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JUDICIAL BALANCING OF OVERLAPPING INTELLECTUAL PROPERTY RIGHTS IN VIETNAM

OVERVIEW

Vietnam's intellectual property regime continues to evolve in response to increasingly complex commercial and creative activities. As businesses expand their portfolios across trademarks, copyrights, industrial designs, patents, and related rights, situations involving overlapping protection have become more frequent. Recent legislative developments under Law No. 131/2025/QH15 and Decree No. 100/2026/ND-CP reflect a broader effort by Vietnamese lawmakers to modernize the legal framework governing intellectual property rights and address practical conflicts arising from concurrent protection over the same subject matter. One of the most notable developments is the introduction of a judicial mechanism allowing courts to restrict the exercise of later-established intellectual property rights where such exercise interferes with earlier rights. This framework represents a significant refinement in Vietnam's approach to intellectual property enforcement. Rather than viewing intellectual property rights as entirely absolute and independent, the new provisions recognize the possibility that the exercise of one right may adversely affect another legally recognized right. The new framework is likely to influence how intellectual property owners approach registration, commercialization, licensing, and enforcement strategies in Vietnam. It also introduces a more balanced perspective that seeks to preserve legal certainty while preventing abusive or disruptive exercises of rights.



THE GROWING REALITY OF OVERLAPPING RIGHTS

Modern intellectual property systems increasingly recognize that a single creation may satisfy the conditions for multiple forms of legal protection. In practice, businesses and creators often rely on overlapping protection as part of a broader strategy to strengthen exclusivity and extend commercial control.

For instance, a product package design may simultaneously qualify for copyright protection as an artistic work, industrial design protection for its appearance, and trademark protection if it functions as a source identifier in the marketplace. Similarly, a software interface may involve copyrights, patents relating to technical solutions, and trademarks associated with branding elements.

Although overlapping rights are legally permissible, conflicts may arise when the holder of a later-established right attempts to exercise that right in a manner that interferes with an earlier right. Such conflicts are particularly common in industries where branding, design, and creative content intersect, including fashion, entertainment, technology, cosmetics, and consumer products.

Under traditional approaches, intellectual property rights were often treated independently, meaning that the validity of one right was generally unaffected by the existence of another. However, this rigid separation sometimes produced commercially unreasonable outcomes. A later-registered trademark, for example, could potentially disrupt the established exploitation of an earlier copyrighted work despite both rights being formally valid.

The recent legislative amendments seek to address this issue by introducing a mechanism focused not on invalidating rights themselves, but on limiting the exercise of rights where conflicts arise.





A SHIFT FROM ABSOLUTE EXCLUSIVITY

The principle established under Article 7.4 of Law No. 131/2025/QH15 represents an important conceptual shift within Vietnam's intellectual property system. The provision recognizes that multiple intellectual property rights may coexist over the same subject matter, but where the exercise of a later-arising or later-established right conflicts with the normal use of an earlier right, the later right may be subject to judicial restriction.

Importantly, the law does not automatically invalidate the later right. Instead, the court may order the cessation of the exercise of the conflicting portion of the right. This distinction is significant because it preserves the formal existence of the protection while limiting its practical enforcement where necessary.

This approach reflects a more nuanced understanding of intellectual property rights as instruments serving both private and public interests. Exclusivity remains central to the system, but exclusivity is no longer entirely unconditional. The exercise of rights must now be assessed in light of fairness, legitimate expectations, and the preservation of existing legal relationships.

The implementing provisions under Article 9g of Decree No. 100/2026/ND-CP further clarify the circumstances in which conflicts may arise. The decree identifies several situations where the exercise of subsequent rights may be deemed incompatible with the normal exploitation of prior rights.

One important scenario involves economic harm. Where the exercise of a later right substantially reduces the economic value or commercial utility of an earlier right, judicial intervention may be justified. This provision is particularly relevant in highly competitive sectors where brand identity and creative assets represent core commercial value.

Another important consideration relates to consumer confusion. If the exercise of a later right creates confusion regarding the origin or quality of goods or services associated with earlier rights, the courts may determine that a conflict exists. This reflects Vietnam's broader policy objective of maintaining fair competition and protecting consumers within the marketplace.

The decree also addresses situations where subsequent rights restrict or prevent the lawful exercise of prior rights. In addition, conflicts involving moral rights are expressly recognized, especially where the exercise of later rights negatively affects the personal and reputational interests attached to earlier copyrighted works.

THE CENTRAL ROLE OF EVIDENCE AND JUDICIAL ASSESSMENT



A notable aspect of the new framework is its emphasis on evidence-based judicial analysis. The decree expressly requires that conflicts between rights be demonstrated through specific evidence rather than mere assertions.

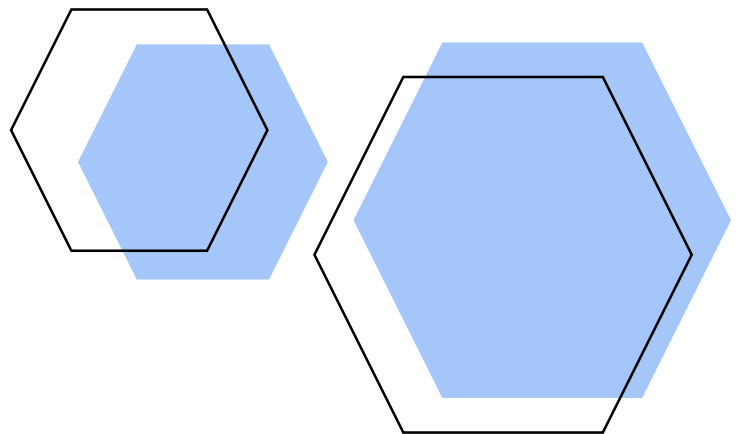
This requirement is likely to have substantial practical implications. Rights holders seeking relief before Vietnamese courts will need to present convincing evidence demonstrating actual or likely interference with earlier rights. Such evidence may include market surveys, consumer confusion studies, licensing records, commercial data, expert opinions, advertising materials, and evidence of prior use.

The evidentiary burden may also encourage more sophisticated intellectual property management practices among businesses operating in Vietnam. Companies may need to strengthen documentation relating to creation dates, commercial use, licensing activities, and market recognition in order to effectively defend or enforce their rights.

At the same time, courts will be required to undertake a careful balancing exercise. The mere coexistence of overlapping rights will not automatically justify restriction. Instead, courts must assess the extent of the conflict, the commercial realities involved, and the proportionality of any limitation imposed.

The decree expressly adopts a principle of minimum necessary restriction. Subsequent rights may only be limited to the extent required to eliminate the conflict, while non-conflicting elements should remain unaffected. This reflects an effort to avoid unnecessarily undermining valid intellectual property rights and to preserve legal certainty wherever possible.

The framework therefore introduces a flexible, case-by-case analysis rather than a rigid hierarchy between different forms of intellectual property. This flexibility may enhance fairness, but it also means that judicial interpretation will play an increasingly important role in shaping future practice.





IMPLICATIONS FOR RIGHTS HOLDERS AND BUSINESSES

The new provisions are expected to influence intellectual property strategies across multiple industries. Businesses can no longer assume that obtaining formal registration automatically guarantees unrestricted enforcement.

Trademark applicants, for example, may need to conduct broader clearance reviews extending beyond trademark databases to include copyrighted materials, industrial designs, and other potentially conflicting rights. Likewise, companies involved in mergers, acquisitions, and licensing transactions may need to pay closer attention to overlapping rights risks during due diligence processes.

The framework may also affect enforcement strategies. Rights holders initiating infringement actions may face counterarguments alleging conflicts with prior rights. As a result, litigation involving overlapping intellectual property claims could become more complex and fact-intensive.

Foreign investors and multinational corporations operating in Vietnam are also likely to take increased interest in the practical implementation of these provisions. Many global businesses rely heavily on layered intellectual property protection strategies. Understanding how Vietnamese courts interpret and balance overlapping rights will therefore become an important consideration in regional portfolio management.

In addition, the framework may encourage greater reliance on contractual solutions. Licensing agreements, coexistence arrangements, and settlement negotiations may become more important tools for managing overlapping rights disputes outside formal litigation.

At a broader level, the amendments demonstrate Vietnam's continuing effort to align its intellectual property system with evolving international practices. Many jurisdictions have increasingly recognized the need to reconcile competing rights through proportionality-based approaches rather than rigid exclusivity doctrines. Vietnam's adoption of a judicial balancing mechanism reflects this wider trend toward more flexible and commercially realistic intellectual property governance.



CONCLUSION

Although the legislative framework has now been established, its practical interpretation will largely depend on future court decisions and enforcement trends. Vietnamese courts will play a central role in determining how conflicts between overlapping rights should be balanced, what level of evidence is required, and how proportional limitations should be applied in practice.

The new mechanism nevertheless represents an important development in Vietnam's intellectual property system. By moving away from the concept of entirely absolute exclusivity, the law introduces a more flexible and commercially realistic approach to managing competing rights. Rather than invalidating later-established rights outright, the framework focuses on limiting enforcement only to the extent necessary to preserve earlier legitimate interests.

For businesses, creators, and investors, the amendments underscore the importance of proactive intellectual property management. Rights holders should reassess registration strategies, strengthen evidentiary records relating to use and commercialization, and remain attentive to potential conflicts across different categories of intellectual property protection.

As Vietnam's economy becomes increasingly innovation-driven and brand-oriented, disputes involving overlapping rights are likely to become more common. The effectiveness and predictability of this new judicial balancing mechanism may therefore play a significant role in shaping the future development of intellectual property protection and enforcement in Vietnam.

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