

Government Decree 54/2000/NCP (03/10/2000)

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DECREE NO. 54/2000/ND-CP OF 3 OCTOBER 2000 OF THE GOVERNMENT ON THE PROTECTION OF INDUSTRIAL PROPERTY RIGHTS TO BUSINESS SECRETS, GEOGRAPHICAL INDICATIONS, TRADE NAMES AND ON PROTECTION AGAINST UNFAIR COMPETITION IN RESPECT OF INDUSTRIAL PROPERTY

GOVERNMENT

- Pursuant to the Law on the organisation of the Government dated 30 September 1992;
- Pursuant to the Civil Code dated 28 October 1995;
- Pursuant to the Resolution of the 8th session of the IXth National Assembly on the implementation of the Civil Code;
- Pursuant to the Commercial Law dated 10 May 1997;
- In order to contribute to enhancing the adequate and effective protection of industrial property rights, fair business activities and legitimate consumer interests;
- At the proposal of the Minister of Science, Technology and Environment,

DECREES:

Chapter I
GENERAL PROVISIONS

and individuals conducting business activities on Vietnamese territory.

This Decree shall also apply to foreign organisations and individuals that do not conduct business activities on Vietnamese territory but fall into one of the following categories:

Organisations and individuals whose industrial property rights are protected under the provisions of the Paris Convention or the provisions of the International Agreements on mutual recognition and protection of industrial property which Vietnam has signed or acceded to;

Organisations and individuals from countries and territories which have, together with Vietnam, accepted the principle of reciprocity in respect of industrial property protection for the organisations and individuals of each others' countries and territories.

Article 3. The Application of Legal DocumentsThe protection of business secrets, geographical indications, trade names and the protection against unfair competition in respect of industrial property shall comply with the provisions of this Decree and other relevant legal documents of Vietnam.

In cases where an international treaty which Vietnam has signed or acceded to contains provisions different from those of this Decree, the provisions of the international treaty shall apply.

Article 4: The Interpretation of TermsThe terms and expressions used in this Decree shall have the respective meanings ascribed to them hereunder:

“Commercial indications” are signs or information which serves as a commercial guidance to goods and

that the quality, goodwill, reputation or other characteristics of the goods are attributable to that geographical origin.

If the geographical indications are appellations of origin, the protection thereof shall be effected according to the current law on appellations of origin;

Geographical information which has become the name of a good and/or is no longer capable of indicating the geographical origins, shall not be protected as geographical indications under the provisions of this Decree.

Article 11: The Persons Entitled to Use Geographical Indications Persons entitled to use geographical indications are all organisations or individuals that manufacture goods bearing the geographical indications of the respective country, territorial region or locality, provided that the goods manufactured by such organisations and/or individuals ensure the goodwill or reputation of the goods.

Article 12: The Content of Industrial Property Rights to Geographical Indications Persons entitled to use geographical indications have the right to display such indications on goods, packaging or business communication documents for the purpose of marketing the goods;

The right to use geographical indications shall not be transferred.

Article 13: Term of the Protection of Industrial Property Rights to Geographical Indications The right to use the geographical indications shall be protected as long as all the conditions regarding geographical indications prescribed in paragraph 1, Article 10 and the conditions regarding manufacturing activities of those persons entitled to use the geographical indications as prescribed in Article 11 of this Decree are fully met.

Article 14: Trade Names A protectable trade name is the name of an organisation or individual that is used in their business activities which meets all the following conditions:

- a. It is a pronounceable combination of letters from the alphabet which can be mixed with numbers;
- b. It is capable of distinguishing the business establishments bearing such a name from others in the same field of business.

The following names shall not be protected as trade names:

- a. The names of administrative agencies, political organisations, socio-political organisations, social organisations, socio-professional organisations or other entities irrelevant to business activities;
- b. Names used as trade names, but which are, however, incapable of distinguishing business establishments that bear such a name in a single field;
- c. Trade names which cause confusion with other trade names which have previously been used in the same locality and in the same business field, or which cause confusion with other trademarks which were already protected before the use of such trade names.

Article 15: The Owners of Industrial Property Rights to Trade Names The owners of industrial property rights to trade names are organisations and/or individuals conducting business activities under such trade names.

Article 16: The Contents of Industrial Property Rights to Trade Names The owners of industrial property rights to trade names have the right to use such trade names for business purposes by using the trade names in their business activities or reflecting them in their business transaction documents, signboards, products, goods, goods packages and advertisements.

The owners of industrial property rights to trade names have the right to transfer such trade names under contracts or leave them to others as an inheritance, provided that the trade names must be transferred together with all the business establishments and business activities under such trade names.

Article 17: The Term of the Protection of Industrial Property Rights to Trade Names Industrial property rights to trade names shall be protected as long as their owners sustain business activities under such trade names.

Chapter III

THE PROTECTION OF INDUSTRIAL PROPERTY RIGHTS TO BUSINESS SECRE1m,;

Article 18: Acts of infringing industrial property rights to business secrets
Acts of infringing industrial property rights to business secrets include:

Accessing or gathering information on business secrets by taking acts against the secret-keeping measures of legitimate owners of such business secrets;

Disclosing or using information on business secrets without the authorisation of owners of such business secrets;

Breaching contracts on secret-keeping measures or deceiving or abusing the trust of persons in charge of secret-keeping, or abusing the trust of the owners of business secrets to access, to gather or to disclose information on such business secrets;

Accessing or gathering secret business information which is submitted by others under the procedures for the approval of business-related licenses or the acquisition of permission for product circulation - especially for pharmaceuticals and agro-chemical products or taking acts against the secret-keeping measures of administrative agencies, or using such information for business purposes, including the purpose of obtaining business-related licenses or licenses for product circulation.

Article 19: Acts of Infringing the Industrial Property Rights to Geographical Indications
Acts of infringing industrial property rights to geographical indications include:

Using any commercial indications which are identical or similar to a geographical indication currently under protection, and thus causing a misconception about the origin of the goods.

Using any commercial instruction which is identical or similar to a geographical indication currently under protection, for identical, similar or relevant goods, and thus damaging the prestige or reputation of the goods bearing such geographical indications, including cases where it is used together with such words as "method", "model", "type", "imitated to", or the like;

Using geographical indications in respect of wines or spirits which are not of the origin of the indicated territories, including cases where the indications of the real origin of goods are provided or the geographical indications are used in the form of translations into other languages or used together with such words as "model", "type", "formula", "imitated to" or the like.

Article 20: Acts of Infringing Industrial Property Rights to Trade Names
Acts of infringing the industrial property rights to trade names are all acts of using any commercial indications identical or similar to the trade names of others for the same type of products or services or similar products or services, and thus causing confusion about business subjects, business establishments or business activities under such trade names.

Article 21: The Right to Request the Handling of Infringements of Industrial Property Rights to Business Secrets, Geographical Indications and Trade Names
The owners of industrial property rights to business secrets, trade names and persons entitled to use geographical indications shall have the right to request

If the persons who requests the handling of the infringing acts are consumers, such persons shall have to clearly state the names and addresses of the infringers and supply evidence of the infringement and prove

The bodies responsible for the management of science, technology and environment in ministries and localities shall have to assist the leaders of such ministries and localities in performing the above-said function and carrying out the following tasks:

