

Does Trademark Registration In Vietnam Provide Immunity From Copyright Infringement?

Trademarks and copyrights – two concepts that may seem familiar, yet they harbor a wealth of legal complexities. Many mistakenly assume that obtaining a Trademark Registration Certificate grants them a "carte blanche" to use the logo without any further considerations. However, the reality is far from simple. In fact, it demonstrates that trademark registration and the issue of copyright infringement are two entirely distinct legal realms. KENFOX IP & Law Office analyzes the core differences, explores the points of intersection, and, in particular, elucidates why, even with a registered trademark, the potential for copyright infringement persists.

In reality, there are numerous instances where the Intellectual Property Office of Vietnam (IP Vietnam) issues Trademark Registration Certificates to third parties for logos with designs that are **completely identical** to logos already protected by copyright belonging to another organization or individual. The question then arises: can this third party freely use the registered logo, relying solely on the Trademark Registration Certificate issued in Vietnam, without facing the legal risk of [copyright infringement](#) regarding the logo of that other organization or individual?

The answer is "No". A Trademark Registration Certificate, even when issued by a competent authority such as IP Vietnam, is not a "golden shield" guaranteeing absolute freedom for all uses of a logo. In other words, possessing a Trademark Registration Certificate does not automatically grant a third party the inherent right to use a logo unconditionally, especially when considering the already protected copyright aspect belonging to other organizations or individuals. To clarify this issue, it is necessary to analyze and distinguish the nature of two independent yet closely related legal categories: "[Trademark Registration](#)" and "[Copyright Infringement](#)".

Clear-Cut Differentiation of "Trademark Registration" and "Copyright Infringement"

Within the intellectual property legal system, trademarks and copyrights are two distinct legal regimes, regulating different aspects of intellectual property rights:

- **Trademark Registration:** When IP Vietnam receives and examines a trademark application, the primary focus of this process is to assess the **distinctiveness** and **compliance with legal regulations regarding trademarks**. Specifically, IP Vietnam will conduct an examination and comparison of the applied-for trademark against the database of previously protected trademarks to determine the potential for **consumer confusion**. Furthermore, IP Vietnam also considers the **uniqueness** and **distinctive character** of the trademark, as well as the **conformity of the trademark with the protection standards and conditions** stipulated by [trademark law](#) for the goods/services for which the trademark is being applied. Thus, the trademark registration process at IP Vietnam mainly revolves around **compliance with regulations and criteria for trademark protection**.
- **Copyright Infringement:** In contrast, the issue of copyright infringement, related rights infringement (copyright) arises when an entity engages in the act of **copying, using, or exploiting** a copyrighted work without **authorization from the copyright owner**. This act directly infringes upon the **exclusive rights** that copyright law grants to authors and copyright owners. The determination of copyright infringement acts and [applicable sanctions are governed by copyright law](#), a legal field entirely separate from trademark law.

Trademark registration certificate does not equate to "Immunity from copyright infringement"

It is crucial to emphasize that the criteria, procedures, and legal requirements for trademark registration and for determining copyright infringement are completely distinct. The fact that a trademark meets the registration standards and is granted a Trademark Registration Certificate by IP Vietnam does not automatically guarantee that the use of that trademark will not infringe upon the copyright of another entity.

In practice, trademark management authorities, including the Intellectual Property Office of Vietnam (IP Vietnam), often face limitations in resources and the scope of examination to conduct a comprehensive review of all potential intellectual property rights associated with a logo, particularly copyright. The trademark examination process primarily focuses on comparing against the database of registered trademarks within the management authority's own system.

Furthermore, it must be acknowledged that state management agencies, no matter how professionally they operate, are not immune to the possibility of errors or omissions during their professional processes. Therefore, the issuance of a Trademark Registration Certificate by IP Vietnam does not equate to ensuring

the absolute legal validity of the trademark in all aspects, especially when considering other intellectual property rights such as copyright.

Similar to tangible property

To further clarify this distinction, consider an analogy using physical property:

- **Land Ownership (Analogous to Trademark):** When you are granted a Land Use Right Certificate by the State (analogous to a Trademark Registration Certificate), you are bestowed with certain rights to utilize that land parcel according to the provisions of the law. However...
- **Construction Based on Another's Design (Analogous to Copyright):** If you construct a house on your land but utilize architectural design blueprints copyrighted by another architect without permission, your Land Use Right Certificate does not grant you the right to infringe upon the architect's copyright in that design work. You possess the land rights and are permitted to build on the land, but you do not inherently have the right to use another's copyrighted design to carry out the construction.

Similarly, the act of a third party registering a trademark for a logo in Vietnam only grants them the right to use that logo as a trademark to distinguish their "automobiles," "furniture," and "medical devices" goods/services in the marketplace. This Trademark Registration Certificate does not automatically authorize them to copy the copyrighted logo artwork of another organization or individual without consent.

"Using a logo as a trademark" is different from "Copying logo artwork"

- **Trademark Rights:** Trademark registration grants a third party the exclusive right to use the logo to identify the commercial origin and distinguish their "automobiles", "furniture", and "medical devices" goods/services from those of competitors in the marketplace.
- **Copyright Limitations:** However, copyright law still protects the rights of the copyright owner (in this case, the organization or individual who is the copyright owner), and prohibits a third party from copying and distributing the logo artwork without permission".

Therefore, a third party may have the right to use a registered logo as a trademark (for the purpose of brand and product identification), but they do not have the right to copy the logo artwork if that artwork is protected by copyright without permission from the copyright owner. In practice, the act of "using a logo as a trademark" in this context is often inherently linked to copying and displaying the logo artwork on products and this is precisely the crucial point that gives rise to the risk of copyright infringement.

Closing thoughts

The fact that a third party is granted a Trademark Registration Certificate by IP Vietnam for a logo that is identical to the logo of another organization or individual does not equate to them automatically having the lawful right to use that logo on products such as "automobiles", "furniture", "medical devices", etc., without concern for legal liability due to copyright infringement of the copyright owner.

A Trademark Registration Certificate cannot be regarded as a "license" to infringe upon pre-existing copyright held by the copyright owner for a copyrighted artwork. Should a third party utilize a copyrighted logo on products without the consent of the copyright owner, they possess full legal grounds to initiate legal action for copyright infringement, even if that third party holds a Trademark Registration Certificate.

Trademarks and copyrights are two independent legal regimes with distinct scopes of protection and enforcement mechanisms. [Trademark registration in Vietnam](#) cannot negate or "override" pre-existing copyright to a protected work. The act of a third party using a logo, even if trademarked, can still constitute copyright infringement and be subject to legal liability as stipulated by law. Consequently, [Article 73.7 of the Intellectual Property Law](#) stipulates that "Signs containing copies of works, unless permitted by the copyright holder of that work," shall not be protected as trademarks.

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