**TRADEMARKS TOKEN USE AND SPECULATION PHENOMENON**

If the range of volatility in the stock market, bond, currency, art, collectibles, real estate, etc. has created the term “speculation” to describe financial transaction risks in an attempt to profit from short-term fluctuations in market value, in the context of increasingly fierce competition in the market today and on the economic dimension, a trademark has become a “passport” for goods and services to easily enter the market, the term “trademarks speculation” began to take shape and quickly became an ever more popular phenomenon.

From 2011 to 2019, the National Office of Intellectual Property of Vietnam (“NOIP”) handled 278,144 applications for registration of industrial property rights for trademarks with Vietnamese owners (accounting for 92.9% of the total number of applications registrations of industrial property rights). In addition, according to the NOIP’s statistics, in 2020, the number of trademarks registration applications (including national and international trademarks) completed for substantive examination increased by 9.7% over the same period last year, in which the number of protection titles granted increased by 16.2%. The above data show that the number of trademarks applications is enormous and increasing year by year. However, in actual, although there has not been a statistical report or an official investigation to determine the using status’s registered trademarks in Vietnam, however, our view shows that not all registered trademarks are being used in practice, there is still the situation of many re-registered trademarks never appeared or not yet put into use on the market. This proves that the registered trademarks are being used in the true sense of “use” according to the law, accounting for only a low percentage, instead, it is the token use to speculate on the trademarks for many different purposes although the possibility of making a profit may not be clear.

1. **“Trademarks use” or actual trademarks use.**

The concept of “trademarks use” as defined in Article 124.5 of the Intellectual Property Law (“IP Law”), accordingly, the owner or the person who is legitimate use of the trademarks to *(i) affix the protected trademarks on goods, goods packages, business facilities, services facilities, transaction documents in business activities; (ii) circulate, offer for sale, advertise for sale, store for sale the goods bearing the protected trademarks; and (iii) import of goods or services bearing the protected trademarks*.

Besides, to compel owners to put registered trademarks to use for protection purposes and remove unused trademarks to facilitate the entry of new businesses into the market. The Article 95.1.[d] of IP Law provides that a trademarks protection title is terminated if *the trademarks has not been used by the owner or person authorized by the owner for five consecutive years before the date of the request for termination without a good reason, unless the use is commenced or restarts at least three months before the date of the request for termination*. Thus, if a registered trademarks is not used in practice within five consecutive years, it is quite possible to be required to be terminated by any other third party who has applied for termination.

Thus, with the provisions on the principle of trademark use or how to remove the rejected trademarks, it still does not reduce the fact that the protected trademark is only a Certificate and is listed in the national register, becoming a “collection of marks” without appearing on the market. The main issue hereto is the concept of "trademarks use" failed entirely obligatory to understand the genuine use of the trademarks or use in commerce, failed to create a trademark management mechanism, and put it into actual use in the market.

1. **From token use to trademarks speculation**

When the principle of use is not strictly binding, the phenomenon of “trademarks speculation” occurs as an inevitable trend, the act of trademarks token use and speculation the above-mentioned with the ultimate purpose of selling these trademarks to subjects have trademarks but have not yet registered them or subjects are prepared to join the market.

With the first to file principle as prescribed in Article 90.2 of the IP Law, accordingly, for an identical or similar mark used for the same goods/services, the subject who files the earliest protection application will be granted a protection titles without requiring proof of use or intent to use it at the time of filing (or even renewal). And when becoming the owner of a protected mark and being granted a Trademarks Ownership Certificate, the owner has the right to prevent others from using the protected trademarks. Therefore, many people have filed for trademarks protection for domestic and foreign goods/services that prepare to enjoy the Vietnamese market or have been present in the market but have not yet protection registered. Then, by using fake trademarks as mentioned above, these subjects have a series of protected trademarks, they just need to wait for the real owners to come and negotiate a “reasonable price” for the trademarks acquisition.

1. **Conclusion**

Trademarks speculation will persist until trademark token use continues. And the condition for this continuation is because the legal regulations do not have a mechanism to handle issues related to the actual use requirements, the scale or limit of use of the mark in the production, trade or proof of use or intent to use (including renewal). To resolve this issue, the competent authority may consider including the concept of "trademarks token use" as a violation to clarify the “actual trademarks use” more clearly. At the same time, create a mechanism for self-evidencing the ability to use the trademark of the actual owner/user for the trademarks in the process of the new registration or to explain the cause and possibility of continued use when renewals for trademarks deprecate for a certain period. It can help cancel the registry and create healthy competition for businesses.