

## At a glance: Trademark Opposition in Vietnam

### 1. What is a trademark opposition in Vietnam?

In Vietnam, a **trademark opposition** is a legal procedure that allows a third party to formally challenge a pending trademark application *before* it gets officially registered by the Intellectual Property Office of Vietnam (VNIPO, formerly, NOIP). A [trademark opposition](#) aims at preventing the registration of trademarks that could potentially infringe on existing rights or create confusion in the marketplace. It's a proactive measure to avoid future legal disputes and brand damage.

Under the amended IP Law of Vietnam in 2022, a Notice of Opposition should be filed within a specific deadline of 05 months from the publication of the trademark application. However, after the 5-month opposition deadline expires, any third party can still file a **third-party observation** with the VNIPO. This submission can be made at any time **until the VNIPO issues a protection title (registration certificate)** for the applied-for trademark.

Third-party observations allow anyone to bring relevant information or concerns to the attention of the VNIPO examiner regarding a pending trademark application, even after the formal opposition period. This information can relate to why the trademark should not be registered (e.g., lack of distinctiveness, conflict with prior rights, etc.)

### 2. Who can file a trademark opposition in Vietnam?

In Vietnam, under Article 112a of the amended IP Law (2022), **any third party** can file a trademark opposition.

This means the right to file an opposition is broadly granted. You **do not** need to be the owner of a prior similar trademark or have a direct commercial interest to file an opposition. Any individual, organization, or business that believes their rights would be adversely affected by the registration of a trademark can file an opposition. This includes owners of prior trademarks, those with well-known marks, or parties with other legitimate interests.

### 3. What are the grounds for filing a trademark opposition in Vietnam?

The grounds for filing a trademark opposition in Vietnam, as per the IP Law, are primarily centered around the following criteria:

**[i] Likelihood of confusion:** Opposition can be based on the likelihood of confusion between the newly filed trademark and an existing trademark under Article 74.2(e) of Vietnam's IP Law.

The IP Law of Vietnam allows for trademark oppositions based on the likelihood of confusion with both **well-known marks** and **unregistered marks that have been widely used in Vietnam**. In detail:

- **Article 74.4 (i)** explicitly allows for opposition based on the similarity to a well-known mark, regardless of whether the goods or services are similar. In this sense, well-known marks enjoy broader protection under Vietnamese law. An opposition can be filed if the trademark application may harm the distinctiveness or reputation of a well-known mark, even if the goods or services are not similar.
- **Article 74.4 (g)** allows for opposition based on the similarity to an unregistered mark, as long as it has been widely used and recognized in Vietnam for similar or identical goods or services.

#### **[ii] Prior rights:**

The IP Law of Vietnam does provide grounds for refusing registration of a trademark if it is confusingly [similar](#) to not only prior trademarks, but also to industrial designs, trade names, and copyrights.

- **Confusingly similar to a prior trademark application:** Article 90.2 mentions that **if there are many applications filed by different people for registration of identical or confusingly similar marks** for identical or similar products or services, the protection title may only be granted for the mark in the valid application with the earliest priority or filing date.
- **Confusingly similar to industrial designs:** Article 74.2(n) provides that a mark is not distinctive if it is identical with or insignificantly different from others' industrial designs that have been or are being protected. This provision aims to prevent consumer confusion between marks and industrial designs, recognizing that the visual appearance of a product can serve as a source identifier.

- **Confusingly similar to trade names:** Under Article 74.2(k), a mark is can be refused registration if it is identical with or similar to another person's trade name currently in use, if the use of such a mark may cause confusion to consumers as to the origin of goods or services. This protects established businesses and their reputation by preventing the registration of trademarks that could mislead consumers about the source of goods or services.
- **Confusingly similar to copyrights:** As per 74.2 (p), a mark may be unregistrable if it is identical with or confusingly similar to names or images of characters or figures in works protected by [copyright](#) and widely known to the public. This provision acknowledges the potential for consumer confusion between trademarks and copyrighted works, especially those that are well-known.

Further, under Article 73.7, trade marks containing copies of works, unless it is permitted by owners of such works shall be ineligible for protection as marks. This provision seems to have a wider scope than Article 74.2.p, as it doesn't specifically require the copyrighted work to be widely known. In short, Article 73.7 acts as a general rule prohibiting the use of any copyrighted material in a trademark without permission. This is a straightforward rule that applies regardless of the fame or recognition of the copyrighted work.

### [iii] Bad Faith:

Opposition can be raised if the trademark application is perceived to have been filed in bad faith, intending to misappropriate the reputation of an existing mark, as provided under Article 117 of Vietnam IP Law and further detailed under Article 34 of Decree No. 23/2024/ND-CP. In essence, this "bad faith" ground for opposition is established when evidence demonstrates that the applicant knowingly sought to register a mark confusingly similar to an already reputable or widely used mark, with the primary intention to unfairly exploit its reputation, engage in trademark squatting, or restrict fair competition.

### [iv] Prohibited marks

In Vietnam, certain marks are prohibited by law from being registered as [trademarks](#) and can be opposed. These marks fall under **absolute refusal grounds** for trademark registration, meaning they are considered inherently unregistrable regardless of prior rights.

Here are the categories of marks that are prohibited and constitute absolute refusal grounds in Vietnam:

- **Signs identical or confusingly similar to:** (i) **National flags, national emblems, and national anthems** of Vietnam or other countries; (ii) **Symbols, flags, insignias, abbreviations, and full names** of Government agencies, Political organizations, Socio-political organizations, and International organizations unless explicit permission is granted by the competent authority.
- **Real names, aliases, pseudonyms, or images** of National leaders, National heroes, and Historical figures of Vietnam and foreign countries.
- **Signs identical or confusingly similar to certification marks, inspection marks, or warranty marks** of international organizations that prohibit their use, unless registered as certification trademarks by the respective organization.
- **Signs that contain unauthorized reproductions of copyrighted works**, unless permission is obtained from the copyright owner.
- **Signs that mislead, cause confusion, or deceive consumers** regarding the origin, features, uses, quality, value, or other characteristics of goods or services.
- **Signs that are inherent shapes of goods or shapes required by the technical characteristics of the product**, making them non-distinctive.
- **Marks merely containing or partially containing geographical terms** that are likely to cause deception or misunderstanding as to the source of goods/services.
- **Marks constituted by foreign words other than Latin, English characters** (e.g., Chinese, Russian, Thai languages), unless their transliteration is added as part of the mark.

Absolute refusal grounds are reasons for rejecting a trademark application based on the inherent characteristics of the mark itself. If a mark falls under these grounds, it will be refused registration outright by the VNIPO because it is deemed unsuitable for functioning as a trademark.

## 4. What is the time frame for filing a trademark opposition in Vietnam?

The time frame for filing a trademark opposition in Vietnam is **within 5 months** from the date of publication of the trademark application in the Industrial Property Gazette.

Previously, there wasn't a strict deadline, and oppositions could theoretically be filed from publication until the decision on registration. However, Under the amended IP Law of Vietnam in 2022 and **Decree 65/2023/ND-CP** introduced a significant change, shortening the opposition period to a fixed **5-month window** from the publication date.

## 5. What is the process for filing a trademark opposition in Vietnam?

The trademark opposition procedure in Vietnam provides a mechanism for [third parties](#) to challenge trademark applications they believe should not be registered.

### Filing an opposition:

- Any third party (“Opponent”) may file an opposition to the trademark application within **5 months** from the date of publication in the Official Gazette.
- The opposition must be filed with the VNIPO and must be in writing, stating the grounds for opposition and supported by relevant evidence and arguments.
- The opposition can be based on absolute grounds (e.g., lack of distinctiveness) or relative grounds (e.g., [conflict with earlier IP rights](#)).

### Notification to the applicant:

- Upon receiving an opposition notice accompanied by relevant evidence, the VNIPO will issue a notice (the first notice) notifying the applicant (“**Opposed Party**”) of the opposition. The Opposed Party is required to provide a response within two (02) months from the notification date.
- Upon considering the Opposed Party’s response, if necessary, the VNIPO may continue to send another notice (the second notice) to the applicant (“**Opponent**”). This second notice indicates that the Opposed Party has responded to the opposition and allocates a further 02-month period for the Opponent to submit a counter-response.

### Handling opposition on relative grounds:

In case where the opposition is based on the similarity or identicalness of the applied-for mark to the Opponent’s prior mark, the VNIPO will integrate the handling of the opposition with the substantive examination of the application. The Opponent will be informed of the result of this combined process through a report that includes both the result of the opposition handling and the substantive examination pertinent to the opposed application. No separate notice on handling the opposition will be sent by the VNIPO to the Opponent.

### Facilitation of Dialogue for Clarification:

If the VNIPO finds it necessary to clarify the content of the opposition, or upon the request made by both Parties, the office will arrange an in-person dialogue or meeting between the parties for further clarification.

### Final Decision and Notification:

The VNIPO will make its final decision on whether to grant or refuse the trademark registration based on the existing documents/evidence and/or the outcomes of the dialogue between parties. The Opponent will be notified of this final decision, which will include the result of the opposition handling along with the substantive examination report against the opposed trademark.

## 6. What documents are required to file a trademark opposition in Vietnam?

To file a trademark opposition in Vietnam, apart from the opposition letter and a signed Power of Attorney (if filed through an IP agent), comprehensive evidence and arguments should be provided to support the grounds for opposition. The evidence can vary depending on the grounds but may include:

- **Prior rights:** Information/documents about earlier/prior marks, industrial designs, trade names, copyright.

- **Evidence of prior use (for well-known marks or prior use rights):** If you are claiming prior use of your mark in Vietnam, you need to submit evidence to prove continuous and widespread use before the filing date of the opposed application. Examples of evidence include: (i) Invoices, (ii) Advertising and marketing materials, (iii) Market research reports, (iv) Sales figures, (v) Exhibits at trade shows, (vi) Prizes/Awards manifesting the reputation of the mark.
- **Similarity analysis:** A detailed explanation and comparison of your mark and the opposed mark, highlighting the similarities in terms of visual appearance, phonetic sound, and conceptual meaning. You should also explain how these similarities, combined with the relatedness of goods/services, create a likelihood of confusion for consumers.
- **Evidence related to absolute refusal grounds (if applicable):** If your opposition is based on absolute refusal grounds (e.g., the opposed mark is descriptive or misleading), you need to provide evidence to support this claim. This could include dictionary definitions, market information, or examples of how the mark is used in a descriptive or generic manner

## 7. Should I file a trademark opposition in Vietnam if the adverse party's applied-for mark is highly similar to my prior mark? Are there any risks if no opposition is filed?

Highly similar trademarks for similar goods/services are likely to cause consumer confusion. Customers may mistakenly believe that the other party's products or services originate from or are associated with your brand. This can damage your brand reputation and goodwill.

Trademark opposition is generally a more cost-effective way to address a potentially infringing mark compared to post-registration actions like [cancellation](#) or infringement lawsuits. Addressing the issue during the opposition phase can save significant time and resources in the long run.

If you do not oppose, the adverse party's trademark application may proceed to registration if it meets all other requirements. Once registered, they will have legal rights to use that mark, which can directly conflict with your brand. A trademark highly similar to yours may not be found by the examiner during his examination process due to technical glitch. The trademark opposition system is designed precisely to provide a second layer of review *after* the examiner's initial assessment but *before* registration is granted.

In such sense, it is strongly recommended to file a trademark opposition to alert the examiner of a likelihood of conflict for his issuance of the refusal.

## 8. Can I extend the opposition period in Vietnam?

No, the 5-month opposition period is strict and cannot be extended.

## 9. What happens after a trademark opposition is filed?

The VNIPO will examine the opposition and the applicant's response (if any). They may request additional evidence or clarification. Ultimately, the VNIPO will issue a decision to either uphold or reject the opposition.

## 10. What are the possible outcomes of a trademark opposition in Vietnam?

The trademark opposition process in Vietnam can lead to several possible outcomes, primarily affecting the opposed trademark application and the rights of both the opposer and the applicant.

- **Successful opposition (Opposition upheld):** If the opposition is successful, the VNIPO will issue a decision **refusing to register** the opposed trademark application. This means the applicant will not be granted trademark rights for the opposed mark for the specified goods and services. The opposed mark cannot be registered in Vietnam in its current form for those goods/services unless the applicant successfully appeals the decision.
- **Unsuccessful opposition (opposition rejected):** If the VNIPO finds the opposition grounds unconvincing or insufficient, they will issue a decision **rejecting the opposition**. This means the opposed trademark application will proceed further in the registration process and is likely to be **granted registration**. The applicant will then obtain trademark rights for the opposed mark for the specified goods and services.

- **Partial success:** In some cases, the VNIPO might find grounds for opposition partially valid. This could lead to **refusal for some goods/services and acceptance for others**. The opposed mark might be refused registration for certain goods/services that are deemed too similar but allowed for others deemed sufficiently distinct. In response to the opposition or in negotiations, the applicant might voluntarily amend their application.
- **Settlement agreement:** The opposer and applicant might reach a **settlement agreement** outside of the formal opposition process. This could involve various terms, such as:
  - *Withdrawal of opposition:* The opposer agrees to withdraw the opposition in exchange for certain concessions from the applicant.
  - *Withdrawal of the opposed application:* The applicant agrees to withdraw the opposed application.
  - *Coexistence agreement:* Parties agree on how they will operate in the market to minimize confusion, perhaps with limitations on geographic areas, channels of trade, or specific goods/services.
- **Assignment:** In some cases, the applicant might agree to assign the trademark to the opposer.

### 11. How long does the trademark opposition process take in Vietnam?

The process can take 12-15 months or longer, depending on the complexity of the case and the responsiveness of the parties involved. In detail, if the opposition involves intricate legal arguments, extensive evidence, or disputes over facts, it will naturally take longer for the VNIPO to review and decide. If the applicant submits a detailed and robust counterargument, it will require more time for the VNIPO to consider both sides of the case. In addition, the processing time at the VNIPO can be affected by their overall workload and backlog of cases.

### 12. What are the costs associated with filing a trademark opposition in Vietnam?

Costs may include official fees, attorney fees, and expenses for gathering evidence. The total cost depends on the complexity of the case.

### 13. Can I withdraw a trademark opposition in Vietnam?

Yes, an opposer in Vietnam can withdraw a [trademark](#) opposition at any point before the VNIPO issues a final decision. While specific procedural steps for formal withdrawal are not explicitly detailed, it generally involves submitting a signed written notification to the IPVN. This notification clearly states the opposer's intention to withdraw the opposition and is typically submitted by the opposer or their authorized representative, such as an IP attorney. Withdrawal is permissible at any stage before the VNIPO's final decision.

### 14. What is the difference between a trademark opposition and a trademark cancellation in Vietnam?

A trademark opposition serves as a **preventative measure** taken *before* registration to stop a problematic mark from being registered. [Trademark cancellation](#), on the other hand, is a **corrective measure** taken *after* registration to remove a problematic mark that is already on the register. Opposition is generally the preferred and more cost-effective route to address potential trademark conflicts if you become aware of a conflicting application in time.

#### Trademark opposition: Criteria for comparisons of differences as compared to cancellation

- **Timing:** A trademark opposition is initiated *during* the trademark application process, specifically *after* the applied-for mark is published in the Official Gazette of Industrial Property (usually around 2 months after the application's acceptance of formality). It happens *before* the trademark is officially registered. There is a statutory time limit (within 05 months from the publication date) to file an opposition.
- **Purpose:** A trademark opposition aims at preventing the registration of a trademark that is considered objectionable based on specific legal grounds. It can help alert the VNIPO to potential conflicts with prior trademarks or other rights before registration is granted. It also enables protection of existing trademark rights and prevent market confusion from occurring in the first place.
- **Grounds for opposition:** Primarily based on absolute and relative grounds for refusal as defined in Vietnam's IP Law. The most common ground is confusing similarity to a prior registered trademark or a prior pending application with an earlier priority date.



- **Other grounds can include:** (i) Lack of distinctiveness of the applied-for mark; (ii) Descriptiveness or genericness of the mark; (iii) Conflict with prior industrial designs, geographical indications, or copyrights (in some cases); (iv) [Bad faith in filing the application](#); and (v) Similarity to well-known trademarks.
- **Possible outcomes:** (i) Successful opposition (Upheld): The VNIPO refuses to register the opposed trademark; (ii) Unsuccessful opposition (rejected): The VNIPO rejects the opposition, and the trademark application proceeds towards registration; and (iii) Partial success/settlement: Limited refusal for some goods/services, amendment of application, or a negotiated settlement between parties.

#### Trademark cancellation: Criteria for comparisons of differences as compared to opposition

- **Timing:** A trademark cancellation is initiated *after* a trademark has already been registered. There is a statutory time limit (5 years after registration, and no time limit for a bad-faith trademark registration).
- **Purpose:** A trademark invalidation aims at revoking or invalidating a trademark registration that is considered to have been improperly granted or is no longer legally valid. It can remove a registered trademark from the register, thus removing the rights associated with that registration. It also enable to clear the trademark register of marks that are impeding the rights of others or causing market issues.
- **Grounds for cancellation:** (i) Non-use: The registered trademark has not been used for a continuous period of 5 years from the registration date (unless there are valid reasons for non-use). This is the most common ground. (ii) Invalidation based on grounds for refusal: The trademark was registered in violation of absolute or relative grounds for refusal that existed at the time of registration (e.g., it was confusingly similar to a prior mark at the time of application); and (iii) Bad faith registration: The trademark was registered in bad faith (e.g., with the intention to block competitors or to misrepresent goods/services).
- **Possible outcomes:** (i) Successful cancellation (Upheld): The VNIPO issues a decision to cancel the trademark registration, effectively removing it from the register; (ii) Unsuccessful cancellation (Rejected): The VNIPO rejects the cancellation action, and the trademark registration remains valid; and (iii) Partial cancellation: Cancellation may be granted for some goods/services but not others.

### 15. What is the role of the VNIPO in the opposition process?

The VNIPO acts as the administrative body that reviews the opposition, evaluates evidence, and makes a decision based on Vietnamese trademark law.

### 16. Can I file an opposition based on unregistered rights in Vietnam?

Yes, it is possible to file an opposition based on unregistered rights in Vietnam.

#### [i] Unregistered copyright:

If a third party attempts to register a trademark that infringes upon your existing, *unregistered* copyright, you can file an opposition. This applies if the trademark incorporates elements like your artwork, a significant portion of your protected work, or other copyrighted material. To succeed, you must provide compelling evidence of: (i) **Existence and Validity of Copyright:** This includes proving the date of creation of your copyrighted work and demonstrating your authorship, (ii) **Infringement:** You must clearly show that the trademark applicant's mark infringes upon your copyright.

#### [ii] Unregistered trademarks:

Although Vietnam primarily operates under a "first-to-file" system for trademarks. In addition, there are two crucial exceptions where *unregistered* trademark rights can be used as a basis for opposition.

- **Well-known marks:** If your unregistered trademark qualifies as "well-known" *within Vietnam*, you can oppose a prior application for a similar or identical mark. However, achieving "well-known" status is a very high bar. It requires substantial evidence of extensive use, promotion, and widespread recognition *specifically within the Vietnamese market*. Recognition outside of Vietnam is not sufficient.
- **Widely used (prior use) marks:** You can oppose a trademark application based on your prior, wide use and recognition of your [unregistered mark](#). This is a weaker ground than a "well-known" mark claim, but it *is* a viable option. To succeed, you *must* prove *all* of the following:

- ✓ **Wide use and recognition:** Your mark has achieved significant recognition among the relevant consumers.
- ✓ **Prior use:** Your use of the mark *predates* the filing date (or priority date, if claimed) of the opposed trademark application.
- ✓ **Continuous and substantial use:** Your use has been consistent and significant, not just occasional or token use.
- ✓ **Use within Vietnam:** The use must have occurred within the territory of Vietnam.
- ✓ **Good faith:** You must demonstrate that your prior use of the mark was in good faith.

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