

New Law on Competition: the likely impact for brand owners Vietnam - IPMAX Law Firm

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Unfair use
Infringement
Enforcement
Government/policy

- **New Law on Competition will enter into force on 1 July 2019**
- **Certain unfair competition acts have not been included, as they are regulated by other laws**
- **Brand owners may no longer be able to challenge certain unfair competition acts before the National Competition Authority**

The new Law on Competition, which is due to replace the existing Law on Competition 27/2004/QH11 dated 3 December 2004, was passed by the National Assembly on 12 June 2018. The new law will enter into force on 1 July 2019.

There are significant changes in the new law compared to the existing one, one of which concerns unfair competition practices.

Certain acts of unfair competition regulated by the existing Competition Law - such as misleading indications, advertisement aimed at unfair competition, promotion aimed at unfair competition, discrimination by association and illegal multi-level selling of goods - are not included in the new law, due to the fact that they are regulated by other specific laws, such as the Intellectual Property Law and the Law on Advertisement. Article 4 of the new Competition Law sets out the following principle:

If other laws contain provisions regulating the act of restraint of competition, the act of economic concentration and the act of unfair competition, as well as the handling of acts of unfair competition, differently from the provisions of this law, the provisions of these other laws will be applied.

In light of the above, it is understood that the handling of acts of unfair competition not specifically listed in the new Law on Competition, but currently regulated in other laws (such as the Law on Intellectual Property and the Law on Advertisement), will follow the provisions of those laws.

The most typical example would be the act of using misleading commercial indications (eg, use of imitation packaging for goods), which is currently listed as an act of unfair competition in both the Intellectual Property Law and the existing Law on Competition. Currently, brand owners may challenge these acts through an administrative procedure at the specialised inspectorate under the Ministry of Science and Technology in accordance with the Intellectual property Law, or through a so-called 'quasi-administrative procedure' at the National Competition Authority under the Ministry of Industry of Trade in accordance with the Law on Competition. However, when the new Law on Competition comes into force, the quasi-administrative procedure to challenge the use of misleading indications before the National Competition Authority may no longer be available to brand owners. Brand owners may only have the following two options:

1. follow an administrative procedure by filing a complaint with the specialised inspectorate under the Ministry of Science and Technology to handle such act of unfair competition under the provisions of the Intellectual Property Law - this is possible, but there are still uncertainties and will not be straightforward for actions based on trademark infringement; or
2. initiate a lawsuit under the litigation procedure - this will take longer and be more expensive.

Additionally, the act of unfair competition referred to as "infringing business secrets" in the existing law has been amended to read "infringing secret information in business" in the new law. The new law also defines the acts of "infringing secret information in business", which include:

1. accessing or acquiring information pertaining to secret information in business by carrying out acts against secret-keeping measures taken by the owners of such information; and
2. unveiling or using secret information in business without the permission of the owners of such information.

However, there is no definition of the term 'secret information in business', which may lead to different understandings. Moreover, some acts of "infringing business secrets" listed in the existing Law on Competition have been removed from the new law, namely:

- breaching security contracts, or deceiving or taking advantage of the trust of persons having a security duty, in order to access, collect or disclose information in the category of business secret of the owner of such business secret; and
- accessing or collecting information in the category of business secret of other persons when such persons carry out procedures stipulated by law in relation to business or carry out procedures to circulate products, by counteracting the measures taken by state agencies or using such information for business purposes, or for applying for licences related to business or to product circulation.

As these acts are regulated by the Intellectual Property Law, it is assumed that such violations will be handled in accordance with the provisions of that law only, and that the National Competition Authority will no longer deal with such violations.

In light of the changes introduced by the new Law on Competition, the alternative procedure for handling certain IP-related unfair competition acts before the National Competition Authority may no longer be available to brand owners. Nevertheless, it is hoped that such changes will help avoid the confusion resulting from the overlapping powers of the different authorities in handling the same type of violation, and that enforcement proceedings against IP-related unfair competition acts will become more unified and straightforward for brand owners.

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