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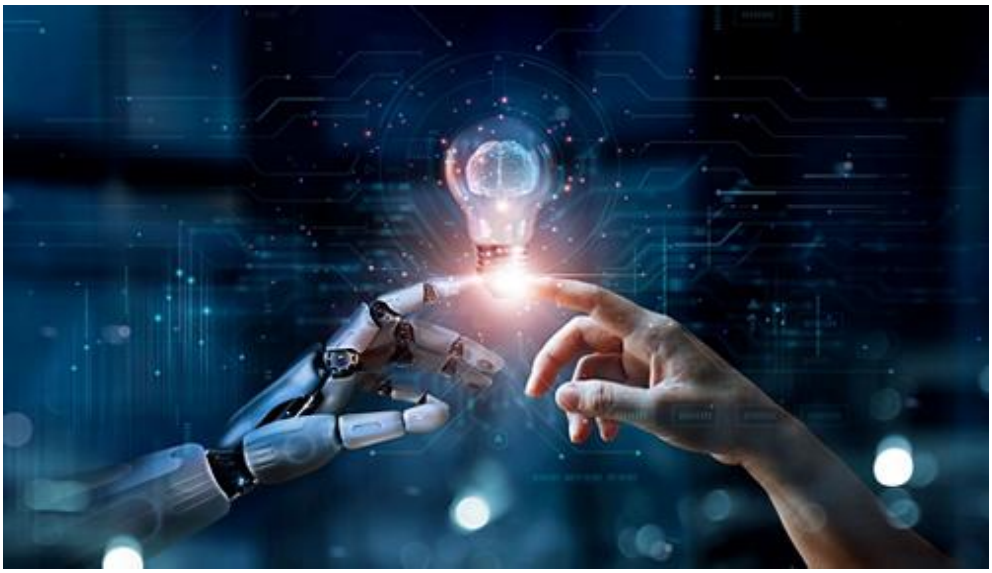

UNFAIR COMPETITION UNDER VIETNAM'S INTELLECTUAL PROPERTY LAW

OVERVIEW

Unfair competition occupies a distinct yet complex position within Vietnam's intellectual property (IP) protection framework. The Intellectual Property Law 2005, as amended in 2009, 2019, and 2022 (the "IP Law"), primarily governs the establishment, exercise, and enforcement of exclusive rights over creative products and distinctive signs. Beyond granting monopolistic rights, however, it also seeks to safeguard the integrity of commercial conduct through the regulation of unfair competition acts related to industrial property rights.

This duality reflects both domestic legislative intent and Vietnam's obligations under the Paris Convention for the Protection of Industrial Property 1967 ("Paris Convention") and the Agreement on Trade-Related Aspects of Intellectual Property Rights 1994 ("TRIPS"). Within this context, unfair competition functions as a legal mechanism to preserve honesty in trade, protect legitimate goodwill, and maintain consumer trust. The protection it affords extends not only to registered IP rights but also to unregistered commercial identifiers, ensuring that enterprises cannot distort competition through deceptive or unethical means.

THE LEGAL BASIS AND DEFINITION

Vietnam's IP Law does not provide a general definition of unfair competition. Instead, it adopts a functional approach, defining specific acts that constitute unfair competition in relation to industrial property. According to Article 130.1 of the IP Law, acts of unfair competition include:

(a) Using commercial indications causing confusion about business entities, business activities, or goods and services;

(b) Misleading the public about the commercial origin, quality, or characteristics of goods or services;

(c) Illegitimately obtaining, using, or disclosing business secrets;

(d) Registering, possessing, or using domain names identical or confusingly similar to protected marks or trade names of others, with bad faith intent; and

(đ) Other acts contrary to honest commercial practices.

This structure mirrors Article 10bis(2) of the Paris Convention, which defines unfair competition as "any act of competition contrary to honest practices in industrial or commercial matters." Further, Article 10bis(3) provides examples such as creating confusion, making false allegations, or misleading the public—illustrating the principle that fairness and integrity form the cornerstone of IP-related market conduct.

The Competition Law 2018 supplements this concept through Article 45, defining unfair competition more broadly as any conduct that "contravenes the principles of good faith, honesty, and commercial practices," causing or likely to cause damage to competitors. However, for industrial property matters, Clause 2, Article 4 of the Competition Law 2018 clarifies that when other specialized laws contain different provisions on unfair competition, those specialized laws shall prevail. Consequently, in cases involving IP-related unfair competition, the IP Law serves as the governing legal basis.

THE RELATIONSHIP BETWEEN UNFAIR COMPETITION AND INDUSTRIA PROPERTY RIGHTS

The provisions on unfair competition under the IP Law are designed t complement, rather than duplicate, exclusive IP rights. Industrial proper rights—such as trademarks (Articles 72–73), trade names (Articles 76–78 industrial designs (Articles 63–65), and geographical indications (Articles 79 88)—grant protection to clearly defined subject matter. Yet, unfair competitio law extends this protection to cases that fall outside strict registrability bu nonetheless undermine fair commercial behavior.

For example, an enterprise's unregistered trade dress may not qualify as protected trademark, but if another business imitates it in a way that confuse consumers about the origin of goods, such conduct may constitute unfa competition under Article 130.1(a). Similarly, the misappropriation of busine secrets—defined under Article 84 as information not generally known an subject to confidentiality measures—constitutes an act of unfair competition obtained or used through dishonest means, such as breach of contract o industrial espionage.

In this sense, the IP Law operates as both a shield (protecting lawful mark identity and investment in goodwill) and a safety net (catching deceptiv conduct not covered by formal IP rights). This design reflects the legislativ intent to ensure that honest competition is not distorted by the exploitation technicalities or registration gaps.

TYPICAL FORMS OF UNFAIR COMPETITION UNDER THE IP LAW

The IP Law identifies several major categories of unfair competition acts, which have been elaborated in Decree No. 65/2023/NĐ-CP guiding the implementation of the IP Law.

(a) Misleading commercial indications:

Under Article 130.1(a), using commercial signs—such as trade dress, packaging, or slogans—that cause confusion about the business entity or the commercial origin of goods and services is prohibited. The assessment of confusion is context-dependent, considering visual, phonetic, and conceptual similarities as well as market familiarity. This mirrors international practice under Article 10bis(3)(1) of the Paris Convention.

(b) Infringement of business secrets:

Per Article 130.1(c), any act of obtaining or using a competitor's trade secret without consent or through dishonest means constitutes unfair competition. The protection applies regardless of whether the information concerns technology, production, or customer data, provided it meets the confidentiality conditions specified in Article 84.1. Such protection also aligns with Article 39 of the TRIPS Agreement, which requires member states to safeguard undisclosed information against unfair commercial use.

(c) Cybersquatting and misuse of domain names:

The misuse of domain names—registering or using a name identical or confusingly similar to another's trademark or trade name—is one of the most modern forms of unfair competition under Vietnamese IP law. This is governed by Article 130.1(d) and elaborated in Articles 21–23 of Decree No. 65/2023/NĐ-CP, which empower authorities to suspend, revoke, or transfer domain names obtained in bad faith. This provision reflects global trends toward addressing online brand abuse and ensures consistency with the Uniform Domain-Name Dispute-Resolution Policy (UDRP) framework recognized internationally.

(d) Residual or open-ended acts:

Finally, Article 130.1(đ) preserves an open clause for "other acts contrary to honest commercial practices." This legislative flexibility allows Vietnamese authorities to address new and evolving forms of deceptive conduct—such as online impersonation, false endorsements, or manipulation of digital reviews—without requiring continuous statutory amendment.

ENFORCEMENT MECHANISMS AND LEGAL REMEDIES

The enforcement of unfair competition acts under the IP Law can proceed through administrative, civil, or, in severe cases, criminal routes, depending on the nature and gravity of the violation.

Administrative enforcement remains the primary mechanism. Under Article 200 of the IP Law and Decree No. 65/2023/NĐ-CP, the Inspectorate of the Ministry of Science and Technology (MOST), provincial Departments of Science and Technology, and the Market Surveillance Authority are competent bodies to handle unfair competition related to industrial property. Administrative sanctions include fines, seizure or destruction of infringing goods, removal of misleading indications, and compulsory public correction.

Civil remedies, governed by Articles 202–205 of the IP Law, allow right holders or affected businesses to request the cessation of unfair competition acts, compensation for damages, and apologies or retractions. Although civil actions provide comprehensive redress, they remain less common due to procedural and evidentiary challenges. Administrative measures, while faster, may not fully compensate the injured party.

Criminal sanctions are generally reserved for serious or repeated infringements that cause significant harm. Although unfair competition acts rarely meet this threshold, related offenses—such as trade secret misappropriation involving substantial damage—may attract liability under Articles 226 and 288 of the Penal Code 2015 (as amended 2017).

In all cases, enforcement authorities are guided by the principles in Article 5.2 of the IP Law, which emphasize proportionality, fairness, and respect for international treaties to which Vietnam is a member.

THE INTERACTION BETWEEN DOMESTIC AND INTERNATIONAL LEGAL FRAMEWORKS

Vietnam's approach to unfair competition reflects its integration into the global IP protection system. The incorporation of Article 10bis of the Paris Convention and Article 39 of the TRIPS Agreement ensures compliance with international obligations. However, these standards are inherently open-textured, relying on interpretation of "honest practices," which must be adapted to domestic commercial contexts.

The Law on Promulgation of Legal Normative Documents 2015, in Article 58(4), establishes that when legal documents issued by the same authority contain different provisions on the same matter, the later one prevails. Nevertheless, as the Competition Law 2018 explicitly prioritizes specialized laws (Article 4.2), the IP Law governs unfair competition acts related to industrial property. This statutory cross-reference ensures that IP-specific issues—requiring technical and reputational assessment—are addressed under a specialized enforcement framework rather than the general competition regime.

PRACTICAL IMPLICATIONS AND FUTURE DEVELOPMENTS

For enterprises, understanding unfair competition under the IP Law is essential for risk management and brand strategy. Beyond registering IP rights, businesses must monitor market conduct to detect and address acts that exploit goodwill or consumer confusion. For practitioners, the unfair competition provisions provide alternative grounds for enforcement where formal infringement is difficult to prove—such as unregistered trade dress imitation or preemptive domain registration.

At the policy level, Vietnam's rapid digital transformation and e-commerce expansion demand continued evolution of unfair competition enforcement. Emerging issues such as influencer misrepresentation, deceptive digital advertising, or AI-generated brand imitations may soon require interpretive guidance or legislative updates. The open clause in Article 130.1(đ) provides the flexibility for regulators to adapt, but consistent application across administrative and judicial levels remains a challenge.

Capacity building among enforcement agencies, clearer evidentiary standards for "confusion" and "bad faith," and the development of judicial precedents will strengthen Vietnam's unfair competition regime. The ongoing discussion on establishing specialized IP courts, as contemplated in the 2022 amendment of the IP Law, may further enhance the uniformity and predictability of decisions in this area.

CONCLUSION

Unfair competition under Vietnam's IP Law serves as a crucial safeguard for market integrity and ethical conduct. By addressing acts that exploit reputation, misappropriate confidential information, or deceive consumers, it reinforces both innovation and trust as the twin pillars of economic modernization. Rooted in Article 130 of the IP Law and harmonized with the Paris Convention and TRIPS Agreement, this framework ensures that Vietnam's market economy remains open yet disciplined—where creativity and honesty are rewarded, and deception finds no refuge.

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