Trademark Refusal in Vietnam: What Strategy Enabled the “Three-Circle” Mark to Overcome a Likelihood-of-Confusion Objection?

When two figurative marks with nearly identical structural compositions are filed for the same category of goods, the prospects of securing registration for the later-filed application are generally slim. In other words, the risk of refusal is exceptionally high. Many businesses assume that obtaining a **Letter of Consent** from the owner of the cited mark will automatically resolve the issue. In practice, however, the matter is far more complex. A Letter of Consent is an important supporting piece of evidence, but it is not a legally binding instrument that compels acceptance by the trademark authority. Examiners remain fully entitled to disregard a Letter of Consent if they conclude that a likelihood of confusion among consumers still exists.

The case involving Australis Holdings, Inc.’s “three-circle” device mark illustrates the limitations of this approach. Although the applicant successfully obtained a Letter of Consent from the owner of the cited mark, the decisive factor was not the consent letter itself. More broadly, in trademark refusal proceedings, the critical issue is not merely whether the owner of the earlier mark agrees to coexistence. Rather, the key is to demonstrate that, when assessed as a whole, the marks are unlikely to create actual confusion in the minds of the relevant public.

This case provides valuable insight into how a carefully structured legal strategy - going beyond reliance on a Letter of Consent alone - can overcome a refusal based on alleged trademark similarity and establish that coexistence of the marks would not adversely affect consumers or the public interest.

Background

Australis Holdings, Inc. filed International Registration No. 1513635 (), designating Vietnam for protection in respect of goods in Class 29. During substantive examination, the Intellectual Property Office of Vietnam issued a provisional refusal, taking the view that Australis Holdings, Inc.’s three-circle device mark was confusingly similar to COSMAXBTI, INC.’s prior three-circle device mark, protected under Trademark Registration No. 1345947 ().

From the perspective of initial examination, the refusal ground adopted by the Intellectual Property Office of Vietnam was understandable. Both marks are abstract geometric devices, both are composed of three circles, and, more importantly, the goods bearing the marks fall within the same product class.

The Limitations of a Letter of Consent in Vietnamese Trademark Examination Practice

To overcome the refusal, Australis Holdings, Inc. obtained a Letter of Consent from COSMAXBTI, INC., whereby the owner of the cited mark expressly confirmed that it had no objection to the registration and protection of Australis Holdings, Inc.’s mark in Vietnam.

However, the examiner did not regard the Letter of Consent as sufficient to eliminate the likelihood of confusion. This position reflects established examination practice in Vietnam. Even where the relevant commercial parties have reached an agreement and consented to coexistence, the Intellectual Property Office of Vietnam may still independently assess whether the concurrent protection of the marks would impair the trademark’s source-identifying function or create a risk of confusion among consumers.

Accordingly, a Letter of Consent alone is rarely sufficient to overcome a refusal based on trademark similarity. To persuade the examining authority, the applicant must present a robust legal and factual case demonstrating that any similarities between the marks are limited to certain superficial elements, whereas the overall commercial impressions conveyed by the respective marks are materially different. The decisive issue is not

whether the trademark owners themselves are willing to coexist, but whether the relevant public is likely to perceive the marks as originating from the same source or from economically connected undertakings.

The Strategy: From Visual Distinctions to Evidence of Coexistence

Assessing Distinctiveness Through Overall Impression and Commercial Impression

Following a careful review of the two marks, it became clear that the likelihood of confusion could not be assessed by isolating a single element - namely, the fact that both marks incorporate three circles—and then concluding that the marks are confusingly similar. Trademark comparison must be conducted on the basis of the marks as a whole, viewed through the eyes of an average consumer exercising ordinary attention.

In the present case, although both signs employ three circles or circular elements, their geometric arrangements differ significantly. Each mark creates a distinct visual composition, a distinct identity, and a distinct commercial impression. Put differently, any similarity exists only at the level of a general geometric concept or motif. The specific expression of that concept, however, differs sufficiently for consumers to distinguish one mark from the other.

This distinction is particularly important in trademark law. Trademark protection does not confer a monopoly over an abstract idea, such as the concept of "three circles" in the abstract. Rather, the assessment focuses on the specific manner in which that concept is expressed in a particular sign. Where different parties employ a common geometric motif but present it in materially different ways that generate different overall impressions, there is a legitimate basis for arguing that no likelihood of confusion exists.

Evidence of Coexistence in Multiple Jurisdictions

An additional pillar of the strategy was evidence demonstrating that the two marks had coexisted in numerous countries and territories without dispute, without evidence of actual consumer confusion, and with the express consent of the owner of the cited mark.

Where two marks have been permitted to coexist across multiple markets under such circumstances, this may constitute a persuasive practical consideration supporting the argument that the likelihood of confusion is neither obvious nor sufficiently serious to justify refusal in Vietnam.

Admittedly, evidence of foreign coexistence does not bind the Intellectual Property Office of Vietnam. Each jurisdiction applies its own legal framework and examination standards. Nevertheless, such evidence remains highly relevant and persuasive. It enables the applicant to support its position with real-world marketplace experience rather than relying solely on theoretical legal arguments.

Evidence of coexistence is therefore not a substitute for Vietnam's independent examination process. Rather, it serves as an important corroborative factor. It demonstrates that other trademark authorities have not regarded the marks as confusingly similar despite their coexistence in relation to goods falling within the same or closely related categories. When considered together with the direct comparison of the marks and the differences in their overall visual and commercial impressions, such evidence strengthens the argument that the marks are capable of coexisting without causing consumers to be misled as to the commercial origin of the goods.

Outcome and Practical Takeaways

Based on the legal arguments and supporting evidence submitted by KENFOX, the Intellectual Property Office of Vietnam issued a decision on April 3, 2026, withdrawing its provisional refusal and granting protection to Australis Holdings, Inc.'s trademark in Vietnam.

This outcome demonstrates that, in trademark refusal cases involving alleged likelihood of confusion - particularly those concerning figurative marks -a Letter of Consent achieves its greatest persuasive value only when incorporated into a comprehensive legal strategy capable of clearly explaining why the concurrent protection of the marks would not create a material risk of consumer confusion.
The case also offers several important lessons for trademark owners facing refusals in Vietnam.

1. **A Letter of Consent Should Not Be Viewed as a Standalone Solution.** Although a Letter of Consent can be a powerful supporting piece of evidence, it should not be regarded as a substitute for substantive legal arguments. If the marks are still considered excessively similar when assessed as a

whole, the Intellectual Property Office of Vietnam may nevertheless refuse registration despite the existence of a consent agreement between the parties.
Accordingly, applicants should avoid relying exclusively on a Letter of Consent and should instead develop a broader evidentiary and legal framework demonstrating the absence of a genuine likelihood of confusion.

2. **Trademark Assessment Must Focus on Overall Impression Rather Than Isolated Elements.** In many cases, the most obvious point of similarity is not necessarily the decisive factor in the confusion analysis. The critical question is whether consumers, when encountering the marks under normal marketplace conditions, would mistakenly believe that the goods originate from the same undertaking or from economically connected entities.
For this reason, trademark comparisons should be conducted on the basis of the overall visual, conceptual, and commercial impressions created by the marks, rather than by dissecting individual elements in isolation.
3. **Foreign Coexistence Evidence Can Be Highly Persuasive.** Evidence demonstrating peaceful coexistence in foreign jurisdictions may provide substantial support in overcoming a refusal based on alleged similarity. Such evidence may include coexistence registrations, records of concurrent use in multiple markets, the absence of disputes or documented consumer confusion, and consent granted by the owner of the cited mark.
While such evidence does not bind the Intellectual Property Office of Vietnam and cannot replace an independent examination under Vietnamese law, it can significantly reduce concerns regarding the likelihood of confusion by showing that the marks have successfully coexisted in real-world commercial environments without creating marketplace confusion.
When combined with a well-reasoned analysis of the marks themselves, foreign coexistence evidence may become an important factor in demonstrating that simultaneous protection of the marks is both legally justifiable and commercially workable.

Conclusion

A trademark refusal in Vietnam is not always the end of the road. In many cases, it is merely the starting point of a legal process that demands careful analysis, strategic thinking, and a well-structured advocacy approach.

An effective response to a trademark refusal should be developed as a comprehensive and persuasive case rather than as a simple explanatory submission. Success often depends on the ability to combine legal analysis, visual comparison, factual evidence, and a clear narrative demonstrating why registration of the applied-for mark would neither prejudice the rights of the owner of the cited mark nor create a likelihood of confusion among consumers.

The "three-circle" trademark case illustrates that even where an applied-for mark is refused on the basis of a high degree of similarity to a cited mark, opportunities to overcome the refusal may still exist if the legal strategy is properly conceived and supported by compelling evidence.

A Letter of Consent may strengthen an applicant's position, but it is rarely the decisive factor. The critical issue remains whether the applicant can demonstrate that, when assessed as a whole, the marks are sufficiently distinct to coexist in the marketplace without causing confusion as to the commercial origin of the goods. This is an important lesson for businesses seeking trademark protection in Vietnam: in challenging cases, the solution is not to rely on a single "silver bullet" piece of evidence. Rather, applicants should build a comprehensive legal strategy capable of persuading the examining authority from both a legal and commercial perspective.

Ultimately, a trademark registration is more than a certificate of protection. It is a valuable business asset that enables companies to operate with greater certainty, expand into new markets, attract commercial partners, safeguard their reputation, and defend themselves against infringement. For that reason, where a refusal presents significant risks but viable legal grounds remain available, investing in a carefully crafted and strategically developed response can make a decisive difference to the outcome.

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