

NEW REGULATIONS IN THE CIRCULAR ON SANCTIONS FOR ADMINISTRATIVE VIOLATIONS IN INDUSTRIAL PROPERTY

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On September 30, 2024, Circular 06/2024/TT-BKHCN (**Circular 06**) was issued by the Ministry of Science and Technology to amend and supplement Circular 11/2015/TT-BKHCN (**Circular 11**) providing guidelines for Decree 99/2013/ND-CP (**Decree 99**) on administrative sanctions in industrial property. Below are some notable new points of this Circular to be addressed by organizations and individuals:

Firstly, amending the application of preventive measures and assurance of handling administrative violations against unfair competition related to the appropriation or use of domain names. Specifically, for acts of appropriating or using domain names that are identical or confusingly similar to others' protected trademarks, trade names or geographical indications not entitled to use for bad faith, or taking advantage of the prestige and reputation of the corresponding trademarks, trade names, or geographical indications for illegal earnings (an act of unfair competition in industrial property), the authorized administrative sanctioning officer shall consider applying the measure of *temporary seizure of the domain name* upon receiving valid documents from the entity requesting to handle unfair competition related to the appropriation or use of domain names. The petition dossier includes:

- (i) A request for application of preventive measures and assurance of handling administrative violations by "temporary seizure of domain names" (which is submitted as (a) a separate document or as (b) part of the petition for handling of unfair competition related to domain name appropriation or use);
- (ii) A power of attorney for making the request (if applicable); and
- (iii) Documentation and evidence proving the act of unfair competition related to domain name appropriation or use.

Secondly, amending and supplementing the method to

determine the amount of illegal gains obtained from administrative violations. According to Circular 06, illegal monetary gains represent the total amount of money that an organization or individual acquires from administrative violations and are calculated by the revenue earned from the transfer, consumption, provision of infringing goods or services after *deducting the direct costs constituting these goods or services*. This provision has been changed from the previous one, in which Circular 11 does not deduct the direct costs constituting goods or services as mentioned above. However, to deduct such direct costs as prescribed in Circular 06, the violating organizations and individuals must provide full records and documents to prove the legality and validity of these costs.

In addition, Circular 06 also adds more specific definitions of illegal gains as valuable papers and other objects or assets. Accordingly, illegal gains as valuable papers are all valuable papers as prescribed by the Civil Code and other types of valuable papers as prescribed by relevant regulations that are obtained by organizations or individuals from administrative violations. Illegal gains as other objects or assets obtained by organizations or individuals from administrative violations are also other objects or assets as prescribed by the Civil Code.

Thirdly, amending and supplementing regulations on violations of industrial property on the Internet. According to Circular 06, an act is considered as occurring on the Internet with the following elements: (i) it takes place on the Internet and (ii) it is carried out on a website under a Vietnamese domain name or with Vietnamese as the display language, or it aims at consumers or information users in Viet Nam. Accordingly, any commission of the above acts by individuals and organizations is

considered a violation of industrial property and will be subject to administrative sanctions according to Decree 99. Moreover, domain name registrants who *allow* other organizations or individuals to use the domain names, and *know or have reason to know* that they will be used to commit violation acts considered as occurring on the Internet, are also deemed to have engaged in an act of violation in industrial property and may be subject to administrative penalties. It can be seen that this regulation has become more binding and stricter as compared to the previous provision in Circular 11 that only owners of national domain names that hire other organizations and individuals to commit violation acts considered as occurring on the Internet would be considered a violation of the law.

COMMENTS AND RECOMMENDATIONS

In general, compared with Circular 11, Circular 06 has regulated administrative sanctions in industrial property more strictly and in more detail. This Circular is issued to improve the state management in industrial property, one of the popular fields in modern society, and to unify with other legal documents in the same field. Circular 06 took effect on November 15, 2024; therefore, individuals and organizations should study and comprehend the provisions in this Circular to ensure compliance with the legal regulations and to adopt measures to protect their legitimate rights when necessary.