

Domain Name Registration and Intellectual Property in Vietnam

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Registration of domain names in Vietnam in the country code top level domain (.VN) has increased significantly since the issuance of the new regulation on management and use of Internet in Vietnam (Decision No. 92/2003/QD-BBCVT) by the Ministry of Posts and Telematics in May 2003. In an attempt to help boost e-commerce in Vietnam, the new regulation provided for simpler domain name registration procedures complemented by faster processing of applications by the Internet authority, the Vietnam Internet Center ("VNNIC") under the Ministry of Posts and Telematics. If documentation is proper and complete, registration can be granted within one or two days. It is no longer necessary that a foreigner reside in Vietnam or a foreign company have either a representative office, branch or subsidiary in Vietnam to be eligible for registering domain names in the country code top level domain (.VN) in Vietnam. In addition, it is no longer required that the host server be located in Vietnam.

Domain names can be registered as <.com.vn> <.biz.vn> <.info.vn> <.net.vn> <.org.vn> etc. on a "first come, first served" basis. A domain name must not contain words that are offensive or contrary to Vietnam's interests, national security, social morals, culture and customs. A domain name identical or related to a geographical name, the name of a leader or famous person or the generic name of an economic industry or sector; line of goods; and governmental, political or social organizations, which may create confusion or disputes, may not be accepted for registration.

Any domain name which, in the VNNIC's opinion, may be disputed shall be posted on the government's Vietnamese language website (www.vnnic.net.vn) for three days. If there is no challenge, registration shall be granted.

Under Decision 92, it is the responsibility of the registrant to ensure that his registration of a domain name and use thereof does not violate intellectual property laws or infringe the intellectual property rights of an IP Owner. The VNNIC, when granting domain name registration, is not required to verify whether or not a domain name registration may violate any IP Owner's rights.

Should a domain name registration infringe any IP Owner's right and the Owner files a complaint and opposition to such registration to VNNIC, the case shall be treated as a domain name-related dispute.

Decision 92 designates the VNNIC as the agency with the authority to handle domain name-related disputes. Unfortunately, Decision 92 lacks the necessary provisions pertaining to the handling and resolution of domain name disputes. More importantly, the legal framework necessary to protect and enforce an individual's or an organization's legitimate intellectual property rights relating to domain names and on the Internet may be lacking. It seems that no consensus among governmental authorities on this legal matter has been reached as yet.

In the meantime, the VNNIC may function as the mediator in domain name disputes by helping the IP Owner work out an amicable solution (e.g., compensation) with the domain name registrant to get the domain name back. Due to inadequate legislation, the VNNIC is likely not to issue any ruling to resolve a dispute.

Remedies may not be available to IP owners to protect their rights and interests. Filing an appeal with the Administrative Court of Vietnam against a decision of the VNNIC granting registration to a local registrant on the grounds that the registration of the domain name had infringed the IP Owner's rights and interests may be rejected by the Court for the following reasons:

- Decision 92 does not have a specific provision requiring the VNNIC to check and ascertain whether the registration of any domain name will infringe the rights of any third party. Under Decision 92, the VNNIC may immediately grant domain name registration to any registrant as long as complete registration forms have been filed and the related fees have been paid. It is the responsibility of the registrant to ensure that his/her registration does not violate the law or infringe the rights of any third party. These provisions are in line with international practice and they promote the development of domain names in Vietnam.
- The VNNIC may have complied with the provisions and procedures prescribed by Decision 92 when it granted the domain name to the local registrant.

Filing a lawsuit against the VNNIC for not settling the dispute submitted to it may also be rejected by the Administrative Court for the following reasons:

- Decision 92 authorizes VNNIC to settle disputes relating to domain name registration between the parties. The settlement of disputes between parties is mediatory in nature, and it is neither an administrative case nor an administrative act which falls under the jurisdiction of the Administrative Courts as provided by the Ordinance on Procedures for Settlement of Administrative Cases (Article 11).
- It may not be the case that the VNNIC is not settling the dispute. The VNNIC may still be in the process of settling the case, but its role is limited to encouraging and giving guidance to the concerned parties to negotiate with each other. In addition, because of the lack of regulations governing the settlement of domain name disputes, as earlier mentioned, it could very well be that the VNNIC was not in a position to resolve the matter to completion.

The last resort may be to file a lawsuit in civil court against the domain name registrant for infringement of IP rights and interests of the owner. However, the effectiveness of this remedy is questionable, since it would be the first case in Vietnam that a Civil Court is called upon to rule as unlawful an act constituted on the basis of a government lawful registration, not to mention the time and cost involved and the competency and transparency of the enforcement systems.

Using the current discrepancies and inadequacy of the law to their advantage, cybersquatters and speculators have recently been actively registering various domain names using trade names and trade marks of well-known international and national firms. The wisest move that IP Owners can take under the present circumstances would be to register their domain names with the VNNIC to protect their proprietary names and marks.

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