

Common Misconceptions and Legal Risks of Using the ® Symbol in Vietnam

In Vietnam, it is not uncommon for businesses to underestimate the legal significance of using the registered trademark symbol ®. Many mistakenly believe that placing the ® symbol on a trademark that is still pending registration - or even one for which no application has been filed - poses little or no legal risk. Some may view it as a harmless marketing tactic or an acceptable placeholder while waiting for registration approval. However, the reality is far more serious. Under Vietnamese law, such misuse can expose businesses to a range of legal consequences, including administrative sanctions, fines, reputational damage, and even civil liability under consumer protection laws.

KENFOX IP & Law Office analyzes the key [legal risks](#) associated with the use of the ® symbol for unregistered trademarks in Vietnam, including violations of intellectual property rights, consumer protection regulations, and commercial laws; and proposes practical solutions to help businesses prevent and effectively address these risks, ensuring legal compliance and safeguarding the trademark owner's rights.

1. Legal risks may arise if the client uses the registered trademark symbol ® for an unregistered trademark in Vietnam

1.1. Risks of violation of IP law and regulations

Using the ® symbol for a trademark that has not been registered in Vietnam constitutes a direct violation of Vietnamese Intellectual Property Law. This act is explicitly categorized as "*Providing false indications on the legal status of IP rights*". The core issue is that such use misleads the public into believing that the mark enjoys formal industrial property rights protection in Vietnam when, in fact, it does not. This prohibition extends to situations where a registration application has been filed but a protection title has not yet been granted, or where a protection title has been revoked, invalidated, or its term of protection has expired at the time the misleading indication is made.

Legal basis:

The primary legal framework for sanctioning the act of providing false indications on the legal status of IP rights is established through a combination of decrees and circulars:

- **Circular 11/2015/TT-BKHCN (Article 7):** This Circular provides detailed guidance on administrative violations in the field of industrial property. It explicitly defines the act of false indication to include the use of the ® symbol when a mark has not been granted a registration certificate. This Circular has been significantly amended and supplemented by **Circular 06/2024/TT-BKHCN**, which came into effect on November 15, 2024.
- However, a crucial update has been introduced with **Circular 06/2024/TT-BKHCN**, effective November 15, 2024. This new Circular provides an important exemption: the use of the ® symbol on goods and packaging (including secondary labels for imported goods) is *not* considered an [infringement](#) if these goods and packaging clearly bear truthful information about the trademark protection status in Vietnam. This means that a clear sub-label, for example, stating "Registered in [Country X], application pending in Vietnam" or "Registered in [Country X] only" could potentially mitigate the risk of administrative penalties.
- **Decree 99/2013/ND-CP (Article 6):** This Decree prescribes the administrative sanctions to be imposed for violations in the field of industrial property. This Decree has also undergone recent amendments and supplements through **Decree 46/2024/ND-CP**. Decree 46/2024/ND-CP was specifically designed to align Decree 99/2013/ND-CP with the amended IP Law of 2022.

Specific penalties and liabilities:

Acts of providing false indications on the legal status of IP rights are subject to administrative sanctions as outlined in the aforementioned legal instruments. The specific penalties under Article 6, Decree 99/2013/ND-CP (as amended) and Article 7, Circular 11/2015/TT-BKHCN (as amended) include:

Administrative fines:

- For individuals: A warning or a fine ranging from VND 500,000 to 1,000,000.
- For entities (organizations): The fine amount is doubled compared to that for individuals, meaning a fine ranging from VND 1,000,000 to 2,000,000.

Additional remedial measures:

- Forcible removal of infringing elements on goods or means of business.
- Forcible public correction of errors.

For more insights, please find our article titled "Use of the trademark symbols in Vietnam" at this link: <https://kenfoxlaw.com/use-of-the-trademark-symbols-in-vietnam>

1.2. Risk of violation of consumer rights and misleading commercial practices

Apart from IP risk analyzed above, the use of the registered trademark symbol ® for an unregistered trademark in Vietnam can indeed be risky to the trademark owner under the Decree No. **98/2020/ND-CP on administrative violations in commercial activities, production and trade of counterfeit and prohibited goods, and protection of consumer rights**, as it constitutes a form of misleading information to consumers. Specifically, the following provisions can serve as legal grounds:

- Article 47.1(dd) (Decree 98/2020/ND-CP): This article addresses violations related to providing information on goods or services to consumers. It penalizes "*Hiding information or providing inadequate, false or inaccurate information for consumers*". The use of the ® symbol for an unregistered mark provides false information about its legal status.
- Article 63.3(a) (Decree 98/2020/ND-CP): For activities conducted on e-commerce websites or mobile applications, this provision prohibits "*Providing false information on traders, owner of e-commerce website or mobile application, goods, services, prices, transport, delivery, payment methods, terms and conditions of contract, and contract containing general terms and conditions on the e-commerce website or mobile application*". Misusing the ® symbol in an online context would fall under providing false information about the goods or services.
- Article 33.3(d) (Decree 98/2020/ND-CP): This provision specifically targets sales promotion activities, penalizing "*Doing sales promotion involving false or misleading information about goods or services in order to deceive customers*". If the ® symbol is used in promotional materials for an unregistered mark, it could be considered misleading.
- Article 53.2(c) (Decree 24/2025/ND-CP amending Decree 98/2020/ND-CP): For remote transactions, this amended provision imposes penalties for "*Providing inaccurate or incomplete information to consumers as prescribed when conducting remote transactions*". This would cover misleading indications on products sold through remote channels.

The **penalties for the above violations** under Decree 98/2020/ND-CP (and its amendments) include:

Administrative fines:

- For general violations in the field of commerce or consumer rights protection, the maximum fine can be up to VND 100,000,000 for individuals and VND 200,000,000 for organizations. More specifically, fines for false or misleading advertising can range from VND 60,000,000 to VND 80,000,000.
- For providing inaccurate or incomplete information in remote or online transactions (Article 53.2(c)), the fine for individuals is between VND 20,000,000 and VND 40,000,000. This fine is doubled for organizations and further doubled if the violation occurs in online transactions.

Remedial measures:

- Forcible correction of false or misleading information.
- Forcible removal of violating elements on labels and packages of goods or means of business

1.3 Risks of civil remedies under Consumer Protection Law

A consumer or a social organization acting on behalf of consumers, may indeed use avenues for protection of consumer rights to seek civil remedies against your client for the improper use of the registered trademark symbol (®) for an unregistered trademark in Vietnam. The use of the ® symbol implies that the trademark is officially registered and protected in Vietnam. When this is not the case, it can be considered a misleading indication to consumers about the legal status, quality, or origin of the goods or services.

Please refer to the legal provisions under the **Law on Consumer Rights Protection (Law No. 19/2023/QH15)** based on which a lawsuit can be filed with a Vietnamese court under civil proceedings:

- **Right to accurate information (Article 4.2):** Consumers have the right to be provided with timely, accurate, and complete information about products, goods, services, transaction content, origin, and

about the business organization or individual. The false use of the ® symbol directly violates this right by providing inaccurate information about the product's legal status.

- **Right to compensation for damages (Article 4.5):** Consumers have the right to demand compensation for damages when products, goods, or services are inconsistent with the registered, announced, published, listed, advertised, introduced, agreed, or committed content by the business. The misleading use of the ® symbol can be seen as a false advertisement or commitment regarding the product's protected status, leading to potential damages for consumers who relied on this information.
- **Right to legal recourse (Article 4.7):** Consumers have the [right to file complaints](#), denunciations, or lawsuits, or request social organizations to file lawsuits to protect their rights in accordance with this Law and other relevant laws. This provision explicitly grants consumers the standing to initiate civil actions.
- **Prohibited acts of deception (Article 10.1(a)):** This article strictly prohibits organizations and individuals engaged in business from "*deceiving or misleading consumers through providing false, incomplete, or inaccurate information*" about their products, goods, or services, or their reputation and business capacity. The use of the ® symbol on an unregistered trademark falls squarely under this prohibition as a deceptive act.
- **Prohibited acts of non-conforming products/services (Article 10.1(e)):** This prohibits businesses from "*not compensating, refunding, or exchanging products, goods, or services for consumers because the products, goods, or services do not match the registration, announcement, publication, listing, advertisement, introduction, agreement, or commitment of the business*". If a consumer purchases a product believing it to be from a registered brand due to the ® symbol, and it turns out not to be, this provision could apply.

Civil lawsuits can lead to injunctions to stop infringing acts and orders for damages.

2. How these risks can be avoided or responded to

2.1. Strategies for risk avoidance

[i] Proactive trademark registration in Vietnam: Given Vietnam's "first-to-file" trademark system, securing formal registration with the IPVN is very critical. This establishes exclusive rights and provides a strong legal basis for protection. Before trademark filing, conducting an availability search is strongly recommended.

[ii] Proper trademark marking practices: Adhering to correct marking conventions is crucial to avoid false indication violations.

- **Strictly limit ® use to registered marks:** The ® symbol should *only* be used for trademarks that have been officially registered with the IPVN. Using it for a mark unregistered in Vietnam, even if registered elsewhere, is a violation.
- **Use ™ for unregistered marks:** For trademarks not yet registered in Vietnam, the ™ symbol is the appropriate designation. Vietnamese law does not define the meaning of the ™ symbol, and its use for unregistered trademarks generally carries "no risks". This allows businesses to assert proprietary claims without falsely implying official registration.
- **Best practices for imported goods:** For imported goods bearing the ® symbol (registered in another country but not in Vietnam), it is important to ensure that the goods or their packaging (including secondary labels) clearly bear truthful information about the trademark's protection status *in Vietnam*. For example, a sub-label stating "**Registered in [Country X]**" or "**Trademark application pending in Vietnam**" can mitigate the risk of administrative penalties. This exemption acknowledges the impracticality of universal trademark registration and focuses on preventing deceptive practices.

2.2. Strategies for responding to misuse or infringement claims

If improper use of the ® symbol is discovered or a claim of false indication arises, a swift and informed response is necessary.

[i] If already using ® for an unregistered mark

- **Immediate cessation of improper use:** The most critical step is to immediately stop all improper use of the ® symbol on the unregistered trademark. This includes removing it from products, packaging, advertising, and all business materials.

- **Prioritize and expedite trademark registration:** Simultaneously, initiate and expedite the trademark registration process for the mark in Vietnam.

[ii] If facing a claim of false indication

Should a claim of "providing false indications on the legal status of IP rights" be made, a structured response is vital.

- **Understand the claim:** Thoroughly understand the specific allegations, the legal articles cited (e.g., Article 7, Circular 11/2015/TT-BKHCN and Article 6, Decree 99/2013/ND-CP, as amended), and the evidence presented by the complaining party or regulatory authority.
- **Potential defense arguments:**
 - **Truthful information on sub-labels for imported goods:** If the goods are imported and bear the ® symbol, a defense can be mounted by demonstrating that clear and truthful information about the trademark's protection status in Vietnam was provided on the goods or packaging (e.g., via a secondary label). This can exempt the act from being considered an infringement.
 - **Unintentional fault and remedial action:** Although not a complete defense, arguing that the misuse was unintentional (e.g., due to a misunderstanding of Vietnamese law, especially for foreign entities) and that immediate, proactive steps were taken to cease the improper use and rectify the situation (e.g., by initiating trademark registration) can influence the outcome, potentially leading to a warning rather than a higher fine.
 - **No likelihood of confusion (for broader infringement claims):** In cases where the claim extends beyond mere false indication to broader [trademark infringement](#), it might be argued that the use of the mark, despite the ® symbol, does not cause a likelihood of confusion as to the origin of commerce with a registered trademark.

Final thoughts

The use of the ® symbol for trademarks that have not been registered in Vietnam is a serious legal issue that requires businesses to exercise utmost caution. To minimize potential risks, businesses must strictly comply with Vietnam's legal provisions on intellectual property, consumer protection, and commercial activities. Proactively registering trademarks in a timely manner, combined with adherence to proper labeling practices, not only helps businesses avoid regulatory sanctions but also plays a critical role in safeguarding the reputation and value of their brands in the Vietnamese market.

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