

Intellectual Property Collateral - Trademarks in Vietnam: Legal Analysis and Market Outlook

Vietnam is rapidly developing as a globally integrated and dynamic economy, making intellectual property (IP) increasingly vital, particularly in technology, e-commerce, and pharmaceuticals. With rising foreign investment, a critical legal question emerges: Can Vietnam's current laws effectively protect IP as collateral, allowing businesses and investors to utilize it as a financial instrument?

Although Vietnam's current law recognized IP as an asset that can be collateralized, there are significant legal loopholes caused by the absence of specific and comprehensive rules directly related to IP collateralization. Do these legal loopholes provide an opportunity to develop the IP collateral market, or do they, conversely, heighten the legal risk, creating challenges for investors, particularly foreign ones increasingly interested in securing loans with IP in Vietnam?

CURRENT LEGAL FRAMEWORK FOR IP COLLATERALIZATION IN VIETNAM

Current Vietnamese law does not have separate, specific regulations on the collateralization of IP in general and [trademarks](#) in particular. However, this does not mean that IP collateralization is impossible.

- **Relying on general principles of civil law, the 2015 Civil Code (CC)**, which governs civil relations, defines IP as both a 'property right' and 'property' under Article 115. Vietnamese civil law fundamentally recognizes an owner's right to freely dispose of their property. Thus, property rights, including IP rights, can legally be used to secure obligations, serving as collateral. Using IP as collateral is governed by the general principles on secured transactions in Articles 292-308 and all provisions on property mortgages in Articles 317-327 of the 2015 CC.
- **Decree No. 21/2021/ND-CP**, which provides detailed regulations for implementing the Civil Code's provisions on secured transactions, explicitly states that property rights and other rights with monetary value derived from intellectual property are assets eligible to secure obligations. This represents a significant advancement, officially recognizing the use of IP as collateral under Vietnamese law.
- **The Intellectual Property Law (IP Law)**: While primarily focused on establishing and protecting IP rights, and not directly governing secured transactions involving IP, the IP Law's clear definition of the subjects and scope of IP rights indirectly facilitates such transactions.

Legal gaps and challenges:

Although the 2015 Civil Code (CC) and Decree No. 21/2021/ND-CP provide a legal foundation, the existing legal framework still lacks detailed provisions and concrete procedures, creating difficulties for practical application. More specifically, neither the Civil Code, Decree 21, nor the IP Law, along with their guiding documents, clearly stipulate:

- A clear and transparent process for registering security interests in IP.
- Valuation methodologies and standards for IP used as collateral, particularly given its intangible nature and high volatility.
- Clearly defined rights and obligations of both the mortgagor and mortgagee of intellectual property during the entire term of the security agreement.
- An efficient and equitable mechanism for the enforcement of security interests in intellectual property upon default, ensuring the protection of the rights of all parties involved.

SIGNIFICANCE OF USING TRADEMARKS AS COLLATERAL IN VIETNAM

Despite limitations in the legal framework, the potential and significance of using trademarks as collateral in Vietnam are considerable and becoming increasingly apparent.

- **Expanding access to capital for businesses**: Trademarks can be the most valuable asset for many companies, particularly SMEs, surpassing even tangible assets. Recognizing trademarks as collateral would unlock a vital source of capital, enabling these businesses to grow, expand operations, invest in R&D, and improve their competitiveness.
- **Using the intangible value of trademarks**: Powerful, well-regarded trademarks represent more than just identification; they embody brand equity, customer loyalty, and competitive market advantage. This intangible value includes reputation, broad brand awareness, customer loyalty, and the capacity

to generate significant future revenue. Trademark collateralization enables businesses to utilize this intangible value to generate tangible value, namely financial capital.

- **Promoting innovation and economic growth:** Recognizing IP, particularly trademarks, as collateral will incentivize businesses to invest more in creating, developing, and protecting their intellectual property. Access to additional financial resources through trademark collateralization will enable Vietnamese companies to enhance their competitive capabilities on the global stage, expand market share, and promote Vietnamese brands worldwide.

CURRENT CHALLENGES AND LIMITATIONS

However, the implementation of trademark collateralization in Vietnam still faces many challenges and limitations due to the lack of a detailed legal framework.

- **Legal challenges: Lack of legal clarity:** The lack of specific provisions within specialized intellectual property legislation poses considerable legal risks, causing both creditors and debtors reluctance to undertake transactions involving IP as collateral. This lack of clarity substantially diminishes the appeal of using trademarks as collateral.
- **Implementation challenges: The complexity of IP valuation:** The valuation of IP, particularly trademarks, poses a significant challenge. A trademark's value is contingent upon various factors, including brand awareness, reputation, market share, and potential for development. The absence of uniform valuation standards and methods, coupled with the lack of a robust secondary market for trademarks, hinders the ability to ascertain appropriate collateral values and loan amounts.
- **Challenges in realizing on collateralized assets:** If a company breaches its repayment obligations, realizing on trademark collateral can present numerous procedural and practical challenges. Transferring trademark ownership, and exploiting and commercializing the trademark to recover the debt, necessitate a well-defined and effective procedure. Moreover, the competence and expertise of [enforcement authorities](#) (e.g., registration offices and courts) in resolving disputes concerning intellectual property, a relatively new and complex asset class, are still largely uncertain.

FOREIGN INVESTOR CONCERNS: TRANSPARENCY, FEASIBILITY, AND EFFICACY OF THE LEGAL FRAMEWORK

Foreign investors' interest in Vietnam's IP collateralization market goes beyond potential; they have specific concerns about the transparency, viability, and effectiveness of the existing legal framework. Accustomed to sophisticated practices and stringent standards, they place particular emphasis on the following crucial legal considerations:

Registry System for Secured Transactions: Completeness, Accessibility, Integration, and Predictability

Foreign investors place particular emphasis on the comprehensiveness, accuracy, and accessibility of information in Vietnam's secured transaction registration system, including information on IP collateralization. They expect to be able to search for information quickly, conveniently, and reliably to determine whether the intended IP collateral is already encumbered by a third party before deciding to disburse loan funds.

Effective inter-agency coordination and data integration between the secured transactions registry (Ministry of Justice), the state authority responsible for intellectual property (Ministry of Science and Technology / Intellectual Property Office of Vietnam), and other relevant agencies (such as tax authorities) are critical for ensuring a consistent, coherent, and efficient system for managing intellectual property collateral. Foreign investors expect a modern, electronic registration system that integrates data, provides online access to information, and offers real-time updates on the status of secured intellectual property assets. Furthermore, they place significant emphasis on the predictability of the system, specifically whether regulations are applied consistently and outcomes are foreseeable.

Convertibility and Liquidity of Collateralized Intellectual Property: Secondary Market, Commercial Exploitation and Enforcement, Protection of Rights

The liquidity of intellectual property pledged as collateral is of paramount importance to foreign investors. They require assurance of the existence of a sufficiently large, transparent, and efficient secondary market for intellectual property assets in Vietnam, enabling them to readily convert collateralized intellectual property into cash in the event of default.

The potential for commercial exploitation of IP used as collateral is also a key consideration for foreign investors. In certain circumstances, the creditor might prefer to commercially exploit the IP to recover the debt instead of merely resorting to a foreclosure sale. Foreign investors will want to know if Vietnamese law allows and enables the commercial exploitation of IP collateral, encompassing provisions regarding the assignment of use rights, exploitation rights, and the distribution of proceeds generated from such exploitation, and the **practical enforceability** of these rights.

In addition, foreign investors seek assurance that Vietnamese law fully protects their interests should [disputes arise concerning IP](#) used as collateral, encompassing an effective, swift, and cost-effective **dispute resolution mechanism**.

Closing thoughts

Using IP as collateral, particularly trademarks, is opening a promising new chapter for the financial market and the business community in Vietnam. However, realizing this potential requires concerted efforts and synchronized actions from the government, businesses, credit institutions, experts, and other stakeholders in perfecting the legal framework, developing service infrastructure, and raising awareness about IP. With determination and a strategic vision, Vietnam can build a sustainable market for IP collateralization, significantly contributing to the prosperity and competitiveness in the age of the knowledge-based economy.

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