

Identical Filing Dates, Identical Marks: Vietnam's Resolution Mechanism and How Businesses Should Respond?

In practice, it is not uncommon for two entirely independent entities to file applications to protect an identical or similar sign for the same goods/services - sometimes even on the very same day. What may appear to be a mere coincidence, however, presents an intriguing legal question: when both applications satisfy the filing-date requirement equally, who has priority? Who will be the lawful owner of the mark?

In a rare case, a client of KENFOX IP & Law Office - Eurotek Vietnam Lubricants Co., Ltd. (Công ty TNHH



Dầu nhớt Eurotek Việt Nam) - filed an application for the mark “**SUPERTOP**” (SUPERTOP, device) covering “lubricants; engine oil” in Class 4 on 26 May 2020. In July 2023, the Intellectual Property Office of Vietnam (IPVN) notified that another application for the mark “SUPERTOP” had also been filed on 26 May 2020 in the name of TLT Spare Parts Production and Trading Co., Ltd. [Công ty TNHH Thương mại Sản xuất Phụ tùng TLT] for the same goods. Once both applications entered substantive examination, the issue was no longer who filed first, but rather: How will the legal system address a situation in which there is no “first comer”?

Core Legal Principle: When “First-to-File” Is Not Dispositive

Vietnam's IP regime adheres strictly to the “first-to-file” rule. The rule is meant to identify who enjoys priority in [trademark registration](#): the applicant who files earlier for the same mark and the same goods/services has the superior claim to protection. However, where two applications for the same mark are filed on the same day, this rule cannot, by itself, determine the prevailing party- simply because neither applicant filed earlier than the other.

In such circumstances, the IPVN does not assume the role of an immediate “arbitrator” to select which party is “deserving” of the trademark registration. Instead, the system is designed to ensure **fairness, transparency**, and to encourage the parties to actively resolve the conflict through **mutual agreement** (or **settlement**).

“Mutual Citation”: When the law mandates dialogue between parties

When an **examiner** at the **IPVN** identifies two applications that involve identical or confusingly similar marks, filed for the same class of [goods/services](#), and bear the **same filing date**, a special procedure is triggered. Specifically, IPVN applies a “mutual citation” (cross-citation) mechanism as follows:

- **Independent examination notices for each application:** Each application is still subjected to a separate **substantive examination** according to standard procedure. However, in the **Notice of Substantive Examination Results** issued to each party, the IPVN will **cite the other application** as a conflicting reference, leading to a **refusal of protection**.
- **Recognition of a parallel legal conflict.** The mutual citation creates a unique legal impasse - each application simultaneously blocks the other. Neither can be allowed because the other “stands in the way”.
- **Requirement to resolve the conflict by agreement.** Rather than issuing a unilateral decision, IPVN encourages the parties to engage directly and reach a solution. The authority acts as a neutral coordinator, creating the opportunity for negotiation toward registrability.

Legal consequence - an administrative stalemate. No application can proceed to grant unless the parties submit a written agreement on how the conflict will be resolved. IPVN will permit only **one** application to move forward to grant.

Accordingly, [trademark owners](#) typically choose one of two pathways:

- **(A) Single owner.** The parties execute an agreement under which one party continues with the application; the other withdraws its application or assigns it to the first party. This is the simpler, faster approach and is often preferred where one party has a [clearer commercial interest](#).
- **(B) Co-ownership of a single mark.** If both parties have legitimate reasons to retain rights, they may agree to co-own a single, consolidated application. Both parties are named on one application, and the other application is withdrawn. This enables joint exploitation of the mark but requires long-term cooperation and a clear allocation of rights and obligations.

Whichever option is chosen, the parties must promptly execute a formal written agreement and notify IPVN. If no agreement is filed within the prescribed period, all related applications will be refused for failure to resolve the conflict.

Why is this mechanism sound?

The “mutual citation–party agreement–single registrable application” approach is not a stop-gap technical fix; it reflects a careful balance between [legal principles and the practical administration](#) of a registration system:

- **Strict adherence to the objectivity of the first-to-file rule.** The IP Office does not consider “use merits” or a mark’s commercial exploitation history absent a clear statutory basis for priority. This ensures procedural fairness in absolute terms.
- **Practicality in administration and dispute prevention.** Avoiding parallel grants of duplicative rights for the same goods/services minimizes the risk of post-registration disputes and, at the same time, incentivizes the parties to engage in dialogue and proactively resolve their conflict.

In other words, the mechanism both safeguards the transparency and objectivity of the legal framework and creates a necessary “space” for the parties to demonstrate good faith and brand strategy. Rather than producing a winner-take-all outcome, it affords both sides an opportunity to negotiate toward a mutually acceptable solution aligned with their business interests.

Recommendations for Trademark Owners

To handle the above scenario effectively, trademark owners should proactively take the following steps:

- **Engage promptly with the counterparty:** Upon receiving an examination notice citing the other application, immediately contact the other applicant. Early negotiations increase the likelihood of agreeing on a path forward—withdrawal, assignment, or co-ownership. Delay may result in both parties losing rights.
- **Standardize the legal paperwork:** Prepare all necessary instruments: a designation or co-ownership agreement, a withdrawal letter, an assignment agreement (if applicable), and an official communication to [the Intellectual Property Office](#) of Vietnam (IPVN) confirming the parties’ agreement.
- **Draft operational clauses (for co-ownership):** If co-ownership is chosen, clearly define quality control, scope of use, decision-making mechanisms, and procedures for resolving disagreements. This helps prevent consumer confusion and internal conflicts.
- **Monitor all deadlines:** Even while negotiating, closely track the examination timelines for both files (response deadlines, publication dates, third-party opposition windows, etc.). Proactive monitoring ensures no critical deadline is missed and avoids adverse procedural outcomes.
- **Consider long-term strategy:** In most cases, having a single owner facilitates management, commercialization, and enforcement (e.g., simplifying licensing, enforcement actions, or future transfers). While co-ownership can be a flexible interim solution, it carries operational risks over time. Owners should weigh the pros and cons carefully and prioritize the option that best serves their long-term brand strategy.

Conclusion

In exceptional situations involving identical filing dates and identical marks, the most effective approach is to act swiftly and pursue strategic negotiations to resolve [the conflict](#) before the deadline for responding to IPVN's notice expires.

In the matter referenced above, KENFOX IP & Law Office represented Eurotek Company in negotiations with TLT Spare Parts Production and Trading Co., Ltd. concerning the "SUPERTOP" mark. As a result, TLT agreed to withdraw its application, thereby creating the legal pathway for KENFOX's client to secure registration of its mark in Vietnam.

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