

## Common Grounds for Trademark Refusal in Vietnam: What are they?

Trademark applicants in Vietnam often face the risk of refusal, leading to wasted time and resources. However, many of these rejections are avoidable. Understanding the common grounds for trademark refusal in Vietnam – such as conflicts with existing trademarks, generic terms, or violations of public order and morality – enables applicants to proactively address potential issues. This proactive approach leads to more effective responses to challenges and, ultimately, a more efficient and successful trademark registration process.

With 15 years of practical experience in handling complicated IP related matters in Vietnam, KENFOX IP & Law Office provides comprehensive details to explain the common grounds for trademark refusal in Vietnam.

### Common Grounds for Trademark Refusal in Vietnam

[Trademark applications](#) in Vietnam can be refused on **absolute grounds** or **relative grounds**.

- **Absolute grounds** relate to the inherent characteristics of the trademark itself (e.g., *lack of distinctiveness, descriptiveness, generic, contrary to public policy*).
- **Relative grounds** primarily relate to the potential conflict of the applied-for trademark with **prior rights** held by other parties. These grounds focus on the relationship between the new trademark application and existing trademarks or other intellectual property rights.

These grounds are detailed in Articles 73 and 74 of Vietnam's IP Law. Article 90 outlines the "first-to-file" principle, which is crucial in resolving conflicts.

#### 1. Absolute Grounds for Refusal (Article 73):

Article 73 of Vietnam's IP Law lists signs that are **ineligible for protection as marks**, and therefore, applications containing these signs will be refused registration. These are:

- (i) **Signs identical or confusingly similar to national symbols** (Article 73.1 & 73.2):
  - *National Flags, Emblems, Anthems*: Signs identical or confusingly similar to national flags, national emblems, and national anthems of Vietnam and other countries, and the International (L'Internationale).
  - *Emblems of State/Political/Social Organizations*: Signs identical or confusingly similar to emblems, flags, armorial bearings, abbreviated or full names of Vietnamese State bodies, political, socio-political, socio-political-professional, social, socio-professional organizations, or international organizations, **unless permitted by those bodies or organizations**.
- (ii) **Signs identical or confusingly similar to names/images of leaders** (Article 73.3): Signs identical or confusingly similar to real names, aliases, pseudonyms, or images of leaders, national heroes, or famous personalities of Vietnam or foreign countries.
- (iii) **Signs identical or confusingly similar to certification seals** (Article 73.4): Signs identical or confusingly similar to certification seals, check seals, or warranty seals of international organizations that require their signs not to be used, unless registered as certification marks by those organizations.
- (iv) **Signs that are misleading or deceptive** (Article 73.5): Signs that cause misunderstanding, confusion, or deceive consumers regarding the origin, properties, use, quality, value, or other characteristics of goods or services.
- (v) **Signs lacking distinctiveness due to inherent nature** (Article 73.6 & implied by Article 74):
  - **Original shapes dictated by function** (Article 73.6): Signs that are original shapes of goods or come into compulsory existence due to the technical properties of goods. This is often linked to lack of inherent distinctiveness under Article 74.
  - **Simple shapes, figures, letters, numerals, common signs** (Article 74.2.a & 74.2.b):
    - ✓ Simple shapes and geometric figures, numerals, letters, or scripts of uncommon languages **unless widely used and recognized as a mark before filing**.

- ✓ Conventional signs or symbols, pictures, or common names in any language for goods/services, common shapes of goods/parts, common packaging shapes widely recognized before filing.
  - **Descriptive signs** (Article 74.2.c): Signs indicating time, place, method of manufacturing, category, quantity, quality, properties, ingredients, intended utility, value, or other descriptive characteristics, or signs making goods considerably more valuable, **unless they become distinctive through use before filing**.
  - **Signs describing business legal status** (Article 74.2.d): Signs describing the legal status and business sector of business entities.
  - **Geographically descriptive signs** (Article 74.2.d): Signs indicating geographical origin, **unless widely used and recognized as a mark before filing, or registered as collective/certification marks**.
- (vi) **Signs containing copyrighted works (Article 73.7)**: Signs containing copies of works, unless permitted by [copyright](#) owners.

## 2. Relative Grounds for Refusal (Article 74.2.e, g, h, i, k, l, n, o, p - based on conflict with prior rights):

Article 74.2 details signs deemed indistinctive **because of conflicts with prior existing rights**. These lead to refusal due to **likelihood of confusion** or **unfair advantage**.

- (i) **Conflict with prior registered trademarks and applications** (Article 74.2.e & Article 90): **Identical or confusingly similar marks for identical or similar goods/services**: Signs identical or confusingly similar to marks of other organizations/individuals already protected for identical or similar goods/services. This is assessed based on:
- **Applications with earlier filing/priority dates** (Article 74.2.e & Article 90): Crucially, Vietnam operates on the **first-to-file principle** (Article 90). The application with the earliest valid filing or priority date generally prevails, assuming it meets all other registrability criteria. Later applications for identical or confusingly similar marks for similar goods/services will be refused.
  - **Treaty-based applications**: Includes applications filed under treaties to which Vietnam is a party.
  - **Marks with terminated or invalidated registrations** (Article 74.2.e & 74.2.h): Marks identical/similar to registrations that have been terminated (except for certain reasons) for no more than 3 years are also grounds for refusal.
- (ii) **Conflict with prior widely used and recognized marks** (Article 74.2.g): Signs identical or confusingly similar to another person's mark that has been widely used and recognized for similar/identical goods/services **before the filing date (or priority date)**. This acknowledges unregistered but well-established marks.
- (iii) **Conflict with well-known marks** (Article 74.2.i): Signs identical or similar to marks recognized as **well-known marks before the filing date**, even for:
- **Identical or similar goods/services**: If likely to affect the distinctiveness of the well-known mark or aim to take advantage of its reputation.
  - **Dissimilar goods/services**: If use is likely to affect distinctiveness or [take advantage of reputation](#). This offers broader protection for well-known marks against dilution and free-riding.
- (iv) **Conflict with prior trade names** (Article 74.2.k): Signs identical or similar to another person's **trade name currently in use**, if it may cause consumer confusion as to the origin of goods/services.
- (v) **Conflict with protected geographical indications (GIs)** (Article 74.2.l & 74.2.m):
- **Generally**: Signs identical or similar to a protected geographical indication if use may mislead consumers as to geographical origin.
  - **Specifically for Wines/Spirits**: Signs identical to, containing, translated, or transcribed from protected GIs for wines/spirits if registered for wines/spirits *not* originating from that geographical area.

- (vi) **Conflict with prior industrial designs** (Article 74.2.n): Signs identical or insignificantly different from others' industrial designs already protected or in the process of being protected (earlier filing/priority dates).
- (vii) **Conflict with prior plant variety names** (Article 74.2.o): Signs identical or confusingly similar to names of plant varieties protected in Vietnam, if registered for plant varieties of the same or similar species or products from those varieties.
- (viii) **Conflict with copyrighted characters/figures** (Article 74.2.p): Signs identical or confusingly similar to names or images of characters/figures in copyrighted works **widely known to the public before the filing date, unless permitted by copyright owners.**

## Final thoughts

The Vietnamese trademark system, while strict, is designed to protect both brand owners and consumers. The common grounds for refusal, both absolute and relative, defines the potential pitfalls applicants face. However, awareness is the key to prevention. By understanding these grounds and conducting thorough pre-filing searches, applicants can minimize the risk of objections and ensure a more efficient and cost-effective registration process. Ultimately, a proactive approach, coupled with a clear understanding of the legal framework, is the best strategy for securing valuable trademark rights in Vietnam.

**By Nguyen Vu QUAN**  
**Partner & IP Attorney**

### Contact

#### **KENFOX IP & Law Office**

Building No. 6, Lane 12/93, Chinh Kinh Street, Nhan Chinh Ward, Thanh Xuan District, Hanoi, Vietnam

**Tel:** +84 24 3724 5656

**Email:** [info@kenfoxlaw.com](mailto:info@kenfoxlaw.com) / [kenfox@kenfoxlaw.com](mailto:kenfox@kenfoxlaw.com)