

VIETNAM

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FASHION LAW

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Introduction

The textile and garment industry is a vital part of Vietnam's economy, and the country has emerged as one of the top textile producers and apparel exporters in the world. Although the industry was hit hard by the COVID-19 pandemic, government policy support and effective tools to protect IP rights in the fashion space are reasons for investors to be optimistic about the industry's future in Vietnam.

1. What are the main intellectual property rights available to protect fashion products?

1.1 Summary of IPRs

See the table on page 304 for a summary of IPR protection tools available to protect fashion products in Vietnam.

1.2 Trademarks and non-traditional trademarks

Under Article 4.16 of Vietnam's Law on Intellectual Property (IP Law), a trademark is any sign used to distinguish the goods or services of different organizations or individuals. To be eligible for registration as a trademark, a sign must be:

- a visible sign in the form of letters, words, drawings, images, including three-dimensional images, or a combination thereof, represented in one or more colors, or a sound mark in graphical representation; and
- capable of distinguishing the goods or services of the mark owner from those of other subjects.

Provided that these requirements are met, there are also a number of "non-traditional" trademarks worth mentioning for the fashion industry.

Color marks. Color *per se* is not registrable in Vietnam. However, the combination of colors can be registered as a trademark, provided that it is distinctive (not too simple or too complicated, not imposed by the nature of the product or necessary to achieve a technical result, etc.). Otherwise, secondary meaning through extensive use must be proven.

Black and white marks. The protection of black and white marks may extend to color variations, as the protection of a black and white trademark is limited to the content of the mark (word/figurative elements). Therefore, use of a mark in color may be accepted as use of the registered mark in black and white. However, this does not apply when color plays a crucial role in giving the sign distinctiveness.

Shape marks. A shape mark is registrable as a three-dimensional mark in Vietnam. To be registrable, the shape mark must not be:

- the inherent shape of the goods or due to the required technical characteristics of the goods (Article 73.6 of the IP Law);
- the usual shape of the goods or part of the goods, or the usual shape of the package or container (Article 74.2(b));
- a sign that significantly adds value to the goods (Article 74.2(c)); or
- identical or not significantly different from another person's industrial design that has been or is being protected (Article 74.2(n)).

Otherwise, secondary meaning through extensive use must be proven.

Pattern marks. A pattern mark is regarded as a device mark, and is registrable if it is distinctive (not too simple nor too complicated, etc.), and capable of identifying the origin of the goods/services.

“Made in”. The “Made in Vietnam” mark is regarded as a descriptive sign, and is not registrable separately. If the applicant is not a Vietnamese entity or does not have an address in Vietnam, this sign is considered deceptive and will be refused according to Article 73.5 of the IP Law.

Unregistered marks. Well-known or widely used marks are protected in Vietnam without registration, and can be effective in prevention of registration and use of similar marks for similar goods or dissimilar goods (in the case of well-known marks) if, the use of such infringing mark is aimed at taking advantage of the well-known mark or may dilute the well-known mark, according to Article 74.2(i) of the IP Law.

1.3 Design as an alternative or addition to TM registration

A variety of fashion products have been filed in Vietnam for design protection, such as shoes and sandals (Locarno classification 02-04), bags (03-01), clothes (02-01 to 02-07), jewelry (11-01), watches (10-02), and so on.

There are no design laws/regulations specific to the fashion industry. Fashion product designs are governed

Summary of IPRs			
IPR	Duration	Time and modalities for grant	Pros and cons in the fashion sector
Trademarks	10 years following the filing date and renewable for unlimited 10-year terms.	According to the law, a mark can be registered within 12 months from the filing date. However, in practice, it will take about 2 – 2.5 years from the date an application is filed with the Intellectual Property Office of Vietnam (IP Office) to obtain a registration.	<p>Pros:</p> <ul style="list-style-type: none"> • Unlimited duration of protection. • The mechanism to protect and enforce a trademark is quite effective. <p>Cons:</p> <ul style="list-style-type: none"> • Lengthy examination period. • Pattern marks/3-D shape marks are difficult to register. Most cases require proving secondary meaning through extensive use.
Design	5 years from the filing date and renewable for two consecutive terms of 5 years each.	The registration process may take up to 1.5 years from the date of filing with the IP Office to obtain a design patent.	<p>Pros: a reasonable term of market exclusivity.</p> <p>Cons:</p> <ul style="list-style-type: none"> • Can be difficult to meet the novelty and industrial applicability requirements for registration. • The protection conferred on an industrial design does not cover elements or features that have been dictated solely by technical considerations, or by the performance of a technical function.
Trade secrets	Unlimited, unless disclosed.	Automatic protection pursuant to Article 84 of the IP Law, provided that the information is: <ul style="list-style-type: none"> • neither common knowledge nor easily obtained; • capable, when being used in business activities, of rendering advantages to its holder over those who do not hold or use it; and • kept secret by its owner with necessary measures so that it is neither disclosed nor easily accessible. 	<p>Pros: no registration procedures required and potentially unlimited protection of the information.</p> <p>Cons: the information can be disclosed accidentally or (lawfully) reverse-engineered, with no legal recourse.</p>
Domain names	1 – 3 years (renewable without any limits).	A domain name can be registered within a day upon filing a request for registration with the domain name registrar.	<p>Pros: essential for brand awareness; can be used for e-commerce.</p> <p>Cons: domain names can be registered by anyone; if the desired name is already registered, it is unavailable to the applicant.</p>

Continued on the following page.

by the Hague Agreement and Vietnam's IP Law and its guiding legislation.

1.4 Copyright as an alternative or addition to TM registration

Under the IP Law, if a work belonging to the closed list of copyrightable works stipulated in Article 14 is created personally by the author(s) without copying others' works and is fixed in a material form, it is copyrightable in Vietnam (assuming it meets the minimum creativity threshold), irrespective of registration procedure.

In the fashion industry, objects such as fashion designs, product designs, and drawings would be protectable as works of applied art if they meet the above criteria. For protected works, the moral rights will be protected for an indefinite

term, while the economic rights will be protected for 75 years from the first date of publication, or 100 years from the fixation date if the work has not yet been published within 25 years from the fixation date.

A copyright registration could be pursued as an alternative to or addition to a trademark registration, especially when there is a question as to the inherent distinctiveness of the objects, which is a requirement for protection as a trademark.

The online database of the Copyright Office of Vietnam (COV) shows a large number of registered copyrights for works related to the fashion industry, such as designs of purses, handbags, and watches.

1.5 Any other pertinent IP rights

Patents. Clothing, headwear, footwear, and accessories such as jewelry, belts, bags, watches, and eyeglasses are all eligible for patent protection in Vietnam.

There are no patent laws/regulations specific to the fashion industry. Inventions related to fashion products and processes are regulated by the following:

- Paris Convention;
- Patent Cooperation Treaty (PCT);
- WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS);

Summary of IPRs (continued)			
IPR	Duration	Time and modalities for grant	Pros and cons in the fashion sector
Patents	20 years, effective from the granting date to the end of the 20th year following the filing date (a maintenance fee must be paid annually).	It will take about 4.5 – 5.5 years from the date an application is filed with the IP Office to obtain a patent.	Pros: a long-term market exclusivity. Cons: can be difficult to meet the novelty and inventive step requirements for registration.
Copyright	Moral rights: unlimited. Economic rights: <ul style="list-style-type: none"> • For applied arts, the term of protection is 75 years from the time the work is first published. • For applied arts that have not been published for a period of 25 years from the time the work was fixed, the term of protection is 100 years from the time the work was created. 	Automatic protection from the fixation date of the work. Registration timeframe: 1 – 3 months from the date an application is filed with the Copyright Office of Vietnam (COV).	Pros: <ul style="list-style-type: none"> • Quicker examination period, no substantive examination. • Registration is not mandatory as copyright is automatically protected without registration. Cons: <ul style="list-style-type: none"> • An abundance of documents is required to prove the origin of the work and the applicant's ownership of the work if the applicant is not the author. • Limited protection. The work is protected in its own particular form, but the copyright does not protect the idea or concept itself. • The enforcement mechanism is not as effective as for industrial property rights.

- Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure;
- Resolution No. 102/2020/QH14 regarding ratification of EVFTA; and
- IP Law.

Geographical indications. Geographical indications are relevant to the fashion industry in terms of protecting unique handicrafts and fashion articles originating from a specific location and consisting of a specific quality or reputation. Under Article 4.22 of the IP Law, a geographical indication is a sign that identifies a product as originating from a specific region, locality, territory or country.

Geographical conditions relevant to a geographical indication mean natural and human factors decisive to the reputation, quality and characteristics of products bearing such geographical indication, including natural factors (such as climatic or ecological) and human factors (skill and expertise of producers, and traditional production processes of localities).

Quality and characteristics of products bearing a geographical indication are defined by one or several qualitative, quantitative, or physically, chemically, or microbiologically perceptible criteria which can be tested by technical means or experts with appropriate testing methods. In Vietnam, the "Hue" palm-leaf conical hat and Isan Thailand traditional silk are protected geographical indications.

2. Beyond intellectual property: what contractual arrangements are useful in manufacturing, distributing and advertising fashion products?

2.1 Manufacturing fashion products

License agreements

License agreements are appropriate contractual arrangements and commonly used in manufacturing fashion goods in Vietnam whereby the licensor (e.g., a designer or a company that has developed fashion goods) grants the licensee the ability to use the licensed intellectual property right (IPR) owned by the licensor to produce and sell fashion goods upon payment of a consideration, without transferring ownership. Article 144 of the IP Law requires that a license agreement must be established in the form of a written contract and must consist of the following terms:

- full names and addresses of the licensor and the licensee;
- grounds for licensing;
- contract type;
- licensing scope, including limitations on use rights and territorial limitations;
- contract term (duration);
- licensing price; and
- rights and obligations of the licensor and the licensee.

Non-disclosure Agreements (NDAs)

The licensor will normally need to disclose information to influence the decision of the prospective licensee to enter into the license agreement – for example, the licensor’s ownership of the IPR and the validity thereof – so an NDA will typically be entered into before negotiating and drafting the license agreement. Under an NDA, an undersigning party will normally be required to maintain the confidentiality of information exchanged during the contractual relationship.

Article 387.2 of Vietnam’s Civil Code mandates that the receiver keep confidential the information provided during the course of contract conclusion, and not use the information for its own purposes or for other illegal purposes. However, the laws generally do not specify the key clauses for the NDA, leaving it to the undersigning party’s discretion. In general, NDAs will include clauses relating to the scope of confidentiality, governing law, dispute resolution, penalties for disclosure, duration and language.

Subcontract agreements with suppliers/in-house manufacturing

There is no definition of a subcontract agreement in the area of fashion under the laws of Vietnam. However, it is commonly understood that a subcontract agreement refers to any contract or proposed contract entered by a primary contractor and subcontractor whereby that subcontractor agrees to provide to the primary contractor services, works, or goods or any part thereof, in order to support such primary contractor in the execution of the main contract executed between it and the project owner.

As the subcontract agreement may involve the sharing of the usage of the IPRs, it is crucial to not only clearly stipulate how the subcontractor will be enabled to use the IPRs (e.g., scope/cases of using the IPRs), but also set out consequences for infringement and breach of contract. The subcontractor must strictly comply with all the primary contractor’s instructions under the subcontract agreement.

2.2 Distributing fashion products

Agency agreement

Subject to an authorization by the principal, an agent is allowed to act in the name and for the benefit of the principal to enter into and perform a transaction under Articles 134 and 138 of Vietnam’s Civil Code and Article 141.2 of the Law on Commerce. A transaction established and performed by the agent with a third party in accordance with the scope of representation gives rise to rights and obligations of the principal. Agency agreements must be in writing. This is a fiduciary relationship and as such, the agent is required to act under the principles of loyalty and good faith. The agent may enter into and perform civil transactions only within the scope of representation on the basis of the contents of representation provided under the agency agreement.

Selective distribution online in high-end fashion and trademark protection

There is no definition of selective distribution in the area of fashion or online platforms under the laws of Vietnam. However, this term can be interpreted equally to the term “exclusive distribution” or “exclusive agency” (Article 169.2, Law on Commerce), except that selective distribution involves more than one distributor in a specific geographic location. However, the use of the word “exclusive” in the contract name or content of the contract requires extreme caution to avoid violating the provisions of competition regulations.

Co-branding and co-marketing

Co-branding or co-marketing agreements are commonly used by parties to achieve greater exposure and more effective results in helping a brand reach a wider audience. In general, the parties are free to negotiate the content of the co-branding or co-marketing agreement, provided that it does not contain provisions contrary to the basic principles of Vietnamese law. In general, the co-branding or co-marketing agreement might contain key clauses such as the purposes and duration of cooperation; contributed IPRs; conditions for participation and withdrawal from the cooperation contract; and conditions for termination (Article 505 of the Civil Code). With respect to key clauses regulating brand and marketing management, these agreements could include clauses that clearly set out rights and obligations of each party in relation to brand positioning and marketing work, royalties, compensation for damages, governing law, and dispute resolution forum.

Franchising and alternative sales model agreements

The franchising model is becoming more widely used by foreign investors in the fashion industry as the route to international expansion, while maintaining control of brand reputation. The Law on Commerce acts as the primary legislation governing franchising agreements in all industries, where the franchisor permits and requires franchisees to purchase or sell goods or provide services in accordance with the standard system set out by the franchisor to use its trademarks, trade names, business know-how, and so on.

According to the Law on Commerce and its guiding legislation, if the franchise agreement is governed by Vietnamese law, it must contain the following key provisions:

- content of commercial rights;
- rights and obligations of franchisor/franchisee;
- price, periodic franchise fee, and payment method;
- contract term; and
- renewal and termination clauses and dispute resolution.

Under a franchise agreement in the fashion industry, the allocation and control of the franchise activities of franchisees are vital to determine how they properly use the franchisor's system, and comply with the franchisor's operation manual, instructions and IP protection (trademarks, designs, copyrights etc.).

There are several alternative models for distributing fashion products in Vietnam, including retail stores and online stores. However, if the retailer is a foreign-invested company, the brand owner should be aware of whether such vendors have been granted a business license and a retail outlet license as per Decree No. 09/2018/ND-CP on the sale of goods and other activities directly related to the sale of goods.

2.3 Advertising fashion products

Employing fashion models

Under a contract where a model is a contracting party, it is necessary to clearly define the scope of the model's duty (for example, being on time for photo shoots, avoidance of any scandals), and it is crucial for the other contracting party to have a right to use the model's image. Other noteworthy clauses that need to be included in this type of contract include the service fee; service completion/payment timeline; contract termination; and dispute resolution (Articles 78-87 of the Law on Commerce).

Social media, influencers and brand ambassadors/celebrities

Influencer contracts will normally be entered into by an advertiser and an influencer to promote the advertiser's goods or services. In addition to clauses clearly stipulating the rights and obligations that the influencer will be required to perform in relation to the promotion of the brand and its products, the influencer contract should also include a key clause detailing the "code of conduct" of the influencer when promoting the products (e.g., actions that influencers will commit not to perform in order to protect the personal image of the influencer and the image of the brand that they are representing), and an indemnification clause in case the influencer breaches their commitments/obligations. The right to early termination of the contract by either party should also be clearly provided.

Advertising standards, relevant authorities and advertising practice

The principal regulatory body for advertising activities is the Ministry of Culture, Sports and Tourism. Ministries and ministerial-equivalent bodies and the People's Committees at all levels also have responsibility for management of certain advertising activities.

There are no advertising rules applicable specifically to the fashion industry in Vietnam. However, all advertising activities in the fashion industry are highly regulated by the Vietnamese government in accordance with the Law on Advertising, which applies to all advertising activities in Vietnam.

3. What regulations govern online marketing and how are the rules enforced?

Marketing and advertising activities in general remain heavily regulated by the Vietnamese government. Legally, Vietnamese entities and branches of foreign companies in Vietnam (except for representative offices) have the right to advertise their goods and services or to hire other third-party service providers to do so. Offshore companies can only hire Vietnamese advertising service providers.

Fundamentally, marketing/advertisement in fashion is not restricted in the mass media in general, or online in particular. The Law on Advertising and Decree No. 181/2013/ND-CP are the main regulations governing online marketing in Vietnam. However, in practice, arbitrary enforcement and interpretation of the regulations continue to hinder the development and spending of the advertising industry.

Furthermore, Decree No. 91/2020/ND-CP on fighting spam messages, spam email and spam calls sets out regulations regarding unsolicited messages sent by email and mobile phone. This decree requires prior consent from the intended recipients for advertising emails, text messages and phone calls and restricts the number of advertising emails that may be sent to an email address in a 24-hour period. The decree also sets out certain details and requirements of each advertising email or text message sent.

Decree No. 38/2021/ND-CP on penalties for administrative violations involving cultural and advertising activities imposes some restrictions on online advertising. These restrictions appear to create unfair competition between Vietnamese companies and global advertising giants like Facebook and Google who do not have to abide by Vietnamese laws and will not need to make changes to their ad format.

Decree No. 70/2021/ND-CP amending and supplementing Decree 181 governs cross-border advertising activities of offshore entities on the Internet such as websites, social networks and applications having users in Vietnam in compliance with Vietnamese regulations on their provision of cross-border advertising services.

3.1 Consumer protection regulations

The Law on Protection of Consumer Rights together with the Law on Advertising and the Law on Product and Goods Quality are the regulations on consumer protection in Vietnam. There are no regulations on consumer protection specifically for the fashion industry.

In general, consumer protection rules in Vietnam include the following:

- Protecting personal information and data privacy for consumers.
- Prohibiting traders from carrying out aggressive sales techniques or engaging in behavior that amounts to harassment of consumers or taking advantage of consumers.
- Providing obligations on third parties who provide information about products to consumers (such as media organizations through their advertising services) and setting out the potential liability of those third parties to ensure the information supplied to consumers about a product is complete and accurate and to require the traders to provide the same.

- Requiring traders to exchange goods or offer a refund during the warranty period where the warranty has been called on more than three times but the fault remains unresolved.
- For defective goods, traders must promptly take all necessary measures to stop the supply of the defective goods on the market and must make a public announcement that the goods are defective. Traders (which can include a manufacturer, importer or supplier) are liable to pay compensation for loss and damage if the goods which they supply are defective and cause loss of life or damage.
- Establishing dispute resolution (negotiation, mediation, arbitration, or court) between consumers and traders and providing settlement of consumers' complaints.
- Any clause that seeks to exclude the statutory liability of the trader, or restricts the rights of consumers to complain, or allows a trader to unilaterally change the price, will be deemed invalid. Consumers must be given sufficient time to study the terms and conditions in a trader's standard-form contract or general trading conditions; and certain standard-form contracts relating to essential goods and services must be registered with the Ministry of Industry and Trade.

3.2 Physical store and online store layout

Under the IP Law, "An industrial design is the exterior appearance of a product represented in shapes, lines, colors or any combination thereof". According to current practice, the IP Office interprets that a "product" is understood as a tangible object. Therefore, intangible designs such as typefaces, icons, user interfaces, etc., are currently not patentable as industrial designs in Vietnam. As such, an "online store layout" or even a "store layout" are not patentable as industrial designs in Vietnam.

Notwithstanding the above, the layout of a physical store may be protectable as an architectural work or a work of applied art, while an online store layout may be protectable as a written work, on the condition that they meet the general criteria for copyright protection as mentioned above.

4. What are the most relevant unfair competition rules for fashion businesses and how do the courts interpret and enforce these rules?

Unfair competition rules for fashion business in Vietnam can be found under the IP Law and the Law on Competition.

The concept of unfair competition under the IP Law (Article 130) refers to:

- the use of commercial indications such as marks, trade names, business symbols, business slogans, geographical indications, designs of packages and/or labels of goods which misleads consumers as to business entities, business activities, or commercial origin of goods or services; origin, production method, utilities, quality, quantity or other characteristics of goods or services; or conditions for provision of goods or services; and
- domain name cyber-squatting.

The concept of unfair competition under the Law on Competition refers to acts performed by enterprises against the principles of good faith, honesty, business norms and standards, which cause or may cause damage to the legitimate rights

and interests of other enterprises. Article 45 of the Law on Competition clearly indicates prohibited unfair competition practices, including:

- trade secret infringement in the forms of assessing and acquiring trade secrets by going against security measures of the owner of trade secrets and disclosing or using trade secrets without consent of the owner;
- forcing customers or business partners of other enterprises, through threats or coercion, to not enter into transactions or to stop transactions with such enterprises;
- discrediting competitors through directly or indirectly providing untruthful information about them which negatively impacts their goodwill, financial status or business operation;
- disrupting competitors' business by directly or indirectly interrupting or disrupting their legitimate business operations;
- illegally luring customers through false information or comparisons without evidence;
- selling goods and services below cost that drives or could drive competitors out of the market.

In practice, the court will apply relevant rules (under the concept of the IP Law or the Law on Competition) based on the nature of the infringements/violations in question. From the IP perspective, the courts often find Article 130 of the IP Law to be complicated and are hesitant to rule on unfair competition charges, except for cases involving domain name cyber-squatting.

Trade secret regulations. Under the IP Law, a trade secret means information obtained from activities of financial or intellectual investment which has not yet been disclosed, and which can be used in business. To qualify as a trade secret under the IP Law, information must satisfy the following:

- it is neither common knowledge nor easily obtainable;
- when used in business activities, such information will bring advantages for its holder over those who do not hold or use it; and
- the trade secret's owner maintains information secrecy by all necessary means so that such secret will be neither disclosed nor easily accessible.

Trade secret regulations relating to the fashion industry are enforced by the same general provisions applicable for other industries, which include provisions about the holder's right, and infringement of rights to a trade secret.

The Law on Competition also introduces the statutory term "secrets in business" and considers infringement of these "secrets in business" to amount to unfair competition (the Law on Competition itself does not provide a definition of this term). A company can enforce trade secret matters under either the IP Law or the Law on Competition, depending on the nature of the violations/disputes.

5. Is there any regulation specifically addressing sustainability or ESG (Environmental, Social and Governance) in the fashion industry?

Textile products circulated in Vietnam must meet National Technical Regulation QCVN 01: 2017/BCT on contents of formaldehyde and certain aromatic amines derived from azo colorants in textile products; evidenced by obtaining a Certificate of Conformity.

In terms of labeling and certification, Circular No. 41/2013/TT-BTNMT provides orders, procedures, and certification of ecological labels for environment-friendly products. Below are some national standards that are applied to environmental labeling:

- TCVN ISO 14024 (ISO 14024), Environmental labels and declarations - Type I environmental labeling - principles and procedures (ISO type 1);
- TCVN ISO 14021 (ISO 14021), Environmental labels and declarations - Self-declared environmental claims (Type II environmental labelling) (ISO type 2); and
- TCVN ISO 14025 (ISO 14025), Environmental labels and declarations - Type III environmental declarations - Principles and procedures (ISO type 3).

In addition, there are some standards (such as EOKO-Text Standard and Global Organic Textile Standard (GOTS)) that manufacturers of textile products in Vietnam apply to labels and certify their products that are mentioned in Annex III of QCVN 01: 2017/BCT.

ISO certification. ISO certifications commonly used/obtained in the fashion industry include the following:

- ISO 9001:2015 sets out the criteria for a quality management system;
- ISO 14001:2015 specifies the requirements for an environmental management system that an organization can use to enhance its environmental performance;
- ISO 45001:2018 specifies requirements for an occupational health and safety (OH&S) management system, and gives guidance for its use, to enable organizations to provide safe and healthy workplaces; and
- ISO 50001:2018 specifies requirements for establishing, implementing, maintaining and improving an energy management system (EnMS).

ESG

Environmental, social, and governance (ESG) remains a relatively unfamiliar topic to the majority of businesses in Vietnam. As a result, Vietnam has not issued any specific law addressing ESG concerns in any specific industry, including the fashion industry. Nevertheless, alongside those mentioned above, a number of current regulations do address ESG concerns.

Environment

By 2022, Vietnam had more than 13,000 garment and textile companies with over 3 million employees, making fashion a key industry for economic development in Vietnam. However, the industry comes with a great risk of environmental pollution, especially water pollution and solid waste. The key legislation for environmental protection is the Law on Environmental Protection 2020, which came into effect on January 1, 2022. Vietnam also issues various regulations that control environmental issues in the fashion industry. Decree No. 113/2017/ND-CP (amended by Decree 82/2022/ND-CP), which guides implementation of the Law on Chemicals, contains several lists of hazardous chemicals subject to special requirements or limitations. Importers, distributors and sellers of textile products in Vietnam should be aware of and follow these lists.

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Frequently Asked Questions (FAQs)

We only manufacture clothing products in Vietnam for export only. Do I need to register my trademarks in the country?

As trademarks have a territorial effect, if you do not have trademark registrations in Vietnam, a trademark pirate in Vietnam may register the trademark beforehand and sometimes you may need to buy the trademark from the pirate or engage in a costly dispute.

In addition, acts of manufacturing, labeling and exporting fashion products that are similar or identical to other's IP rights may still constitute violations. Of note, the laws remain ambiguous about whether manufacture of trademarked goods for export only constitutes "use" of trademark in Vietnam. It is clear that exportation alone is not considered use of trademark within Vietnam territory. However, as the act of "Affixing the protected mark on goods, goods packages, business facilities, means of service provision or transaction documents in business activities" constitutes trademark use in Vietnam under Article 124(a) of the IP Law, in practice, some competent authorities view that the act of affixing the marks on goods in the process of manufacture as use of trademark in Vietnam. Thus, such acts may be alleged as infringement of a third party's trademark rights.

Thus, it is advisable to register your marks in Vietnam to prevent any allegation of infringement of other parties, especially as trademark squatting is becoming more and more popular in Vietnam.

If we have registered our trademark in Vietnam but only manufacture and export fashion products there, can the mark be canceled on non-use grounds?

As discussed above, it is still unpredictable whether the manufacture of goods in Vietnam will be considered "use" for the purpose of possible non-use cancellation. To increase the chances of success in defending the registration, you may consider entering into a license agreement with the local company who manufactures the goods and have the license recorded at the trademark registry, as well as keeping documents/evidence on the local company's manufacture of goods bearing the marks in Vietnam. While it is not 100% guaranteed that this can secure the registration, there is a good chance that it will be helpful.

Do license agreements need to be registered with the authorities in Vietnam?

The amended IP Law eliminated the requirement for registering a trademark license to establish the validity of such license against a third party. The law also sets out that the use of the trademark by the licensee would inure to the benefit of the trademark owner. In other words, a grant of international licensing rights is not required to be registered with the authorities.

However, licenses for other registered IP, such as patents, still need to be registered to be enforceable against a third party. This presents hurdles to business transactions owing to the vague definition of the term "third party." Any entity other than the signatories, including banks and tax authorities, can claim to be the third party to such a license agreement, which may complicate the performance of obligations under unregistered licenses.

Another important regulation is Decision No. 1643/QĐ-TTg, which approved a recent development strategy for Vietnam's textile and garment industry and encouraged businesses to implement the process of greening in production and obtain certificates of environmental protection and green growth in the textile industry. Circular No. 41/2013/TT-BTNMT provides orders, procedures, and certification of ecological labels for various types of environment-friendly products.

Social

Core subjects and issues of social responsibility, related principles and practices, and textile industry standards (including the Clean Clothes Campaign, Fair Wear Fund, and Fur Free Retailer program) are addressed in National Standard No. TCVN ISO 26000:2013 - Guidance on social responsibility.

Governance

Corporate governance is regulated by Vietnam's Civil Code and the Law on Enterprises, depending on the type of entity in question. In general, these regulations encourage transparent working environments and company rules and procedures that protect the rights of shareholders.

6. Customs monitoring: do any special import and export rules apply to fashion products?

IPR holders of fashion goods, like other products, can apply for customs monitoring as a preemptive measure. The IPR holders can initiate border control measures by adding the concerned trademarks to the customs database ("customs recordal"). Based on the recordal, customs on a nationwide scale in Vietnam will look out for fake versions of genuine goods or IP infringing products when such goods cross the borders of Vietnam, and proactively notify the trademark owners (through their local counsels) of any suspected shipments for further verification before the goods enter the domestic market.

There is no public data on effectiveness of the customs monitoring in Vietnam. In practice, Vietnamese customs agencies have strengthened their monitoring activities at the border regarding IP infringement import and export products.

The procedure of customs seizures is as follows:

- Upon detecting suspected goods, customs will temporarily suspend the clearance of the goods and notify the IPR holder or its authorized IP agency.
- Within five working days from the date of the notice, customs will decide whether to suspend the goods.
- To request seizure, within three working days from the date of the notice, the IPR holder or its authorized IP agency must submit an application for suspension and a deposit bond or bank guarantee for an amount equal to 20% of the value of the goods that are subject to the suspension, or at least VND 20 million (approximately USD 820 as of September 2023), if the total value of the goods cannot be determined.
- Upon receiving the bond and the request for suspension, customs will officially detain the shipment for 10 working days. Customs can extend the

time limit for another 10 working days as necessary. During this time limit, IPR holders can take samples of the goods to determine whether the goods infringe their rights.

- If customs find trademark infringement based on verification, they can impose a fine of up to VND 500 million (approximately USD 20,500 as of September 2023). Customs will also confiscate the infringing goods for destruction.

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Chi Lan Dang is an associate with the Tilleke & Gibbins trademark team in Hanoi. She assists clients in sectors ranging from pharmaceuticals to luxury goods in protecting their trademarks in Vietnam, Cambodia, and Laos, in matters including: filing and prosecuting trademark applications; handling oppositions, cancellations, invalidations, and appeals; and advising and prosecuting trademark license and assignment agreements. Chi has gained considerable knowledge and practical experience in the protection of intellectual property rights with an emphasis on oppositions and appeals.



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Tu Ngoc Trinh is a senior associate with the Tilleke & Gibbins corporate and commercial team in the firm's Hanoi office. Tu handles a range of corporate matters including: company formation, employment, commercial transactions, and mergers and acquisitions. She is a key member of the firm's top-tier franchising practice in Vietnam, and also takes the lead on cases related to competition and consumer protection laws in Vietnam. Tu is a member of the Hanoi Bar Association and the Vietnam Bar Federation.



Hien Thi Thu Vu

Hien Thi Thu Vu heads the Tilleke & Gibbins regulatory affairs team in Vietnam, advising and assisting chemical, pharmaceutical, medical device, and biotechnology companies to register their products with Vietnam's regulatory agencies. She also assists with analyzing technical matters and assessing the possibility of infringement in patent infringement cases. Hien is a licensed attorney and a Vietnam-qualified IP agent, and previously headed the patent unit at a leading local firm in Hanoi.



Diep Thi Bich Le

Diep Thi Bich Le began her career with Tilleke & Gibbins' trademark team, handling all aspects of trademark prosecution in Vietnam for foreign clients. After completing an LLM in IP Law at the University of Leeds, writing her thesis on trademark dilution doctrine, she joined the IP enforcement team and now focuses on advising clients on strategies to enforce their IP rights in Vietnam. On the litigation side, she has represented clients before civil courts in trademark, copyright and industrial design infringement lawsuits.