

Letter of Consent for Trademarks Within Corporate Groups in Vietnam: Legal Analysis, Practice, and Recommendations

The fundamental principle of intellectual property (IP) law is to prevent consumer confusion regarding the commercial origin of goods and services. However, in practice, companies within the same corporate group or with close affiliations often wish to use similar trademarks. Does a "[Letter of Consent](#)" from the prior trademark owner (usually the parent company) carry enough legal weight to negate the likelihood of confusion? Despite a clear parent-subsidiary or internal affiliation, the Intellectual Property Office of Vietnam (IPVN)'s acceptance or refusal of a subsidiary company's trademark application (even with a Letter of Consent) still heavily depends on the assessing examiner's view of the risk of confusion for the public. The lack of specific legal regulations and inconsistency in examination are creating significant challenges for businesses

KENFOX IP & Law Office analyzes the legal bases, practical application, and latest developments concerning the acceptance of Letters of Consent between affiliated companies, thereby providing key considerations for rights holders.

1. Legal Barriers and the Role of the Letter of Consent

In the course of business, it is a practical and not uncommon scenario for subsidiaries or affiliated companies within the same corporate group to seek to use and register trademarks similar, or even identical, to those of the parent company or other related entities. This typically arises from strategies for unified brand building or the expansion of product/service portfolios under a familiar "family" of marks.

However, from the perspective of IP law, each company, whether parent or subsidiary, is considered an independent legal entity. Therefore, when two separate legal entities apply to register identical or confusingly similar trademarks for the same or similar types of goods/services, Article 74.2(e) of the IP Law may be applied to refuse protection for the later-filed trademark due to the likelihood of consumer confusion regarding the commercial origin.

To overcome this legal barrier, a common solution adopted by enterprises is to submit a "Letter of Consent" (LoC) from the owner of the [cited trademark](#) (typically the parent company or an affiliate holding the prior registration). Theoretically, the LoC signifies the consent of the potentially affected rights holder, aiming to persuade the examining authority (the IPVN) that the coexistence of these marks will not be prejudicial and should not be refused on the grounds of likelihood of confusion. The underlying rationale is that the parties are closely related (given their affiliation), and consequently, the risk of dispute or mutual detriment between them is low.

2. The Cautious Approach of the IPVN and the Refusal of Letters of Consent in Practice

Although the Letter of Consent is a recognized legal instrument, practical application in Vietnam indicates a tendency for the IPVN to handle this matter with caution, especially concerning the protecting of public interests. The primary concern lies in the potential conflict between accepting Letters of Consent and the fundamental function of trademarks, which is to safeguard consumers against confusion. Allowing similar trademarks to coexist based on private agreements may undermine the source-identifying function of trademarks and create difficulties for consumers. Furthermore, adhering to the principle that public authorities should not act ultra vires (beyond their legal authority), it is therefore necessary to await official regulations rather than continuing to apply practices lacking a legal foundation.

Even with a Letter of Consent furnished by the parent company, the subsidiary's application remains subject to potential refusal if the IPVN deems the risk of consumer confusion to be tangible. This viewpoint is based on the following reasoning:

- **Consumer Perception:** Ordinary consumers might neither recognize nor be concerned with a corporation's complex ownership structure. Upon encountering similar products/services bearing identical or very similar trademarks, yet sourced from two different companies (legal entities) stated on the packaging, consumers may become confused as to the true entity responsible for manufacturing, distributing, and assuming liability for said product/service. While the products might, from an economic standpoint, originate from the same group source, confusion at the legal level (concerning the liable legal entity) nevertheless persists.
- **Risks Related to Quality and Reputation:** Should the subsidiary (having been granted a Letter of Consent (LoC) for a similar mark's registration) fail to uphold uniform quality standards consistent with those of the parent company, this may adversely impact consumer experiences and impair the general goodwill associated with the brand, which the parent company has diligently established.

- **Risks Related to Structural Changes:** The parent-subsidary relationship may change in the future (for instance, the subsidiary becoming an independent entity). In such an event, the parallel existence of identical or similar trademarks held by two entirely separate legal entities might result in genuine confusion in the marketplace.

Accordingly, in terms of consumer protection, the IPVN might find that a Letter of Consent lacks adequate legal grounds to entirely negate the potential for confusion. [Specific instances of rejection](#) have occurred; for instance: Parent company A holds the trademark “X” for cosmetics, while subsidiary B seeks registration for the mark “X Plus” for its own distinct cosmetics line. Even if B furnishes a Letter of Consent from A, the IPVN might nevertheless reject the application, reasoning that it would be unclear to consumers which entity holds ultimate liability for products bearing the “X” mark, compounded by the inherent risk should the relationship between A and B alter.

3. Letters of Consent Among Related Entities: Should They Be Allowed?

Notwithstanding the prudent approach previously discussed, an alternative viewpoint suggests the need for greater flexibility towards Letters of Consent involving intra-group companies. The question arises: Would consumers actually experience confusion or suffer significant detriment when products/services bearing similar trademarks originate from different subsidiaries within the same corporate group? In many instances, the parent company maintains stringent control over brand strategy, quality standards, and market positioning for its subsidiaries. Consumers may recognize these trademarks as belonging to the same overarching brand “family”, and the distinctions between the sub-brands reflect the diversity of product lines, price segments, or target markets, rather than necessarily implying confusion as to overall origin or compromised quality. The IPVN’s stance of refusal appears to be predicated on a somewhat restrictive interpretation of the function of trademarks in this context – viewing it solely as a means to identify a single legal entity rather than an interconnected economic system under common control. This approach may not adequately reflect the complex realities of contemporary corporate structures and diversified brand strategies

Letters of Consent exchanged between affiliated companies or other entities within the same corporate group should be permissible, because:

- **Common Commercial Source:** Fundamentally, products/services originating from entities within the same corporate group typically share common management origins, strategic direction, and possibly quality standards as well. Consumers, even if they do not differentiate precisely between each legal entity, typically recognize the product as part of an “ecosystem” or a larger brand entity (the group). Consequently, should confusion occur, it typically does not result in material detriment regarding economic benefits or quality standards.
- **Corporate Group Branding Strategy:** Subsidiaries’ use of trademarks similar to that of the parent company can form part of a cohesive brand strategy, serving to enhance the corporate group’s identity and overall power in the marketplace.
- **Consensus and Self-Monitoring:** When the parent company, in its capacity as the owner of the original trademark or as the controller of the overarching brand strategy, has proactively granted a Letter of Consent to its subsidiary, this implies that they have duly assessed and consented to the coexistence of [similar trademarks](#) within their brand portfolio. The management of reputation and quality constitutes a vital element for the sustainable growth of the entire corporate group. Therefore, it is reasonable to assume that the parent company will maintain a mechanism to oversee the subsidiary’s use of the trademark to protect quality and the overall brand image. The Letter of Consent clearly expresses the will of the original trademark owner not to object to the registration by the affiliated company. Furthermore, the parent company itself, for its own benefit and reputation, will likely have mechanisms to monitor the use of the trademark by the subsidiary company to ensure quality and the common brand image.

Therefore, the intervention by the IPVN and the rejection of the Letter of Consent, predicated on an assumption of confusion, while the ultimate responsible entity (the parent company) has provided its consent, may be construed as an unnecessary interference in business autonomy, internal brand management, and the market strategy of the enterprise.

Furthermore, it is necessary to consider whether the refusal of an internal Letter of Consent constitutes the most effective tool for consumer protection. Instead of preventing trademark registration from the outset based on an assumption of potential confusion, perhaps the focus should be on post-registration management mechanisms and more robust enforcement of rights. This includes strictly addressing acts of providing false information regarding products, misleading advertising, and the production of counterfeit and imitation goods – actions that directly harm consumers, irrespective of whether the trademark was registered based on an

internal Letter of Consent. The IPVN's application of the concept of "[consumer confusion](#)" within IP law to address potential concerns regarding quality management or internal brand strategy may represent an inappropriate expansion of its mandate, extending trademark registration into domains primarily governed by competition law, consumer protection law, or corporate governance.

The acceptance of Letters of Consent in cases involving parent-subsidary or affiliated companies is reasonable, facilitating flexible business operations and the implementation of branding strategies, provided that there is no clear evidence of actual harm to consumers.

4. The Necessity of Explicit Legal Provisions and Notes for Enterprises

Acceptance of Letters of Consent between affiliated companies is not yet stipulated with specificity, detail, and binding force in legal instruments concerning Intellectual Property. Consequently, the ultimate determination remains considerably dependent on the perspective and evaluation method employed by each examiner. An examiner inclined towards stringent consumer protection principles can still reject the application upon finding excessive similarity between the marks or the existence of a high potential risk, irrespective of the parent-subsidary ties. This creates uncertainty and numerous disadvantages for businesses

This situation results in uncertainty for enterprises. To mitigate the risk of rejection, intra-group companies ought to consider the following approaches:

- **Designing Trademarks with Differentiation:** Incorporate specific distinguishing elements into the subsidiary's trademark vis-à-vis the parent company's mark, sufficient for consumers to differentiate to a certain degree, thus directly reducing the potential for confusion.
- **Centralized Ownership Structure:** The parent company acts as the registrant for all trademarks and variants thereof, thereafter licensing them or granting the right to use them to subsidiary companies via license agreements or business cooperation contracts (BCCs). This is regarded as the most secure and unambiguous approach in legal terms.
- **Diligent Preparation of the Letter of Consent:** Should the decision still be to pursue separate registration for the subsidiary by means of a Letter of Consent, it is imperative to prepare a comprehensive and robust dossier, including: Clear legal evidence establishing the parent-subsidary relationship or affiliation; a duly executed Letter of Acceptance; and a detailed and unequivocal undertaking from the applicant regarding quality control, ensuring the absence of consumer confusion, and safeguarding the reputation of the original trademark.

Closing thoughts

The issue concerning Letters of Consent in [trademark registration](#) highlights the complex interplay between business needs, legal principles, and the goal of public protection. Formulating regulations on Letters of Consent requires a delicate balance between respecting the freedom of agreement and self-determination of trademark owners, and the state's responsibility to protect public interests, especially consumers, from the risk of confusion in the market.

In a context where legal regulations are not yet entirely clear, businesses need to proactively assess risks and choose the most appropriate trademark registration strategy. The early issuance of specific guidance from state management agencies will be very important in creating transparency, consistency, and a more favorable legal environment for the operations of corporations or affiliated companies in Vietnam.

By QUAN, Nguyen Vu | Partner, IP Attorney
 PHAN, Do Thi | Special Counsel
 HONG, Hoang Thi Tuyet | Senior Trademark 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 / kenfox@kenfoxlaw.com