

The Trademark MUMUSO.KR and the Protection of Vietnamese Consumers' Rights

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Abstract

In accordance with the Korea Trademark Act, the trademark MUMUSO.KR (MUMUSO with insignia ".KR" inside of the letter "O") was granted protection by the Korean Intellectual Property Office under Korean Certificate of Trademark Registration No. 401141318 on November 06, 2015 (filing date December 18, 2014, registration date November 06, 2015).¹ The mark is also granted protection in Vietnam in accordance with the Vietnam Intellectual Property Law and Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Madrid Protocol) under International Registration No. 1330965, and valid up to November 18, 2026.² The trademark owner is MUMUSOKR Co. Ltd. established in Seoul.

MUMUSO.KR mark is not used in Korea. However, this mark has been in use in Vietnam by MUMUSO Vietnam Export - Import Co. Ltd. (MUMUSO Vietnam). It has opened more than 20 MUMUSO stores countrywide. MUMUSO's products include: Health and beauty care products, clothes and accessories, house-wares, electrical and electronic equipment. Almost MUMUSO's goods are China-made goods. But the MUMUSO's stores use the trademark MUMUSO.KR in combination with Korean indication and the slogans of "*Korean fashion style*", "*Coming from Korea*", "*MUMUSO is typical for a simplicity, model and healthy living of Korea style*" to cause the confusion about MUMUSO's product origin.³ Further, the appearance of MUMUSO's goods is relatively familiar with Korean goods and Vietnamese consumers believe that these products are of Korean quality albeit being made in China. This article will analyze legal aspects concerning MUMUSO.KR mark, legal grounds for trademark use in Korea and Vietnam and the protection of consumers' rights from the use of confusing mark of MUMUSO.KR origin.

Keywords: Trademark MUMUSO.KR, MUMUSOKR Co. Ltd, MUMUSO Vietnam, Korea, Vietnam, made in China, use of trademark, misleading indication, goods origin, consumer's rights.

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- 1) Korean Certificate of Trademark Registration No. 401141318, Nov. 6, 2015, KOREA INTELL. PROP. RIGHTS INFO. SERV., <http://eng.kipris.or.kr/enghome/main.jsp> (last visited Oct. 15, 2018).
- 2) Madrid Union, *Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks*, art. 6(2), WIPO (Oct. 15, 2018), http://www.wipo.int/wipolex/en/wipo_treaties/text.jsp?file_id=283484#P211_43070 [hereinafter *Madrid Protocol*].
- 3) *About Mumuso*, MUMUSO, <https://mumuso.com.vn/trang/gioi-thieu-ve-mumuso> (last visited Nov. 11, 2018).

I. Introduction

During the international economic integration, every country focuses on the protection of intellectual property (IP) rights, including the trademark rights protection. Trademark is an indispensable guide for consumers (to choose products) and a means for companies to build reputation (quality of products) and an image in the marketplace (distinct from other companies). From point of view of Francis Gurry, Director General of World Intellectual Property Organization – WIPO, A product's brand (trademarks – the legal incarnation of brands – are by far the most widely used form of registered intellectual property) appeal can be as important for determining competitive success as its quality or price tag. In short, a recognized brand is among the most valuable intangible assets a company can own.⁴

Trademark used to identify and distinguish among goods of one person and others. Trademark helps consumers' make decisions based on reputation such brands represent. Trademark is important for business entity to have assets and help grow their business.

In general, the core functions of the trademark include: (1) Distinguish one's products from others, guide consumers to distinguish one product from another's by affixing a trademark to it; (2) Indicate origin, inform consumers that products with the trademark originate from the same source; (3) Warranty of quality, guarantee consumers that all products with the trademark have the same quality; and (4) Advertising, remind consumers of goods associated with the trademark as a promotional method in commercial transactions.⁵ Those functions relate and interact with each other. Based on those functions, trademark guide Vietnamese consumers to choose the product of one person over the same product of the other.

4) World Intell. Prop. Org. [WIPO], *2013 World Intellectual Property Report: Brands - Reputation and Image in the Global Market*, at 4, http://www.wipo.int/edocs/pubdocs/en/intproperty/944/wipo_pub_944_2013.pdf.

5) World Intell. Prop. Org. [WIPO], *WIPO Intellectual Property Handbook*, at 79 (2004), http://www.wipo.int/edocs/pubdocs/en/intproperty/489/wipo_pub_489.pdf; *See also* Kor. Intell. Prop. Off. [KIPO], *Overview of the Trademark System in Korea*, KIPO, http://www.kipo.go.kr/kpo/user.tdf?a=user.english.html.HtmlApp&c=93000&catmenu=ek04_01_01 (last visited Oct. 31, 2018); *See also* Nat'l Intell. Prop. Off. [NOIP], *Overview*, NOIP, [http://www.noip.gov.vn/web/noip/home/en?proxyUrl=/noip/cms_en.nsf/\(agntDisplayContent\)?OpenAgent&UNID=C25B6BC02DA791E0472576A10031CC5B](http://www.noip.gov.vn/web/noip/home/en?proxyUrl=/noip/cms_en.nsf/(agntDisplayContent)?OpenAgent&UNID=C25B6BC02DA791E0472576A10031CC5B) (defining Trademark).

Similar to the Republic of Korea (Korea), the Socialist Republic of Vietnam (Vietnam) has established adequate legal environment to protect trademark as commercial indication guiding consumers to distinguish one product from another's, informing them about goods origin, goods quality.

In accordance with Korea Trademark Act and Vietnam Intellectual Property Law and the related treaties, the trademark MUMUSO.KR (MUMUSO with insignia “.KR” inside of the letter “O”) was granted protection by the Korean Intellectual Property Office and Vietnam National Office of Intellectual Property. In other words, MUMUSO.KR mark is a valid trademark in both Korea and Vietnam. The Trademark owner is MUMUSOKR Co. Ltd. established in Seoul.

II. Legal Basic of the Protection of Trademark MUMUSO.KR and the Protection of Vietnamese Consumer's Rights

A. Legal Basic on the Protection of the Trademark MUMUSO.KR

1. Registration of the Trademark MUMUSO.KR

Trademark is one of the intellectual property (IP) objects, which is under protection in accordance with Vietnamese Law on Intellectual Property, Korean Trademark Act. These special laws promulgate the registration, the use and IP rights enforcement concerning trademark. If Korea protects trademark by specialized act - Trademark Act⁶, Vietnam protects trademark by general law - Law on Intellectual Property – “IP Law” - concerning Industrial Property rights, Copyrights and Related rights, rights to Plant Varieties⁷.

In accordance with the Article 3.1 of Korean Trademark Act, any person who “uses or intends to use a trademark in the Korea” may obtain registration of

6) Sangpyobeop [Trademark Act], Act No. 71, Nov. 28, 1949, *amended by* Act. No. 14033, Feb. 29, 2016 (S. Kor.).

7) Law No. 50/2005/QH11, Nov. 29, 2005, *amended by* Law No. 36/2009/QH12, June 19, 2009 (Viet.).

his/her trademark.⁸ For registration, the trademark must have a distinctive feature that enables traders and consumers to distinguish the goods/services from others. Trademark Act also stipulates the trademarks ineligible for trademark registration (Article 34)⁹; one of them is " Any trademark which falsely indicates a relationship with a state, race, ethnic group, public organization, religion, or famous deceased person, or which slanders, insults, or is likely to defame any of them" (Article 34.2 of the Trademark Act)¹⁰. In this case, the trademark MUMUSO.KR with the insignia ".KR" which indicates a relationship with Korea (national domain name of Republic of Korea) was granted protection by the Korean Intellectual Property Office under Korean Certificate of Trademark Registration No. 401141318 on November 06, 2015 (filing date December 18, 2014, registration date November 06, 2015)¹¹. Applicant is MUMUSOKR Co. Ltd, the address 601.47 Sejongo Aero 23-GIL Jongro-Gu Seoul.

Korea and Vietnam are Members States to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks¹². In accordance with the Madrid Protocol and the IP Law of Vietnam, the mark "MUMUSO.KR" (figurative mark by the Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks) of that applicant is also granted protection in Vietnam under International Registration No.1330965, and valid up to November 18, 2026 (filing date on November 18, 2016) for list of goods 3, 8, 9, 14, 16, 18, 21, 24, 25, 29, 30, 32 (the list of goods is in accordance with the International Classification of Goods and Services for the Purposes of the Registration of Marks was established by Nice Agreement 1957)¹³. Korea is State Party to the Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks (2011) and the Nice Agreement Concerning the International Classification of Goods and

8) Sangpyobeop [Trademark Act], Act No. 71, Nov. 28, 1949, *amended by* Act. No. 14033, Feb. 29, 2016, art. 3(1) (S. Kor.).

9) *Id.* art. 34(2).

10) *Id.*

11) Korean Certificate of Trademark Registration No. 401141318, Nov. 6, 2015, KOREA INTELL. PROP. RIGHTS INFO. SERV., <http://eng.kipris.or.kr/enghome/main.jsp> (last visited Oct. 15, 2018).

12) Madrid Union, *Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks* (Oct. 15, 2018), http://www.wipo.int/export/sites/www/treaties/en/documents/pdf/madrid_marks.pdf [hereinafter *Madrid Protocol*].

13) *Id.*

Services for the Purposes of the Registration of Marks (1999).¹⁴ Vietnam is not yet a member to these agreements but accepted them for the purposes of the registration of marks.¹⁵

In other words, the applicant -MUMUSOKR Co. Ltd. had obtained the international registration in Vietnam through the Madrid Protocol, the Vienna Agreement and the Nice Agreement. At present, both Korea trademark registration No. 401141318 and international registration No.1330965 have value. According to Article 6.2: "Period of Validity of International Registration; Dependence and Independence of International Registration" of the Madrid Protocol, upon expiry of five years from the date of the International Registration, MUMUSO.KR registration No. 1330965 shall become independent of the basic registration - Korean Certificate of Trademark Registration¹⁶. The protection resulting from the international registration, whether or not it may no longer be invoked if, before the expiry of five years from the date of the international registration, the basic registration, as the case may be, has been the subject of a final decision of revocation, cancellation or invalidation, in respect of all or some of the goods and services listed in the international registration (Article 6.3 Madrid Protocol). Hence, if the basic Korean trademark registration of MUMUSO.KR is revoked, the international registration will be also revoked. During this term, international registration No.1330965 in Vietnam will be dependent on Korean Certificate of Trademark Registration No. 401141318.

2. Use of the Trademark “MUMUSO.KR” in accordance with intellectual property laws

The use of trademark and trademark rights enforcement in Vietnam and Korea are in accordance with the related laws, the guiding by-laws, and the following treaties: Agreement on Trade-Related Aspects of Intellectual Property Rights (Korea's membership of 1995; Vietnam's membership of 2007)¹⁷; The Paris Convention for the Protection of Industrial Property (Korea's

14) *WIPO-Administered Treaties*, WIPO, http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=13%20and%20http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&search_what=B&bo_id=10 (last visited June 31, 2018).

15) Nat'l Off. of Intell. Prop. of Viet., Notice No. 9694/TB-SHTT, Nov. 19, 2014 (Viet.).

16) *Madrid Protocol*, *supra* note 2.

17) *Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement)*, WIPO, http://www.wipo.int/wipolex/en/other_treaties/parties.jsp?treaty_id=231&group_id=22 (last visited Nov. 11, 2018).

membership of 1980; Vietnam's membership of 1949)¹⁸; Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Korea's membership of 2003; Vietnam's membership of 2006)¹⁹; Free Trade Agreement between the Government of the Socialist of Republic of Vietnam and the Government of the Republic of Korea ("VKFTA" enforced on December 20, 2015)²⁰.

a. In Korea

The use of MUMUSO.KR mark in Korea should be in accordance with the Trademark Act, the following IP related laws, and the guiding by-laws²¹, including but not limited to:

- Commercial Act²²
- Unfair Competition Prevention and Trade Secret Protection Act²³
- Framework Act on Consumers²⁴
- Enforcement Decree of the Trademark Act²⁵

According to the Trademark Act, the term "use of trademark" means any of the following: (a) Displaying a trademark on goods or packages of goods; (b) Transferring or delivering goods or packages of goods on which a trademark is displayed, or exhibiting, exporting, or importing such goods for the purpose of transfer or delivery; (c) Displaying a trademark on advertisements for goods, price tags, transaction documents, or other means, and exhibiting or giving wide

18) *WIPO-Administered Treaties*, *supra* note 14.

19) *Madrid Protocol Status*, *supra* note 12.

20) *Free Trade Agreement between the Government of the Socialist of Republic of Vietnam and the Government of the Republic of Korea*, VIETNAM KOREA FTA, http://vkfta.moit.gov.vn/Resources/2_ko_vn_eng_151220.pdf (last visited Nov. 11, 2018).

21) *Republic of Korea*, WIPO, <http://www.wipo.int/wipolex/en/profile.jsp?code=KR> (last visited June 31, 2018).

22) *Sangeopbeob* [Commercial Act], Act No. 1000, Jan. 20, 1962, *amended by* Act No. 10696, May 23, 2011 (S. Kor.).

23) *Gyeongjaengbangji mic eyongepbohobeop* [Unfair Competition Prevention and Trade Secret Protection Act], Act No. 911, Dec. 30, 1961, *amended by* Act of Apr. 17, 2018 (S. Kor.).

24) *Sobija gibeonbeob* [Framework Act on Consumers], Act No. 7988, Sept. 27, 2006, *amended by* Act No. 10678, May 19, 2011 (S. Kor.).

25) *Sangpyobeob sihaengryeong* [Enforcement Decree of the Trademark Act], Presidential Decree No. 24439, Mar. 23, 2013) (S. Kor.).

publicity to the trademark (Article 2.1.11).²⁶

After registration of trademark, there is no proof for the use of trademark MUMUSO.KR by MUMUSOKR Co. Ltd. in Korea. In the investigation reports of Korean MBC ("Fake enterprise MUMUSO" and "MUMUSO is a Chinese company" of MBC), MUMUSOKR Co. Ltd. registered their trademark at the Korean Intellectual Property Office but its headquarter is not locate in Seoul (the address written on its products was fake).²⁷ MUMUSOKR Co. Ltd. had not any actual production activities or stores in Korea. MBC also quoted words from Park Jong Pil, deputy director of the Korean Intellectual Property Office: "MUMUSO established a company in Korea, but we could not confirm their state of business in Korea. MUMUSO does not have any stores in Korea. No Korea companies produce MUMUSO products".²⁸

In most jurisdictions, trademarks are subjected to cancellation and removal from trademark registration if its use has not commenced during a prescribed period of time.²⁹ In Korean and Vietnamese legislation, non-use trademark is also one of the grounds to revoke the registered trademark.³⁰ In accordance with Article 119.1.3 Korean Trademark Act (it takes effect from September 01, 2016), trademark may be cancelled if it has not been in use without justifiable grounds for three consecutive years prior to the cancellation application.³¹ Based on the Certification of trademark MUMUSO.KR registration, that mark has not been in use for three consecutive years. Any person may request cancellation of a non-used registered mark without having to justify the locus standing (Article 119.5 of the Trademark Act)³². Based on these provisions, trademark owners are encouraged to review their policies and take appropriate

26) Sangpyobeop [Trademark Act], Act No. 71, Nov. 28, 1949, *amended by* Act. No. 14033, Feb. 29, 2016, art. 2(1)(1) (S. Kor.).

27) Munhwa Broad. Corp., *Fake Enterprise MUMUSO*, YOUTUBE (Mar. 23, 2018), <https://www.youtube.com/watch?v=KtXO6urkHqE>; *See also* Munhwa Broad. Corp., *MUMUSO Is a Chinese Company*, YOUTUBE (Mar. 24, 2018), <https://www.youtube.com/watch?v=qPiFLd1Fi7I>.

28) *Id.*

29) Int'l Trademark Ass'n, *Enforcement Committee Reinforces Policy on Non-Use Cancellation Grace Periods*, 70 INTA BULLETIN, May 15, 2015.

30) Sangpyobeop [Trademark Act], Act No. 71, Nov. 28, 1949, *amended by* Act. No. 14033, Feb. 29, 2016 (S. Kor.); *see also* Law No. 50/2005/QH11, Nov. 29, 2005, *amended by* Law No. 36/2009/QH12, June 19, 2009 (Viet.).

31) Sangpyobeop [Trademark Act], Act No. 71, Nov. 28, 1949, *amended by* Act. No. 14033, Feb. 29, 2016, art. 119(1)(3) (S. Kor.).

32) *Id.* art. 119(1)(5).

measures if their registered marks are not in use in Korea. The Act will also allow courts to focus primarily on the issue of cancellation without addressing the locus standing of the applicant.³³

Furthermore, in accordance with Trademark Act, trademark may be declared invalid by invoking ground in case where the applicant acted in bad faith when filing the application.³⁴ This ground mainly concerns cases where the applicant was pursuing illicit aims in filing the application for the trademark. Pursuant to Article 34.(1).13 of Trademark Act, trademark ineligible for trademark registration is any trademark which is identical or similar to a trademark (excluding a geographical indication) recognized as indicating the goods of a specific person by consumers in Korea or overseas, which is used for unlawful purposes, such as unjust enrichment or inflicting loss on the specific person.³⁵ In the case MUMUSO.KR Co. Ltd., the MUMUSO.KR mark may be declared invalid in Korea by that invoking ground.

b. In Vietnam

Different from Korea in special Trademark Act, Vietnam promulgated general IP Law including all intellectual property subjects. The use of trademark and trademark rights enforcement of MUMUSO.KR in Vietnam should be in accordance with the IP Law and following IP related laws and the guiding by-laws, including but not limited to:

- Civil Code³⁶
- Criminal Code³⁷
- Code of Civil Procedure³⁸
- Criminal Procedures Code³⁹

33) Sangpyobeop [Trademark Act], Act No. 71, Nov. 28, 1949, *amended by* Act. No. 14033, Feb. 29, 2016 (S. Kor.).

34) *Id.*

35) *Id.* art. 34(1)(13).

36) Code No. 91/2015/QH13, Nov. 24, 2015 (Viet.).

37) Code No. 100/2015/QH13, Nov. 27, 2015, *amended by* Code No. 12/2017/QH14, June 20, 2017 (Viet.).

38) Code No. 92/2015/QH13, Nov. 25, 2015 (Viet.).

39) Code No. 100/2015/QH13, Nov. 27, 2015, *amended by* Act No. 12/2017/QH14, June 20, 2017 (Viet.).

- Law on Commerce⁴⁰
- Law on Protection of Consumer's Rights⁴¹
- Law on Handling Administrative Violations⁴²
- Law on Administrative Procedures⁴³
- Law on Advertising⁴⁴
- Law on Customs⁴⁵
- Law on Competition⁴⁶

Pursuant to the Article 124.5(b)(c) of the IP Law, the use of a mark means the performance of the following acts: Circulating, offering, advertising for sale or stocking for sale goods bearing the protected mark; importing goods or services bearing the protected mark.⁴⁷ In this case, MUMUSO Vietnam is importing, circulating, offering, and advertising for sale of goods labeled the MUMUSOKR mark in the market.

While MUMUSO.KR mark is not used in Korea, MUMUSO Vietnam Import – Export Co. Ltd (MUMUSO Vietnam)⁴⁸ does business under franchise form with the Korean MUMUSO.KR mark in Vietnam. It has been authorized by MUMUSO Shanghai Co. Ltd to be an agent for the use and management of this trademark in Vietnam. For its part, MUMUSO Shanghai Co. Ltd has been authorized by MUMUSOKR Co. Ltd (Korea) to be the agent for the global use and management of the trademark MUMUSO.KR.⁴⁹

MUMUSO Vietnam has expanded the business rapidly with the MUMUSO.KR trademark. At present, MUMUSO Vietnam has more than 20 stores in Vietnam.

40) Law No. 36/2005/QH11, June 14, 2005 (Viet.).

41) Law No. 59/2010/QH12, Nov. 17, 2010 (Viet.).

42) Law No.15/2012/QH13, June 20, 2012 (Viet.).

43) Law No. 93/2015/QH13, Nov. 25, 2015 (Viet.).

44) Law No. 16/2012/QH13, June 21, 2012 (Viet.).

45) Law No. 54/2014/QH13, June 23, 2014 (Viet.).

46) Law No.27/2004/ND-CP, Dec. 3, 2004, *amended by* Law No.23/2018/QH14, June 12, 2018 (Viet.). This Law will be effective on July 01, 2019.

47) Law No. 50/2005/QH11, Dec. 25, 2001, art. 124 (Viet.).

48) MUMUSO, <https://mumuso.com.vn/> (last visited Nov. 11, 2018).

49) Dep't of Competition & Consumer Prot., *Results of Inspection of Law Observance in Operation of Mumuso Vietnam Import Export Company Limited*, MINISTRY INDUSTRY & TRADE OF THE SOCIALIST REPUBLIC VIET. (July 13, 2018), <http://www.moit.gov.vn/web/guest/tin-chi-tiet/-/chi-tiet/ket-qua-kiem-tra-viec-chap-hanh-phap-luat-trong-hoat-%C4%91ong-cua-cong-ty-tnhh-xuat-nhap-khau-mumuso-viet-nam-12312-22.html>.

They have been opened in important cities and provinces such as Ho Chi Minh City, Hanoi, Lang Son, Ca Mau, Da Nang, Binh Duong, etc. The average turnover has reached over 30 billion VND per month (equivalent 1.5 billion KRW). MUMUSO Vietnam plans to reach 100 stores in Vietnam by the end of 2018.⁵⁰ MUMUSO's products include: Health and beauty care products, clothes and accessories, house-ware, electrical and electronic equipment.⁵¹ In fact, MUMUSO used commercial indications to cause confusion as to Korean origin of goods: Affixing mark MUMUSO.KR on China-made goods in combination with the slogan "Korean style", "Goods of Korean style" as advertising for sale, designs of packages.

According to the Article 130 of IP Law, the following acts shall be regarded as acts of unfair competition: Using commercial indications to cause confusion as to business entities, business activities or commercial origin of goods or services; using commercial indications to cause confusion as to the origin, production method, utilities, quality, quantity or other characteristics of goods or services; or as to the conditions for provision of goods or services. Commercial indications specified in this Article mean signs and information serving as guidelines to trading of goods or services, including marks, trade names, business symbols, business slogans, geographical indications, designs of packages and/or labels of goods.⁵² Acts of using commercial indications specified in this Article include acts of affixing such commercial indications on goods, goods packages, means of service provision, business transaction documents or advertising means; selling, advertising for sale, stocking for sale and importing goods affixed with such commercial indications.⁵³ In other words, it would be an act of unfair competition to use of the trademark MUMUSO.KR that would mislead the public into believing the MUMUSO goods are produced, manufactured in Korea, other than the actual places of production, manufacture in China.

50) *Global Development Strategy*, MUMUSO, <https://mumuso.com.vn/bai-viet/chien-luoc-phat-trien-toan-cau-cua-mumuso> (last visited June 28, 2018).

51) *About Mumuso*, MUMUSO, <https://mumuso.com.vn/trang/gioi-thieu-ve-mumuso> (last visited June. 28, 2018).

52) Law No. 50/2005/QH11, Nov. 29, 2005, *amended by* Law No. 36/2009/QH12, June 19, 2009 (Viet.).

53) *Id.*

B. The Use of the MUMUSO.KR Mark and Consumers' Rights Protection in Vietnam

Consumer protection framework covers a range of institutional mechanisms. The essential elements of such framework are: national consumer policy; designated agency for consumer protection; Consumer laws; Codes or soft law; Consumer redress mechanism; Consumer education and information programs; and International co-operation and networking.⁵⁴ However, this article focuses on issues concerning the use of MUMUSO.KR trademark that misleads Vietnamese consumers.

Vietnamese consumer laws must ensure that consumer rights are protected and enforceable provide the responsibilities of traders towards consumers; responsibilities of social organizations for the protection of consumer rights; the rights and obligations of consumers; settlement of disputes between consumers and traders; and state management responsibilities for consumer right protection.

1. Legal basic

The use of MUMUSO.KR mark and consumers' rights protection should be in accordance with the Vietnamese IP Law, the Law on Protection of Consumer's rights and the following related laws, guiding by-laws, including but not limited to:

- Law on Protection of Consumer's rights⁵⁵
- Law on Enterprises⁵⁶
- Law on Product and Goods Quality⁵⁷
- Law on Advertising⁵⁸
- Law on Handling Administrative Violations⁵⁹
- Criminal Code⁶⁰

54) U.N. Conf. on Trade & Dev., *Manual on Consumer Protection*, at 22 (2016), <https://unctad.org/en/PublicationsLibrary/webditcclp2016d1.pdf> (last visited Nov. 11, 2018).

55) Law No. 59/2010/QH12, Nov. 17, 2010 (Viet.).

56) Law No. 68/2014/QH13, Nov. 26, 2014 (Viet.).

57) Law No. 05/2007/QH12, Nov. 21, 2007 (Viet.).

58) Law No. 16/2012/QH13, June 21, 2012 (Viet.).

59) Law No. 15/2012/QH13, June 20, 2012 (Viet.).

60) Code No. 100/2015/QH13, Nov. 27, 2015, *amended by* Code No. 12/2017/QH14, June 20, 2017 (Viet.).

Vietnamese consumer's rights are stipulated under Law on Protection of Consumer's rights.

Pursuant to the Article 8 of Law on Protection of Consumer's Rights (Law 59/2010/QH12), the consumers' rights are as follows: (1) To have his/her life, health and property safety and legitimate rights and interests assured when making transactions with or using goods or services provided by a goods or service trader. (2). To be provided with accurate and adequate information on the goods or service trader; contents of goods- or service-related transactions; and goods origin; and with transaction-related invoices, vouchers and documents and other necessary information on the goods or services he/she has bought or used. (3). To select goods or services or goods or service traders based on his/her needs and actual conditions; to decide to participate or not participate in transactions and select contents of agreement when making transactions with a goods or service trader. (4). To give feedback to goods or service traders on goods or service prices and quality, servicing style, transaction modes and other matters related to transactions between the consumer and goods or service traders. (5). To participate in the elaboration and implementation of policies and laws on consumer right protection. (6). To claim damages when a goods or service fails to meet standards or technical regulations or to reach the quality, quantity, utilities, prices or other matters as notified, posted up, advertised or committed by the goods or service trader. (7). To lodge a complaint or denunciation or initiate or request a social organization to initiate a lawsuit to protect his/her rights under this Law and other relevant laws. (8). To receive counseling, assistance and guidance on consumption knowledge.⁶¹

In other words, Vietnamese consumers could be provided with accurate and adequate information on the goods; goods origin; and other necessary information on the MUMUSO goods they have bought or used.

2. Using MUMUSO.KR Mark and the other Related Indications to Cause Confusion concerning the Origin of MUMUSO Goods

Having received request from Korean Business Association, the Minister of Vietnam's Industry and Trade Ministry signed Decision No. 1809/QĐ-BCT

61) Law No. 59/2010/QH12, Nov. 17, 2010, art. 8 (Viet.).

dated 25/5/2018 on inspection of legal compliance in commerce, production, trade in counterfeit goods, banned goods, competition and protection of consumers' rights and interests with regard to MUMUSO Vietnam.⁶²

On the basis of the Decision No. 1809/QĐ-BCT, the inspection group comprised of representatives of Ministry of Industry and Trade from 7 units: Vietnam Competition Authority (VCA), Department of Electronic Commerce and Digital Economics, Department of Market Surveillance, Department of Export – Import, Legal Department, Planning Department, Inspectorate of Ministry of Industry and Trade, General Directorate for Standardization, Metrology and Quality of Ministry of Science and Technology, Health Ministry Inspectorate, Hanoi and Ho Chi Minh City Market Surveillance Branches which have numerous MUMUSO stores.

Upon the Conclusion dated July 12, 2018 of Inspection Group (based on Decision No. 1809/QĐ-BCT), the infringement of MUMUSO Vietnam.⁶³ Most of MUMUSO.KR mark-labeled products in MUMUSO Vietnam's chain stores have origin of China; the identification of origin of products for sale at stores; the use of KOREA sign for misleading origin of products for sale at stores and grounds for operation of MUMUSO chain stores in Vietnam.

Based on the inspection findings, detailed violations can be identified as follow:

a. Origin of products presented at MUMUSO chain stores

99.3% of products (2,257/2,273 different types) from MUMUSO chain stores are imported from China, the rest are merchandise produced domestically.⁶⁴

In fact, MUMUSO Vietnam with the business slogan "*Korean fashion style*"/"*Coming from Korea*" have been expanding their activities in Vietnam and misleading consumers about the origin of MUMUSO.KR mark-labeled goods.⁶⁵

62) Ministry of Indus. & Trade, Decision No. 1809/QĐ-BCT, May 25, 2018 (Viet.).

63) Dep't of Competition & Consumer Prot., *supra* note 49.

64) *Over 99% of Goods at 'Korea' Retailer Chain Mumuso made in China*, VOICE OF VIET. (July 15, 2018), <https://english.vov.vn/economy/over-99-of-goods-at-korea-retailer-chain-mumuso-made-in-china-379096.vov>.

65) Nguyen Huong, *Mumuso is flogging goods made in China*, VIET. INV. REV. (Dec. 5, 2018), <https://www.vir.com.vn/mumuso-is-flogging-goods-made-in-china-59139.html>.

b. Legality of business activity with MUMUSO.KR mark

MUMUSOKR Co. Ltd. with address at: 601, 47 SEJONGDAERO 23-GIL, JONGRO-GU, SEOUL KOREA is the holder right of MUMUSOKR mark. It has not any MUMUSO store in Korea. Shanghai MUMUSO Company is the beneficiary for the use and management of trademark on global scale under the authorization of MUMUSOKR Co. Ltd. MUMUSO Vietnam can use MUMUSO.KR mark under authorization of Shanghai MUMUSO Company. But, MUMUSO Vietnam does not carry out its obligation for franchise registration attached to MUMUSO.KR trademark.

In Vietnam, operations in the form of franchising are governed by Decree detailing and guiding some articles of Law on Commerce about Conditions for Franchising.⁶⁶ Pursuant to Decree No. 08/2018/ND-CP, the provisions on franchising, notably including franchise registration requirements, still remain as in Decree No. 35/2006/ND-CP⁶⁷. The Ministry of Industry and Trade generally interprets these amendments to be easing business conditions for franchisees, but not for franchisors.⁶⁸ In other words, foreign franchisors still need to register with the Ministry of Industry and Trade before conducting franchising activities in Vietnam. However, MUMUSO Vietnam does not fulfill its obligation for franchise registration. Under the Article 24.1.d of Decree No. 35/2006/ND-CP, MUMUSO Vietnam will be imposed administrative sanctions.⁶⁹

Moreover, according to the website of National Business Registration System (NBRS),⁷⁰ MUMUSO Vietnam has obtained the Business Registration Certificate on October 25, 2016 and registered its location of head office but not registered the other its stores.⁷¹ Upon the Law on Enterprise and the other Franchise regulations, MUMUSO Vietnam will be punished under Vietnamese legislation.

66) Decree No. 35/2006/ND-CP, Mar. 31, 2006, *amended by* Decree No. 08/2018/ND-CP, Jan. 15, 2018 (Viet.).

67) Decree No. 35/2006/ND/CP, Mar. 31, 2006 (Viet.).

68) *Id.*

69) *Id.* art. 24(1)(d).

70) NAT'L BUS. REGISTRATION SYS., <https://dichvuthongtin.dkdd.gov.vn/inf/Forms/Searches/EnterpriseInfo.aspx?h=1fb6> (last visited July 14, 2018).

71) Hieu Cong, *Mumuso Ho Chi Minh City Fined over 322 Million, and Banned thousands of Products*, ZING.VN (July 18, 2018), <https://news.zing.vn/mumuso-tung-bi-tphcm-phat-hon-322-trieu-dong-huy-hang-nghin-san-pham-post861339.html>.

c. The Use of Misleading Trademark on Consumers

MUMUSO Vietnam is alleged to have violated regulations on provision of insufficient, misleading, inaccurate information to consumers.⁷² Through information and materials available to consumers, the company used numerous contents implicating its affiliation with Korean origin. However, the company could not provide evidence and materials to sustain the accuracy of information provided, particularly information on origin, production technology. The inspection process showed the company's public presentation of advertisement content: 'MUMUSO: Price from 22,000 VND; KOREA' at business stores; the use of KOREA on bags for customers inaccurately misleads customers' knowledge to believe that the store, producers, place of production and product origin has relevance to KOREA. According to the Article 8 of Law on Advertising⁷³ and the Article 3.4 of Law on Protection of Consumer's rights MUMUSO Vietnam is alleged to violate regulations on competition (misleading advertisement on product origin for unhealthy competition).⁷⁴

It also is alleged to violate regulations on labels in accordance with the Article 8 and Article 16 of Decree on label.⁷⁵ The inspection final report found: A number of goods has foreign language stamp and Vietnamese stamp with contents not in accordance with statement and imported files.⁷⁶ Decree No. 43/2017/ND-CP deals with information on label, presentation thereof, and state management of label circulated in Vietnam and imported goods.⁷⁷ It also contains provisions to protect consumers' interests against smuggled and counterfeit goods; mandatory information to be shown on trademark by nature of goods: Cosmetics; children's toys; textile, garment, leather and footwear products; porcelain, ceramic and glass products; diapers, sanitary napkins, facial masks, cotton removers, cotton buds, toilet paper. Under the Article 15.1 of Decree No. 43/2017/ND-CP, manufacturers and importers shall self-identify and label the origin of goods truthfully, accurately, and consistently with law on origin of goods or agreements to which Vietnam has acceded or signed.⁷⁸ Furthermore,

72) Dep't of Competition & Consumer Prot., *supra* note 49.

73) Law No. 16/2012/QH13, June 21, 2012, art. 8 (Viet.).

74) Law No. 59/2010/QH12, May 30, 2011, art. 3-4 (Viet.).

75) Decree No. 43/2017/ND-CP, Apr. 14, 2017 (Viet.).

76) Dep't of Competition & Consumer Prot., *supra* note 49.

77) Decree No. 43/2017/ND-CP, Apr. 14, 2017 (Viet.).

78) *Id.* art. 15(1).

all imported goods, including MUMUSO goods, have to be labeled in Vietnamese, including the name of the importer, the product, instruction manuals, and ingredients.⁷⁹ By information of state authority, Market Surveillance Department, some MUMUSO goods are lack of Vietnamese-language labels and instructions, infringing upon Vietnamese regulations.⁸⁰

In accordance with Article 14.1(b) of Decree on Sanctioning of Administrative Violations in Industrial Property, administrative sanctions upon the unfair competition in the domain of industrial property are as follows⁸¹: A warning or fine of between 500,000 and 250,000,000 VND (equivalent of 25,000 - 12,500,000 KRW) for act affixing trade indications on goods, thereby misleading as to business entities or activities, trade origin of goods in case where infringing goods are valued from up 3,000,000 VND (equivalent 150,000 KRW); selling goods affixed with trade indications, thereby misleading as to business entities or activities, trade origin of goods or origin; additional sanctions as suspension of trading in infringing goods for between 01 and 03 months; and remedial measures as forcible removal or forcible destruction of infringing elements, forcible destruction of infringing goods from which infringing elements cannot be removed.⁸²

Under Decree No. 124/2015/ND-CP dated November 19, 2015 of the Government on amending and supplementing a number of Articles of Decree No. 185/2013/ND-CP regulating penalties for administrative violations in commercial activities, production and trading in counterfeit and banned goods, and protection of consumer rights (Article 21.1(c); 21.12(e); 21.14; 21.15), violation in trading goods which have unidentified origins or sources and other violations should be imposed following sanctions⁸³: A warning or a fine of between 200,000 and 400,000 VND (equivalent 10,000 - 20,000 KRW) for one of following violation shall be imposed in cases the violated goods valued less than 1,000,000 VND (equivalent 50,000 KRW) : Trading goods which have unidentified origins or sources; by Article 21.12 - A fine of between 30,000,000 and 40,000,000 VND (equivalent of 15,000 - 20,000 KRW) for violation specified above in case of the violated goods valued 100,000,000 VND (equivalent 5,000,000 KRW) and above; by Article 21.14 - Additional

79) *Id.* art. 7.

80) *Business in brief* 27/6, VIETNAM NET (June 27, 2018), <http://m.english.vietnamnet.vn/fms/business/203112/business-in-brief-27-6.html>.

81) Decree No. 99/2013/ND-Cp, Aug. 29, 2013, art. 14(1)(b)(Viet.).

82) *Id.*

83) Decree No. 124/2015/ND-CP, Nov. 19, 2015 (Viet.).

penalties: a) To confiscate material evidence for acts of violations specified in this Article; b) To confiscate means being tools, machines and other articles used for conducting acts of administrative violations, for acts of violations specified in this Article; by Article 21.15 - Remedial measures: a) Forging the destruction of violated goods, for violated acts specified in this Article; b) Forcing the destruction of violated goods which are being circulated in the market, for acts of violations specified in this Article; c) Forcing the submission of illegal benefits which were gained from conducting violated acts specified in this Article. MUMUSO Vietnam stores has revenue of over 30 billion VND per month⁸⁴, therefore, it will be imposed serious sanctions in accordance with these Decrees.

In accordance with the Law on Protection of Consumer's rights⁸⁵, the consumer's right concerns MUMUSO.KR mark as follows: To be provided with accurate and adequate information on goods; goods origin (Article 8.2). Besides the omission, MUMUSO Vietnam violates the Article 10.1(a) of the Law on Protection of Consumer's rights when committing prohibited act: making of deceitful or misleading advertisements or concealment of information or provision of incomplete, untruthful or inaccurate information on the goods⁸⁶; and violates the Article 8.3 of the Law on Product and Goods Quality when committing prohibited act: Importing, selling goods of unclear origin⁸⁷.

MUMUSO Vietnam also violates its obligations under the Law on Enterprises (Article 8.5 and Article 8.9): To ensure and be responsible for the quality of goods or services in accordance with legally established standards or registered or announced standards; to perform the business ethic duty to ensure lawful rights and interests of customers and consumers.⁸⁸

The sanctions imposed on the misleading information on MUMUSO goods origin are in accordance with Vietnam's related laws and decrees.

d. Other violations of laws

MUMUSO Vietnam failed to comply with statement procedure to state authorities for product promotion on several promotion programs.⁸⁹ It is alleged

84) MUMUSO, *supra* note 48.

85) Law No. 59/2010/QH12, May 30, 2011, art. 8(2) (Viet.).

86) *Id.* art. 10(1)(a).

87) Law No. 05/2007/QH12, Nov. 21, 2007, art. 8(3) (Viet.).

88) Law No. 68/2014/QH13, Nov. 26, 2014, art. 8(5), 8(9) (Viet.).

89) *Violations Found at Mumuso Viet Nam: MoIT*, *supra* note 71.

to violate regulations on product information: The inspection group found two types of cosmetic products contained components on the label not in line with those in statement file. The inspection group requested the company to recall entirely said 2 types of cosmetics to be handled by state authorities. It is alleged to violate e-commerce regulations where it did not provide the exact information relating to website with responsibility of informing the Ministry of Industry and Trade. MUMUSO Vietnam is alleged to violate other commercial regulations. Given the finding, the Minister of Industry and Trade Ministry instructed authorities to consider and handle in their power such alleged violations. Upon Vietnamese laws, all administrative violations shall be punished, In case where the infringement is serious, criminal actions may be possible.⁹⁰

Pursuant to Criminal Code No. 100/2015/QH13 (Article 198.1 Deceiving customers), “any person that fraudulently measures goods or services or commits other fraudulent acts while buying or selling goods/services in any of the following cases shall receive a warning, be liable to a fine of from VND 10,000,000 to VND 100,000,000 (equivalent of 500,000 - 5,000,000 KRW), or face a penalty of up to 03 years' community sentence: a) The offender previously incurred a civil penalty for the same offence or has a previous conviction for the same offence which has not been expunged; b) The illegal profit reaped is from VND 5,000,000 to under VND 50,000,000 (equivalent of 25,000 to under 250,000 KRW)”.⁹¹ This offence committed in any of the following cases shall carry a fine of from VND 100,000,000 to VND 500,000,000 (5,000,000 to 25,000,000 KRW) or a penalty of 01 - 05 years' imprisonment: a) The offence is committed by an organized group; b) The offence is committed in a professional manner; c) The offence involves the use of deceitful methods; d) The illegal profit earned is VND 50,000,000 or over (equivalent of 2,500,000 KRW or over); Article 198.3: the offender might also be liable to a fine of from VND 20,000,000 to VND 100,000,000, (1,000,000 to 5,000,000 KRW) be prohibited from holding certain positions or doing certain works for 1 - 5 years.⁹²

90) BUI TIEN DAT, LAWS ON HANDLING ADMINISTRATIVE VIOLATIONS: THEORY AND PRACTICE 12 (2008).

91) Criminal Code No. 100/2015/QH13, Nov. 27, 2015, art. 198 (Viet.).

92) *Id.*

III. Handling Measures and Responsibilities for Consumer Right Protection

A. Handling Measures

1. Handling Measures concerning MUMUSO.KR Mark

If MUMUSO Vietnam meets the registration requirement of franchising, MUMUSO.KR chain stores will be under legal protection in Vietnam. Hence, apart from remedying said violations by MUMUSO Vietnam, given the laws on intellectual property and franchising, after completing franchising registration procedure, MUMUSO.KR trademark can still be used because it has value in Vietnam. Upon the MUMUSO.KR mark in combination with the other Korean indications, possibility for misleading product origin is still in the air. There are 2 options to avoid misleading Vietnamese consumers about source and origin of goods attached the mark MUMUSO.KR: (1) Withdrawal of the Korean indications of MUMUSO goods origin; (2) Revocation of the registered trademark is liable to mislead the public.

Withdrawal of the Korean indications of MUMUSO goods origin

According to the Article 130 of IP Law, the using Korean indications of MUMUSO goods origin shall be regarded as acts of unfair competition. These acts could be punished under Law on Competition, Law on Handling Administrative Violations⁹³. The detailed punishments are as below (Handling Violations of Vietnamese Consumers' Rights).

Revocation of the registered trademark is liable to mislead the public

There are two types of procedures that come under the cancellation proceedings: Trademark can be revoked and declared invalid. These procedures are the legal procedures that allow anyone to try and remove a trademark from the trademark register. However, the difference is that revocation applies as

93) Do Minh Thuy, *Some issues on the IP enforcement and IP dispute settlement in Vietnam*, J. SCI. & TECH., no 2, 2017.

from the date of the request, whereas a declaration of invalidity removes the registration from the Register of trademarks with retroactive effect.⁹⁴

Concerning MUMUSOKR mark, the issue can only be resolved if the “MUMUSO.KR” with insignia “.KR” to be removed from the registered trademark.

First, MUMUSOKR trademark could be removed from the registered trademark based on the ground of ineligible for trademark registration (Article 34.2 Korean Trademark Act).⁹⁵

Second, in accordance with the Article 119.1.9(d) of the Korean Trademark Act⁹⁶, a trial to revoke the trademark registration may be requested where the MUMUSO.KR Co. Ltd., holder of the MUMUSOKR mark right, fails to make appropriate measures though it is aware (Conclusion of Vietnam Inspector Group Decision 189/QD - BCT) that MUMUSO Vietnam fails to obtain permission to use the certification mark causes confusion concerning the MUMUSO goods origin.⁹⁷

Third, the owner of this trademark does not carry out any business activities in Korea, thus the unused trademark can be canceled based non used mark at request according to Korea’s Trademark Act (Article 117.1.3).⁹⁸ The cancellation can be requested by anyone after 3 years of trademark used discontinuously.⁹⁹ The change of regulations on trademark cancellation for being unused has paved the way for the cancellation. Therefore, any person who has products can be confused with MUMUSO.KR’s products can make a request for trademark revocation on the non-used ground.

MUMUSO.KR trademark is designed in Vietnam as International application according to Madrid Agreement on International Trademark Registration, thus the trademark only is independent with Korean origin after 5 years since the date of application (Article 6.2 Madrid Protocol).¹⁰⁰ It could be canceled upon

94) *Invalidity and revocation (cancellation)*, OHIM, <https://euipo.europa.eu/ohimportal/invalidity-and-revocation> (last updated July 18, 2018).

95) Sangpyobeop [Trademark Act], Act No. 71, Nov. 28, 1949, *amended by* Act. No. 11113, Dec. 3, 2011, art. 34 (S. Kor.).

96) Sangpyobeop [Trademark Act], Act No. 71, Nov. 28, 1949, *amended by* Act. No. 14033, Feb. 29, 2016, art. 119 (S. Kor.).

97) *Id.*

98) Sangpyobeop [Trademark Act], Act No. 71, Nov. 28, 1949, *amended by* Act. No. 14033, Feb. 29, 2016, art. 117(1)(3) (S. Kor.).

99) *Id.*

100) *Madrid Protocol*, *supra* note 2.

the cancelation of the basic Korean Mark. Upon Vietnam IP law, there are not any grounds to revoke and declare MUMUSOKR mark invalid.

2. Handling Violations of Vietnamese Consumers' Rights

Under the Law on Protection of Consumers' Rights, Commercial Law, Decree 43/2017/ND-CP dated 14 April 2017 by the Government on goods label, product origin is one of required contents on product label.¹⁰¹ Organization and individual producing, importing merchandise shall be responsible for identifying and labeling product origin, and ensure accurateness, truthfulness, and abide by other regulations on product origin. The trader violates consumers' right to be provided accurate information on product origin. If there is such a violation, trader may be fined as aforementioned, depending on goods value. If serious consequences are caused, perpetrator can be imprisoned under the Criminal Code.

According to Vietnam's laws, the provision of inaccurate information on product origin is an act of deception to consumers through advertisement or cover-up activities is forbidden. Counterfeit, change of origin goods in the market will be handled for conduct of sale of counterfeit goods in according with the Decree 185/2013/ND-CP of the Government on distinctions for identification of counterfeit goods, counterfeit goods are those labeled with fake indication of origin, place of manufacture, package, assembly.¹⁰²

According to Vietnam's current laws, product origin is provided under Decree No. 31/2018/ND-CP of March 08, 2018 on guidance for Law on Foreign Trade Management regarding product origin, the Circular No. 38/2006/TT-BTC dated April 20, 2018 of Ministry of Finance provides the identification of origin of imported, exported goods and the other concerning by-laws, general principle to identify product origin is provided as: Goods origin is a country, group of countries or territory where the goods had been produced of final stage of manufacture is performed so as to change the basic of the product (Article 3.1 of the Decree No. 31/2018/ND-CP).¹⁰³ Therefore, goods imported from China cannot satisfy Korean origin standard.

Article 8 of the Law on Protection of Consumers' rights provides compensation

101) Decree No. 43/2017/ND-CP, Apr. 14, 2017 (Viet.).

102) Decree No. 185/2013/ND-CP, Nov. 15, 2013 (Viet.).

103) Decree No. 31/2018/ND-CP, Mar. 8, 2018 (Viet.).

in case goods or service does not meet the technical standard and norms, quality, quantity, function, use, price and other contents declared, listed, advertised, or as committed by business organizations, individuals.¹⁰⁴ In addition, consumers can take steps to complain, denounce, bring a lawsuit, or request social organizations to initiate a lawsuit to protect their rights and interests in accordance with the law and other regulations. If sign of violation on commercial fraud is found, administrative authorities can transfer the investigation file and file for criminal action.¹⁰⁵

Given regulations under Decree 43/2017/ND-CP of the Government on labeling products, product origin is one of mandatory requirements on the label.¹⁰⁶ Specifically, organizations, individuals manufacturing, importing can by themselves identify and label product origin, but they shall ensure truthfulness, accurateness, and abide by relevant regulations.¹⁰⁷

Under the Law on Protection of Consumers' Rights, consumers should be provided accurate information on product origin.¹⁰⁸ On the conduct of producing, selling counterfeit label goods, fine is imposed with possibility of additional punishment or application of remedy measures in accordance with the Vietnamese legislation.¹⁰⁹

Punishment was imposed for the MUMUSO Vietnam's infringement. Under the Vietnam Decree on Sanctioning of Administrative Violations in Industrial Property (Decree No. 99/2013/ND-CP) and Law on handling Administrative Violations, the acts of unfair competition should be punished and authorities clamped down on MUMUSO stores as Thailand.¹¹⁰ Given the information from the Korea Trade-Investment Promotion Agency, Thai police have seized more than 1,300 fake Korean products from across Thailand. Thai police recently clamped down on seven MUMUSO stores.¹¹¹

104) Law No. 59/2010/QH12, May 30, 2011, art. 8 (Viet.).

105) *Id.* art 8(7).

106) Decree No. 43/2017/ND-CP, Apr. 14, 2017, art. 8 (Viet.).

107) *Id.* art. 8(4).

108) *Id.* art. 8.

109) Law No. 59/2010/QH12, May 30, 2011 (Viet.).

110) *Id.*

111) Min-ho Jung, *Thai Police Crack Down on Fake Korean Brand*, THE KOREA TIMES (Sept. 3, 2018), https://www.koreatimes.co.kr/www/nation/2018/09/120_254944.html.

B. Responsibilities for consumer right protection

Beside the Judicial system, the other responsibilities for consumers' rights protection are included:

1. IP Responsibilities for infringing acts

Under Article 15 Decree 99/2013/ND-CP and IP Law, sanctioning competence includes: (1). Scientific and technological inspectorates are competent to handle violations of industrial property; (2). Market management offices are competent to handle the following violations: In trading goods at domestic market; (3). Customs offices are competent to handle violations import - export goods; (5). Police agencies are competent to detect, verify, collect information and evidence of acts infringing industrial property rights and provide them to agencies handling violations.¹¹² The provincial and district-level People's Committees are competent to handle violations in industrial property committed in their respective localities on the principle of determination and apportionment of competence sanctioning administrative violations.

2. Bodies system for protection of consumers

a. Central bodies

Pursuant to Article 34 of Decree 99/2011/ND-CP dated 27/10/2011 guiding and detailing some articles of Law on the Protection of Consumers' Rights, protection of consumers' rights and interests is carried out throughout from central to local levels in which central bodies, especially Ministry of Industry and Trade, with different mandates and functions, shall undertake important role in instructing other agencies.¹¹³

The Ministry is directly responsible for the protection of consumers' rights and interests. Additionally, Vietnam Competition Authority shall assist the Minister of Ministry of Industry and Trade in state management of the protection of consumers' rights and interests. The Authority has mandates to

¹¹²) Decree No. 99/2013/ND-CP, Aug. 29, 2013, art. 15 (Viet.).

¹¹³) Decree No. 99/2011/ND-CP, Oct. 27, 2011, art. 34 (Viet.).

formulate legal documents on the protection of consumers' rights and interests, organize for implementation thereof after they take legal effect, handle complaints and denunciations within power.

Besides, there is another important agency relating to the management of protection of consumers, that is Market Surveillance Agency with mandates to conduct market inspection, oversight, fight against smuggling, counterfeit, low-quality products, handle administrative violations on consumption.

b. Local level

Pursuant to Article 35 of Decree 99/2011/ND-CP dated 27/10/2011 guiding and detailing some articles of Law on the Protection of Consumers' Rights, Provincial level People's Committee shall be responsible for state management on the protection of consumers' rights and interests at local level.¹¹⁴ Department of Industry and Trade shall assist Provincial People's Committee Chairman in the implementation of state management on the protection of consumers' rights and interests within the boundary.¹¹⁵

Commune level People's Committee shall answer to higher People's Committee regarding state management on the protection of consumers' rights and interests within the commune.

Consumer Protection Division is subject to Vietnam Competition Authority and assists the Director in implementation of state management on the protection of consumers' rights and interests.

Article 35 of Decree 99/2011/ND-CP also provides the details on responsibility of state authorities regarding the protection of consumers' rights and interests at local level.¹¹⁶

Protection of consumers' rights and interests is common responsibility of the state, society, enterprises and consumers. Although state authorities have important and overarching role in consumer protection, there is a need to include all relevant stakeholders to take proactive and concrete actions in order to safeguard effectively and speedily consumers' rights and interests.

114) *Id.* art. 35.

115) *Id.*

116) *Id.*

c. Social organizations for consumers' rights protection

Pursuant to the Law on the Protection of Consumers' Rights, social organizations also engage in consumer right protection.¹¹⁷ A social organization may protect consumer rights through many forms and performance of tasks assigned by state agencies (Article 27 to 29).¹¹⁸

IV. Conclusion

Trademark is an indispensable guide for consumers and a means for companies to build a reputation and an image in the marketplace. In the case MUMUSO.KR, it was used to infringe upon the reputation of Korean goods when it was been attached on the China - made goods. It also causes confuse to the consumers as misleading mark labeled on the Chinese goods. Its acts have been sanctioned by the Vietnamese legislation. But, to avoid the misleading indication of these goods origin, this mark should be revoked or invalidated under the law.

117) Law No. 59/2010/QH12, May 30, 2011, art. 3-4 (Viet.).

118) *Id.* art. 27-29.

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