

In an attempt to protect trademark owners, the Vietnamese Government issued a Decree to waive the first-to-file rule until March 1993. This Decree, however, no longer applies.

In a May 1993 interview at the Patent Information and Documentation Centre, Director Vu Khac Trai suggested that Vietnamese legislators had built in safeguards to protect trademark owners. Specifically, he stated that a company that files for trademark protection must prove that it owns the trademark. Information on application procedures, however, slightly contradict the Director. Applications must only provide "information concerning the origin of the mark (if any)"³.

It appears that the only sure way for foreign invested companies to overcome this deficiency in the Trademark Ordinance is to register for a trademark before pirates make competing claims.

Deficiency: Trademark Disputes and the People's Courts.
Source: Fred Burke, Baker & McKenzie (Hong Kong), "Trademark Protection in Vietnam", in *East Asian Executive Reports*.
Date: October 1991.
Details:

The People's Courts in Vietnam are not trained in commercial matters, and do not have the expertise necessary to handle trademark dispute litigation. If civil damages are sought, however, litigation in the People's Courts is the only option; only these Courts can award such damages.

The National Assembly in December, 1993 will consider legislation to establish Economic Courts. These Courts will either be completely separate from the People's Courts, or will be combined at the appellate level. It is expected that in either form, the new Economic Courts will have the jurisdiction to hear all commercial cases, including those which involve trademark disputes. Until the independence of the Economic Courts is established, investors are advised to settle trademark and other commercial disputes through informal or administrative means.

2.5 Repatriation of Capital and Profits

No major gaps or deficiencies were discovered in this area of legislation.

2.6 Labour

No major gaps or deficiencies were discovered in this area of legislation.

2.7 Land Use

Deficiency: Enforcement of Penalties Imposed for Infringing on Land Use Rights.
Source: John Gillespie, "Foreign Investment in SR Vietnam Revisited", *International Business Lawyer*.
Date: October 1990. Comments apply under 1993 Law on Land.
Details:

Article 73 of the 1993 Law on Land assures investors that the State will protect an enterprise's land use rights from the actions of wrongdoers, including corrupt State officials. Penalties for infringement on land use rights range from warnings to fines, to forced retirement of officials.

In cases of corrupt officials, however, State protection may have limited value. The enforcement of penalties is the responsibility of the local People's Committees, which are the same State bodies that effectively control land use. It would seem that in many cases the corrupt officials would come from within the Committees themselves, and that the