

GOVERNMENT DECREE ON PROTECTING INDUSTRIAL PROPERTY IN THE FORM OF TRADE SECRETS, GEOGRAPHIC ORIGINS, AND TRADEMARKS AND AFFIRMING RIGHTS AGAINST UNFAIR COMPETITION IN THE FIELD OF INDUSTRIAL PROPERTY

- Pursuant to the Law on the Government Organization dated September 30, 1992;
- Pursuant to the Civil Code dated October 28, 1995;
- Pursuant to the resolution of the National Assembly's Ninth Legislature, Eight Session referring to the implementation of the Civil Code;
- Pursuant to the Trade Law dated May 10, 1997;
- To promote full and effective protection of industrial property, genuine trade and consumers' legal interests;
- Pursuant to the suggestion of the Minister for Science, Technology and Environment,

DECREES:

CHAPTER I - GENERAL PROVISIONS

Article 1: Scope of application

This decree includes detailed regulations on protection of industrial property associated with several of the 'other subjects' described in Article 780 in the Civil Code, dated October 28, 1995, including business secrets, geographic origins, trademarks and affirming rights against unfair competition in the field of industrial property.

Article 2: Subjects of this decree

1. This decree is applicable to foreign and domestic individuals and organizations doing business in the territories of Vietnam.
2. This decree is applicable to foreign individuals and organizations which do not perform business in Vietnam but are among the following subjects:
 - a. Organizations and individuals which possess industrial property observing the Paris Convention or regulations of international conventions on mutual 'protection of industrial property that Vietnam has signed or participated in;
 - b. Organizations and individuals of countries, territories of Vietnam accepting a tit-for-tat principle in protecting industrial property for organizations and individuals of each country and territory.

Article 3: Application of legal documents

Protection of business secrets, geographic origins, trademarks and rights against unfair competition associated with industrial property must observe regulations in this decree and other relevant guiding documents of Vietnam.

In cases where international conventions that Vietnam has signed or participated in include regulations different from those stated in this decree, these conventions' regulations shall be effective.

Article 4: Definitions

Here are some definitions included in this decree:

1. 'Commercial indicator' refers to symbols and information as guiding information for commodities and services. They include labels, trademarks, trade symbols, trade passwords, geographic origins, packaging design, etc.;
2. 'Use of commercial indicator' refers to the action or actions of sticking commercial indicator(s) on commodities, commodity packaging, associated services, trade documentation and means of advertising; selling, advertising for promoting sale, storing for sale and importing commodities enclosed with such commercial indicator(s);
3. 'Investment gain' is knowledge and information in the form of technology, inventions, utility solutions, industrial designs, technical know-how, business secrets and other information obtained in financial or intellectual investment activities;
4. 'Use of investment gain' refers to the action or actions of using knowledge or, information described in 3, this article to manufacture products, supply services, sell and purchase goods; selling, advertising for sale, storing for sale, and importing products made using such knowledge and information.

Article 5: Terms for defining industrial property associated with business secrets, geographic origins and trademarks

Industrial property associated with business secrets, geographic origins and trademarks is defined by all the terms described in articles 6, 10 and 14 in this decree without registration at the State relevant body.

CHAPTER II

INDUSTRIAL PROPERTY ASSOCIATED WITH BUSINESS SECRETS, GEOGRAPHIC ORIGINS AND TRADEMARKS

Article 6: Business secrets

1. A protected business secret refers to an investment gain in the form of information which satisfies the following terms:
 - a. It is not an ordinary knowledge;
 - b. It can be used in business activities to create the user's advantage over others who do not hold such information;
 - c. It is secured with necessary measures making it difficult to approach or to reveal.
2. Other secret information such as information referring to relatives, State management, national security and defense shall not be protected as business secrets.

Article 7: Owners of industrial property associated with business secrets

1. Owners of industrial property associated with business secrets are organizations and individuals who have invested to produce investment gain(s) as a business secret(s).
2. In cases where a business secret is created by the contract implementing party or is created during implementing a given task, that business secret is under the ownership of the hiring party, excluding cases where the relevant parties have other agreements.

Article 8: Content and time of protection of industrial property associated with business secrets

1. Owners of industrial property associated with business secrets have the right to possess, use and decide on the use of business secrets according to the law of Vietnam.
2. Rights of owners of industrial property associated with business secrets shall be protected when these business secrets satisfy terms described in 1, Article 6 of this decree.

Article 9: Transfer of industrial property associated with business secrets

1. Industrial property associated with business secrets are permitted to be transferred or inherited according to law,
2. Transfer of industrial property associated with business secrets is implemented under the mode of contract documentation, in which the transferor must clearly state the business secret transferred. In cases where the relevant parties merely transfer the right to use business secrets (licenses of business secrets) the transferee has to implement measures to protect (keep in secret) the business secret(s) according to the transferor's request.

Article 10: Geographic origins

1. A protected geographic origin is information about the commodity's geographic origin which satisfies the following terms:

It is in the form of a word, a sign, a symbol or an image featuring a country or a territory, or a locality of a country;

It is on commodities, commodity packaging or documentation associated with sale and purchase of these commodities, aimed at introducing information that the commodities have specific typical and unique quality and other characteristics since they come from that country, territory, or locality.

2. In cases where geographic origin is the name of the commodity's origin, the protection of it is implemented according to the current laws on the name of commodity origin.

3. Geographic information, which has become popular name(s) of commodities and has lost its origin introduction capability, shall not be protected as geographic origins according to regulations in this decree.

Article 11: Those who have the right to use geographic origins

Those, who have the right to use geographic origins, include organizations and individuals involved in manufacture of commodities carrying such indicators in that country, territory or locality with commodities manufactured by these organizations and individuals assured to have their introduced reputation.

Article 12: Content of industrial property associated with geographic origins

1. Those, who have the right to use geographic origins, have the right to reveal such geographic origins on the commodities, a commodities' packaging or documentation associated with sales and purchases of such commodities or with advertising for these commodities.

2. The right to use geographic origins shall not be transferred.

Article 13: Time for protection of industrial property associated with geographic origins

The right to use geographic origins is protected when the terms on geographic origins described in 1, Article 10, and terms on manufacture by those who have the right to use geographic origins stated in Article 11, this decree shall be all satisfied.

Article 14: Trademarks

1. Protected trademark is the name of organizations and individuals that is used in their business activities and satisfies the following terms:

- a. it is a group of letters, that can be enclosed with digits and can be pronounced;
- b. it can be used for differentiate the business subjects which carry that trademark from other ones which are also involved in the same field of business.

2. The following names shall not be protected as trademarks:

- a. Names of administrative bodies, political organizations, socio-political organizations, social organizations, socio-vocational organizations or subjects which are not involved in business activities;
- b. Names used for describing functions of the trademark but that cannot be used for differentiating business subjects in the same field of operation;
- c. Trademarks easily mistaken with other trademarks, which have been used by other organizations or individuals in the same locality and field of business, or can be mistaken with other trademarks that were protected before these trademarks were used.

Article 15: owners of industrial property associated with trademarks

Owners of industrial property associated with trademarks are organizations and individuals doing business using those trademarks.

Article 16: Content of industrial property associated with trademarks

1. Owners of industrial property associated with trademarks have the right to use those trademarks for business purposes by using these trademarks for naming their business activities on relevant business documentation, boards, products, commodities, product packaging and advertisements.

2. Owners of industrial property associated with trademarks have the right to transfer the trademarks according to contracts or bequeath them to others, yet the transfer must include all business facilities and activities enclosed with the trademarks transferred.

Article 17: Time for protection of industrial property associated with trademarks

Industrial property associated with trademarks is protected when the relevant owner(s) still maintains (maintain) business activities using those trademarks.

CHAPTER III

PROTECTION OF INDUSTRIAL PROPERTY IN THE FORM OF TRADE SECRETS, GEOGRAPHIC ORIGINS AND TRADEMARKS

Article 18: Violation of industrial property in the form of trade secrets

Violations of industrial property in the form of trade secrets include:

1. Seeking or collecting information in the form of trade secret(s) by opposing protection measures taken by that secret's (those secrets') legal owners;

2. Revealing or using information in the form of trade secret(s) without permission of that secret's (those secrets') legal owners;

3. Violation of secret contracts or cheating, taking advantage of those individuals who are in charge of keeping the secret(s) to seek, collect and reveal information in the form of trade secret(s);

4. Seeking or collecting information in the form of trade secret(s) of other individuals when they submit the secret(s) in requesting a license, a business license or a license to supply products, especially pharmaceutical agrochemical products, by opposing protection measures taken by the relevant administrative bodies, or using such information for trade purposes or requesting a license to do business or supply products.

Article 19: Violations of industrial property in the form of geographic origins

Violations of industrial property in the form of geographic origins include:

1. Using any commercial indicators coinciding with or similar to geographic origins which are under protection, that gives a wrongful perception of the commodity's geographic origin;

2. Using any commercial indicators coinciding with or similar to protected geographic origins for identical, similar or related goods, that affects the reputation of the goods legally carrying these geographic origins, including cases using the words 'measure', 'design', 'type', 'adapt' or other similar words;

3. Using geographic origins for wines and brandies which do not come from the indicated countries or territories, including cases where real origins of the goods are stated, or where geographic origins are translated into other languages or cases using words 'design', 'type', 'adapt' and other similar words.

Article 20: Violations of industrial property in the form of trademarks

Violations of industrial property in the form of trademarks include actions of using any commercial indicators coinciding with or similar to trademarks of others for identical or similar goods and services, that causes wrongful perception of business performers, facilities and activities run using those trademarks.

Article 21: Right to request sanction for violation of industrial property in the form of trade secrets, geographic origins and trademarks

1. Owners of industrial property in the form of trade secrets and trademarks, and those individuals who have the right to use geographic origins, have the right to ask State relevant bodies to force the violators to stop their infraction and provide compensation.

2. In cases of actions violating industrial property in the form of trademarks or giving wrongful information of trademarks and geographic origins, that perplexes consumers, consumers have the right to request relevant State bodies to force violators to stop their infraction and indemnify losses.

3. Prescription of the right to request sanction for violation of regulations in 1 and 2, this article shall be one year commencing from when the violation is discovered but not exceeding three years commencing from when the violation occurs.

Article 22: Duties of proof

1. When requesting sanction for violation of regulations in 1, Article 21, this decree, owners of industrial property in the form of trade secrets, trademarks and those who have the right to use geographic origins, have to prove terms for defining their rights as well as their right's scope while declaring the name and address of the violator(s) and providing evidence and levels of the violation.

In cases where compensation is required, owners of industrial property in the form of trade secrets, trademarks and those individuals who have the right to use geographic origins, have to prove losses caused by the violator(s).

2. In cases where the petitioner is a consumer, this consumer has to show the name and address of the violator(s) and provide evidence(s) of violation as well as levels of violation(s), if any.

Article 23: Procedures of sanctioning violation(s) of industrial property in the form of trade secrets, geographic origins and trademarks

Sanction of violation(s) of industrial property in the form of trade secrets, geographic origins and trademarks shall be implemented according to formalities applicable to sanction of violation(s) of industrial property in other matters.

**CHAPTER IV
PROTECTION OF RIGHTS AGAINST UNFAIR COMPETITION ASSOCIATED WITH
INDUSTRIAL PROPERTY**

Article 24: Unfair competition associated with industrial property

Unfair competition associated with industrial property includes:

1. Using commercial indicators to create a wrongful perception of business performers, facilities and activities; goods and services with an aim to:
 - a. Take advantage of other manufacturers' and suppliers' reputation;
 - b. Affect the reputation of other manufacturers and suppliers;
 - c. Give consumers a wrongful perception of the origin, manufacture, function, quality, quantity or other characteristics of goods and services; or the terms associated with supply of goods and services.
2. Appropriating or using investment gain(s) of other individuals without permission of these individuals.

Article 25: Rights against unfair competition associated with industrial property

1. Organizations and individuals, suffering losses or potentially suffering losses due to unfair competition associated with industrial property, have the right to ask relevant State bodies to force unfair competitors to stop their unfair competition and pay compensation; to enact administrative sanctions or prosecute unfair competition maker(s).
2. Associations of consumers and occupation associations of organizations and individuals can represent their members in implementing the right described in 1, this article.

Article 26: Duties of proof of organizations and individuals requesting sanction on unfair competition

Organizations and individuals implementing the right to request sanction on unfair competition described in Article 25, this decree, have to demonstrate to relevant State bodies their legal rights and interests or those of organizations and individuals they are representing, which are being violated or may be violated by unfair competition.

Article 27: Sanction of unfair competition

Organizations and individuals engaging in unfair competition associated with industrial property, based on their performance's nature, will be administratively sanctioned or prosecuted; or shall pay compensation according to law when causing losses.

CHAPTER V

STATE MANAGEMENT ON PROTECTION OF INDUSTRIAL PROPERTY IN THE FORM OF TRADE SECRETS, GEOGRAPHIC ORIGINS AND TRADEMARKS, AND RIGHTS AGAINST UNFAIR COMPETITION ASSOCIATED WITH INDUSTRIAL PROPERTY

Article 28: Content of State management on protection of industrial property in the form of trade secrets, geographic origins and trademarks, and rights against unfair, competition associated with industrial property

1. Issuance of policies, strategies, plans to develop industrial property activities, guiding documents referring to protection of trade secrets, geographic origins, trademarks and rights against unfair competition;
2. Protection of legal interest(s) of the State, organizations and individuals regarding industrial property in the form of trade secrets, geographic origins, trademarks and rights against unfair competition;
3. Implementation of guiding documents and policies on protection of industrial property in the form of trade secrets, geographic origins and trademarks, and rights against unfair competition;
4. Management of consulting and representation services related to industrial property associated with trade secrets, geographic origins, trademarks and rights against unfair competition;
5. Training and development of staff involved in the field of industrial property in the form of trade secrets, geographic origins, trademarks and rights against unfair competition;
6. Implementation of international co-operation in industrial property in the form of trade secrets, geographic origins, trademarks and rights against unfair competition;
7. Provision of guidelines for, inspection and examination of the implementation of policies and regulations on industrial property in the form of trade secrets, geographic origins, trademarks and rights against unfair competition.
8. Receipt and resolution of claims, denunciation's; sanction of violations related to industrial property in the form of trade secrets, geographic origins, trademarks and rights against unfair competition.

Article 29: Responsibilities of relevant State bodies in protection of industrial property in the form of trade secrets, geographic origins, trademarks and rights against unfair competition related to industrial property

1. The Ministry of Science, Technology and Environment is the body that shall conduct State management of industrial property in the form of trade secrets, geographic

origins, trademarks and rights against unfair competition nation-wide; It is responsible for organising and guiding the implementation policies and regulations on industrial property in the form of trade secrets, geographic origins, trademarks and rights against unfair competition.

2. The ministry's National Office of Industrial Property is responsible for assisting the Minister for Science, Technology and Environment in accomplishing the following duties:

a. Co-ordinating with other relevant State bodies as well as social organizations to implement measures to protect industrial property in the form of trade secrets, geographic origins, trademarks and rights against unfair competition and assure that regulations on industrial property in the form of trade secrets, geographic origins, trademarks and rights against unfair competition are observed (including the assessment of the terms required for defining the right, content of the right, action(s) of violating the right related to trade secrets, geographic origins and trademarks, and unfair competition) in accordance with the request of relevant State bodies, organizations and individuals;

b. Receipt and resolution of claims and denunciations related to industrial property in the form of trade secrets, geographic origins, trademarks and rights against unfair competition related to industrial property within their powers and duties;

c. Examination of professional skills and qualifications, granting of business certificates, and technical management of organizations offering representation services related to industrial property in the form of trade secrets, geographic origins, trademarks and rights against unfair competition related to industrial property;

d. Provision of technical guidance and training related to industrial property in the form of trade secrets, geographic origins, trademarks and rights against unfair competition for industrial property management bodies of various ministries, branches, localities and establishments,

e. Performance of international co-operation in industrial property in the form of trade secrets, geographic origins, trademarks and rights against unfair competition within their powers and duties.

3. Ministries, ministerial and Governmental bodies, and centrally governed provincial and municipal People's Committees, within their duties and powers, are responsible for organising, directing and managing industrial property activities associated with trade secrets, geographic origins, trademarks and rights against unfair competition inside their branches or localities.

Science, technology and environment bodies of individual branches and localities are responsible for assisting their branches' and localities' leadership to accomplish the above tasks as well as implement the following tasks:

a. Providing minister(s), head(s) of the ministerial and Governmental bodies, or chairpersons of the central governed provincial and municipal People's Committees suggestion(s) of concrete measures to implement State policies on industrial property in the form of trade secrets, geographic origins, trademarks and rights against unfair competition, and to implement such measures;

b. Management of protection of industrial property in the form of trade secrets, geographic origins, trademarks and rights against unfair competition related to industrial property inside their branches and localities, and implementation of measures to promote this management;

c. Popularization of policies on industrial property in the form of trade secrets, geographic origins, trademarks and rights against unfair competition; co-ordination with social organizations to carry out measures to promote industrial property activities;

d. Provision of assistance for business performers inside their branches and localities in meeting the duties of proof in defining industrial property in the form of trade secrets, geographic origins, trademarks and rights against unfair competition in Vietnam and abroad;

e. Co-ordination with law enforcement bodies to promote protection of industrial property in the form of trade secrets, geographic origins, trademarks and rights against unfair competition; and sanction of infractions related to industrial property in the form of trade secrets, geographic origins, trademarks and rights against unfair competition, including assessment of terms for defining the right, content of the right, action of violating the right to trade secrets, geographic origins, trademarks and unfair competition related to industrial property according to the request of relevant State bodies, organizations and individuals.

Article 30: Administrative infraction sanction

Administrative infraction sanction on protection of industrial property in the form of trade secrets, geographic origins, trademarks and rights against unfair competition related to industrial property is regulated by another Government decree.

Article 31: Claims, denunciations and resolution of these claims and denunciations

1. Organizations and individuals have the right to send their claims and/or denunciations to bodies, organizations and individuals empowered to issue administrative decisions and sanction administrative actions violating the law on protection of industrial property in the form of trade secrets, geographic origins, trademarks and rights against unfair competition related to industrial property.

2. Individuals have the right to send claim(s) to bodies, organizations and individuals empowered to deal with illegal actions related to the protection of industrial property in the form of trade secrets, geographic origins, trademarks and fights against unfair competition related to industrial property.

3. The empowered bodies, organizations and individuals, upon receiving claim(s) and/or denunciation (s), are responsible for resolving them promptly in accordance with the law on claims and denunciations.

CHAPTER VI IMPLEMENTING PROVISIONS

Article 32: Transition provisions

Trade secrets, geographic origins and trademarks, which existed before this decree comes into effect but still satisfy all the terms described in this decree, are protected by this decree.

Article 33: Implementation provisions

This decree is effective 15 days after signing.

Ministers, heads of ministerial and Governmental bodies and chairpersons of the centrally governed provincial and municipal People's Committees are responsible for implementing this decree.

**P/p the Government
Prime Minister**

PHAN VAN KHAI