

Registering Class 35 - A Choice or an Imperative Strategy in Vietnam, Laos, and Cambodia?

In the markets of Laos, Cambodia, and Vietnam, registration under Class 35 is no longer merely an option—it has become an essential requirement for securing robust and comprehensive brand protection. The prevailing practice of prioritizing Class 35 in trademark examination within these jurisdictions is not just procedural in nature; it constitutes a strategic key that enables businesses to significantly enhance their trademark protection—often exceeding expectations.

KENFOX IP & Law Office provides in-depth legal analysis of this critical practice, shedding light on the competitive advantages that Class 35 offers to applicants. The firm also outlines specific and practicable strategic directions to help businesses fully leverage this superior trademark protection mechanism.

The Strategic Value of Class 35 in Trademark Examination

Class 35, as defined under the Nice Classification, encompasses a broad range of services relating to "advertising; business management; business administration; office functions". Notably, this class includes retail and wholesale services, import-export agency services, and the grouping of various goods for the benefit of others to enable consumers to conveniently view and purchase those goods. In other words, Class 35 covers commercial activities that support the sale of goods and services classified under other classes.

A distinguishing feature of trademark examination procedures in **Laos, Cambodia, and Vietnam** is the significant emphasis placed on trademarks registered under Class 35. Examiners in these jurisdictions routinely conduct "**cross-class examinations**" to assess the distinctiveness of a trademark, taking into account potential conflicts across different classes. As a result, an existing Class 35 registration may serve as a legal basis to refuse a subsequent application for a similar or identical trademark—even if the later application pertains to a different class covering specific goods.

Searches and reviews of existing Class 35 registrations are given high priority. This means that even if your trademark application is filed for a specific class of goods or services (e.g., Class 25 – Clothing), the examiner will proactively search for [similar or identical trademarks](#) in Class 35 to assess grounds for refusal. For instance, if you apply to register a mark for "beverages" in Class 32, the examiner will not only search within Class 32 but also examine Class 35 for any registered marks covering "retail services for beverages" or "advertising services for beverages" that could give rise to a conflict.

This heightened emphasis on Class 35 sets these jurisdictions apart from many others globally, where such cross-class conflicts are often given less weight.

The underlying rationale for this practice stems from the recognition that a trademark registration in Class 35 typically encompasses broad commercial activities such as marketing and sales, which may extend across various types of goods and services. Accordingly, a Class 35 registration can serve as an effective barrier against the registration of conflicting marks in related product classes.

Why Is Class 35 Important?

Several factors contribute to the particular emphasis placed on Class 35 in the jurisdictions of Laos, Cambodia, and Vietnam:

- **Enhanced Enforcement:** By registering under Class 35, trademark owners are better positioned to proactively address [trademark infringement](#), particularly in relation to commercial activities such as retail, wholesale, and advertising. In the event of a dispute, ownership of a Class 35 registration serves as a solid legal basis to assert and enforce legitimate rights and interests.
- **Mitigation of Examination Errors:** Trademark examiners in these jurisdictions routinely engage in **cross-class examination**—meaning they actively search for identical or confusingly similar marks in Class 35 even when reviewing applications filed in other specific classes. This practice helps reduce the likelihood of oversight involving earlier Class 35 registrations and enhances the accuracy of the examination process. Intellectual property right holders can rely on this examination practice to assert stronger arguments in opposition proceedings or appeals against examination decisions.

Strategic and Practical Significance

For businesses operating in or targeting the markets of Laos, Cambodia, and Vietnam, securing [trademark registration](#) under Class 35 should be treated as a **strategic imperative** rather than an optional measure. This registration functions as a proactive tool for extending protection beyond the initially designated goods or services, enabling enterprises to establish a broader defensive perimeter against future conflicting marks that may mislead consumers and erode brand value.

However, businesses should take into account the following considerations:

- **Increased Costs:** Registering additional services under Class 35, in addition to the primary goods or services, will inevitably increase the total cost of [trademark protection](#). Enterprises should carefully weigh these additional expenses against the tangible benefits of broader protection and the specific commercial risks relevant to their operations.
- **Scope of Class 35:** While Class 35 offers extensive coverage, its protective scope is not unlimited. It remains critical to ensure that the descriptions of services under Class 35 accurately reflect the commercial activities of the business. Overly broad or irrelevant descriptions may be vulnerable to opposition or may dilute the enforceability of the registration. For example, a Class 35 description may include: “Retail services, wholesale services, and online retail store services specializing in *[list of specific goods or types of goods]*.”
- **No Absolute Guarantee:** Despite its strategic value, registration under Class 35 does not automatically preclude the registration of all subsequent similar marks. Examiners will continue to assess the degree of similarity between the respective marks and their goods/services on a case-by-case basis. Nevertheless, a Class 35 registration clearly enhances the likelihood of success in opposing or preventing the registration of conflicting marks in related classes.

What Are the Risks of Not Registering Class 35?

When a business registers a trademark solely for goods, but a third party does not manufacture those goods and instead engages in activities such as offering them for sale, advertising, or using product images bearing the registered trademark, the question arises as to whether such conduct constitutes trademark infringement - particularly in cases where the trademark owner has not secured protection under Class 35.

In practice, such conduct may indeed give rise to trademark infringement concerns. However, the burden of proof and enforcement becomes significantly more complex and uncertain in the absence of a Class 35 registration.

Without a Trademark Registration Certificate that directly protects “retail services” or “advertising services” associated with the mark, the trademark owner lacks a clear legal basis to demand cessation of the infringing acts based on service-class overlap. Instead, the owner must demonstrate that the third party’s actions, although not involving the same class of goods or services, nonetheless cause substantial consumer confusion and result in harm. This presents a substantial and complex evidentiary burden.

Assessing the “likelihood of confusion” in the absence of class correspondence is inherently more subjective. Administrative enforcement authorities (e.g., the Inspectorate or the Intellectual Property Office) and courts must engage in a more nuanced evaluation of external factors. They will consider elements such as the actual reputation of the mark, the manner and context in which the third party uses the mark ([degree of similarity](#), commercial setting), and whether there is concrete evidence of actual consumer confusion. This may require the trademark owner to present compelling evidence, including consumer surveys, market analysis reports, or proof of specific damages.

Final thoughts

When a business registers a trademark solely for products (e.g., Class 10 for medical devices) but fails to secure registration under Class 35 for related commercial services such as offering for sale or advertising, it creates a significant gap in the overall protection of its brand. Although legal grounds may still exist to assert trademark infringement, the absence of Class 35 protection renders the process of proving and enforcing such claims far more complex, costly, and less effective compared to cases where Class 35 coverage is in place.

Investing in Class 35 registration at the outset represents a relatively modest cost, but its strategic value is considerable - especially when weighed against the potential risks and damages that trademark infringement can inflict on brand owners. Accordingly, to ensure robust and comprehensive brand protection, trademark owners should carefully evaluate and incorporate Class 35 registration into their overall trademark protection strategy.

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