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IP KNOWLEDGE EXTRACT



CHALLENGING OLDER TRADEMARK REGISTRATIONS IN VIETNAM

By Uyen Ngo, Nguyen Hoa Binh, et al.

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Overview

An older trademark registration in Vietnam is not necessarily immune from challenge simply because it has remained on the register for more than five years. At the same time, the existence of suspicious circumstances surrounding the filing does not automatically allow a third party to cancel a longstanding registration. The position depends on the legal ground relied upon, the applicable limitation period and, importantly, the evidence available to establish the relevant facts.

For businesses facing an earlier registration that obstructs a new application, market entry or enforcement strategy, these distinctions can have significant commercial consequences. Before committing resources to cancellation proceedings, it is therefore important to determine not only whether the registration appears vulnerable, but also whether the proposed legal route remains available.

The Five-Year Period Is Not The Whole Analysis

Vietnamese trademark cancellation rules contain time limits that can affect whether certain grounds remain available against an existing registration. As a result, the grant date of the challenged registration is often one of the first dates considered when assessing a potential cancellation action.

However, the passage of five years should not be treated as an automatic confirmation that the registration can no longer be challenged. The limitation period applies differently depending on the legal basis of the cancellation request. In particular, the current Intellectual Property Law expressly recognises bad faith as a ground for invalidating the validity of a protection title, while other grounds concerning entitlement or failure to satisfy protection requirements may be subject to the statutory limitation period.

Accordingly, a preliminary assessment should identify the precise legal defect alleged against the registration before determining whether the five-year period creates an obstacle. Starting with the age of the registration alone can lead to the wrong conclusion because the relevant question is not simply how old the registration is, but which cancellation ground is being pursued.

Moreover, older registrations can require additional care. Amendments to Vietnam's Intellectual Property Law have changed the structure of the cancellation provisions over time. Transitional provisions may therefore affect which substantive rules apply to a registration examined and granted under an earlier legal framework. The date on which a cancellation request is filed does not necessarily mean that every provision of the law then in force automatically governs the substantive validity of an older registration.



Bad Faith Must Be Established Through Evidence

Where bad faith is relied upon, describing the applicant's conduct as dishonest is not sufficient. A cancellation request should be supported by evidence capable of showing why the applicant's conduct at the relevant time amounted to bad faith.

The evidentiary assessment is particularly important because bad faith is highly dependent on the surrounding circumstances. Relevant material may include evidence showing the applicant's knowledge of an earlier mark, previous commercial dealings between the parties, contractual relationships, communications, distribution arrangements, access to products or branding materials, or conduct suggesting an intention to appropriate another party's trademark.

Nevertheless, knowledge of an earlier mark and bad faith should not automatically be treated as equivalent. The surrounding facts remain important. For example, a prior commercial relationship may provide a factual basis for showing that the applicant was aware of the earlier mark, while additional evidence may demonstrate why filing the mark in its own name was inconsistent with the parties' relationship or commercial understanding.

Similarly, where the parties had no direct relationship, the analysis may need to rely on a broader combination of circumstances. Evidence concerning the earlier mark's market presence, publicity, reputation, geographic reach and the similarity between the signs may become relevant in assessing whether the later applicant was likely to have known of the earlier mark and whether its conduct supports an inference of bad faith.

Therefore, the strength of a bad-faith challenge will often depend less on a single document than on whether the evidence collectively presents a coherent account of the applicant's knowledge, conduct and purpose.

Each Date Serves A Different Purpose

Timing also matters when preparing the evidence. Trademark disputes frequently involve documents created before filing, during examination and after registration. Those documents should not automatically be given the same evidentiary function.

The filing date of the challenged application is particularly important when the cancellation requester seeks to establish circumstances that existed before the applicant sought protection. Evidence of earlier use, commercial relationships, reputation or knowledge should therefore be assessed by reference to the period relevant to the particular legal ground.

By contrast, later documents can still be valuable where they shed light on an earlier relationship or subsequent conduct. However, their evidentiary value should be explained carefully. A document created after the filing date cannot simply be treated as proof that the same circumstances necessarily existed beforehand. Instead, it should be connected to the specific fact that it is intended to establish.



This distinction becomes especially important when relying on commercial data. Sales, advertising expenditure, media coverage or market recognition arising several years after the challenged filing may demonstrate later commercial success, but they do not necessarily establish the position that existed when the application was filed.

Consequently, an effective evidence strategy should be chronological as well as substantive. Each document should be considered in terms of both what it proves and when the relevant fact must have existed.

Bad Faith And Other Cancellation Grounds Should Remain Distinct

Another important issue is the relationship between bad faith and other substantive defects in a trademark registration.

A registration may potentially be vulnerable because the applicant was not entitled to register the mark, because the mark failed to satisfy the applicable protection requirements, or because the application was filed in bad faith. Although the same factual circumstances may support more than one argument, the legal grounds should not be merged without analysis.

For example, evidence of an earlier commercial relationship could be relevant to whether the registrant had a legitimate basis for applying for the mark. The same evidence, together with surrounding conduct, might also support an allegation of bad faith. Nevertheless, each ground has its own legal function and should be addressed accordingly.

This distinction is particularly important when limitation issues arise. A party should not assume that characterising an otherwise time-barred objection as "bad faith" will automatically overcome the limitation period. Where bad faith is relied upon as an independent route, the facts and evidence must satisfy the requirements of that ground.

Conversely, the existence of a limitation period for certain cancellation grounds should not lead a registrant to assume that every possible challenge has expired. The legal basis of each potential claim must first be identified.

Evidence Should Be Assessed Before Proceedings Begin

For businesses considering cancellation proceedings in Vietnam, the most useful first step is often an evidence review rather than immediate preparation of the cancellation request.

The relevant filing, grant and international registration dates should first be confirmed. The applicable version of the Intellectual Property Law and any relevant transitional provisions can then be identified. Against that legal framework, the available evidence can be mapped to each proposed cancellation ground.

This process can expose weaknesses at an early stage. A business may have strong evidence that another party copied its mark, for example, but insufficient evidence concerning the circumstances at the relevant filing date. Alternatively, there may be substantial evidence of prior dealings between



the parties, but the documents may not clearly establish ownership, knowledge or the purpose behind the later application.

Identifying these gaps before filing allows the requester to determine whether additional evidence should be collected and whether the expected prospects justify the cost of proceedings.

At the same time, trademark owners defending older registrations should conduct the same analysis from the opposite perspective. The age of the registration may provide an important defence against certain grounds, but relying exclusively on the five-year period without considering possible bad-faith allegations can underestimate the remaining risk.

Conclusion

Ultimately, whether an older trademark registration in Vietnam can be successfully challenged cannot be determined by the passage of time alone. The outcome depends on the legal ground available under the applicable framework, the effect of any limitation period and the strength of the evidence supporting the challenge.

Therefore, both cancellation requesters and trademark owners should assess these elements together before deciding how to proceed. A careful review of the relevant dates, legal grounds and supporting evidence can clarify whether cancellation remains a realistic option and help businesses choose an appropriate strategy for protecting their trademark interests in Vietnam.

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Lawyers and Consultants

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info@daitin.com.vn | www.daitin.com.vn

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