

CHAPTER 22 NUTRITION AND MILK FORMULA PRODUCTS

OVERVIEW

According to the Survey measuring Vietnam's sustainable development goal indicators on children and women 2020-2021 taken by UNICEF, 97.6 per cent of children in Vietnam are breastfed at least once, 55.2 per cent of children aged 6-23 months received food from 5 or more food groups during the previous days of the Survey, and 78.2 per cent of children aged 24-59 months are developmentally on track in at least three of the following four domains: literacy-numeracy, physical, social-emotional, and learning.¹ Although the number of malnourished children has been decreasing in recent years, the number of children with micronutrient deficiencies remains relatively significant.² Therefore, access to products that contribute to improved nutrition as well as fitness and health development should be ensured. To achieve this goal, the government's policies and regulations need to facilitate the widespread consumption of nutritional products. Within the framework of this chapter, we will present several issues that in our opinion are limiting this.

I. INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS AND QUALITY VIOLATIONS

Relevant authorities: Ministry of Science and Technology (MOST), Vietnam Directorate of Market Surveillance (VDMS), Ministry of Health (MOH)

Issue description

The increase in intellectual property infringement and quality issues in the dairy and food industry is becoming more prevalent. In pursuit of profit, a significant number of businesses have resorted to producing counterfeit or fake products of well-known brands, as well as engaging in false advertising, to compete unfairly, misleading consumers about the origin and quality of their products. Many of these businesses also use low-quality ingredients, unsanitary production processes, and substandard products, even going so far as to falsify the quality of their products in comparison to their self-declared declarations. In some cases, these businesses have been prosecuted for criminal liability. These acts of intellectual property infringement, quality violation, and false advertising not only have a severe impact on the legitimate rights and interests of conscientious businesses but also seriously jeopardize the rights and health of consumers.

The inadequate implementation of the Law on Intellectual Property³ and Law on Product and Goods Quality in Vietnam: Some underlying factors include:

- Lack of comprehensive and strict inspection and control, especially for online advertising and sales. Some e-commerce platforms have shown signs of tolerating trademark infringement products, even though they have received warning letters from trademark owners, but they refuse to remove the infringing products.
- Lack of self-monitoring mechanisms between businesses in the same associations and industries, therefore the regulatory authorities have difficulty in identifying cases of violation in terms of trademarks, quality, and advertising.
- There is no requirement that food for sensitive consumers such as the elderly, patients, pregnant women,

1 "Survey measuring Vietnam's sustainable development goal indicators on children and women 2020-2021", UNICEF. Available at: <<https://www.unicef.org/vietnam/media/8641/file/Summary%20report%20-%20MICS%206.pdf>>, last accessed on 30 October 2023

2 "Vi chất dinh dưỡng- Thực trạng và giải pháp hiện nay" [Micro-nutrients - current status and solutions], National Institute of Nutrition, 25 May 2016. Available at <<http://viendinhduong.vn/vi/tin-tuc/vi-chat-dinh-duong-thuc-trang-va-giai-phap-hien-nay.html>>, last accessed on 2 August 2022.

3 The document consolidation number 11/VBMN-VPQH issued on 8 July 2022.

young children be produced in facilities that meet Good Manufacturing Practices (GMP) or equivalent, resulting in difficulties in quality control.

- Law enforcement agencies (such as economic police, market surveillance) have not been adequately disseminated with intellectual property regulations, leading to confusion when enforcing, even with recognizable trademark infringements.
- In many cases, the Vietnam Intellectual Property Research Institute already concluded the violation of a product, which the enforcement agency has proceeded to handle, but then the Intellectual Property Office of Vietnam had an opposite opinion. This causes a lot of difficulties for the enforcement agency when making a decision to resolve and makes violators more “immune” to the Law on Intellectual Property.

Recommendations

1. Ministry of Science and Technology:

- Organize training programs to enhance expertise and knowledge on intellectual property for enforcement agencies (such as economic police, and market surveillance), and encourage enforcement agencies to proactively handle recognizable trademark infringements without consulting experts;
- Issue a specialized program for the inspection and handling of counterfeit and fake trademarks and quality violations in the food industry. This is because the food industry has a significant impact on public safety and health. The program should aim to identify and strictly handle products with packaging and labels that violate trademarks that have been registered and protected by other businesses, and/or violate quality standards; and
- Take measures to resolve the disagreement in professional opinions between the Intellectual Property Office of Vietnam and the Vietnam Intellectual Property Research Institute.

2. Ministry of Industry and Trade:

- Instruct market surveillance forces to inspect and strictly handle acts of counterfeiting/falsifying trademarks and quality violations for the food industry;
- Take measures to require e-commerce platforms to quickly handle counterfeiting/falsifying trademarks, quality violations, and advertising violations when receiving warnings from trademark owners or competent authorities; and
- Take measures to encourage food associations and industries to develop a Code of Conduct, which agrees on detailed guidelines on what should and should not be done; enterprises committed to producing quality products, not infringing on trademarks, conducting business and advertising in accordance with the law; there should be a mechanism for feedback to identify, report, and self-correct violations, as well as a process for reporting violations to regulatory authorities should they persist.

3. Ministry of Health:

- Amend legislation to require food for the elderly, patients, pregnant women, and young children to be produced in facilities that meet Good Manufacturing Practices (GMP) or equivalent.

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