

**Remarks by Unilever Vietnam International Company Limited in address to the
Conference on Vietnam Legal Framework against EVFTA Commitments on
Intellectual - Property Review Results and Recommendations**

Hanoi, Tuesday Morning, 1st March 2016

Dear Distinguished Guests,

First of all on behalf of Unilever Vietnam International Company Limited I would like to express our thanks for your invitation to this conference.

Starting negotiations in June 2012 the EU and Vietnam announced the conclusion of the negotiations for an EU-Vietnam Free Trade Agreement (FTA) On 2 December 2015.

Starting its operations here in 1995, Unilever Vietnam now has become one of the most successful fast-moving-consumer-good (FMCG) companies in the country with more than 1,500 employees . More than 35 million people in Vietnam use one or more Unilever products every day. Various of its brands, including OMO, Lifebuoy, Sunsilk, Clear, Lipton, and Knorr, have become household names, and have become an indispensable part of people’s lives. 20 years is not a long time in the history of a company, but at Unilever Vietnam, we are proud that in the short span of 20 years, we have been able to achieve so much. What we have achieved, we have done so by staying true to our mission of ‘Making Vietnamese Lives Better’ every day.

Strong protection of Intellectual property rights has always been one of the most important factors in the successes of Unilever Vietnam. We have witnessed tremendous efforts and commitments by Vietnam in joining international treaties, adopting laws, revising them in compliance with the international treaties, and implementing the adopted laws and regulations. Looking now at the text of EU-Vietnam Free Trade Agreement t as agreed in January 2015 we would like to share some of our opinions with your Distinguished guests.

A) Vietnam laws and regulations in general have complied with the agreed EVFTA text but we observe certain shortcomings

i) In connection with Trademarks, Article 5.6 - Grounds for revocation of the agreed EVFTA text reads:

3. *Any use of a registered trademark by the proprietor of the trademark or with his consent in respect of the goods or services for which it is registered, that is liable to mislead the public, particularly as to the nature, quality or geographical origin of those goods or services shall make the trademark liable to revocation or alternatively be prohibited by relevant domestic law.*

Article 96 of Law on Intellectual Property of Vietnam lists cases in which a trademark registration shall be revoked, namely:

a/ Owner of the registered trademark was not entitled (including right assigned from another person) to registered trademark;

b/ The trademark did not meet registration conditions at the time of registration.

Thus, in our opinion, Law on Intellectual Property of Vietnam still fails to include the cases of revocation as provided for under the Article 5.6.3 of EVFTA.

ii) Article 7.1 on International Agreements of the agreed EVFTA reads “The Parties shall accede to the Geneva Act to the Hague Agreement Concerning the International Registration of Industrial Designs (1999)”.

We note that Vietnam has still not a member of the Hague Agreement. We further note that Vietnam will have 2 years from the entry into force of EVFTA. There is no doubt that Vietnam will be able to access to within the prescribed period. What we are concerned about is Vietnam getting ready to effectively implement the Hague Agreement by the moment it accesses to it.

iii) Article 25 Definitions For the purposes of Sub-section 3.2: of the agreed EVFTA reads “1. *Goods infringing an intellectual property right*” means goods, the importation or exportation of which, according to the law of the country where the goods are found, infringe an intellectual property right, consisting of counterfeit goods referred to in paragraph 2(a) and pirated copyright goods referred to in paragraph 2(b)”.

Article 124 of Vietnam Law on Intellectual Property on Use of industrial property objects while expressly regards importation of goods bearing a trademark as use of that trademark, is silent on exportation. As a result, exportation of goods bearing an unauthorized registered trademark does not fall within the acts of infringement as provided for under Article 129 of Vietnam Law on Intellectual property.

In our opinion Vietnam Law on Intellectual Property should be revised to expressly include exportation of goods bearing a trademark shall constitute use of this trademark. This is important because at present Vietnam enforcement agencies would hesitate to deal with exportation of goods bearing an unauthorized trademark unless rights holder provide with evidence that the goods bearing the trademark are also for domestic use.

B) Taking this opportunity we would like to share with you some of our practical concerns in enforcing our IPR rights

Our observation is that Vietnam laws and regulation in general have complied with the agreed EVFTA text. We however are more concerned about the implementation and enforcement as we have been.

For example, assuming holder of a registered trademark has requested an enforcement agency to enforce his rights against an alleged infringer. If now that alleged infringer files a petition for canceling (revoking) that trademark registration with Vietnam National Office of Intellectual Property, the enforcement will suspend handling the request by the rights holder until the final outcome of the cancellation action (Article 28.2. Circular No.11/2015/TT-BKHCN of June 26, 2015 by Ministry of Science and Technology).

The matter is that it will take months if not years for the Vietnam National Office of Intellectual Property to review and make a decision whether to cancel (revoke) that trademark registration or not. That means during this long period of time the holder of the registered trademark will not be allowed to enforce his rights against infringers.

One of various other practical issues is protection of well-known trademark. Almost everyone without hesitation will agree that UNILVER, OMO, Lifebuoy, Sunsilk, Clear, Lipton, and Knorr are all well-known trademarks. However there is no procedure for us to request a court or National Office of Intellectual Property of Vietnam to recognize the marks to be well-known. In early 2000s Vietnam National Office of Intellectual Property of Vietnam used to accept applications for recognizing a mark to be well-known but the applications were never reviewed.

Another issue we have observed is that in many cases fines and penalties imposed on an infringer fails to make infringers desist from infringing other IP rights of

the same infringers. In our opinion, the fines and penalties imposed are still not severe enough. In majority of cases our legal expenses many times exceed the fines that an infringer has to pay. In theory, rights holder may file a lawsuit to claim for damages but getting it done is much easier said than done.

Having said that we once again should stress and appreciate the efforts and successes in the IPR field that the Vietnam has done and achieved. We look forward to approval, ratification and implementation of EVFTA to ensure an effective environment for trade and investment relations, in which businesses like ours will also benefit, prosper and make more contributions.

Given the amount of time allotted for this conference we look forward to other occasions to share with you experiences. Thank you.

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