

Letter of Consent: The Key to Overcoming Trademark Refusal by the IP Office of Vietnam?

During the trademark registration process in Vietnam, a frequent obstacle encountered by applicants is the rejection of applications based on findings that the applied-for mark is confusingly similar or identical to a previously registered trademark (the cited mark). Although the Intellectual Property Office of Vietnam (IP Viet Nam) has, in practice, reviewed and accepted Letters of Consent (LoCs) in numerous instances as grounds for withdrawing notifications of intended refusal of trademark protection, the absence of specific provisions within Vietnam's IP law addressing this mechanism creates a significant legal vacuum. Consequently, the acceptance of a Letter of Consent is largely contingent upon IP Viet Nam's case-by-case assessment approach, resulting in inconsistency and unpredictability for applicants.

KENFOX IP & Law Office provides analysis, insights, and important considerations when choosing a Letter of Consent as a solution to overcome an intended refusal of trademark protection from IP Viet Nam.

The absence of legal provisions for Letters of Consent (LoCs)

The IP Law of 2005 (as amended and supplemented in 2009, 2019, and 2022) and its implementing regulations, such as Decree No. 65/2023/ND-CP or Circular No. 23/2023/TT-BKHCN, contain no provision addressing the concept, legal validity, content, form, or the procedure for submitting and examining a Letter of Consent as a basis for [overcoming grounds for refusal of trademark protection](#) based on confusing similarity with a cited trademark.

Nevertheless, there are certain provisions within the Law on Intellectual Property that refer to the element of “consent” or “non-opposition” in very specific and limited contexts. Specifically:

- **Article 87.2** permits organizations or individuals conducting business to register a trademark for products which they market but are manufactured by others, provided that the manufacturer does not use such trademark for those products and does not object to such registration.
- **Article 87.7** stipulates that an agent or representative of a trademark owner (under an international treaty to which Vietnam is a party) may not register that trademark without the consent of the trademark owner (unless there are legitimate grounds).

However, these provisions apply only to specific situations and cannot be construed as a general legal basis for the acceptance of Letters of Consent in cases of refusal based on confusing similarity between the trademarks of unrelated entities. The fact that the law provides for “consent” in these narrow circumstances, yet remains entirely silent on the most common scenario, namely refusal due to confusing similarity, further highlights the existing legal gap. This silence could be interpreted as either an oversight by the legislature or a tacit determination that the consent of the parties is insufficient to overcome the risk of public confusion in the general case.

A direct consequence of this legal gap is the creation of significant uncertainty for both applicants and IP Vietnam. Applicants are uncertain as to whether a Letter of Consent will be accepted or what standards must be met for acceptance. IP Vietnam, when considering a Letter of Consent, must render decisions based on informal and potentially inconsistent examination practices, lacking a firm legal basis to cite. This situation creates a fundamental tension: on the one hand, the law details objective criteria (albeit potentially difficult to apply) for trademark refusal, intended to protect the public and the rights of prior rights holders; on the other hand, the law provides no mechanism to integrate or consider the subjective agreement between the relevant parties (i.e., the Letter of Consent), who may possess their own assessment of market realities and the potential for coexistence.

[Trademark examination practice and application of Letters of Consent in Vietnam](#)

Despite the clear lack of legal regulation, established practice at IP Vietnam over many years indicates a general inclination to review and, in many instances, accept Letters of Consent as a basis for overcoming refusals of trademark protection premised on confusing similarity. This acceptance, however, is not governed by an implicit or automatic principle. Rather, IP Viet Nam employs a case-specific evaluation approach.

This case-by-case approach, in the absence of specific legal guidance, inevitably leads to inconsistency and unpredictability in IP Viet Nam's decisions. The outcome of an application submitted with an LoC can vary

depending on the specific examiner, the filing time, or even the prevailing internal viewpoints at IP Viet Nam at that moment. This creates significant risk and uncertainty for trademark applicants and IP representatives. This reality also reflects the existence of differing views within IP Viet Nam and among professionals regarding the legal value and scope of acceptance for LoCs. These can be broadly categorized into three main groups:

- (a) **Cautious/negative viewpoint:** Argues that since the law does not regulate it, accepting LoCs lacks legal basis and may even constitute misapplication of the law. This viewpoint emphasizes the principle that civil servants can only do what the law permits and fears legal risks if LoCs are accepted without clear regulation.
- (b) **Limited acceptance viewpoint:** Acknowledges practice and international norms but suggests LoCs should only be accepted in limited cases to minimize risk, such as between parent and subsidiary companies or affiliated companies within the same group, especially with additional commitments regarding non-confusion.
- (c) **Broader acceptance viewpoint (Based on Practice):** Argues that LoCs should continue to be accepted as a practical solution, based on established practice and the parties' right to self-determination.

The existence of these differing viewpoints, coupled with IP Viet Nam's lack of official, public, and detailed guidelines on reviewing LoCs, further increases the uncertainty and lack of transparency in the examination process.

Factors Influencing the Decision on Acceptance/Refusal of Letters of Consent

Based on examination practice, several key factors can be identified that IP Vietnam typically considers when evaluating Letters of Consent:

- (a) **Degree of similarity of trademarks and goods/services:** This is the foremost factor. A Letter of Consent is significantly more likely to be accepted if the applied-for trademark, despite possessing similar elements, still exhibits relatively clear overall differences compared to the cited trademark. Conversely, if the two trademarks are deemed identical or confusingly similar to the extent of being difficult to distinguish for identical or closely related goods/services, the Letter of Consent is highly likely to be refused, even if the owner of the cited trademark has consented. This suggests that IP Vietnam does not appear to view the Letter of Consent as an automatic mechanism that overrides a finding regarding the likelihood of confusion, but merely as one factor to be weighed in the overall assessment. A Letter of Consent might "salvage" borderline cases, but is unlikely to alter the outcome for cases where confusion is deemed unavoidable due to an excessively high degree of similarity.
- (b) **Relationship between the applicant and the owner of the cited trademark:** Practice indicates that the Intellectual Property Office of Vietnam (IP Vietnam) tends to favor the acceptance of Letters of Consent issued between companies with an organizational affiliation, particularly between parent and subsidiary companies within the same corporate group. This preference may stem from an assumption that internal control mechanisms and unified brand management within such a group can mitigate the risk of [consumer confusion](#) regarding the origin or quality of the goods or services. Typically, the submission of a Letter of Consent in these circumstances should be accompanied by an Undertaking from the applicant pledging not to cause consumer confusion. However, this preference lacks an explicit legal basis in the current legislation and potentially raises issues concerning equal treatment for unrelated parties who nonetheless have valid coexistence agreements.
- (c) **Content and form of the Letter of Consent:** Although not explicitly regulated, practice dictates that a Letter of Consent must contain the essential information necessary to clearly ascertain the intent of the consenting party. Required content typically includes: full details (name and address) of the owner of the cited trademark and the applicant; the relevant trademark representations and their corresponding registration or application numbers; the specific list of goods and/or services for which registration is consented; an unambiguous statement of consent or non-opposition to the registration and use of the applicant's trademark in Vietnam; and the signature of an authorized representative and the seal (if the

consenting party is an entity) of the owner of the cited trademark. Deficiencies in content or form may diminish the probative value or lead to the rejection of the Letter of Consent.

- (d) **Risk of consumer confusion:** This is arguably the decisive factor and constitutes the fundamental rationale invoked by IP Vietnam for refusing a Letter of Consent, even when other factors might appear favorable. The primary function of a trademark is to protect consumers from confusion as to commercial origin. Therefore, if IP Vietnam determines that allowing two similar trademarks to coexist in the marketplace, notwithstanding the prior owner's consent, would nonetheless cause significant confusion or otherwise harm the public interest, the Letter of Consent will be refused.

Final thoughts

Factors such as the degree of [similarity between the marks](#) and the associated goods/services, the relationship between the involved parties, the substantive content and formal requirements of the Letter of Consent, and notably the potential risk of consumer confusion, are all material considerations in the determination by IP Viet Nam regarding the withdrawal of a tentative refusal of trademark protection. An optimal strategy for overcoming such a refusal through the utilization of a Letter of Consent entails combining the preparation of said Letter, meticulously drafted with respect to both substance and formality, with cogent reasoning demonstrating to IP Viet Nam that the coexistence of the two marks will not be detrimental to consumer interests.

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