



TRADEMARK FILING REQUIREMENTS

VIETNAM



OCTOBER 2014



RECEIPT OF THE APPLICATION

The application for registration of a mark must be filed using the prescribed form. The filing language is Vietnamese.

The application must be filed with the National Office of Industrial Property (NOIP) Vietnam or at any of its receiving offices.

REPRESENTATION

IP representation is required if the applicant does not have local presence in Vietnam. The power of attorney must be submitted to the Office. If the document is in a foreign language, a translation in Vietnamese must be submitted together with the original power of attorney.

SEARCH, FORMALITY AND SUBSTANTIVE EXAMINATION

The application will be received if it meets the filing requirements of (A). The Office will then conduct a formality examination to determine whether the requirements (B) are complied with before publishing valid applications within a period of 2 months from the date the application is accepted as legitimate. The application will then undergo substantive examination for a determination of whether it satisfies the registrability criteria (C). A search for conflicting marks is also carried out during the substantive examination stage by the Office.

From the date of publication of the application but prior to the decision to grant the registration of a mark, any third party may send written objections to the registration of the mark.

A. Minimum Filing Requirements.

The application shall be given a filing date if the following minimum requirements are met:

- (a) Name and address of the applicant;
- (b) Representation of the mark;
- (c) List of the goods or services for which the registration is sought; and
- (d) Prescribed fees and charges, including filing fee, publication fee, substantive examination and search fee; fee for claim priority right, if priority is claimed.

B. Formality Requirements.

The formality examination is conducted within one month from the filing date. The application must meet the following requirements before it can be considered a valid application eligible for publication:

- (a) If the applicant is represented, the power of attorney and its translation into Vietnamese if the original document is in a foreign language;



- (b) Documents evidencing priority and their translation into Vietnamese if the documents are in a foreign language;
- (c) Description of the mark sought to be registered;
- (d) Correct classification of goods or services covered by the application;
- (e) Five identical representations of the mark is in the prescribed format (maximum of 80mm x 80mm);

A mark specimen must be clearly presented with the dimensions of each element of the mark ranging between 8mm x 80mm and the entire mark must be presented within a space of 80mm x 80mm.

- (f) If the application is for a three-dimensional mark, a photograph or drawing must be submitted together with a description;
- (g) If the mark contains color/s, the representation must show the color/s claimed.

C. Registrability.

A trademark application shall be published within (02) two months from the date such application is accepted as legitimate.

Substantive examination will then be carried out within a period of nine months from the date of publication. This period does not include the time given for the applicant to correct or amend the application.

A mark must be visible and in the form of letters, numerals, words, pictures, images, including three-dimensional images or their combinations. It must also be capable of distinguishing goods or services.

The following cannot be protected:

- (a) signs that are merely colors and neither combined with character signs or figure signs nor presented in the form of character signs or figure signs;
- (b) signs pertaining to the following are not protectable as marks;
 - (i) identical with or confusingly similar to national flags or national emblems;
 - (ii) identical with or confusingly similar to emblems, flags, armorial bearings, abbreviated names or full names of Vietnamese state agencies, political organizations, socio-political organizations, socio-political-professional organizations, social organizations or socio-professional organizations or international organizations, unless permitted by such agencies or organizations;
 - (iii) identical with or confusingly similar to real names, alias, pseudonyms or images of leaders, national heroes or famous personalities of Vietnam or foreign countries;
 - (iv) identical with or confusingly similar to certification seals, check seals or warranty seals of international organizations which require that their signs must not be used, unless such seals are registered as certification marks by those organizations;



- (v) those that mislead or confuse or deceive consumers as to the origin, properties, intended utilities, quality, value or other characteristics of goods or services.
- (c) signs that are contrary to the public order or prejudicial to national security;
- (d) signs that are not distinctive, i.e., those that fall under one of the following:
 - (i) simple shapes and geometric figures, numerals, letters or scripts of uncommon languages, except where such signs have been widely used and recognized as a mark;
 - (ii) conventional signs or symbols, pictures or common names in any language of goods or services that have been widely and regularly used and known to many people;
 - (iii) signs indicating time, place and method of production, category, quantity, quality, properties, ingredients, intended utility, value or other characteristics, which is descriptive of goods or services, except where such signs have acquired distinctiveness through use before the filing of mark registration applications;
 - (iv) signs describing the legal status and business field of business entities;
 - (v) signs indicating the geographical origin of goods or services, except where such signs have been widely used and recognized as a mark or registered as collective marks or certification marks as provided for in this Law;
 - (vi) signs other than integrated marks which are identical with or confusingly similar to registered marks of identical or similar goods or services on the basis of registration applications with earlier filing dates or priority dates, as applicable, including mark registration applications filed under treaties to which the Socialist Republic of Vietnam is a contracting party;
 - (vii) signs identical with or confusingly similar to another person's mark which has been widely used and recognized for similar or identical goods or services before the filing date or the priority date, as applicable;
 - (viii) signs identical with or confusingly similar to another person's mark which has been registered for identical or similar goods or services, the registration certificate of which has been invalidated for no more than 5 years, except where the ground for such invalidation is non-use of the mark according;
 - (ix) signs identical with or confusingly similar to another person's mark recognized as a well-known mark which has been registered for goods or services which are identical with or similar to those bearing such well-known mark, or for dissimilar goods or services if the use of such mark may affect the distinctiveness of the well-known mark or the mark registration is aimed at taking advantage of the reputation of the well-known mark;
 - (x) signs identical with or similar to another person's trade name currently in use if the use of such signs may cause confusion to consumers as to the origin of goods or services;



- (xi) signs identical with or similar to a geographical indication being protected if the use of such signs may mislead consumers as to the geographical origin of goods;
- (xii) signs identical with, containing or being translated or transcribed from geographical indications being protected for wines or spirits if such signs have been registered for use with respect to wines and spirits not originating from the geographical areas bearing such geographical indications;
- (xiii) signs identical with or insignificantly different from another person's industrial design which has been protected on the basis of an industrial design registration application with the filing date or priority date earlier than that of the mark registration application.

REGISTRATION

If the mark satisfies the registrability requirements and all the fees (granting fee, publication fee and registration fee) are paid in full and on time, the NOIP shall carry out the procedures for grant of protection. The decision to grant the trademark registration and issue the certificate shall be published in the Industrial Property Gazette.

CONTACT

National Office of Intellectual Property
Ministry of Science and Technology
386 Nguyen Trai St., Thanh Xuan District
Hanoi, Vietnam
Tel: (844) 3858 3069; 3558 8217
Fax: (844) 3858 8449; 3858 4002
Email: vietnamipo@noip.gov.vn



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