**Non- traditional trademarks in Vietnam**

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**What should be noted about non-traditional trademarks in Vietnam?**

Trademarks based on a single color, appearance, shape, sound, smell, taste and texture
are often difficult to register.

**1. Three-dimensional shapes (3D marks) in Vietnam:**

No separate provisions are set out in the laws of Vietnam concerning registration of a 3D mark. It is possible to register the shape of a product as a three-dimensional trademark, provided the shape performs the function of a trademark in the marketplace. To qualify, the shape of the product must be **inherently distinctive**. The shape should also not be dictated by the function of the product.

For a 3D trademark application in Vietnam, all images (*from different views*) of such a 3D mark must be combined in one image so as to be affixed onto the trademark application. The applicant is obliged to submit a two-dimensional representation including all views of the 3D mark to affix onto the trademark application.

A three-dimensional shape mark will be refused registration if it consists exclusively of **(a)** a shape that results from the nature of the goods themselves; **(b)** a shape of goods that is necessary to obtain a technical result; or **(c)** a shape that gives substantial value to the goods.

An application claiming a shape as a trademark must include descriptions and representations that show each feature of the trademark sufficiently clearly to permit proper examination of the trademark. In general, representations of the shape mark should be in the form of perspective or isometric drawings that show clearly all the features of the trademark (usually, top, bottom and side views are required). The parts of the configuration claimed to constitute the trademark should be shown in solid lines, while the unclaimed parts, if any, should be shown in broken lines. The drawings, views and/or photographs of the trademark must also be accompanied by a written description of the trademark. The description and pictorial representation of a shape trademark should together clearly define all the details that constitute the trademark.

The advantage of trademark protection once you decide to register a shape under a 3D mark rather than industrial design protection, is that it may **last indefinitely** and is usually cheaper to obtain.

Some original shapes may also qualify for **copyright and industrial design** protection in Vietnam.

**2. Color marks in Vietnam:**

Single colors cannot be registered. A combination of colors should be arranged or combined in an unusual and distinctive manner. Kindly note that marks registered in black and white or grayscale are construed broadly to protect the mark both as registered and in other color combinations.

**3. Trade dress registration in Vietnam:**

“Trade dress” is not defined in Vietnamese law. The term “trade dress” is commonly construed to be a product’s appearance when it is used to identify the creator of that product. Trade dress comprises of the total image of a product and may include features such as size, shape, color, texture, graphics, or particular sales techniques.

In Vietnam, a trade dress often serves the same function as a trademark – identifying the source of
products in the marketplace. A trade dress can generally be protected under trademark laws, and it can be registered as a trademark. It may be protectable under unfair competition laws or actions for passing off. In short, a trade dress/get-up in Vietnam may be protected under the trademark or unfair competition laws, which may protect the distinctive packaging or shape of a product.

**4. Sound marks in Vietnam:**

A sound mark is a type of non-traditional trade marks. Protection of sound marks is a requirement under Article 18.18 of the CPTPP to which Vietnam is a member. To register a sound mark in Vietnam, under Article 105.2 of Vietnam IP Law 2022, the applicant is required to submit:

* a magnetic sound recording of the trademark on a medium that allows for easy replaying. Currently, the most common media are CDs, DVDs and MP3 recordings; and
* a graphical representation of that sound mark (*i.e a sound mark in Vietnam must be represented graphically*) for examination on distinctiveness and availability of the sound for registration.

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Kindly note that a lengthy piece of musical notation, such as the complete score of an orchestral or piano piece, is unlikely to meet registrability requirements.

**5. Hologram marks in Vietnam:**

No separate provisions are set out in the laws of Vietnam concerning registration of a hologram mark. The applicant is advised to provide clear representations that show all the features of the trademark. Each of the various views of the hologram must be depicted in the representation so that all the material features of the mark are apparent. However, for simple holograms where the essential features do not change according to the angle at which it is viewed, multiple views may not be necessary and a single representation may be acceptable

The application must be accompanied by a description of the trademark that likewise clearly describes all the features of the trademark. A copy of the actual trademark should also be provided.

**6. Motion marks (Moving marks) in Vietnam:**

Moving marks can be represented by a sequence of still pictures in the correct sequence that corresponds to the mark in use and a written description describing the nature of the mark represented by the still pictures.

No separate provisions are set out in the laws of Vietnam concerning registration of a motion mark (moving mark). If an applicant is interested in protecting a motion mark (moving mark) in Vietnam, he should provide clear representations that show all the features of the trademark. The application must be accompanied by a description of the trademark that likewise clearly describes all the features of the trademark. A copy of the actual trademark--for example, as a video clip--should also be provided.

The description of **a** m**otion mark (moving mark) in Vietnam** should include the following information:

- That the mark is a moving image;

- What the images depict, i.e., what the change in appearance is;

- How many images are involved;

- What is the sequential order of the images;

- That there is a single sequence of the movement (and not a variable sequence).

**7. Taste marks (Flavor marks) in Vietnam:**

Vietnam has not recognized taste marks (flavor marks). Thus, taste marks (flavor marks) are not registrable and protectable in Vietnam.

**8. Touch marks in Vietnam:**

Vietnam has not recognized touch marks. Thus, touch marks are not registrable and protectable in Vietnam.

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