

IP protection for to-be-launched products in Vietnam: How to optimize?

Among the 10 ASEAN countries, Vietnam is considered a key market for many foreign businesses, with great development potential. Entering the Vietnamese market with new products offers significant potential, but also presents challenges. However, intellectual property rights (IPRs) are especially crucial in Vietnam, where counterfeiting can be a significant challenge. However, reality shows that many businesses often only care about IPRs protection when they discover that their products have been copied or imitated by a third party. This leads to businesses losing their competitive advantage and making it difficult to handle IPRs infringement.

With 15 years of experience in complex intellectual property disputes, KENFOX IP & Law Office offers businesses effective strategies to protect their intellectual property rights, including legal mechanisms to handle potential infringement of upcoming products.

1. Protect “industrial designs” before product launch

Industrial design (ID) is an important component of a product, creating the first impression and shaping its identity. This differentiation in the market helps enhance recognition, attract customer attention, and contribute to product positioning in their minds. Therefore, industrial design is an important intellectual property asset, contributing to the success of businesses. While trademarks and industrial designs are both forms of intellectual property, their protection works differently. Unlike trademarks, which can be registered after the product launch, industrial designs require registration before public disclosure to ensure exclusive rights.

Many businesses mistakenly believe they can apply the "offer for sale first, register later" approach used with trademarks to industrial designs. One of the common mistakes of businesses is to proceed with industrial design registration only after the product has been marketed. This is a "fatal" mistake when applying trademark thinking to industrial designs. In fact, once a product is sold on the market, its industrial design is deemed to have lost its 'novelty' and can no longer be protected. To qualify for protection, an industrial design must meet three criteria: (i) novelty, (ii) inventiveness and (iii) industrial applicability.

Industrial designs require “absolute novelty”, meaning they must not have been published before the application date for registration. Offering products on the market before registration causes the industrial design to lose its novelty and, consequently, its eligibility for protection. Any pre-filing disclosure of the product or its packaging to the public, whether through sales or otherwise, will compromise the design's novelty. Additionally, if the packaging design and product style are not fundamentally distinct from existing market products, they will also be considered to lack novelty. To avoid losing novelty, businesses should assess the “protectability” of their product designs and apply for industrial design protection before disclosure or selling the product in the market. This proactive approach ensures that the industrial design retains its novelty and receives legal protection.

2. Keep your industrial design secret until launch

Businesses often aim to surprise the market with their breakthrough products. However, products from reputable companies frequently fall victim to copying and imitation. To counteract this, the key is to employ a “hiding” or “late launch” strategy for industrial designs to protect product secrets until the very last minute.

To prevent competitors from copying product designs prematurely, businesses can opt for “late publication” or “deferred publication” when filing an industrial design application. Under the IP Law 2022, the publication of industrial design applications can be delayed for up to 7 months, provided that the applicant submits a request for this delay at the time of filing. By keeping the product's industrial design secret until launch, you can create a **surprise effect**, grab customer attention, and ultimately **boost product value and profits**. This strategy also protects your design from being copied before it hits the market.

3. Trademark - The foundation for long-term success

Protecting a company's “brainchild” goes beyond just registering the industrial design. Trademark registration also plays a crucial role in brand building and market positioning. Logos, slogans, and even product packaging can be protected as trademarks, helping businesses:

Trademark registration also plays an important role in building a brand and affirming its position in the market. Logos, slogans, or even product packaging can be protected as trademarks, helping businesses:

- **Stand out from the crowd:** In a sea of products, trademarks are one of the key elements that help businesses establish their unique identity and gain recognition among consumers
- **Protect their reputation:** A strong trademark helps businesses build trust with customers, foster loyalty, and drive sales.
- **Expand their reach:** A powerful trademark is the key to unlocking international markets and achieving global success

4. Combine various forms of intellectual property protection

Simultaneous registration of trademarks, industrial designs, and even [copyrights not only protects](#) the visual and design elements of a product but also empowers businesses with a robust legal arsenal to combat intellectual property (IP) infringement.

Registering all three types of intellectual property (IP) creates an impenetrable shield for a company's "brainchild". In case of product copying or imitation, a company can leverage all three protections to seek enforcement through Vietnamese authorities via administrative measures (*confiscation of infringing products, destruction, administrative fines*), civil remedies (*demanding the infringer to cease infringement, apologize, issue public correction, and compensate for damages*), or criminal prosecution. Note that criminal penalties do not apply to [industrial design infringement](#).

5. Select the right IP "weapons" for each country

Vietnam is a key market, but businesses aiming to conquer international markets should carefully plan to register for IPR protection in each specific country. The rules and mechanisms for [protecting trademarks](#), and especially industrial designs, can vary significantly across nations. Therefore, a "one size fits all" IP strategy can pose significant risks. Businesses should consult with IP lawyers who have international experience to develop tailored IP strategies for each target country, thereby choosing the most effective solutions that save both time and costs.

6. Advice for your journey to conquer the Vietnamese market

- **Strategic planning:** From the early stages of product development, businesses should plan their intellectual property rights (IPRs) protection. It's crucial to define clear goals, identify potential customers, and analyze competitive products to build an effective IP strategy.
- **Act quickly and decisively:** In Vietnam, the "first to file" principle applies to trademark and industrial design applications. Applying early is crucial and acts as the most powerful "weapon" in protecting the unique design and brand of your product.
- **Eliminate weaknesses:** Identify any unprotected aspects of your industrial designs and trademarks. Clearly determine the timing for registration and product launch to sidestep potential legal pitfalls.
- **Internal control:** Enterprises should develop internal control measures to protect business secrets and prevent information leaks before filing for official protection.
- **Combat Infringement:** Develop a strong plan to address potential piracy and [infringement issues](#) following the product's launch.
- **Seek professional assistance:** Consult with an IP attorney for tailored advice on identifying elements requiring protection, conducting a protection search, and ensuring timely application submission.

Final thoughts

Launching a new product with unique packaging and a prominent brand marks a crucial turning point in any business's journey. Protecting intellectual property rights is an indispensable aspect of every enterprise's strategy. Viewing the registration of intellectual property protection as a strategic move is essential; this ensures that businesses have effective tools and mechanisms to address imitations of their products.

Implementing timely and effective protection measures not only safeguards business innovations but also establishes a solid competitive advantage in the market. If your business is preparing to launch a new product, it is important to ensure comprehensive protection of your IPRs to [prevent infringements and protect your brand](#)

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