

Government Decree 54/2000/NĐ-CP (03/10/2000)

Serial: 54/2000/NĐ-CP
Category: Decree
Issuer: Government
Issue Date: 03/10/2000

DECREE NO. 54/2000/NĐ-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

Article 1. The Scope of the Regulation This Decree stipulates in detail the protection of industrial property rights with respect to some of the “other subject matters” specified in Article 780 of the Civil Code dated 28 October 1995, including: business secrets, geographical indications and trade names, and protection against unfair competition in respect of industrial property.

Article 2: The Stakeholders of the Decree This Decree shall apply to domestic and foreign organisations 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 Documents The 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 Terms The 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 services including trademarks, trade names, business logos, business slogans, geographical indications, packaging and product labels;

“Use of commercial indications” refers to the act of affixing such commercial indications on goods, packages, service means, business communication documents, and advertising means as well as the selling and advertising for sale, the storing for sale and the importing of goods affixed with such commercial indications;

“Investment Results” refers to knowledge and information in the form of technologies, inventions, utility solutions, industrial designs, technical know-how and business secrets that have been achieved by financial or intellectual investment activities;

“The use of investment results” refers to acts of using knowledge and information specified in paragraph 3 of this Article to conduct the activities of manufacturing products, providing services, trading in goods, as well as the selling, advertising for sale, storing for sale and importing of products manufactured with the use of such knowledge and information.

Article 5. Conditions for establishing industrial property rights for business secrets, geographical indications and trade names
The industrial property rights to business secrets, geographical indications and trade names shall automatically arise, without the need for registration with competent State agencies, when all the conditions prescribed in Articles 6, 10 and 14 of this Decree are satisfied.

Chapter II

INDUSTRIAL PROPERTY RIGHTS TO BUSINESS SECRETS, GEOGRAPHICAL INDICATIONS AND TRADE NAMES

Article 6: Business Secrets
Protectable business secrets are the results of investment in the form of information that satisfies all the following conditions:

- a. The information is not general knowledge;
- b. The information is applicable to business activities, and when used, the holder of the information would have comparative advantages over those who do not hold or use such information;
- c. The information is kept secret by its holder by necessary measures so that such information shall neither be disclosed nor easily accessible.

Other secret information irrelevant to business activities, such as personal status, State management, and security and national defense secrets, shall not be protected in the name of business secrets.

Article 7: The Owners of Industrial Property Rights to Business Secrets
The owners of industrial property rights to business secrets are organisations or individuals that have made an investment to create or to achieve investment results in the form of business secrets;

Where a business secret is created or achieved by an employee or a performer of a task assigned under a contract while fulfilling the task, such a business secret shall be under the employer’s or assignor’s ownership, unless otherwise agreed by the involved parties.

Article 8: The Content and Duration of the Protection of Industrial Property Rights to Business Secrets
The owners of industrial property rights to business secrets are entitled to possess, use and dispose of such business secrets according to the provisions of law;

The rights of owners of industrial property rights to business secrets shall be protected as long as such business secrets satisfy all the conditions prescribed in paragraph 1, Article 6 of this Decree.

Article 9: The Transfer of Industrial Property Rights to Business Secrets
Industrial property rights to business secrets may be transferred or inherited according to the provisions of law;

The transfer of industrial property rights to a business secret shall be effective in the form of a written contract in which the transferor clearly states the business secret to be transferred. In cases where the contractual parties agree to transfer only the right to use the business secret (business secret license), the transferee shall be obliged to take the necessary secret-keeping measures as required by the transferor.

Article 10: The Geographical Indications
Protectable geographical indications refer to information on the geographical origins of goods which meets all the following conditions:

- a. The information is expressed in words, signs, symbols or images and is used to indicate a country or a territorial region or a locality of the country;
- b. The information is displayed on goods, packaging or business communication documents for the purpose of indicating that the goods originate from a particular country, territorial region or locality 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 SECRETS, GEOGRAPHICAL INDICATIONS AND TRADE NAMES

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 competent State agencies to stop the infringer from infringing their rights and pay damages caused by the infringement.

In cases where there is an infringement of industrial property rights to trade names or a provision of misleading information about trade names or misleading indications as to the geographical origin of goods, and where these factors have caused confusion among consumers, such consumers may request the competent State agencies to force the infringers to stop the infringing acts and to pay compensation for damages caused by the acts to the consumers.

The time limit for exercising the right to request the handling of an infringing act prescribed in Clauses 1 and 2 of this Article shall be one year calculated from the date the infringing act is detected, but must not be later than three years from the date such infringing act is committed.

Article 22: The Obligation to Provide Proof and Evidence
When exercising the right to request the handling of infringing acts prescribed in Clause 1, Article 21 of this Decree, the owners of industrial property rights to business secrets and trade names and persons entitled to use geographical indications, shall be obliged to prove the conditions for establishing their rights and the scope thereof, and to clearly state the names and addresses of persons who have committed the infringing acts, and to supply evidence of the scale and seriousness of such infringements.

In the case of damages claims, the owners of industrial property rights to business secrets and trade names and the persons entitled to use geographical indications shall prove the degree of the damage caused by the infringers.

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 degree of the damages (if any).

Article 23: The Order and Procedures for Handling Acts of Infringing Industrial Property Rights to Business Secrets, Geographical Indications and Trade Names
The handling of acts of infringing industrial property rights to business secrets, geographical indications and trade names shall comply with the order and procedures for handling acts of infringing other types of industrial property rights.

Chapter IV

PROTECTION AGAINST UNFAIR COMPETITION RELATED TO PROPERTY

Article 24: Acts of industrial property-related unfair competition
Acts of industrial property-related unfair competition include:

Using commercial instructions to provide a misleading perception or information about business holders, business establishments, business activities, goods and/or services, for the purposes of:

- a. Taking advantage of the prestige and reputation of other producers and/or business people for one's own production and/or business activities;
- b. Damaging the prestige and/or reputation of other producers and/or business people for one's own production and/or business activities;
- c. Causing confusion about the origins, production methods, properties, quality, quantity or other characteristics of goods and/or services; or about the conditions for the supply of goods and/or services to consumers, in the course of recognising and selecting goods and/or services or in the course of business activities.

Appropriating and using the investment results of others without their permission.

Article 25 The Rights Against Industrial Property-Related Unfair Competition
Organisations or individuals that suffer from damage or are in danger of suffering from damage caused by unfair competition acts in the field of industrial property shall be entitled to request the competent State bodies to force persons who commit unfair competition acts to stop such acts, and claim damages, and to take administrative measures or subject to criminal liability the persons who commit unfair competition acts.

Consumers' societies and professional associations of organisations and individuals may represent their own members in exercising the rights provided for in Clause 1 of this Article.

Article 26: The Proof Obligation of Organisations and Individuals That Request the Handling of Unfair Competition Acts
Organisations and individuals that exercise the right to request the handling of the unfair competition acts provided for in Article 25 of this Decree shall be obliged to prove before the competent State bodies the fact that their legitimate rights and interests or those of the organisations and individuals they are representing are infringed upon or in danger of being damaged by unfair competition acts.

Article 27 The Handling of Unfair Competition Acts
Organisations and individuals that commit unfair competition acts in the field of industrial property shall, depending on the nature and seriousness of such acts, be administratively handled or subject to criminal liability. If any damage is caused, compensation for this must be made according to the provisions of the law.

Chapter V

THE STATE MANAGEMENT OF THE PROTECTION OF INDUSTRIAL PROPERTY RIGHTS TO BUSINESS SECRETS, GEOGRAPHICAL INDICATIONS, TRADE NAMES AND THE PROTECTION AGAINST INDUSTRIAL PROPERTY-RELATED UNFAIR COMPETITION

Article 28: The Contents of the State Management of the Protection of Industrial Property Rights to Business Secrets, Geographical Indications, Trade Names and the Protection Against Industrial Property-Related Unfair Competition.
Promulgating policies, strategies, plans for the development of industrial property activities and legal documents concerning the protection of business secrets, geographical indications, trade names and the protection against unfair competition;

Protecting the legitimate interests of the State, organisations and individuals in the field of industrial property where this is related to business secrets, geographical indications, trade names and the protection against unfair competition;

Organising the implementation of legal documents and policies on industrial property that are concerned with the protection of business secrets, geographical indications, trade names and the protection against unfair competition;

Managing the provision of consultancy and representation services that concern the protection of business secrets, geographical indications, trade names and protection against unfair competition;

Training and building up a contingent of cadres operating in the field of industrial property where this is related to business secrets, geographical indications, trade names and the protection against unfair competition;

Undertaking international co-operation in the field of industrial property with respect to business secrets, geographical indications, trade names and the protection against unfair competition;

Guiding, inspecting and examining the implementation of policies and the observance of the law and regulations on industrial property that is related to business secrets, geographical indications, trade names and the protection against unfair competition;

Receiving and handling complaints and denunciations, and handling violations of the law and regulations on industrial property that are related to business secrets, geographical indications, trade names and the protection against unfair competition.

Article 29: Responsibilities of the State Competent Bodies Responsible for the Management of the Protection of Industrial Property Rights to Business Secrets, Geographical Indications, Trade Names and the Protection Against Industrial Property-Related Unfair Competition
The Ministry of Science, Technology and Environment shall be the governmental body that performs the unified State management of the industrial property with respect to business secrets, geographical indications, trade names and the protection against unfair competitions throughout the country. It shall have to organise and direct the implementation of regimes, policies and legal provisions on industrial property that are related to business secrets, geographical indications, trade names and the protection against unfair competition.

The National Office of Industrial Property under the Ministry of Science, Technology and Environment shall assist the Minister of Science, Technology and Environment in performing the following tasks:

a. To co-ordinate with the other State bodies as well as social organisations in taking measures to protect the industrial property rights related to business secrets, geographical indications, trade names and the protection against the unfair competition, and to ensure that legal provisions on industrial property related to business secrets, geographical indications, trade names and the protection against unfair competition are strictly observed, including the assessment of the conditions for establishing rights, content of rights and acts of infringing the rights to business secrets, geographical indications, trade names as well as unfair competition acts, at the requests of State bodies, organisations and individuals;

b. To receive and settle, within its competence, complaints and/or denunciations about industrial property rights related to business secrets, geographical indications, trade names and the protection against industrial property-related unfair competition;

c. To examine the professional qualifications of, grant business licenses to and professionally manage organisations that provide industrial property representation services related to business secrets, geographical indications, trade names and the protection against industrial property-related unfair competition;

d. To give professional instructions and organise professional refresher courses on industrial property rights related to business secrets, geographical indications, trade names and the protection against unfair competition for industrial property management agencies of the ministries, localities;

e. Within the scope of authorization, to undertake international co-operation activities in the field of industrial property related to business secrets, geographical indications, trade names and the protection against unfair competitions.

The Ministries, the ministerial-level agencies, the agencies of the Government and the People's Committees of the provinces and cities under the central government shall, within their functions and tasks, have to organise, direct and manage industrial property activities related to business secrets, geographical indications, trade names and the protection against unfair competitions in their respective branches or localities.

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:

- a. Proposing to the ministers, the leaders of the ministerial-level agencies, the leaders of the agencies of the Government and the chairmen of the People's Committees of the provinces and cities under the central government, measures to materialize the State's policies on industrial property related to business secrets, geographical indications, trade names and the protection against unfair competitions, and organising the implementation of such measures;
- b. Organising the management of the protection of industrial property rights to business secrets, geographical indications, trade names and the protection against industrial property-related unfair competition in their respective ministries and localities, and taking measures to enhance the effectiveness of such work;
- c. Organising the propagation of policies on industrial property related to business secrets, geographical indications, trade names and the protection against unfair competitions, and co-ordinating with social organisations in taking measures to step up the emulation movement for creativity and industrial property activities;
- d. Helping business holders under the management of their respective ministries and localities prove the conditions for establishing industrial property rights over business secrets, geographical indications, trade names and the protection against unfair competitions in Vietnam and abroad;
- e. Co-ordinating with the law enforcement bodies in protecting the industrial property rights related to business secrets, geographical indications, trade names and the protection against unfair competition, and handling violations of the legislation on industrial property with respect to business secrets, geographical indications, trade names and the protection against unfair competition, including the assessment of the conditions for establishing rights, contents of rights and acts of infringing industrial property rights to business secrets, geographical indications, trade names and the determination of industrial property-related unfair competition acts at the requests of State agencies, organisations and individuals.

Article 30: The Handling of Administrative Violations The handling of administrative violations in the protection of industrial property rights to business secrets, geographical indications, trade names and the protection against industrial property-related unfair competition shall be prescribed in another Government Decree.

Article 31: Complaints, Denunciations and the Settlement Thereof Organisations and individuals may lodge complaints to the competent agencies, organisations and/or individuals about administrative decisions and administrative acts that are in contravention of the law on the protection of industrial property rights to business secrets, geographical indications, trade names and the protection of the right against industrial property-related unfair competition.

Individuals may denounce to the competent agencies, organisations and/or individuals illegal acts relating to the protection of industrial property rights to business secrets, geographical indications, trade names and the protection of the right against industrial property-related unfair competitions.

The competent agencies, organisations and/or individuals, upon receiving complaints and/or denunciations, shall have to settle them in a prompt and lawful manner according to the provisions of the legislation on complaints and denunciations.

Chapter VI

IMPLEMENTATION PROVISIONS

Article 32: The Transitional Provisions The business secrets, geographical indications and trade names which existed before the effective date of this Decree and which still satisfy all the conditions for protection prescribed by this Decree, shall be protected under the provisions of this Decree.

Article 33: The Implementing Provisions This Decree shall enter into force 15 days after its signing.

The ministers, the leaders of the ministerial-level agencies, the heads of the agencies attached to the Government and the presidents of the People's Committees of the provinces and cities under the central government shall have to implement this Decree.

