Bad-Faith Trademark Filings in Vietnam: What Evidence Really Matters?

When a brand owner discovers that its trademark has already been applied for or registered in Vietnam by a third party, the immediate assumption is often that the case is open-and-shut: *"The marks are identical. The goods are identical. This is blatant bad faith".*

Not necessarily.

In practice, demonstrating similarity between two marks is usually the simplest part of an opposition or invalidation. The real challenge - and where most foreign brand owners stumble - lies in evidence. Proving bad faith requires proving state of mind, commercial motive, and intent under a strict first-to-file regime.

Decisive direct evidence rarely exists. Instead of treating individual documents in isolation, a successful bad-faith action in Vietnam relies on building a cohesive, self-reinforcing chain of evidence.

Here is what practical experience shows truly moves the needle.

1. Establishing Prior Knowledge: The Core Foundation

The starting point is demonstrating that the applicant was fully aware of the genuine brand prior to filing.
The strongest evidence naturally stems from a prior commercial relationship. Distributorship or agency agreements, purchase orders, formal quotations, email negotiations, OEM manufacturing discussions, or franchise exchanges make it nearly impossible for the applicant to claim independent creation.

Where no formal contract was ever signed, the focus must shift to market exposure. Evidence of the brand's regional presence - cross-border sales into Southeast Asia, international trade exhibitions, localized online marketing, social media engagement, and website traffic originating from Vietnam - serves as critical circumstantial proof that the applicant did not design the mark by coincidence.

2. Investigating the Filing History: Pattern vs. Coincidence

One trademark application often reveals very little. Twenty applications tell a completely different story.
Before filing an action, an exhaustive audit of the applicant's portfolio at the Intellectual Property Office of Vietnam (IP Viet Nam) is essential.

- Has the applicant filed marks belonging to multiple unrelated foreign brand owners?
- Have they targeted distinctive, highly stylized logos, invented words, or unique figurative elements?
- Are the filings concentrated in industries where foreign brands are actively expanding?

A demonstrated pattern of opportunistic filings instantly reframes the case: an isolated, disputable conflict transforms into compelling evidence of systematic trademark squatting.

3. Assessing Conduct and Commercial Motive: Why Was the Mark Filed?

Knowledge alone does not complete the case. An applicant's conduct before, during, and after filing reveals the commercial motive behind the registration:

- Did the applicant approach the genuine brand owner offering to "assign" or "sell" the mark at an extortionate price?
- Did they demand excessive compensation in exchange for a Letter of Consent?
- Did they secure the registration only to leverage it into an exclusive distribution deal?
- Did they use the registration to block genuine shipments at Vietnam Customs or issue threatening letters to legitimate distributors?
- Is there a complete absence of genuine commercial use or marketing activity under the mark?

These behaviors provide authorities with the answer to the most vital question: *Why was the mark filed in the first place?*

4. The Power of Chronology: Timing as Circumstantial Proof

The chronological sequence of events is frequently underestimated.
Consider a familiar scenario:

- **January:** The parties initiate preliminary distribution talks.
- **February:** The foreign brand shares product catalogues, technical specs, and wholesale pricing.
- **March:** Negotiations break down.
- **April:** The local party files an identical trademark application in Vietnam.

No single document may state, *"We intend to misappropriate your brand."* Yet, the chronology speaks for itself. It is strongly recommended to construct a granular timeline of all communications before drafting legal arguments. In IP disputes, timing often supplies the causation that documents alone cannot.

5. Separating "Bad Faith" from "Well-Known Trademarks"

A frequent and costly mistake is expending enormous resources trying to prove that a mark is "well-known" in Vietnam.

While regional reputation is helpful context, bad faith and well-known trademark protection are distinct legal concepts. Over-relying on strict well-known criteria can divert focus from the applicant's bad-faith conduct. The question is not simply: *"Can we prove our mark is universally famous?"*

It should be: *"What combination of evidence proves this specific applicant knew of our brand and sought the registration for an improper commercial advantage?"*

Strategic Takeaways

In bad-faith disputes, practitioners rarely find a single document that settles the matter on its own.

A viable case is typically assembled by linking different facts together: correspondence establishing prior knowledge, portfolio searches demonstrating a pattern, commercial demands indicating motive, and a chronological timeline showing opportunistic timing. Taken alone, each item may seem inconclusive; presented together, they form a clear and persuasive commercial picture.

For rights holders facing trademark conflicts in Vietnam, the initial assessment should therefore focus less on the degree of similarity between the marks, and more on what can be concretely documented about the applicant's conduct and background.

That is where the strategic advantage is built

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