



Please rest assured that Taiwan IPO and our firm have been maintaining normal operation as the coronavirus pandemic spreads throughout the world.

When faced with the severe global health crisis triggered by the pandemic, please take good care of your health and stay healthy.

TIPLO News

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This news mail distributed in Japanese and English from time to time provides updates on the development of law in Taiwan with focus on intellectual property rights law. For more information about the status of intellectual property right protection and practice in Taiwan, please visit our website www.tiplo.com.tw

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- 01 Draft amendments to Copyright Act and Trademark Act approved for a bid for access to CPTPP**

For Taiwan's bid to join the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) trade pack, Taiwan IPO has spotted and examined the differences between Taiwan's relevant regulations and the Trans-Pacific Partnership agreement (TPP, CPTPP's original version) since 2016, and therefore proposed the draft amendments to the Copyright Act and Trademark Act of Taiwan. As the review of the proposed amendments were not finished by the Legislative Yuan during the 9th term, the proposed amendments were submitted to the Executive Yuan in 2020 again and approved thereby in the 3787th meeting on January 20, 2022 and will be submitted to the Legislative Yuan for deliberation.

Highlights of the proposed amendment to the Copyright Act are as follows:

1. For reinforcing protection to copyright holders, acts of digital piracy, illegal distribution, and illegal public transmission that cause severe infringement will be considered the offense actionable (indictable) without complaint, and "infringement upon works provided with consideration", "reproduction in original form (100% reproduction)", and "infringement causing right holder's damages of at least TWD1

million” are listed as the three conditions for determining and establishing the occurrence of serious infringement (amended Article 100).

2. In view of the facts that optical discs no longer serve as a significant form of infringement and pirated optical discs are included in the scope of digital piracy defined in the amended Article 100, the aggravated penalties for the indictable offenses of reproduction and distribution of pirated optical discs and the corresponding provisions stipulating confiscation by the court and confiscation by administrative agency under the current Copyright Act are repealed accordingly, and the penalties applicable to general offenses of illegal reproduction and distribution shall govern under the amendment (3rd paragraph of Article 91, 3rd paragraph of Article 91-1, Article 98, and Article 98-1 deleted).

Highlights of the proposed amendment to the Trademark Act are as follows:

1. According to the current Trademark Act, an infringer will be held civilly liable for infringement by counterfeiting labels when the infringer is found to commit infringement “knowingly”, which forms the subjective condition and requirement for sustaining the occurrence of infringement. Under the amendment, such a subjective condition is removed, and the infringer’s “intention” or “negligence” will be the subjective conditions for sustaining the infringer’s general civil liability for damages for trademark infringement. (Amended Article 68)

2. Criminal penalties are added to be applied in cases involving offenses of importation of counterfeiting labels or packaging to which a registered trademark or collective trademark is applied without authorization, and criminal penalties will also apply to preparatory and contributory acts of infringement. Such an amendment will be able to boost trademark holders’ sales and profits and also enhance trademark protection. (Amended Article 95)

3. The current subjective condition for sustaining infringement, that is, the infringement being committed “knowingly”, is repealed with respect to the punishable offense of counterfeiting labels to which a sign similar or identical to another’s registered certification mark is applied and the offense of selling or having the intent to sell (or to possess) the infringing goods made by any other person. Under the amendment, such a subjective condition is removed, and the infringer’s “intention” will be the subjective condition for sustaining the infringer’s criminal penalties, which will also apply to indirectly intentional acts that are foreseeable to cause infringement (Amended Article 96 and 97). (Released 2022.01.20)

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02 UMC handed TWD20 million for trade secrets theft lawsuit launched by Micron

For the case Micron Technology Inc. (hereinafter referred to as “Micron”) brought against Taiwan-based United Microelectronics Corp (hereinafter referred to as “UMC”) for trade secret misappropriation, Taiwan Intellectual Property and Commercial Court (hereinafter referred to as the “IPC Court”) adjudicated on January 27, 2022 that the lower court’s judgment on this case should be vacated. According to the IPC Court judgment, defendant, RONG Le-Tien was found not guilty, while defendant HO Chien-Ting and defendant WANG Yung-Ming were sentenced to one-year imprisonment and in addition thereto a fine of TWD1 million and six-month imprisonment and in addition thereto a fine of TWD1 million, respectively, and both of Ho and Wang were respectively granted a probation of 4 years and 2 years each.

UMC was ordered to pay TWD20 million subject to a two year probationary period.

The IPC Court's press release on this case is summarized below.

As an important and international technology company, it is a matter of course that Micron Technology Inc. has been investing much manpower and resources in R&D and also has been concluding employment agreements and non-disclosure and intellectual property rights agreement with employees. Moreover, Micron must have been reiterating in job training the importance of employees' obligation of trade secrets protection so as to decrease and prevent leak of significant R&D assets as a result of employee's negligence that would affect the company's competitiveness. In view of the foregoing, the IPC Court believed that defendant Ho and Wang must have signed the non-disclosure and intellectual property rights agreement with Micron, and in this regard, they were supposed to be aware of Micron's rules and regulations about trade secrets protection. Contrary to their confidentiality obligations, Ho reproduced and used Micron's trade secrets that were supposed to be deleted and destroyed, and Wang did the same without authorization and further disclosed the design rule parameters of DR25nmS to Rong, the executive at UMC; such a leak has tremendously jeopardized Micron's rights and interests and constituted the primary act that has been prohibited by the Trade Secrets Act since 2013. Judging from Ho's and Wang's post-offense attitude and their criminal motives, purposes, and means of crime, the IPC Court imposed the aforesaid sentences and fines on the defendants.

During the trial proceedings of this case, UMC had reached a settlement with Micron, and Micron also dropped the lawsuit against the defendants with respect to the alleged offenses actionable with complaint and held no opinions on the lenient sentence on the defendants with respect to their offenses actionable without complaint. In addition, as Ho and Wang have never received jail sentence (which can be substantiated by the Taiwan High Court's records), the prosecutor agreed to the probation granted to the defendants who have pleaded guilty; also, UMC has sought to make amends as well. From the probe and trial and the sentencing, the defendants should learn their lesson and this Court sees no likelihood of recommitment, and hence, probation granted to them should be appropriate. This Court thus adjudicated as above with a view to bringing the defendants' edification and self-correction. Furthermore, in order to keep the defendants vigilant and learn their lessons and also to prevent their recommitment during the probationary period, the IPC Court advised pursuant to the 5th subparagraph, 2nd paragraph of Article 74 of the Criminal Code that Ho and Wang each should do community service for a designated government department, government institution, administrative entity, other public welfare organizations or groups for 200 hours and 100 hours, respectively. (Released 2022.01.28)

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03 Taiwan and Vietnam sign MOU on trade and economic cooperation

On January 5, 2022, representative of the Taipei Economic and Cultural Office in Vietnam and representative of the Vietnam Economic and Cultural Office in Taipei inked a memorandum of understanding on trade promotion and cooperation to boost communication of trade delegations and collaboration of business matching and further to build intensive trade and economic relation.

According to statistics, Taiwan is Vietnam's 4th largest source of imports, while Vietnam is Taiwan's 7th market of export, which reveals that Taiwan and Vietnam are intensely related to each other in economy and trade. Moreover, Taiwan and

Vietnam's total trade in the period from January through November 2021 had been growing against the COVID-19 pandemic to reach USD18.1 billion, hitting a record high and seeing a year-on-year rise of 26%. During that period, Taiwan experienced 34% increase in exports to Vietnam in an amount of USD12.5 billion and also 10% growth in imports from Vietnam in an amount of USD5.6 billion.

Taiwan has been exporting to Vietnam such products as integrated circuit, optical lens, printed circuit, processors and controllers, and memory, etc., while Vietnam has been exporting to Taiwan the products including cell phones, computers and electronic products, ready-made garments, mechanical appliances, and shoes. The trade between Taiwan and Vietnam reflects that the two countries' cooperation is based on their complementary and mutually beneficial investments and supply chains. For the time being, there are around 4,000 Taiwanese companies in Vietnam and 80% of them are in the manufacturing sector, which mainly import mechanical equipment, raw materials, and components and parts from Taiwan. Moreover, the electronics industry of Taiwan has invested heavily in Vietnam to also drive up exports of relevant electronic components to Vietnam for assembly and production.

After execution of this MOU, both countries will base their future cooperation on the existing basis to hold trade exhibitions and promote their respective high quality products (Taiwan Excellence and Vietnam Value) and to enhance business matching through exchanges of market information and communication of trade delegations. In the meantime, both countries will begin personnel training so as to push forward trade cooperation and market development and also to equalize the bilateral balance of payments and boost the visibility of Vietnam's agricultural and industrial products in Taiwan market. (Released 2022.01.05)

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