

Chinese Character Trademarks: Still Protected or Outdated?

This question is attracting the attention of many businesses and individuals using trademarks containing Chinese characters in Vietnam. Before 2005, trademarks consisting solely of Chinese characters were considered inherently distinctive and were granted protection if they met the required standards and conditions. The protection of trademarks containing only Chinese characters was in accordance with the provisions of the Industrial Property (IP) law in effect from 1982 to 2005.

However, the 2005 Intellectual Property Law, amended in 2009, 2019, and 2022 ("**IP Law 2005**"), has made significant changes, leading to much debate as to whether Chinese character trademarks are still protected in Vietnam.

Changes from the 2005 IP Law

After the [2005 IP Law](#) was promulgated and took effect, trademarks containing only Chinese characters were no longer protected as trademarks. This has caused many difficulties for businesses that had previously registered and used Chinese character trademarks.

Dispute over trademark containing Chinese characters

Some applicants, when registering a combined trademark containing a distinguishing element and Chinese characters, believe that since Vietnam's current IP Law no longer protects Chinese characters separately, the trademark applied for registration needs to coexist with the previously protected Chinese character trademarks under the pre-2005 IP Law. The IP Office of Vietnam's refusal to protect these trademarks is based on the reasoning that the Chinese characters in the applied trademark are identical or similar to those in the previously protected trademarks, which is not entirely reasonable.

However, this viewpoint has faced many objections. Critics argue that accepting protection for a registered trademark containing Chinese characters identical or similar to a previously protected Chinese character trademark may lead to a [violation of the intellectual property rights](#) of the owners of those trademarks, while also causing confusion for consumers.

Perspectives on the protection of Chinese character trademarks

KENFOX IP & Law Office provides some comments on the above issue as follows:

From the perspective of IP law, unless terminated or invalidated, a trademark that has been granted a protection title is still fully protected and enforced according to Vietnamese law.

Laws in any country are subject to change over time to suit practices or other perspectives that lawmakers consider. However, the core values of the law, including the protection of intellectual property rights, are always respected. For trademarks that were validly registered before the 2005 Intellectual Property Law took effect, the trademark owner's intellectual property rights remain protected, regardless of any changes in protection conditions under current law.

In addition, another important point that trademark applicants need to note is that, according to the transitional clause in the 2005 Intellectual Property Law: "*On grounds for invalidating protection titles, only the provisions of legal documents in effect at the time of granting the protection title apply*". This transitional provision is especially important in the context of trademarks "containing only Chinese characters" that were protected before the 2005 IP Law. Accordingly:

- Trademarks containing Chinese characters registered before the effective date of the 2005 IP Law are still considered valuable and protected, even if they no longer fully meet the protection conditions under current regulations.
- Trademarks containing Chinese characters that were granted protection titles before 2005 still retain their legal value and protected rights unless those titles have been invalidated according to the legal provisions in effect at the time of granting.
- The trademark owner still enjoys full rights, including the rights to use, authorize the use of, transfer, and prohibit infringement of the trademark.

To clarify, although [the protection conditions](#) may have changed after the 2005 IP Law took effect, trademarks containing Chinese characters that were registered and met the protection conditions at that time will continue to be protected. This means that the trademark owner still enjoys full intellectual property rights according to the law in effect at the time the rights to the trademark were established.

Accepting protection for an applied-for trademark containing “Chinese characters” that is identical or similar to a “Chinese characters” trademark protected before the 2005 IP Law took effect will deprive the current trademark owner of their legal rights. This not only reduces the value of intellectual property but also contradicts the basic principles of IP law, turning a valuable asset into something worthless. This causes injustice and weakens the system designed to protect the legal rights of businesses.

In short, the argument that a trademark applied for registration needs to co-exist with a trademark containing “Chinese characters” protected before the 2005 IP Law, simply because Vietnam’s current IP Law no longer specifically protects “Chinese characters” is not appropriate. A trademark containing “Chinese characters” that is applied for can be considered for protection if it demonstrates sufficient distinctiveness and complies with the current regulations. However, this does not mean that the mark will automatically co-exist with a mark containing “Chinese characters” that was protected before the implementation of the 2005 IP Law.

Applied-for trademarks containing Chinese characters: Some important notes

Although Chinese characters are not protected separately, applicants should note the following to avoid refusals that could negatively affect trademark registration in Vietnam:

- An applied-for trademark containing Chinese characters must not infringe on the intellectual property rights of other owners.
- An applied-for trademark containing Chinese characters must be distinguishable from other trademarks that have been or are being protected.
- Chinese characters in the applied-for trademark must not be identical or similar enough to cause confusion with an already protected trademark containing Chinese characters.

If an applied-for trademark conflicts with or is [likely to cause confusion](#) regarding the origin or other characteristics of the trademark compared to another owner’s mark (including cases where the cited mark contains only “Chinese characters”, was registered a long time ago, and currently does not satisfy the protection conditions under current law as mentioned above), the application will be refused protection. The applicant cannot argue that the applied-for mark should have been protected or should co-exist with the previously registered mark.

Final thoughts

The issue of trademark protection for marks containing Chinese characters in Vietnam is still a hot topic, attracting much debate and interest in the business community. Although the 2005 IP Law made important changes, including not protecting trademarks containing only Chinese characters, this does not mean that these trademarks are out of date. Trademarks registered before 2005 retain their legal value and are protected by law.

Therefore, businesses that own trademarks consisting solely of Chinese characters and were protected before the effective date of the 2005 IP Law can still continue to use and enjoy the protection benefits prescribed by law. Their IP rights are not affected by future changes in the law, unless [the trademark is terminated or invalidated](#).

With 20 years of experience handling complex IP cases, KENFOX IP & Law Office understands the challenges businesses face in protecting trademarks containing Chinese characters, even when legal regulations change. We have a proven track record of success in helping clients maintain and protect their rights. Our deep understanding of Vietnamese law and ability to adapt to legal changes allows us to partner with you effectively and establish strong IP rights in Vietnam.

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