

## Registering a Trademark in Bad Faith in Vietnam: How to Prove the Applicant's Intentions and Motives

To prove that a trademark application was filed in “*bad faith*”, it must be shown not only that the applicant “*knew*” or “*had a basis to know*” about the mark of the legitimate trademark owner but also that the applicant had a specific intention or motive behind the registration. As per Article 34.2(b) of Circular 23/2023/TT-BKHON, this *second condition* focuses on the ***motives*** and ***intentions*** of the applicant. What actions do these intentions and motives include? Is it easy to prove?

KENFOX IP & Law Office provides the following analysis and interpretation to help the genuine IP rights holder understand the relevant regulations. Based on this, they can accurately determine the documents and evidence that need to be collected for proof purposes.

### Dishonest intentions and motives: What actions?

Actions that reflect dishonest intentions and motives, or “bad faith” are specified in **Article 34.2(b)** as follows:

[i] ***Taking advantage of the reputation and prestige of a brand to gain profit***: Registering a trademark with the intention of [taking advantage of the reputation and prestige](#) of another person's trademark is considered to be in bad faith. The genuine trademark owner needs to prove that the applicant's motive for filing a trademark registration application was to financially benefit from the brand's long-term presence on the market, which is widely trusted and recognized by consumers.

[ii] ***Resale, license, or transfer of registration rights***: Registering a trademark with no intention of using it in commerce, but rather to profit by either selling it back to the original owner, reselling it to another rightful owner, or licensing it for profit, is considered bad faith

[iii] ***Preventing market entry***: Registering a trademark with the intention of blocking another party from entering or competing in the market constitutes trademark abuse and creates a barrier to competition. This involves registering a mark similar to a well-known or emerging one, aimed specifically at hindering that mark's entry or expansion in the market. Such malicious registrations can significantly impede healthy competition and market development.

[iv] ***Conducting contrary to other fair trade practices***: This includes any practice deemed unfair or unethical in commerce. Such practices may involve deceptive strategies, creating confusion in the marketplace, or other tactics that contravene the principles of honest and fair competition.

Thus, if you fall into one of the four categories mentioned above, the genuine trademark owner has a legal basis to prove that the applicant's intentions and motives in filing the trademark registration application are dishonest or in bad faith.

### Proving the intention and motive behind trademark registration in trademark speculation cases: Easy or difficult?

The provisions in Article 34.2(b) concerning the intention and motive for determining whether the applicant is acting in bad faith are designed openly. On one hand, this provision lists specific, typical acts of trademark registration in bad faith, providing legitimate trademark owners with a concrete legal basis to prove the applicant's dishonest intentions and motives (*such as exploiting the reputation and prestige of the trademark for profit, reselling, licensing, or transferring registration rights, and preventing market entry*). On the other hand, it establishes a broader, more comprehensive regulation that covers other acts contrary to fair trade practices. This opens up opportunities for genuine trademark owners to prove bad faith and reclaim their trademark rights through [opposition](#), third-party opinions, or [invalidation](#) procedures.

The open design of Article 34.2(b) allows for a broader interpretation of the applicant's intentions and motives, not just limited to specific acts. This flexibility aids IP Vietnam and IP rights holders by identifying acts of dishonesty or bad faith that may not have been clearly foreseen at the time the law was enacted but still fall within the general spirit of the law. The provision concerning “*conducts contrary*”

to other fair trade practices” serves as a comprehensive regulation, covering all forms of abuse that undermine the integrity of the trademark protection system and fairness in trade.

## Final thoughts

Although Article 34.2(b) is designed openly, proving the intention and motive behind trademark registration is predicted to be a significant challenge, especially in the context that trademark squatting in Vietnam becomes increasingly sophisticated and constantly changing in Vietnam. Intent is inherently subjective and often difficult to prove without explicit statements or actions that reveal the applicant's motives. In practice, the registration of reputable trademarks is frequently “concealed” (or “hidden”) under the names of organizations or individuals unrelated to the legitimate trademark owner. This is considered a sophisticated trick and dealing with it is never simple. Moreover, if an applicant simply exploits the first-to-file principle to register a trademark owned by another as soon as possible and without performing the act of offering the trademark for profit, proving bad faith is nearly impossible. The situation becomes even more sophisticated and complicated if a third-party registers trademarks that are “*similar but not identical*”, or only for products akin to well-known ones that have not yet been registered in Vietnam, leaving the legitimate trademark owner with limited recourse to prevent or reclaim their rights.

Please contact KENFOX IP & Law Office for in-depth advice on the most effective solutions to your intellectual property issues, especially in cases of bad faith trademark registration in Vietnam. With extensive practical experience and a successful track record in resolving trademark disputes both administratively and through [court proceedings](#), KENFOX is well-equipped to help you protect your rights in the most effective manner.

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