

**Joint Circular No.: 05/2016/TTLT-BKHCH-BKHDT dated April 05, 2016 of the Ministry of Science and Technology, and the Ministry of Planning and Investment on detailing and guiding measures against corporate names that infringe industrial property rights
4/5/2016**

**THE MINISTRY OF SCIENCE AND TECHNOLOGY –
THE MINISTRY OF PLANNING AND INVESTMENT**

**SOCIALIST REPUBLIC OF VIETNAM
Independence – Freedom – Happiness**

No.: 05/2016/TTLT-BKHCH-BKHDT

Hanoi, April 05, 2016

JOINT CIRCULAR

ON DETAILING AND GUIDING MEASURES AGAINST CORPORATE NAMES THAT INFRINGE INDUSTRIAL PROPERTY RIGHTS

*Pursuant to the Government's Decree No. 99/2013/ND-CP dated August 29, 2013 on the sanctioning of administrative infringements in the field of industrial property (referred to as the Decree No. 99/2013/ND-CP);
Pursuant to the Government's Decree No. 78/2015/ND-CP dated September 14, 2015 providing for the enterprise registration (referred to as the Decree No. 78/2015/ND-CP);
Pursuant to the Government's Decree No.20/2013/ND-CP dated February 26, 2013 defining functions, tasks, powers and organizational structure of the Ministry of Science and Technology;
Pursuant to the Government's Decree No. 116/2008/ND-CP dated November 14, 2008 defining the functions, tasks, powers and organizational structure of Ministry of Planning and Investment;
The Minister of Science and Technology and the Minister of Planning and Investment promulgate this Joint Circular to detail and guide measures against corporate names that infringe industrial property rights.*

Chapter I GENERAL PROVISIONS

Article 1. Scope of application

This circular details and guides grounds for determining corporate names that infringe industrial property rights and measures against such infringements; procedures for changing corporate names, removing infringing elements in corporate names, revoking enterprise registration certificates of companies whose names infringe the industrial property rights.

Article 2. Regulated entities

1. Companies that are established in accordance with the law on enterprises and use names that infringe the industrial property rights.
2. Industrial property rights holders of brands, trade names and geographical indications which are protected (referred to the industrial property rights holders).
3. Authorities competent to handle violations in the field of industrial property; and officials competent to impose administrative penalties in the field of industrial property.
4. Business registration offices affiliating to Departments of Planning and Investments (referred to as the business registration offices).
5. Other relevant organizations and individuals as regulated by the law.

Article 3. The competence to handle infringements and decide the forcible change of corporate names or revocation of enterprise registration certificates

1. Authorities competent to handle infringements and officials competent to impose administrative penalties that conclude or make decisions on corporate names that infringe the industrial property rights are regulated in Chapter III of the Decree No. 99/2013/ND-CP
2. Authorities competent to decide the forcible change of corporate names or revocation of enterprise registration certificates are business registration offices where companies that have infringing names are headquartered.

Chapter II GROUNDS FOR DETERMINING CORPORATE NAMES THAT INFRINGE INDUSTRIAL PROPERTY RIGHTS AND MEASURES AGAINST SUCH INFRINGEMENTS

Article 4. Grounds for determining corporate names that infringe industrial property rights

Grounds for determining corporate names that infringe the industrial property rights shall comply with the law on intellectual property, and be concluded or decided by authorities competent to handle infringements or officials competent to impose administrative penalties in the field of industrial property.

Article 5. Written conclusions on corporate names that infringe industrial property rights

The written conclusion given by the competent authority which specifies that the corporate name infringes the industrial property rights as regulated in Point a Clause 4 Article 19 of the Decree No. 78/2015/ND-CP includes:

1. Conclusions on the inspection made by the authority competent to handle infringements in the industrial property rights as regulated in Clause 1 Article 3 of this Circular.
2. The decision on the imposition of administrative penalties given by the competent official, imposing administrative penalty which requests the company to change its name or remove infringing elements from its name.

Article 6. Forcible change of the company's name or forcible removal of infringing elements from the company's name

1. The forcible change of the company's name or forcible removal of infringing elements from the company's name shall apply to cases where the violating company fails to terminate its act of using infringing name on products, means of business, means of services, signboards or transaction documents, or fails to carry out procedures for changing such infringing name according to the notice given by the competent business registration office or agreements made between concerned parties.

2. If the decision on the imposition of administrative penalties applies the forcible change of the company's name or forcible removal of infringing elements from the company's name, the violating company shall perform one or some of the following measures:

- a) Apply for change of the company's name;
- b) Send the written notice of change of the company's business lines to the business registration office;
- c) Other measures as regulated by the law.

3. The application for change of the company's name or notice of change of the company's business lines regulated in Clause 2 of this Article shall be performed in accordance with regulations of the law on enterprises.

Article 7. Revocation of enterprise registration certificates

The revocation of the enterprise registration certificate shall apply to the cases where the violating company fails to comply with the forcible change of the company's name or the forcible removal of infringing elements from the company's name as prescribed in the decision on the composition of administrative penalties given by the competent officials, and fails to provide explanation as regulated in Point c Clause 1 Article 209 of the Law on enterprises to the business registration office within 06 months as of the end of the deadline for sending such explanation or at written request.

Chapter III

PROCEDURES FOR IMPOSING MEASURES AGAINST CORPORATE NAMES THAT INFRINGE INDUSTRIAL PROPERTY RIGHTS

Article 8. Procedures for handling infringements related to corporate names

1. When receiving the request for handling infringements related to the corporate name, the infringement-handling authority may request the alleged violator to provide information, documents and evidences as regulated in Point c Clause 2 Article 25 of the Decree No. 99/2013/ND-CP or conduct the inspection, verification and collection of evidences. The infringement-handling authority shall give one of the following documents of infringement handling results:

- a) The written conclusion on the corporate name that infringes the industrial property rights, specifying the assessment and conclusion on the corporate name that comprises elements infringing rights of brands, geographical indications and trade names that are protected; and the using of such corporate name on products, means of business, means of services, signboards or transaction documents in relevant business sectors is considered as an infringement of the industrial property rights;
- b) The decision on the imposition of administrative penalties, specifying the forcible change of the company's name or the forcible removal of infringing elements from the company's name.

2. The procedures for changing the company's name, changing business lines and revoking enterprise registration certificate shall be performed in accordance with regulations of the law on enterprises.

Article 9. Procedures for changing the company's name, removing infringing elements from the company's name in the cases where the company is granted with the written conclusion on the corporate name that infringes the industrial property rights

1. In case the infringement-handling authority makes a written conclusion on the corporate name that infringes the industrial property rights as regulated in Point a Clause 1 Article 8 of this Circular, such infringement-handling authority shall send such written conclusion to the holder of industrial property rights and violating company, and facilitate concerned parties in negotiating and reaching an agreement within 30 days as of the issuance of such written conclusion.

2. If the concerned parties reach an agreement within the prescribed time-limit and propose handling measures in compliance with the law on intellectual property without affecting rights and interests of third parties, consumers and the society as prescribed in Clause 2 Article 27 of Decree No.99/2013/ND-CP, the infringement-handling authority shall issue a notice recording such agreement and stop its settlement in this case;

In case the concerned parties cannot reach an agreement within the prescribed time-limit, the holder of industrial property rights is entitled to send written notice to the business registration office, requesting the business registration office to grant the request to the company whose name infringes the industrial property rights to change its name as regulated. The written notice of the holder of industrial property rights shall be enclosed with documents as regulated in Clause 4 Article 19 of the Decree No.78/2015/ND-CP.

Within 10 days as of the receipt of valid documents, the business registration office shall grant a notice requesting the company that has the infringing name to change its name and carry out procedures for changing the company's name within 02 months as of the date of notice.

3. Within 02 months as of the date of notice, if the company that has the infringing name carries out procedures for changing its name as regulated, the business registration office shall send notices to the infringement-handling authority and the holder of industrial property rights of the change of name of the violating company within 05 working days as of the date on which such change of the company's name is approved by the business registration office.

4. Within 03 working days as of the end of the time-limit for carrying out procedures for changing the company's name as regulated in Clause 2 of this Article, if the company that has the infringing name fails to carry out procedures for changing its name as regulated, the business registration office shall send notices to the authority competent to handle administrative violations in the field of planning and investment, and the infringement-handling authority to inspect and handle in accordance with the law on intellectual property.

Article 10. Procedures for changing the company's name, removing infringing elements from the company's name and revoking enterprise registration certificate in the cases where decisions on the imposition of administrative penalties in the field of industrial property are granted

1. If the competent official grants a decision on the imposition of administrative penalties as regulated in Point b Clause 1 Article 8 of this Circular, the infringement-handling authority shall send such decision on the imposition of administrative penalties to concerned parties and the business registration office. Within 60 days as of the effective date of the decision on the imposition of administrative penalties, the violating company must carry out procedures for changing its name or removing infringing elements from its name as regulated in Clause 2 Article 6 of this Circular.

2. Within 10 working days as of the end of the time-limit for executing the decision on administrative penalties as regulated in Clause 1 of this Article, if the violating company fails to carry out procedures for changing its name or removing infringing elements from its name, the infringement-handling authority shall send notice to the business registration office for the handing cooperation.

Within 05 working days as of the receipt of the notice sent by the infringement-handling authority, the business registration office shall grant a notice requesting the violating company to submit the explanatory report as regulated in Point c Clause 1 Article 209 of the law on enterprises.

3. Within 10 working days as of the end of the time-limit for submitting the explanatory report as requested by the business registration office, if the violating company fails to submit such report, the business registration office shall send a notice to the authority competent to handle administrative violations in the field of planning and investment to handle in accordance with the law.

4. After 06 months as of the end of the time-limit for submitting the explanatory report as regulated in Clause 2 of this Article, if the violating company fails to submit such report as requested, the business registration office shall revoke the enterprise registration certificate according to procedures stated in Clause 4 Article 63 of the Decree No. 78/2015/ND-CP.

Article 11. Responsibility for cooperating to impose measures against corporate names that infringe industrial property rights

1. Holders of industrial property rights shall provide sufficient documents as regulated and coordinate with competent authorities during the imposition of measures against corporate names that infringe industrial property rights.

2. The business registration office where the violating company is headquartered shall receive and handle the request for changing the name of violating company submitted by the concerned holder of industrial property rights; the request for revoking enterprise registration certificate from the infringement-handling authority.

3. The business registration office shall cooperate and appoint its officials to the inspection team at the request for cooperating to impose measures against the corporate name that infringes the industrial property rights; request the

violating company to submit its explanatory report as regulated in Point c Clause 1 Article 209 of the law on enterprises upon the receipt of notice from the infringement-handing authority.
4. The infringement-handing authority shall cooperate with the business registration office to consider the explanatory report submitted by the violating company to impose handling measures in conformity with current laws.

Chapter IV IMPLEMENTATION

Article 12. Effect and implementation organization

1. This circular shall take effect as of May 20, 2016.

2. The Inspectorate of the Ministry of Science and Technology; the Agency for Business Registration, the Ministry of Planning and Investment shall inspect the implementation of provisions of this Circular during the cooperation for imposing measures against corporate names that infringe industrial property rights./.

**MINISTER
OF PLANNING AND INVESTMENT**
(Signed and sealed)

**MINISTER
OF SCIENCE AND TECHNOLOGY**
(Signed and sealed)

Bui Quang Vinh

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