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New finds this week

With careful planning and informed use of Vietnam's IP procedures, companies are better positioned to protect their interests, safeguard their branding strategies, and operate confidently within one of Southeast Asia's most dynamic markets.

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New finds this week

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PROACTIVE TRADEMARK STRATEGIES IN VIETNAM FOR NAVIGATING NON-INFRINGEMENT AND INVALIDATION MECHANISMS

Overview

Intellectual property disputes have become an increasingly common feature of Vietnam's fast-moving commercial environment. As competition intensifies and more companies expand into the market, conflicts over trademark ownership and use are almost inevitable. Instead of waiting for disputes to take shape, forward-looking businesses are turning toward proactive legal strategies to protect their commercial interests. Among these strategies, declarations of non-infringement and trademark invalidation have emerged as effective methods for establishing legal certainty and preventing unnecessary conflict. These mechanisms give businesses a clearer understanding of their position under Vietnamese law while reducing the chance of disruptive enforcement action in the future.

Understanding Declarations of Non-Infringement in Vietnam

Vietnamese law does not formally define a declaration of non-infringement as a standalone legal procedure. Nevertheless, the concept functions as an important practical tool for businesses seeking assurance that their activities do not violate existing intellectual property rights. This mechanism is especially relevant when a business intends to introduce a new product or service into Vietnam, or when it has received warnings or threats alleging trademark infringement.

In essence, a declaration of non-infringement is a request for official or quasi-official confirmation that a particular use of a mark does not infringe another party's registered rights. While the system may not mirror that of certain common law jurisdictions, Vietnam offers multiple pathways for companies to obtain clarity. The first and most direct approach is to engage with the trademark owner. By explaining the nature of the intended use and articulating why such use does not amount to infringement, the requesting party may obtain written confirmation of non-infringement. This approach promotes constructive dialogue and can resolve concerns efficiently, although it depends entirely on the trademark owner's cooperation.

When direct engagement does not lead to a conclusive outcome, the requesting party may escalate the matter to competent authorities. Courts in Vietnam have the authority to examine disputes and issue judgments providing legal clarity, including confirmation of non-infringement. Although this route is not used as frequently, it remains available when circumstances require judicial certainty.

One of the more practical alternatives in Vietnam involves the administrative enforcement authorities. Agencies such as the Market Management Agency can request "expert opinions" from the Vietnam Intellectual Property Research Institute or the IP Office of Vietnam. These expert assessments are widely regarded as credible and are routinely relied upon by courts and enforcement authorities when determining whether an infringement has occurred. For businesses seeking a reliable, neutral evaluation, this approach offers an effective means of reducing uncertainty and risk before disputes escalate.



Challenging Trademark Validity Through Invalidation

Beyond seeking clarity regarding non-infringement, many businesses encounter situations where an existing trademark registration creates an obstacle to market entry or product development. Vietnam's IP law provides a structured mechanism for resolving such concerns through trademark invalidation. Article 96 of the IP Law empowers third parties to challenge improperly granted registrations, ensuring that the marketplace remains fair, competitive, and aligned with statutory requirements.

A declaration of invalidity may target the entire registration or only a portion of the protected goods and services. Applications for invalidation can be based on several grounds. One significant basis is the bad faith of the original applicant, such as where the applicant knowingly sought to register a mark connected with another well-established business. Another common ground relates to procedural or substantive non-compliance. This may arise when a mark lacks distinctiveness, when the applicant had no legitimate right to register the mark, or when amendments during prosecution impermissibly broadened the scope of protection.

When a petition for invalidation is filed, the IP Office of Vietnam reviews the evidence and determines whether legal grounds for invalidation exist. If the challenge succeeds, the registration is either partially or entirely invalidated. This outcome removes the legal barrier and may allow other businesses to enter the market without concerns regarding potential infringement of that particular right.



Strategic Considerations For Businesses Operating In Vietnam

Although Vietnam's system does not follow the same procedural style as common law jurisdictions, the available mechanisms, whether judicial, administrative, or negotiated, can be used effectively by businesses that approach the process strategically. Companies planning to launch products, adopt new branding, or enter potentially competitive sectors should consider proactive legal review before investing heavily in marketing or distribution.

Engaging early with trademark owners is often a worthwhile first step. Many disputes can be avoided through communication and clarification. Where cooperation is uncertain, businesses may find significant value in obtaining expert opinions from administrative bodies. These opinions provide credible, objective assessments that can prevent future disputes and support a stronger legal position should litigation arise.

Invalidation proceedings, while potentially more adversarial, remain an essential tool for correcting improper registrations that pose unjustified obstacles. By understanding the grounds and procedures for invalidation, businesses can protect their freedom to operate and maintain competitive agility.



Conclusion

Vietnam's trademark landscape continues to evolve in response to market growth, increased foreign investment, and rising awareness of intellectual property rights. Although the system differs from jurisdictions where non-infringement declarations are firmly codified, Vietnam offers practical pathways for businesses to obtain legal certainty. Declarations of non-infringement, whether through direct communication, administrative expert opinions, or judicial routes, enable companies to anticipate and prevent disputes before they arise. Likewise, the invalidation mechanism under Article 96 ensures that the trademark register remains accurate and free from improperly granted rights.

Businesses that take proactive steps seeking clarity before conflict arises, understanding the available mechanisms, and acting strategically can significantly reduce legal risks. With careful planning and informed use of Vietnam's IP procedures, companies are better positioned to protect their interests, safeguard their branding strategies, and operate confidently within one of Southeast Asia's most dynamic markets.

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