

## CHAPTER 2 INTELLECTUAL PROPERTY RIGHTS

### OVERVIEW

Intellectual Property Rights Sector Committee under EuroCham (IPRSC) was established in 2012 to provide a platform for our members to exchange information, voice their concerns and make recommendations for a stronger enforcement of intellectual property (IP) rights in Vietnam. By doing so, we hope to contribute to bringing the IP legal system closer to the common global standards, producing a healthier and more competitive business climate, and so helping to attract foreign investment to Vietnam.

Chapter 12 of the EU-Vietnam Free Trade Agreement (EVFTA) clearly stipulates the protection and enforcement of IP rights, creating opportunities for Vietnam to improve the effectiveness of IP protection. Domestic enterprises are also asked to thoroughly prepare to take advantage of these benefits.

We welcome the Vietnamese government's recognition of the significance of IP. However, challenges in enforcement remain, causing difficulties for businesses with protected products in Vietnam. With the recommendations below, we hope to help improving the establishment and protection of IP rights in a more effective and equitable manner.

### I. INTELLECTUAL PROPERTY (IP) RIGHTS PROTECTION

Relevant authorities: The Ministry of Culture, Sports and Tourism (MOCST); the Ministry of Science and Technology (MOST); the Vietnam Directorate of Market Surveillance (VDMs); the Ministry of Industry and Trade (MOIT); and the Supreme People's Court (SPC)

#### 1. Criminal prosecution of IP infringement

##### Issue description

Criminal measures are provided under the IP Law and referred to in the Criminal Code to handle acts of infringement of IP rights. The Criminal Code was promulgated in 2015 and amended in 2017.<sup>1</sup> However, the application of criminal measures in practice faces many challenges for both IP owners and law enforcement agencies. Such challenges mainly arise from the lack of specific guidance regulations regarding the definition of "commercial scale", the method of determining and proving "illegal profits", and especially the criteria for assessing and determining "intentional fault".

##### Potential gains/concerns for Vietnam

IP rights infringements are increasingly sophisticated and constantly changing in their methods of implementation, leading to new challenges in handling violations by criminal measures. A typical example is the determination of the criminal offense based on illegal profit earned by the infringer or loss caused or the value of the infringing goods. Article 226 of the Criminal Code stipulates that the illegal profit must be from VND 100,000,000, or the loss caused must be from VND 200,000,000 value of infringing goods sufficient to constitute a criminal offense must be from VND 200,000,000. Authorities often determine this value based on the quantity of goods seized at the time of inspection. However, this method alone may not fully reflect the extent and scale of violations, as the trading of counterfeit goods (covering both trademarks and geographical indications) often occurs continuously, and violators do not necessarily store many goods at a time. Therefore, if only based on the quantity of seized goods, determining the crime and assessing the scale of the violation may not be comprehensive. This may lead to the omission of crimes, negatively affecting society and the rights of rights holders.

<sup>1</sup> Criminal Code 100/2015/QH13 promulgated on 27 November 2015 by the National Assembly.

Another example is the determination of criminal liability for acts of infringement of IP rights. According to Decree 98<sup>2</sup> prescribing penalties for administrative violations against regulations on commerce, production and trade in counterfeit and prohibited goods, and protection of consumer rights, “counterfeit trademark goods” have been removed from the definition of “counterfeit goods”. However, authorities remain confused, and lack of consistency is seen in determining crimes and applying handling measures under Articles 192 and 226 of the Criminal Code. The main reason is that both the Criminal Code and Decree 98 have not yet provided regulations for distinguishing between counterfeit goods and counterfeit trademarks on goods. Many overlaps are also seen in assessing acts of trading counterfeit goods and counterfeit trademarks on goods in terms of objects and objective signs. Therefore, clear and consistent guidelines are necessary for effective application in practice.

### Recommendations

We would like to make the following recommendations:

- It is necessary to establish evaluation criteria beyond the quantity of seized goods to ensure a more comprehensive determination of criminal elements and the assessment of the scale of violations.
- Clear and consistent guidelines are required regarding definitions such as “commercial scale” methods for determining and proving “illegal profits”, and especially the criteria for evaluating and identifying “intentional wrongdoing” to ensure effective application in practice.

## 2. Copyright registration

### Issue description

Vietnam has very few criminal investigations or prosecutions for copyright infringements,<sup>3</sup> despite having laws that impose significant fines and potential prison sentences. One reason for this is the complexities involved in recognising copyright for enforcement purposes. While the Vietnamese IP Law does not mandate copyright registration for protection (consistent with the Berne Convention, to which Vietnam is a signatory) it seems that obtaining a registration certificate is essential for authors/IP owners to effectively enforce their rights in cases of dispute.

### Potential gains/concerns for Vietnam

While copyright registration is not mandatory for enforcement in Vietnam, enforcement authorities and online platforms seem reluctant to act against copyright infringements without formal local registration. Currently, the process of registering copyright with the Copyright Office of Vietnam (COV) poses several challenges for IP owners. For instance, applicants must provide sensitive documents such as the author’s passport or national ID card, as well as employment contracts that may include personal information, trade secrets, and confidential business details. Additionally, authors or creators must sign a declaration, which can be problematic if they are no longer with the company or, in some cases, if they are deceased. At present, only certificates of copyright registration are accepted as valid proof of ownership, and no alternative documentation is recognised.

### Recommendations

We would like to recommend as follows:

- **Encourage Alternative Proofs:** Consider recognising alternate forms of documentation as valid proof of copyright ownership, such as contracts, invoices, or prior published works, to provide flexibility for rights holders.
- **Provide Clear Guidelines:** Develop comprehensive, clear guidelines for the registration process, outlining required documents, steps, and expected timelines. This can help applicants navigate the process more efficiently.

<sup>2</sup> Decree 98/2020/ND-CP dated 26 August 2020 of the Government prescribing penalties for administrative violations against regulations on commerce, production and trade in counterfeit and prohibited goods, and protection of consumer rights (Decree 98).

<sup>3</sup> The 2024 Special 301 Report by the Office of the United States Trade Representative. Available at: <<https://ustr.gov/sites/default/files/2024%20Special%20301%20Report.pdf>>, last accessed on 25 November 2024.

- **Safeguard Sensitive Information:** Implement measures to protect sensitive information in submitted documents, such as allowing for redacted versions of personal data, trade secrets, and confidential information.
- **Strengthen Enforcement Mechanisms:** Improve the capacity and resources of enforcement authorities to address copyright infringements more effectively. This includes training for officials on international copyright laws and enforcement practices.

### 3. Copyright issues

#### Issue Description

The IP Law stipulates that copyright and related rights are immediately protected without registration procedures. However, a certificate of registration of copyright and related rights is of crucial importance for the IP owner when a dispute arises, or to facilitate the IP owner in the process of commercializing copyright and related rights.

However, the requirements for copyright protection set out in Decree 17<sup>4</sup> may cause difficulties in the registration process of original works. Specifically:

- (i) Article 39.2(c) on refusal to issue the Certificate of Copyright Registration upon discovering a dispute, complaint or denunciation can be exploited to delay registration if interpreted broadly, including cases where there is no dispute regarding the status of the author or copyright owner.
- (ii) In Article 43.1, the requirement that the title of a work must be consistent with the content and type of the work may directly affect and limit the right to name a work.

#### Potential gains/concerns for Vietnam

Disputes regarding the use, exploitation of works, or royalties do not affect the determination of the author or copyright owner and therefore should not be a basis for refusing to grant a Copyright Protection Certificate. The current provision of Article 39.2(c) from Decree 17 may be interpreted in broader terms, and include the aforementioned disputes. We are concerned that using this interpretation to delay the copyright registration process may hinder the enforcement and commercialization of copyright by IP owners.

We are also concerned of the requirement in Article 43.1 of Decree 17, stating that the title of the work must be consistent with the content and type of work. This may hinder the exercise of the right to name a work as mentioned in Article 19.1 of the IP Law. This requirement may also inhibit innovation and does not ensure the balance of interests between IP owners and public interest according to Article 8.1 of the IP Law.

#### Recommendations

Decree 17 should be amended as follows:

- Limit the scope of Article 39.2(c) by excluding cases of disputes, complaints and denunciations that do not affect the determination of the status of the author and/or copyright owner; and
- Eliminate Article 43.1 requiring that the title of a work must be consistent with the content and type of the work.

### 4. Seeking expert opinion from Vietnamese IP agencies

#### Issue Description

Although there is no legal obligation to seek opinion for enforcement actions and proceedings, IP enforcement and proceeding agencies have traditionally requested formal or professional opinions from IP organizations

<sup>4</sup> Decree 17/2023/ND-CP dated 26 April 2023 of the Government on elaborating the Law on Intellectual Property regarding copyrights and related rights (Decree 17).

such as the Vietnam Intellectual Property Research Institute (VIPRI), the Intellectual Property Office of Vietnam (IP Vietnam) for trademark and industrial design matters, and the Expertise Center for Copyright and Related Rights (ECCR) for copyright matters before engaging in enforcement.

### Potential gains/concerns for Vietnam

In fact, this process may further complicate matters for the IP owner, specifically for industrial designs' inspection. There are instances in which regarding the same industrial designs' inspection, particularly in the motorcycle industry, VIPRI and IP Vietnam hold divergent viewpoints regarding the same subject requiring evaluation and inspection. The discrepancy arises from whether the evaluation procedure considers the object's overall aspect. This may complicate matters for the IP owner to enforce their IP rights, as other professional agencies often hold the opposite opinion towards the party that is likely to be considered as infringing the industrial design, stating that the design requested for consideration has significant differences due to the exclusion of some basic design features as these excluded features are interpreted as traditional features, even though the product is protected as a whole. Under the current IP Law, there is no regulation regarding the exclusion of features or definition of "traditional features". This creates challenges for both adjudication and enforcement agencies as they are unwilling to consider alternative solutions or make independent decisions within the scope of their functions and authority.

The internal discrepancies between VIPRI and IP Vietnam pose challenges to adjudication and enforcement processes. We highly appreciate that IP Vietnam has taken notes of comments on this issue and provided directions to consider and discuss with relevant agencies and ministries for coordination. However, to date, there have yet to be specific guidelines issued by competent authorities. This has led to the near suspension of IP rights' owners' enforcement options, suggesting an underperformance of IP rights protection.

We have noted that the MOST has issued Decision 516 dated 17 March 2021,<sup>5</sup> announcing the list of organizations and ad hoc judicial expertise performers in scientific and technological inspection activities under the management authority of the MOST in 2021, which contains the list of organizations and judicial expertise performers. This document has served to somewhat address IP owners' difficulties, offering adjudication agency a choice between judicial expertise from organizations or independent judicial expertise performers in cases of opposing opinions. However, this procedure has not yet been widely adopted and is almost only applied for litigation matters. Meanwhile, complaints related to the enforcement of IP rights are also handled through administrative measures, which are preferred by IP owners due to their swiftness and effectiveness.

### Recommendations

To accommodate the handling of administrative violations related to IP in cases of opposing opinions, we recommend that:

- The selection of independent judicial expertise performers be popularized for all cases of IP rights complaints under administrative procedures. Independent experts' opinions may also serve to inform agencies in handling administrative violations, similar to the process adopted for litigations.
- If requested by the IP owner, the MOST shall promptly establish an Inspection Council to review case studies on differing inspection or expertise opinions, so as to achieve a common ground on which expertise opinions are founded in accordance with the law.
- More organizations capable of performing professional inspections, specifically in the field of IP, should be added to the list of organizations that perform ad hoc judicial expertise for more multi-dimensional and objective opinions.

In addition, to allow more effective expertise consulting with Vietnam's IP agencies, we also recommend to:

- Encourage IP enforcement agencies to carry out enforcement and adjudication activities in accordance with their jurisdiction and functions, with professional comments serving as a point of reference only; IP owners

<sup>5</sup> Decision 516/QĐ-BKHCN dated 17 March 2021, issued by the Ministry of Science and Technology, announces the list of organisations and individuals authorised to conduct judicial expertise on a case-by-case basis in science and technology activities under the management of the Ministry of Science and Technology in 2021 (Decision 516).

are not obligated to provide additional professional opinions in situations where an infringement is overtly apparent or where analogous cases have occurred in the past.

- Strengthen the dissemination and development of IP-related capacities and know-how for enforcement and adjudicating agencies in order to facilitate the exercise of their authorities and the performance of their duties.
- In addition to technical considerations, the adjudication and processing of infringements should also take into account the malicious intentions of the potential infringing party in intentionally creating counterfeit products that are not entirely identical to the original products on the market, with the intention of deceiving consumers or capitalizing on the reputation and popularity of the original products to promote similar goods (free riding technique).
- Recognise and incorporate consumer perspectives into the adjudication and enforcement processes, considering the potential impact of infringement on consumer welfare, and addressing instances where consumer confusion may arise. This could involve engaging consumers in the evaluation process or conducting surveys to better understand the public perception of IP-related issues.
- Strengthen training and examination work, and issue more professional certificates for IP inspectors to expand the roster of inspectors in general and independent judicial expertise performers in the field of IP in particular.

## 5. Common problems with procedures of industrial property rights establishment

### 5.1. Digital/Electronic signatures

#### Issue Description

Currently, IP Vietnam only accepts physical signatures on paper, and does not accept digital signatures or electronic signatures in submitted documents.

#### Potential gains/concerns for Vietnam

With the development of technology, digital signatures and electronic signatures are now widely used by IP owners. However, these signatures are not accepted by IP Vietnam as documents submitted must be originals or certified copies with wet signatures on paper. This may take more time and cost for IP owners.

#### Recommendations

We would like to make the following recommendation:

- IP Vietnam should consider allowing IP owners and related parties to use digital signatures and electronic signatures in activities of establishing and enforcing rights at IP Vietnam on documents it receives such as power of attorney, transfer agreements, transfer of rights to use, documents proving changes to information about the applicant, etc.

### 5.2. Security control protocols for inventions

#### Issue Description

Article 14 of Decree 65,<sup>6</sup> which was issued on 23 August, 2023 with immediate effect, provides guidance on Article 89.a regarding situations in which security control procedures are required for inventions.

However, one of the most challenging shortcomings is that whenever inventions are subject to security control requirements, the initial step is to submit patent applications in Vietnam or Patent Cooperation Treaty (PCT) applications<sup>7</sup> with Vietnamese origin. Numerous applicants, in fact, have no interest in the Vietnamese market

<sup>6</sup> Decree 65/2023/ND-CP dated 23 August 2023 of the Government detailing a number of articles and measures to implement the Intellectual Property Law on industrial property, protection of industrial property rights, rights to plant varieties, and state management of intellectual property (Decree 65).

<sup>7</sup> A PCT application is a patent application filed under the Patent Cooperation Treaty (PCT). The PCT is the 1970 Patent Cooperation Treaty as amended in 1984 and 2001.

because they exclusively export and trade their products abroad; therefore, they have no reason to submit a patent application in Vietnam. Furthermore, it is not uncommon for applicants to abstain from submitting a PCT application due to their preference for filing patent applications exclusively in one or a limited number of countries, rather than submitting a PCT application with a Vietnamese origin. Nevertheless, in order to fulfill the security control prerequisite, the applicants are still obligated to submit their initial patent application in Vietnam or through the PCT. Therefore, IP owners are wasting time, efforts, and money on this mandatory procedure.

### Potential gains/concerns for Vietnam

Should an IP owner not have an interest in safeguarding their invention in Vietnam, the obligatory prerequisite of initially filing a patent application in Vietnam or through a PCT application of Vietnamese origin serves only as a security control regulation. This process imposes a burden on both IP Vietnam and IP owners due to its rigidity and inflexibility. IP owners may request withdrawal or abandonment of a patent application after it has been filed. Indeed, numerous nations, including the United States, France, China, and India, afford IP proprietors the opportunity to select the security control method for patent applications.

### Recommendations

Further regulations should be imposed to allow IP owners to freely select between the two procedures outlined below:

- File a patent application in Vietnam or a PCT application of Vietnamese origin (as currently stipulated in Decree 65).
- Submit a first filing request for a patent application: in this instance, a concise description (i.e., no more than one to two pages) is sufficient to demonstrate the invention's nature and initiate the first filing procedure (Decree 65 does not specify this circumstance; therefore, it is suggested that this be included in the near future). Some countries in the world are good examples on this regulation, such as the US, France, China, India, where regulations on concise and quick security control procedures (foreign filing license) are applied. Examples are provided in the links provided in the footnotes.<sup>8</sup>

## 6. Trademark

### a. Delay in the establishment of IP rights

#### Issue Description

Pursuant to the IP Law and its associated guiding Circulars, the period for substantive examination of a trademark registration application is stipulated not to exceed nine months from the date of its publication. However, in reality, this process often takes up to nearly two years. If the applicant provides feedback on the results of the substantive examination, it usually requires an additional twelve months or more for IP Vietnam to review the feedback and reach a final decision.

Regarding international registrations with Vietnam designation, if there is a failure to meet the protection criteria or exhibit deficiencies, IP Vietnam will issue a provisional refusal notice. However, there is a considerable backlog of feedback files submitted over the last three to four years that remain unresolved. Similarly, complaint cases related to trademark registration applications have been pending without resolution, with some ongoing for over a decade.

8 "Global Collaborations and Foreign Filing Licenses," *American Bar Association*, 01 April 2020. Available at < [Institute of Practical Law, 2005. Available at <\[https://legacy.pli.edu/emktg/toolbox/Foreign\\\_Filing04.pdf\]\(https://legacy.pli.edu/emktg/toolbox/Foreign\_Filing04.pdf\)>; "What is a Foreign Filing License?", \*Dinsmore & Shohl LLP\*, January 22, 2019. Available at <<https://www.drm.com/resources/what-is-a-foreign-filing-license/>>; "Foreign Filing Licenses", \*United States Patent and Trademark Office\*. Available at <<https://www.uspto.gov/web/offices/pac/mpep/s140.html>>, last accessed on 17 March 2025.](https://www.americanbar.org/groups/intellectual_property_law/publications/landslide/2019-20/march-april/global-collaborations-foreign-filing-licenses/#:~:text=What%20is%20a%20Foreign%20Filing,the%20inventor%27s%20or%20invention%27s%20country%20>)

### Potential gains/concerns for Vietnam

An increased influx of complaints and staff shortages may contribute to delays, and such protracted delays are causing significant difficulties and disruptions to business operations, resulting in adverse effects on consumer interests. Lack of trademark certification limits the ability to protect brands, exposing consumers to risks of encountering counterfeit, substandard, or fraudulent products.

### Recommendations

- It is requested to expedite the inspecting and processing of applications at all stages, especially the handling of notices of refusal and complaints.

### b. Administrative procedure for registering trademarks

#### Issue Description

The provisions in the revised IP Law and the practice of handling records and documents have shown progress towards sustainable development, environmental protection, and resource saving, specifically as follows.

According to the provisions guiding the implementation of the revised IP Law, specifically Article 29 of Decree 65, trademark owners have the right to select the format of their trademark registration certificate as a paper copy or an electronic copy (e-certificate). Accordingly, the trademark registration form of IP Vietnam has also been amended so that applicants can select either a paper certificate or e-certificate. In case the applicant does not select the “paper copy” box at the time of filing the application, IP Vietnam will issue an e-certificate by default. Although e-certificates offer many advantages such as cost savings and convenience, the practice of authenticating and accepting the legal value of this type of document has not yet been clearly regulated by state agencies. Currently, due to the lack of specific guidance on e-certificate authentication, many authorities may still require trademark owners to present a copy of the registration certificate as legal evidence. Consequently, many owners hesitate about e-certificate option and therefore still prefer paper format certificates.

IP Vietnam has started sending documents and papers via e-mail to applicants/industrial property representatives of applicants to increase work efficiency, save time and minimize the risk of losing documents during the delivery process. This is a significant step as IP Vietnam aims to digitalize its activities and could be a premise to gradually eliminate the use of traditional paper format documents.

However, the e-filing system of IP Vietnam for trademark applications has not been restored. This leads to overlap in records management: IP Vietnam currently receives a large number of paper files and key information needs to be manually entered into the electronic system. This not only wastes resources but also poses a risk of errors and prolongs the processing time of documents.

### Potential gains/concerns for Vietnam

IP Vietnam has been making great efforts towards a green trend, protecting the environment and developing sustainably, as well as reducing administrative paperwork for state agencies and the people. If this receives due investment for comprehensive development, it will create favourable conditions for IP owners in submitting applications and exchanging documents with IP Vietnam. The IP staff will handle less unnecessary administrative work, freeing up time for application processing and trademark examinations. This will contribute to a more efficient solution for assessment and recognition and establishment of IP rights, as well as of cases within their jurisdiction.

### Recommendations

IP Vietnam should consult with ministries and agencies for solutions to facilitate the digitalisation of administrative procedures, for example:

- Provide specific guidance on the authentication and use of e-certificates. The MOST and relevant agencies should coordinate to issue detailed instructions, and at the same time raise awareness among state agencies regarding the legal value of e-certificates. This aims to create more favourable conditions for trademark owners in enforcing their rights and promote transparency in IP management.

- Improve the process of sending documents and official dispatches via email, aiming to completely eliminate sending paper documents; consider options to allow applicants/representatives of IP to submit official dispatches and documents via email or the e-filing system (after being restored).
- Restore the e-filing system for trademarks so that filing is timely, at least for basic filing procedures as before the system was suspended.

### c. Recognition of well-known trademarks

#### Issue Description

The revised IP Law modified the definition of a “well-known trademark” in Article 4.20, stating that a well-known trademark is recognised as a mark that is widely known by the relevant section of the public within Vietnam, as opposed to being known by the general consumer base across all fields, as was stipulated in previous regulations. This amendment aligns with the assessment criteria for well-known trademarks detailed in Article 75.1, focusing on “consumers concerned who have come to know the trademark.” This change is expected to streamline the process of recognising well-known trademarks in the future and alleviate the burden of proof for IP owners. While the criteria in Article 75 for evaluating well-known trademarks remain unchanged from previous regulations, trademark owners now need to satisfy only “a few specific criteria” from Article 75, rather than all. The Amended IP Law further introduces a time reference for establishing the well-known status of a trademark.

Decree 65 explicitly states that the criteria set forth in Article 75 of the Amended IP Law serve as the foundation for establishing rights to a well-known trademark (Article 10.2), determining protected subjects (Article 73.5), identifying infringement of rights related to a well-known trademark (Articles 77.2 and 77.4), and proving the right holder of a well-known trademark (Article 91.5).

Although Circular 23<sup>9</sup> has a provision on the recognition of well-known trademarks (Article 27), the content is basically similar to the provisions in Circular 01<sup>10</sup> and Circular 16.<sup>11</sup>

As per the current regulations, well-known trademarks are acknowledged based on decisions by IP Vietnam or through civil proceedings in court. Nevertheless, existing legal documents lack specific guidelines regarding the scope of authority, responsibilities, and powers of competent agencies in the review and recognition of well-known trademarks, as well as procedures for the evaluation and recognition of well-known trademarks.

In fact, in some recently resolved opposition cases, IP Vietnam did not provide comments on the arguments and evidence proving the well-known trademark. This may result in disagreement among IP owners when the documents provided do not receive a complete and satisfactory conclusion and may more or less affect the final outcome of the relevant case.

#### Potential gains/concerns for Vietnam

The absence of detailed regulations for competent authorities to recognise well-known trademarks and the procedures for such recognition can result in numerous conflicts during the implementation of the law. Specifically, owners of well-known trademarks are currently unable to fully exercise their legitimate rights as prescribed by law. This is due to their inability to establish and enforce their rights in the face of infringements and unfair competition. In practice, the delay or failure of IP Vietnam to address cases involving opposition and invalidation of protection certificates based on well-known trademarks hinders the exercise of trademark rights by third parties.

9 Circular 23/2023/TT-BKHCN dated 30 November 2023 of the Ministry of Science and Technology detailing a number of articles of the Law on Intellectual Property and measures to implement Decree 65/2023/ND-CP dated 23 August 2023 of the Government detailing a number of articles and measures to implement the Law on Intellectual Property on industrial property, protection of industrial property rights, rights to plant varieties and state management of intellectual property related to procedures for establishing industrial property rights and ensuring industrial property information (Circular 23).

10 Circular 01/2007/TT-BKHCN dated 14 February 2007 of the Ministry of Science and Technology guiding the implementation of Decree 103/2006/ND-CP dated 22 September 2006 of the Government detailing and guiding the implementation of a number of articles of the Law on Intellectual Property on industrial property (Circular 01).

11 Circular 16/2016/TT-BKHCN dated 30 June 2016 of the Ministry of Science and Technology amending and supplementing a number of articles of Circular 01/2007/TT-BKHCN dated 14 February 2007 guiding the implementation of Decree 103/2006/ND-CP dated 22 September 2006 of the Government detailing and guiding the implementation of a number of articles of the Law on Intellectual Property on industrial property, amended and supplemented by Circular 13/2010/TT-BKHCN dated 30 July 2010, Circular 18/2011/TT-BKHCN dated 22 July 2011 and Circular 05/2013/TT-BKHCN dated 20 February 2013 (Circular 16).

To mitigate the subjectivity of IP Vietnam and other relevant authorities in recognising the protection of well-known trademarks, it is imperative to introduce public regulations that provide detailed guidance on the criteria for determining well-known trademarks.

### Recommendations

- Issue comprehensive guidelines regarding the capabilities of agencies/specialised IP courts tasked with identifying and certifying well-known trademarks, as well as the processes involved in this regard, specifically:
- Prescribe detailed regulations regarding the scope of authority, tasks, and powers of competent agencies responsible for reviewing and recognising well-known trademarks.
- Provide detailed instructions concerning testing regulations and specific criteria for the recognition of well-known trademarks in scenarios related to the establishment and enforcement of rights.
- Offer guidance on the procedures for coordination and consultation among relevant competent agencies in the process of considering and recognising well-known trademarks.

## 7. Geographical Indications (GIs)

### Issue Description

The EVFTA established protection for 169 EU GIs and 39 Vietnamese GIs in 2020. Vietnam's registry now includes 130 domestic GIs, 8 foreign GIs, and 5 ASEAN GIs. Despite this progress, implementation challenges persist:

Enforcement remains inconsistent, with widespread infringement of EU GIs in food and alcoholic beverage sectors. Vietnam demonstrates less advanced GI awareness compared to neighbors like Thailand. The IP legal framework inadequately addresses “evocation” cases, where terms like “style” or “type” suggest association without direct infringement. Conflicts exist between EU GIs and pre-existing Vietnamese trademarks, creating protection uncertainty. Current verification systems lack robustness, allowing counterfeit products to make unsubstantiated GI claims, and contradicting the disposition of the EVFTA.

However, truth is that the EVFTA provides Vietnam with a transition period of up to 10 years (from 2020 to 2030) to fully implement certain GI enforcement measures, particularly in situations involving potential conflicts with pre-existing trademarks, this transitional period complexifies the monitoring implementation. It is equally essential that its interpretation remains consistent with the EVFTA's intended objectives.

### Potential gains/concerns for Vietnam

Effective GI implementation offers Vietnam economic opportunities through enhanced EU market access, premium pricing potential, and rural development support. The upcoming EU Regulation 2023/2411, extending GI protection to craft and industrial products by 2025, presents additional opportunities for Vietnam's handicraft traditions.

Without addressing implementation challenges, Vietnam risks undermining consumer confidence in its GI system, potentially compromising EVFTA benefits and damaging EU-Vietnam trade relations. Local producers face unfair competition from counterfeit products, diminishing incentives for quality production and authentic GI development.

### Recommendations

In order for Vietnam to utilise GI benefits while strengthening EU-Vietnam trade relations, we would like to make the following recommendations:

- Strengthen enforcement through specialized training for authorities.
- Develop awareness programs targeting consumers, producers, and officials.

- › Establish clear procedures for resolving GI-trademark conflicts.
- › Implement robust certification systems with digital tracing capabilities.
- › Enhance protection against GI evocation through clearer regulations.
- › Prepare legal frameworks for craft and industrial GIs under EU Regulation 2023/2411.

## **ACKNOWLEDGEMENT**

EuroCham Intellectual Property Rights Sector Committee

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