

Industries face more penalties

Under the new Circular No 11/2015/TT-BKHCHN, apart from the main sanctions, additional penalties and remedial measures shall be imposed on enterprises, depending on the nature and severity of their violations.



The provisions of Circular No 11/2015/TT-BKHCHN (hereinafter referred to as “Circular 11”), in which a number of regulations on additional penalties and remedial measures are detailed, shall come into effect on August 11, 2015.

The regulations specified in Circular 11 are of Decree No 99/2013/ND-CP (hereinafter referred to as “Decree 99”), which stipulates penalty measures against administrative violations in the field of industrial property.

1. Additional penalties

Decree 99 prescribes that additional penalties consist of:

- Confiscation of material evidence and means of infringement;
- Deprivation of right to use industrial property representation service practice certificates, assessor cards and certificates of the qualified assessment organisation;
- Suspension of production and trading activities of the products and services that violate the law.

As stated in Circular 11, the additional penalty of confiscation of material evidence and means of violation shall only be imposed on wilful violation in the event of the violators being unidentified, and it being necessary to prevent possible subsequent violations or material evidence from being destroyed or dispersed.

2. Remedial measures

The following remedial measures applicable to violations of industrial property laws are clearly specified in Circular 11:

Forced removal of infringing elements

- Forced removal of infringing elements is implemented in cases where the material evidence and means of violation are products, goods, expressions and business means, or transaction documents that are attached with signs of infringement of industrial property rights or misleading commercial indications.

Enterprises may eliminate the elements by using different methods of removal, such as cutting or erasing them;

- Forced revision of domain information or return of domain name is applicable in the following cases:

- The party requesting handling of the violation (“the requesting party”) and the party receiving such request (“the requested party”) fail to come to an agreement after the petition is accepted.
- The requested party refuses to stop the acts of registration of, possession of right to use, or use of the infringing domain name.
- Forced alteration of the enterprise’s name and removal of infringing elements in the enterprise’s name shall be applied where the violating party continues to use an enterprise’s name illegally, or fails to carry out procedures to change the infringing enterprise’s name in compliance with the business registration office’s notification or the parties’ agreement.

Measures for the destruction of commodities, material evidence and means shall be taken in the following circumstances: goods bearing counterfeit marks or geographical indications; materials and means used mainly for the production or trading of goods bearing counterfeit marks or geographical indications; labels and items bearing counterfeit marks or geographical indications; and infringing stamps, labels and items; as well as invalid goods; merchandise harmful to human health, animals, plants and the environment; indestructible goods that infringe the law; and destruction without guaranteed prevention of violations, or lack of other applicable measures.

Measures involving forced repayment of illegal profits earned from acts of violation **apply** to cases where the invoices and vouchers related to such acts and infringing goods have been discovered by the time of assessment and examination. Such profits shall be remitted to the state treasury of Vietnam.

In addition, Circular 11 stipulates that competent authorities should consult subjects of industrial property rights and those who request handling of violations, as well as the individuals and organisations involved. Enterprises committing acts of violation must bear all expenses incurred during the implementation of remedial actions, as provided for by regulations on the handling of administrative violations.

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