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THE NEW BAD FAITH STANDARD IN VIETNAM TRADEMARK PRACTICE

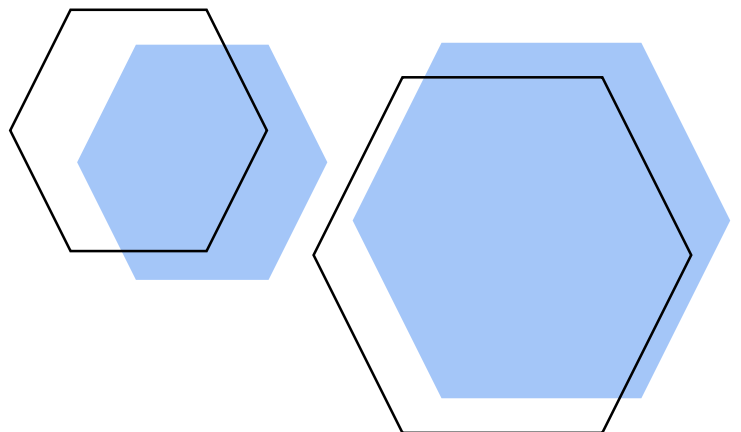


OVERVIEW

The introduction of Circular No. 10/2026/TT-BKHCN marks one of the most significant developments in Vietnam's trademark practice in recent years. While much attention has focused on the new legal standards for determining bad faith filings, the practical implications for brand owners may be even more important.

For many years, bad faith was available as a legal ground in theory but remained difficult to rely upon successfully in practice. The evidentiary burden was high, particularly when the true brand owner had no direct commercial relationship with the trademark applicant. As a result, many businesses preferred to challenge problematic applications through other legal grounds, such as lack of distinctiveness, likelihood of confusion, prior rights, or entitlement to registration.

The changes introduced by Circular No. 10/2026/TT-BKHCN do not eliminate these traditional grounds. However, they significantly increase the practical value of bad faith as part of a broader trademark protection strategy.





A BROADER VIEW OF BAD FAITH

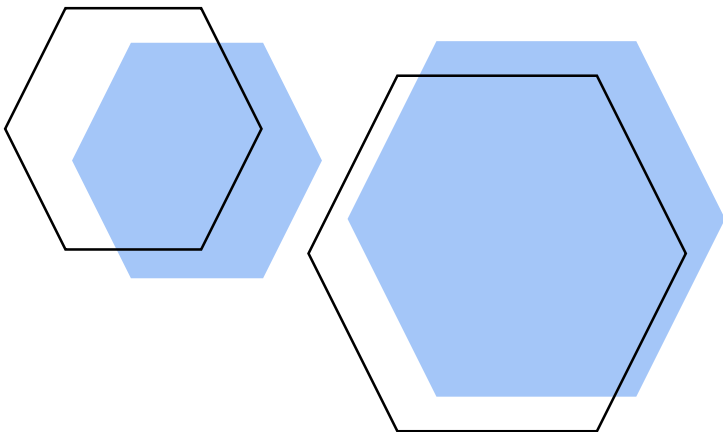
One of the most challenging aspects of proving bad faith under the previous framework was the need to establish what the applicant knew and intended at the time of filing.

In practice, evidence of a person's subjective intention is rarely available. Brand owners seldom possess documents demonstrating that the applicant deliberately targeted their mark. Direct evidence, such as communications demanding payment for a trademark transfer or offering to sell the application back to the true owner, is uncommon.

Circular No. 10/2026/TT-BKHCN partially addresses this difficulty by introducing a separate legal route that focuses on the applicant's filing behaviour rather than solely on the applicant's subjective knowledge and intentions.

This shift is significant because patterns of conduct are often easier to prove than state of mind. Trademark records, business registrations, commercial activities, and filing histories can provide objective evidence that may reveal whether an applicant is engaging in genuine brand development or merely accumulating trademark rights without any legitimate business purpose.

As a result, the analysis increasingly moves from examining what the applicant was thinking to examining what the applicant was actually doing.





TRADEMARK HOARDING

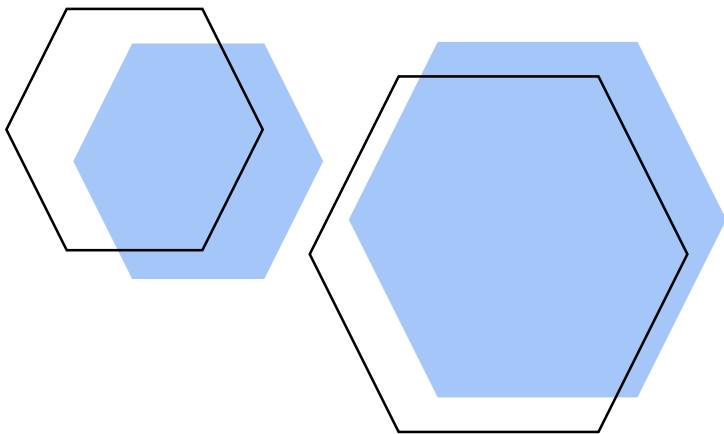
The new provisions create opportunities for brand owners to investigate the filing history of suspicious applicants more thoroughly.

Where an applicant has filed numerous trademarks corresponding to brands used by different businesses, questions naturally arise regarding the commercial justification for those filings. The greater the gap between the volume of trademark applications and the applicant's actual business activities, the stronger the argument that the filings may not reflect a genuine intention to use the marks.

This does not mean that every applicant with a large trademark portfolio is acting in bad faith. Many legitimate businesses maintain extensive trademark portfolios to support diverse products, services, and future expansion plans.

However, the new framework allows authorities to consider whether the scale of filings is reasonably connected to the applicant's business capacity and commercial operations. Evidence relating to company activities, product offerings, marketing efforts, and actual use of trademarks may therefore become increasingly relevant.

For brand owners facing trademark squatters, this development provides a potentially valuable source of evidence that was previously less significant under the former legal framework.





CONSUMER RECOGNITION

Another important change concerns the status of the earlier trademark that has allegedly been misappropriated.

Previously, parties often faced difficulties proving that an earlier mark was "widely used in Vietnam." Although the concept was not identical to well known trademark status, it nevertheless imposed a substantial evidentiary burden.

Circular No. 10/2026/TT-BKHCN introduces a more practical standard by requiring evidence that relevant consumers in Vietnam recognize the earlier mark as indicating the commercial origin of goods or services.

This change is particularly beneficial for foreign businesses entering the Vietnamese market. A trademark may have established commercial recognition among relevant consumers even though it does not yet satisfy the more demanding requirements associated with extensive nationwide use.

Consequently, evidence such as sales records, advertising materials, social media presence, market surveys, industry publications, distribution activities, and customer recognition may assume greater importance in future disputes.

The focus is no longer solely on demonstrating the scale of use. It is increasingly directed toward demonstrating market recognition.

BEYOND BAD FAITH

Despite the favourable changes introduced by Circular No. 10/2026/TT-BKHCN, brand owners should avoid relying exclusively on bad faith allegations.

Bad faith remains a fact intensive legal ground. Although the evidentiary burden has been relaxed in certain respects, success will still depend on the quality and persuasiveness of the evidence available in each case.

In many disputes, other legal grounds may continue to provide stronger or more straightforward arguments. Depending on the circumstances, a trademark may be challenged based on prior rights, lack of distinctiveness, likelihood of confusion, ownership disputes, or violations of the entitlement to registration provisions under the Intellectual Property Law.

A successful opposition or invalidation action will often involve a combination of legal grounds rather than reliance on a single argument.

For this reason, bad faith should be viewed as an additional strategic tool rather than a complete replacement for traditional trademark protection mechanisms.



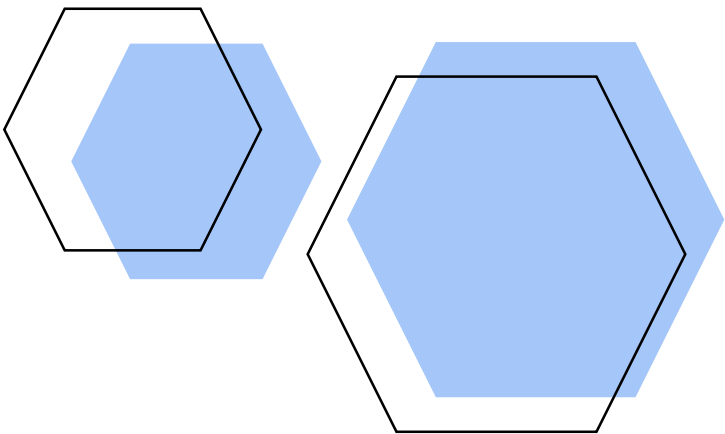
EVIDENCE MATTERS

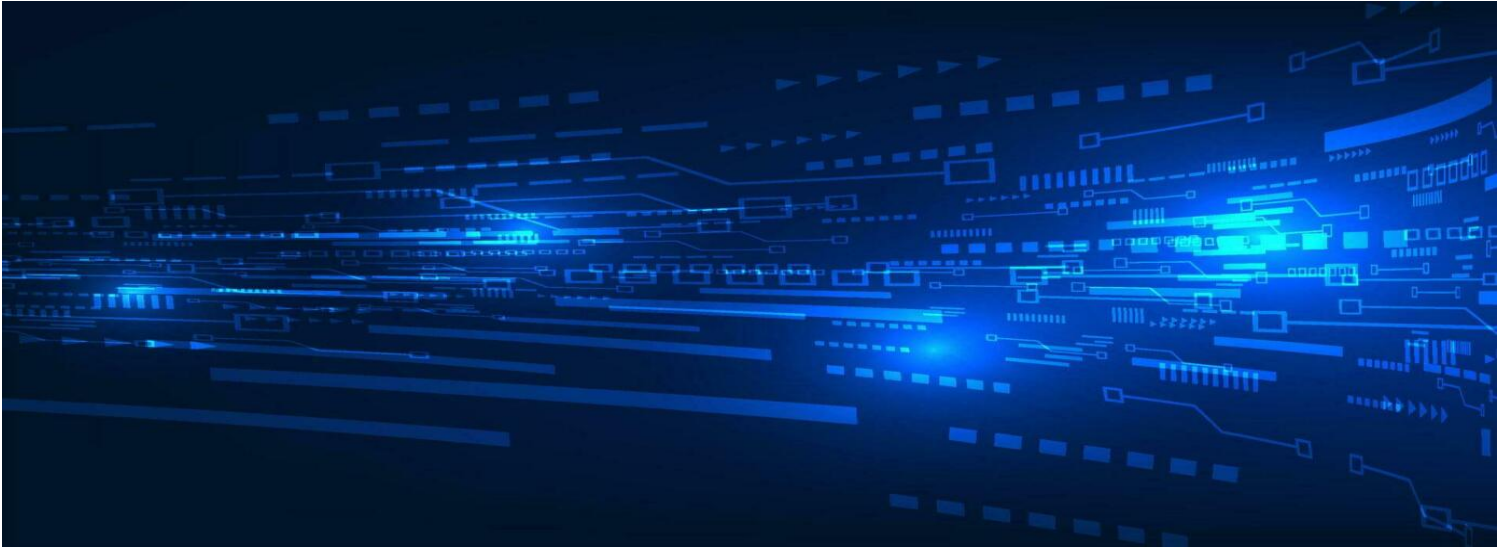
One practical lesson emerging from Circular No. 10/2026/TT-BKHCN is the increasing importance of evidence collection.

Businesses should not wait until a dispute arises before gathering information that demonstrates use and recognition of their trademarks. Marketing materials, sales records, invoices, advertising expenditures, media coverage, distribution agreements, and online presence may all become valuable evidence in future proceedings.

The earlier such evidence is collected and maintained, the stronger the position of the brand owner if a bad faith filing occurs.

This is particularly important for foreign companies planning to enter Vietnam. Although trademark registration remains the most effective form of protection, maintaining evidence of brand recognition can provide a crucial additional layer of security.





CONCLUSION

Circular No. 10/2026/TT-BKHCN represents an important step in strengthening Vietnam's ability to address abusive trademark filings. By introducing a new legal ground targeting trademark hoarding and by lowering the evidentiary threshold concerning recognition of earlier trademarks, the amended framework makes bad faith allegations more practical than before.

Nevertheless, bad faith remains only one component of a successful trademark enforcement strategy. Brand owners should continue to pursue early trademark filings, monitor the register regularly, and maintain evidence demonstrating market recognition and commercial use.

The most effective approach is not merely to accuse a third party of acting in bad faith, but to build a comprehensive evidentiary record capable of persuading the Intellectual Property Office and, where necessary, the courts. Under the new framework, those preparations may prove more valuable than ever.

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