GOVERNMENT

SOCIALIST REPUBLIC OF VIETNAM Independence - Freedom - Happiness

No.12-1999-ND-CP

DECREE ON PENALTIES FOR ADMINISTRATIVE OFFENCES IN RELATION TO INDUSTRIAL PROPERTY

The Government

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

Pursuant to the Civil Code dated 28 October 1995;

Pursuant to the Ordinance on Dealing with Administrative Offences dated 6 July 1995;

In order to improve the effect of protection of industrial property rights of organizations and individuals, to protect the rights and legitimate interests of consumers and to take part in fighting against production or trading of fake goods and commercial fraud;

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

Decrees:

CHAPTER I

General Provisions

Article 1 Definition of Terms

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

- 1. "*Object of industrial property*" means an invention, utility solution, industrial design, trademark (including trademark of services) or appellation of origin of goods.
- 2. "*Owner of industrial property*" means the owner of a certificate of protection, the owner of [a certificate] of international registration of a trademark, or a transferee of industrial property rights in respect to a protected object of industrial property.
- 3. "*Certificate of protection*" means the patent of an exclusive invention, utility solution or industrial design or the certificate of registration of the trademark or the certificate of the right to use an appellation of origin of goods.
- 4. "*Element which is in breach*" means:

- š The identical or similar sign causing confusion with the protected trademark or appellation of origin of goods;
- š The mark or instructions in breach of the provisions for instructions protecting industrial property rights and industrial property obligations;
- š The part of products, product or process for production of products which is identical to the protected part, product 2 -

Draft translation of MPI and PF

to industrial property shall be one year from the date on which the offence is committed. In respect of production or trading of goods in breach of protected trademarks, controlling the market, abolishing an object of industrial property, restricting or narrowing the scope of protection of industrial property rights of other persons, taking advantage of or lessening commercial goodwill of other business establishments;

- (c) Providing misleading and incorrect information or evidence in relation to the procedures for complaints regarding industrial property rights.
- 2. A fine of between two million (2,000,000) dong and ten million (10,000,000) dong shall be imposed on any organization or individual conducting one of the following acts:
 - (a) Making any unauthorized amendment of, or falsifying, a certificate of protection or certificate relating to protection of industrial property rights, where the degree [of the offence] is not subject to prosecution for criminal liability;
 - (b) Falsifying any document or making

- 1. A warning or a fine of between five hundred thousand (500,000) dong and two million (2,000,000) dong shall be imposed on any organization or individual conducting one of the following acts:
 - (a) Providing misleading instructions (including instructions in the form of signs) related to the owner of industrial property;
 - (b) Providing misleading instructions (including instruction in the form of signs) related to products or services containing an element whose industrial property rights are protected;

- 6 -

4. In addition to the forms of penalty stipulated in clauses 1, 2 and 3 of this article, the organization or individual committing the offence may be subject to one or mof1,

- 6. In addition to the forms of penalty stipulated in clauses 1, 2, 3, 4 and 5 of this article, the organization or individual committing the offence may be subject to one or more measures as follows:
 - (a) Being compelled to correct misleading and incorrect information in respect of the acts stipulated in sub-clauses (a) and (c) of clause 1 of this article;
 - (b) Being compelled to pay compensation for damage caused by an administrative offence in respect of the acts stipulated in clauses 1, 2 and 3 of this article.

Article 8 Offences of the provisions in relation to industrial property obligations

- 1. A warning or a fine of between one million (1,000,000) dong and five million (5,000,000) dong shall be imposed on any organization or individual conducting one of the following acts:
 - (a) Failing to perform the obligation to make a contract or to register a contract for transfer of industrial property rights in accordance with the form, substance and procedures as stipulated in the laws in relation to industrial property;
 - (b) Failing to perform the obligation to register trademarks in respect of products or services in industries where the registration of trademarks is compulsory.
- 2. A fine of between two million (2,000,000) dong and ten million (10,000,000) dong shall be imposed on any organization or individual using as the trademark, signs which cause misunderstanding or confusion or are used for the purpose of deceiving consumers in relation to origin, ability, functions, quality or value of goods or services.
- 3. A warning or a fine of between five hundred thousand (500,000) dong and two million (2,000,000) dong shall be imposed on any organization or individual failing to perform the obligation to pay remuneration to an owner of an invention, utility solution or industrial design in accordance with the decision of the State body authorized in compulsory licencing.
- 4. Additional forms of penalty:
 - (a) Withdrawing the right to use a business licence for a period of between one month and three months in respect of the acts stipulated in clause 1; for a period of between three months and one year or an indefinite period in respect of the acts stipulated in clause 2 of this article;
 - (b) Confiscating the physical evidence and means used for administrative offences in respect of the acts stipulated in sub-clause (b) of clause 1 and clause 2 of this article.

- 5. In addition to the forms of penalty stipulated in clauses 1, 2, 3 and 4 of this article, any organization or individual committing an offence may be subject to one or more measures as follows:
 - (a) Being compelled to perform obligations relating to industrial property in respect of the acts stipulated in sub-clauses (a) and (b) of clause 1 and clause 3 of this article; being compelled to eliminate an element(s) which are in breach, on goods and means of business in respect of the acts stipulated in clause 2 of this article;
 - (b) Being compelled to pay compensation for damage caused by an administrative offence in respect of the acts stipulated in clauses 1, 2 and 3 of this article.

Article 9 Offences of the provisions in relation to protection of industrial property rights

- 1. A warning or a fine of between five million (5,000,000) dong and twenty million (20,000,000) dong shall be imposed on any organization which, or individual who, is not an owner of industrial property or the prior person entitled to use (in the case of an invention, utility solution or industrial design), conducting one of the following acts for business purposes without obtaining a permission from the owner of industrial property or the licence to use (in the case of compulsory licencing) issued by the Ministry of Science, Technology and Environment:
 - (a) Producing (namely manufacturing, assembling, processing and packing) protected products or parts of products which are an invention, utility solution or industrial design;
 - (b) Applying a protected process which are an invention or utility solution;
 - (c) Exploiting protected products or part of products which are an invention or utility solution;
 - (d) Circulating (namely selling and transporting), advertising (by mass media, advertising signs, means of business, other products or goods, means of services, offers, promotion, correspondence used for business purposes) in order to sell or to offer or store to sell protected products or parts of products which are an soluty of

- Š Products or parts of products with the protected external appearance which is an industrial design or contains one or more parts which are components substantially constituting the protected industrial design;
- S Products or parts of products bearing a sign or with a package bearing identical or similar signs which causes confusion with the protected trademark or appellation of goods of the same or similar type, including cases where the appellation of products is translated into other languages or used with such words as "sort of", "type of", "adapted from" or similar words;
- (h) Importing or exporting types of products set out in sub-clause (g) of this clause;
- Attaching (in all forms such as printing, sticking, attaching, moulding, embossing and so forth) identical or similar signs to products or packaging of products causing confusion with the protected trademark or appellation of goods of the same or similar type;
- (k) Providing services under the name or logo or attaching identical or similar signs to means of services causing confusion with the protected trademark of the services of the same or similar type.
- 2. A fine of between twenty million (20,000,000) dong and fifty million (50,000,000) dong shall be imposed on any organization or individual conducting any act set out in clause 1 of this article where a further offence is committed, and a fine of between fifty million (50,000,000) dong and one hundred million (100,000,000) dong shall be applicable in the case of a large scale or organized offence where the degree [of the offence] is not subject to prosecution for criminal liability.
- 3. A fine of between two million (2,000,000) dong and ten million (10,000,000) dong shall be imposed on any organization or individual carrying out one of the following acts:

- 5. In addition to the forms of penalty stipulated in clauses 1, 2, 3 and 4 of this article, the organization or individual committing the offence may be subject to one or more measures as follows:
 - (a) Being compelled to eliminate an element which is in breach on products, goods or means of business in respect of the acts stipulated in clauses 1 and 2 of this article;

- (g) Compel [offenders] to pay compensation for damage caused by an offence;
- (h) Compel [offenders] to destroy articles containing the element which is in breach, or low grade quality goods which are in breach and which harm the health of people.
- 1. Chairmen of people's committees of provinces and cities under central authority shall have the powers to:
 - (a) Issue a warning;
 - (b) Impose a fine of up to one hundred million (100,000,000) dong;
 - (c) Confiscate the physical evidence and means used for administrative offences;
 - (d) Withdraw the right to use a business licence issued by the [authority] of the district or provincial level for an indefinite or definite period;
 - (e) Compel [offenders] to eliminate an element which is in breach on products, goods or means of business, or to correct misleading and incorrect information causing offences;
 - (g) Compel [offenders] to pay compensation for damage caused by an offence;
 - (h) Compel [offenders] to destroy articles containing the element which is in breach, or low grade quality goods which are in breach and which harm the health of people.

Article 11 Powers of inspectors specializing in industrial property

Inspectors of the Ministry of Science, Technology and Environment specializing in industrial property shall have the power to impose administrative penalties for offences occurring within the country. Inspectors of the Department of Science, Technology and Environment specializing in industrial property shall have the power to impose administrative penalties for offences occurring in the localities within their authority. The powers of inspectors specializing in industrial property to impose penalties shall be as follows:

1. Any inspector specializing in industrial property in the course of carrying ow Ao47 -1.16.[99j4

a value of up to five hundred thousand (500,000) dong;

- (d) Compel [offenders] to eliminate an element which is in breach on products, goods or means of business, or to correct misleading and incorrect information causing offences;
- (e) Compel [offenders] to pay compensation for damage caused by an offence;
- (g) Compel [offenders] to destroy articles containing the element which is in breach, or low grade quality goods which are in breach and which harm the health of people.
- 2. Any chief inspector of the Department of Science, Technology and Environment specializing in industrial property shall have the power to:
 - (a) Issue a warning;

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- (d) Compel [offenders] to eliminate an element which is in breach on products, ect misleadi2, ination causing offence
 - (e) Compel [offenders] to pay compensation for d
 - (g) Compel [offenders] to destroy articlescontainin(Dr57ow grade quality goods whic

- (e) Compel [offenders] to eliminate an element which is in breach, on products, goods or means of business, or to correct misleading and incorrect information causing offences;
- (g) Compel [offenders] to pay compensation for damage caused by an administrative offence;
- (h) Compel [offenders] to destroy articles containing the element which is in breach, or low grade quality goods which are in breach and which harm the health of people.

Article 12 Powers of police offices, customs offices and market control bodies

Heads of police offices at the district level, directors of economic police divisions, directors of provincial police departments, the Director of the Economic Police Department, heads of customs control teams at border gates, directors of provincial customs departments, heads of market control bodies and directors of market control departments shall, depending on their auth8ctor

accordance with article 47 of the Ordinance on Dealing with Administrative Offences.

3. If upon preparation of the minute of the offence, the person authorized to impose the penalty considers that dealing with the offence needs the evaluation or conclusion of the

5. Any decision to issue a fine of more than two million (2,000,000) Dong must be sent to the People's Inspectorate of the same level.

Article 16 *Procedures for withdrawing the right to use a licence*

1. The procedures for withdrawing the right to use a business licence or licence to provide industrial property representation services must comply with article 50 of the *Ordinance on Dealing with Administrative Offences*.

The person authorized to impose the penalty shall apply the form of withdrawing the right to use a licence in cases where an organization or individual committing an offence intentionally fails to suspend th

Where the person authorized to impose the penalty identifies that a licence has been granted by a person lacking authority, or the contents of the licence are contrary to the laws, he/she must immediately withdraw the licence and at same time notify in a timely manner the body which issued the licence or body authorized to issue and control such licence and the authorized State inspection body.

- Article 17Procedures for temporarily retaining the physical evidence and means used for
administrative offences
- 1. Powers and procedures for taking measures to temporarily retain the physical evidence and means used for administrative offences shall be as stipulated in article 41 of the *Ordinance on Dealing with Administrative Offences*.
- 2. The measure of temporarily retaining the physical evidence and means used for administrative offences, is taken in order to immediately prevent an offending act or to protect evidence necessary for the purpose of verifying details which shall be used as a basis for a decision to deal with the offence.
- 3. If upon expiry of the period of temporary retention of the physical evidence and means used for administrative offences, the person authorized to impose the penalty considers that the measure of confiscating the physical evidence and means used for administrative offences should be taken, the authorized person who issued the decision to temporarily retain the physical evidence and means used for administrative offences shall issue a decision, or request the body authorized to impose the penalty of issuing a decision, to confiscate the physical evidence and means used for administrative offences in accordance with article 51 of the *Ordinance on Dealing with Administrative Offences* and article 18 of this Decree.
- Article 18Procedures for confiscating the physical evidence and means used for
administrative offences
- 1. The procedures for confiscating the physical evidence and means used for administrative offences in relation to industrial property shall comply with article 51 of the *Ordinance on Dealing with Administrative Offences*.
- 2. The measure of confiscating the physical

and conditions for eliminating an element which is in breach on goods, or intentionally fails to perform the requirements [imposed by] the person

guarantee they can use other functions, or make (other) use of such means as raw materials;

- (b) A uctioning goods, provided that purchasers shall be issued with a proper licence by the owner of industrial property; and the goods satisfy all quality standards and the purchasers must make additions to instructions as stipulated;
- (c) Where it is impossible to eliminate an element which is in breach, or to satisfy all conditions for auction in accordance with sub-clauses (a) and (b) of this clause, [such goods] may be distributed to users to use for non-commercial purposes (such as humanitarian purposes, social welfare, studies or education), provided that the exploitation or use of such products shall not affect the legal rights and interests of the owner of the relevant object of industrial property.

Article 20 Enforcement of penalty decisions

1. Where an organization or individual subject to [a penalty decision] fails to voluntarily comply with the penalty decision within five days from the da

administrative offences in relation to industrial property shall be as stipulated in chapter IX of the Ordinance on Dealing with Administrative Offences.

CHAPTER V

Implementing Provisions

Article 22

This Decree shall be of full force and effect after fifteen (15) days from the date of its signing. All provisions of sub-clause (a) of clause 1 and sub-clause (a) of clause 3 of article 15 of Decree no.57-CP dated 31 May 1997 on penalties for administrative offences in relation to measurement and quality of goods shall be replaced with the provisions on penalties for production or trading of goods whose trademarks are identical or similar to the trademarks of other establishments as stipulated in this Decree.

Article 23

The Minister of Science, Technology and Environment, the Minister of Trade, the Ministry of Interior, the Minister of Finance and the General