping, etc.), on products or product packaging, signs identical or mistakenly similar to trademarks or appellations of origin of goods which are protected for the goods of the same kind or similar to such products;
- i) Providing services in the names or symbols, or with signs affixed on service facilities, which are identical or mistakenly similar to service marks protected for the services of the same kind or similar to such services.

2. A fine of 20,000,000 to 50,000,000 VND shall be imposed on an organization or individual that

3. A fine of 2,000,000 to 10,000,000 shall be imposed on an organization or individual that commits one of the following acts: producing, trading in, transporting, storing for trading, importing or exporting decals, product labels, trademark samples or product packages, which bear signs identical or mistakenly similar to trademarks, appellations of origin of goods or industrial designs which are currently protected.

4. The additional sanctioning forms:

- a) Stripping of the right to use the business licenses for 1 to 6 months for acts prescribed in Clauses 1 and 3; 6 months to 1 year or indefinitely, for acts prescribed in Clause 2 of this Article;
- b) Confiscation of exhibits and administrative violation means, for acts prescribed in Clauses 1, 2 and 3 of this Article.

5. In addition to the sanctioning forms prescribed in Clauses 1, 2, 3 and 4 of this Article, the violating organization or individual may be subject to one or all the following measures:

- a) Compulsory removal of the violation elements on the products, goods or business facilities, for acts prescribed in Clauses 1 and 2 of this Article;



- b) Compulsory compensation for the damage caused by the administrative violation, for acts prescribed in Clauses 1 and 2 of this Article;
- c) Compulsory destruction of articles bearing the violation elements, for acts prescribed in Clause 3 of this Article; compulsory destruction of goods of inferior quality that may cause damage to human health, for acts prescribed in Clauses 1 and 2 of this Article.

### **Chapter III**

#### **THE SANCTIONING COMPETENCE AND PROCEDURES**

##### **Article 10.** Sanctioning competence of the People's Committees of all levels

The People's Committees of all levels shall be competent to sanction the acts of industrial property administrative violation committed in the localities under their respective management as prescribed in Articles 6, 7, 8 and 9 of this Decree. The sanctioning competence of the People's Committees of all levels are specified as follows:

1. The presidents of the People's Committees of rural districts, urban districts, provincial capitals and provincial towns shall have the right to:
  - a) Serve a warning;
  - b) Impose a fin of up to 10,000,000 VND;
  - c) Confiscate exhibits and/or violation means valued up to 100,000,000 VND;
  - d) Strip the right to use the business licenses granted by the district level definitely or indefinitely;
  - e) Compel the removal of the violation elements on the products, goods or business facilities; compel the public rectification of false information leading to the violation;
  - f) Compel the compensation for the damage caused by the administrative violation;
  - g) Compel the destruction of articles bearing the violation elements or violation goods of inferior quality that may cause damage to human health.
  
2. The presidents of the People's Committees of provinces and centrally-run cities shall have the right to:
  - a) Serve a warning;
  - b) Impose a fine of up to 100,000,000 VND;
  - c) Confiscate exhibits and/or administrative violation means;
  - d) Strip the right to use the business licenses granted by the district level or provincial level definitely or indefinitely;
  - e) Compel the removal of the violation elements on the products, goods or business facilities; compel the public rectification of false information leading to the violation;
  - f) Compel the compensation for the damage caused by the administrative violation;
  - g) Compel the destruction of articles bearing the violation elements or violation goods of inferior quality that may cause damage to human health.

**Article 11.** The sanctioning competence of the specialized industrial property inspectorate

The specialized industrial property inspectorate of the Ministry of Science, Technology and Environment shall be competent to administratively sanction acts of violation throughout the country. The specialized industrial property inspectorate of the provincial/municipal Department of Science, Technology and Environment shall be competent to sanction violations occurring in the locality under its management. The sanctioning competence of the specialized industrial property inspectorate is specified as follows:

1. A specialized industrial property inspector who is on duty is competent to:

- a) Serve a warning;
- b) Impose a fine of up to 200,000 VND;
- c) Confiscate exhibits and/or violation means, valued up to 500,000 VND;
- d) Compel the removal of the violation elements on the products, goods or business facilities; compel the public rectification of false information leading to the violation;
- e) Compel the compensation for damage caused by the administrative violation;
- f) Compel the destruction of articles bearing the violation elements or violation goods of inferior quality that may cause damage to human health.

2. A specialized industrial property chief inspector of a provincial/municipal Department of Science, Technology and Environment has the right to:

- a) Serve a warning;
- b) Impose a fine of up to 10,000,000 VND;
- c) Confiscate exhibits and/or administrative violation means, valued up to 100,000,000 VND
- d) Compel the removal of the violation elements on the products, goods or business facilities; compel the public rectification of false information leading to the violation;
- e) Compel the compensation for the damage caused by the administrative violation;
- f) Compel the destruction of articles bearing the violation elements or violation goods of inferior quality that may cause damage to human health;
- g) Request the Director of the National Office of Industrial Property to strip the right to use the operation licenses for industrial property representation services.

3. The specialized industrial property chief inspector of the Ministry of Science, Technology and Environment is competent to:

- a) Serve a warning;
- b) Impose a fine of up to 20,000,000 VND;
- c) Strip the right to use the operation licenses for industrial property representation services definitely or indefinitely;
- d) Confiscate exhibits, means used in the administrative violation;
- e) Compel the removal of the violation elements on the products, goods or business facilities; compel the public rectification of false information leading to the violation;
- f) Compel the compensation for the damage caused by the administrative violation;
- g) Compel the destruction of articles bearing the violation elements or violation goods of inferior quality that may cause damage to human health.

**Article 12.** The sanctioning competence of the police agency, customs authority and market management agency

The head of District Police, the head of Economic Police Division, the director of Provincial Police, the director of the Economic Police Department, the head of the Border-Gate Customs Inspection Team, the Director of Provincial Customs Department, the chief of the Market Management Sub-Department and the director of the Market Management Department shall have the right to apply administrative sanctions and other measures against the acts of violating the regulations on protection of industrial property rights in the domains under their respective competence as prescribed in Clauses 1, 3, 4 and 5, Article 9 of this Decree and Articles 29, 30 and 33 of the Ordinance on Handling of Administrative Violations.

**Article 13.** The responsibilities of the specialized industrial property State management agency in handling administrative violations

The National Office of Industrial Property shall perform the function of State management over industrial property according to law, and shall have to coordinate with other competent agencies at central and local levels in handling administrative violations in industrial property, when so requested by such agencies.

**Article 14.** The sanctioning procedures

1. Upon detecting a violation act or signs of an administrative violation regarding industrial property, the person competent to sanction shall have to order the immediate suspension of such violation act and clearly explain the regulations on sanctions against administrative violations regarding industrial property as well as the relevant provisions of industrial property legislation to the violating organization or individual to strictly abide by the provisions of the industrial property legislation.
2. In cases where a violation is clearly determined as being subject to a warning, the person competent to sanction shall make a sanctioning decision right at the place where the violation occurs, either in writing or not in writing .

If he/she deems that the violation might be subject to a fine, the person with sanctioning competence shall make a written record on the administrative violation according to Article 47 of the Ordinance on Handling of Administrative Violations.

3. If, after making the written record on the violation, he/she deems that the violation handling requires evaluation and/or conclusion of the specialized industrial property agency, the person with sanctioning competence shall send the dossier and evidences of the violation and a written request for expertise evaluation to the industrial property State management agency at central or local level as stipulated in Article 13 of this Decree for the evaluation and conclusion on the violation, as well as the handling forms and measures suitable to the violation.

Within ten days after receiving such written request and the dossier and evidences of the violation, the State management agency in charge of industrial property shall reply the person with sanctioning competence in writing.

4. Within fifteen days after making the written record on the violation, the competent person shall have to issue a decision on sanctioning the violation act. In case of a serious violation involving many complicated circumstances, the said time limit may be

prolonged but shall not exceed thirty days. The issuance of the sanctioning decision and the contents thereof shall comply with the provisions of Article 48 of the Ordinance on Handling of Administrative Violations.

The effective date of a sanctioning decision shall be its signing date or another date stated therein, which must not exceed fifteen days after the signing of the sanctioning decision.

The sanctioning decision must be sent to the sanctioned organization or individual within three days after its signing, and at the same time to the National Office of Industrial Property for coordination in supervising and carrying out the procedures for establishment, amendment, suspension or cancellation of the relevant titles of protection, certificates or licenses.

**Article 15.** The procedures for imposing fines

The imposing of a fine must comply with the following regulations:

1. The fine level and the fine payment time limit and place must be clearly specified in the sanctioning decision;
2. The fined organization or individual must pay the fine within the time limit and at the place specified in the sanctioning decision and shall get the fine receipt; the fine collection shall be effected with fine receipts issued by the Ministry of Finance.
3. The person imposing the fine is prohibited from collecting the fine on the spot.
4. The collected fine amount shall be remitted into the State budget via the account opened at the State Treasury.
5. The decision on a fine of 2,000,000 VND or more must be sent to the People's Procuracy of the same level.

**Article 16.** The procedures for stripping the right to use licenses

1. The procedures for stripping the right to use the business licenses and the operation licenses for industrial property representation services shall comply with the provisions of Article 50 of the Ordinance on Handling of Administrative Violations.

The person with sanctioning competence shall apply the sanctioning form of stripping the right to use the licenses in cases where the violating organization or individual deliberately refuse to terminate the violation act or is likely to resume the violation after the decision on violation suspension is issued. The person with sanctioning competence, who has decided to apply the sanctioning form of stripping the right to use the licenses, shall have to clearly specify in the sanctioning decision the title, type and serial number of such license and the duration of stripping the license use right, and at the same time notify in writing the agency that has granted such license thereof, clearly stating the reason and time limit for tripping the right to use license.

If the type of to be-stripped license or the stripping duration is deemed beyond his/her deciding competence, the person with sanctioning competence shall have to issue a

decision to suspend the violation act and request the higher-level agency with sanctioning competence or the licensing agency to issue a decision to strip the right to use or withdraw the license.

2. The person with sanctioning competence shall decide to apply the sanctioning form of stripping the right to use the license for a definite time limit for cases where the violating organization or individual is deemed able to take measures to overcome restrict the consequences caused by the violation, terminate the violation act and do away with the causes and conditions for continued violation after a certain period of suspending the production, business or service activities.

The applicable duration of stripping the right to use the license must be in the time range prescribed for the relevant violation act and correspond the duration necessary for the violating organization or individual to overcome or restrict the violation consequences, fully satisfy the requirements stated in the sanctioning decision and do away with the causes and conditions for continued violation. Upon expiry of the time limit stated in the sanctioning decision, the competent person who has issued the decision on stripping the right to use the license must return the license to the organization or individual that uses such license.

3. The person with sanctioning competence shall decide to apply the sanctioning form of stripping the right to use the license indefinitely or request the agency that has granted such license to withdraw it in cases of organized and/or large-scale violations or repeated violations.

Where a license is detected having been granted ultra vires, not in compliance with the prescribed procedures, or with a content contrary to law, the person with sanctioning competence shall promptly withdraw the license, and at the same time promptly notify the licensing agency, the agency competent to grant and manage such license, and the competent State inspectorate.

**Article 17.** The procedures for temporary seizure of exhibits and violation means

1. The competence and procedures to apply the measure of temporarily seizing exhibits and administrative violation means shall comply with the provisions of Articles 41 of the Ordinance on Handling of Administrative Violations.

2. The temporary seizure of exhibits and violation means shall be applied in cases where it is necessary to immediately prevent the violation act or secure evidences necessary to verify the involved facts which shall serve as basis for handling the violation.

3. Upon expiry of the time limit for temporary seizure of exhibits and violation means as prescribed, if the confiscation of exhibits and/or violation means is deemed necessary, the competent person who has decided the temporary seizure of exhibits and violation means may issue a decision or request the agency with sanctioning competence to issue a decision to confiscate the exhibits and violation means according to Article 51 of the Ordinance on Handling Administrative Violations and Article 18 of this Decree.

**Article 18.** The procedures for confiscating exhibits and administrative-violation means

1. The procedures for confiscating exhibits and/or administrative-violation means in the field of industrial property shall comply with the provisions of Article 51 of the Ordinance on Handling of Administrative Violations.

2. The confiscation of exhibits and means used in the administrative violations in the field of industrial property shall be applied in the following cases where:

- a) The confiscation and sealing of such goods and means are necessary, so as to obtain evidences and to ensure that the evidences shall not be destroyed, abolished or deformed;
- b) Such goods, papers, documents and means may lead to a subsequent violation;
- c) The violating organization or individual has neither capability nor conditions to do away with the violation elements on goods, or deliberately does not fulfill the requirements of the person with sanctioning competence regarding the removal of the violation elements, modification or addition of signs and indications on goods and business facilities;
- d) Goods circulated on market, exported or imported goods with violation elements, though their origin, owner, producer or seller cannot be identified, there are enough grounds to determine that such goods have not been produced or marketed by the owners of the relevant industrial property objects;
- e) The violation means are those with principal function to produce violation goods or provide violation services.

**Article 19.** The procedures for dealing with confiscated exhibits and/or violation means

The procedures for dealing with the confiscated exhibits and/or means used in the administrative violation in the field of industrial property shall comply with the provisions of Article 52 of the Ordinance on Handling of Administrative Violations and the following regulations:

1. The destruction measure shall apply in cases where the exhibits and violation means are the following objects:

- a) Violation goods are of inferior quality, causing damage to human life and health and living environment;
- b) Violation goods and articles have no use value;
- c) Violation goods and articles are decals, product labels, trademark samples, product and goods packages;
- d) Violation goods and means, though having use value, cannot be handled through measures prescribed in Clause 2 of this Article.

2. In cases where the exhibits are goods or production, business or service means which have use value, they shall be handled through following measures:

- a) Removal of the violation elements on goods and production, business or service means and auction of such goods and facilities, provided that the purchaser have measures to rationally make full use of them and assure not to cause subsequent violations, not to affect the legitimate rights and interests of the relevant owners of industrial property objects. For means having the principal function to produce violation goods and articles or provide violation services, the auction shall not be applied unless the purchasers have remedial measures or secure the use of such means for other functions or as raw materials;

- b) Auction of goods, provided that the purchasers have been granted a lawful license by the industrial property owner, the goods meet the set quality standards and the purchasers has measures to secure the additions of indications as prescribed;
- c) In cases where the violation elements cannot be removed or there are not enough conditions for auction as prescribed in Points a and b of this Clause, such goods or means may be distributed to user for non-commercial purposes (such as humanitarian, social welfare, research or education purpose), provided that the exploitation or use of such products does not affect the legitimate rights and interests of the relevant owners of industrial property object s.

#### **Article 20.** Execution of the sanctioning decisions

1. If past five days after receiving the sanctioning decision, the sanctioned organization or individual still fails to voluntarily abide by such decision, the person with sanctioning competence shall issue a decision on coercive enforcement of the sanctioning decision.
2. The execution of sanctioning decisions, the coercive enforcement of sanctioning decisions, and the statute of limitations for enforcement of sanctioning decisions shall comply with provisions in Articles 54, 55 and 56 of the Ordinance on Handling of Administrative Violations.

### **Chapter IV**

#### SETTLEMENT OF COMPLAINTS AND DENUNCIATIONS, AND HANDLING OF VIOLATIONS

#### **Article 21.** Complaints about and denunciation of violations in the handling of violations

1. If persons competent to sanction administrative violations in the field of industrial property commit acts of violating the regulations on administrative sanctions, harassing, tolerating or covering up the violators, failing to sanction or sanctioning ultra vires, they shall, depending on the nature and seriousness of the violation, be disciplined or examined for penal liability. If material damage is caused to the State, organizations and/or citizens, the compensation must be made according to laws.
2. The procedures for lodging and settling complaints and denunciations by organizations and individuals that have been sanctioned for administrative violations in the field of industrial property shall comply with Chapter VIII of the Ordinance on Handling of Administrative Violations and the Ordinance on the Procedures for Settling Administrative Cases. The procedures for handling violations, which are applicable to the person competent to sanction administrative violations and the person subject to sanctions against administrative violations in the field of industrial property, shall comply with Chapter IX of the Ordinance on Handling of Administrative Violations.

### **Chapter V**

#### IMPLEMENTATION PROVISIONS

**Article 22.** This Decree takes effect 15 days after its signing. The provisions in Point a, Clause 1 and Point a, Clause 3, Article 15 of Decree No. 57/CP of May 31, 1997 on the sanctions against administrative violations in the field of measurement and goods

quality are now replaced by the provisions on sanctions against the acts of production of and/or trading in goods bearing the trademarks identical or mistakenly similar to those of other establishments as prescribed in this Decree.

**Article 23.** The Minister of Science, Technology and Environment, the Minister of Trade, the Minister of Public Security, the Minister of Finance and the General Director of Customs shall, within their respective management function, have to guide and inspect the implementation of this Decree.

**Article 24.** The ministers, the heads of the ministerial-level agencies and the agencies attached to the Government and the presidents of the People's Committees of provinces and centrally-run cities shall have to implement this Decree.

**On behalf of the Government**

**Prime Minister**

PHAN VAN KHAI