



Law on the registration and protection of trademarks in e-commerce: A comparative study between Vietnam and China

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Abstract

E-commerce in Vietnam has experienced rapid growth, surpassing USD 20 billion in 2023, and creating both opportunities and challenges for trademark protection. Trademarks serve as vital intangible assets, ensuring brand recognition, consumer trust, and fair competition. Both Vietnam and China adopt the “first-to-file” principle, granting rights to the earliest applicant rather than the first user. In Vietnam, trademark protection is governed by the Intellectual Property Law and related decrees, but gaps remain, especially regarding well-known marks and the liability of e-commerce platforms in preventing infringements. Enforcement is often limited to administrative sanctions with relatively low deterrence. In contrast, China has built a more comprehensive system. Its Trademark Law prevents malicious filings and allows stricter sanctions, while the 2018 E-Commerce Law clearly defines platform responsibilities through a notice-and-takedown procedure and joint liability rules. Additionally, China combines legal obligations with voluntary agreements among platforms to strengthen monitoring and enforcement. For Vietnam, lessons include clarifying platform obligations, applying advanced technologies to detect infringements, tightening sanctions, and fostering cooperation between regulators, platforms, and international partners. Strengthening these mechanisms will allow Vietnam to safeguard trademark rights effectively, promote innovation, and ensure a fair digital marketplace.

Keywords: E-commerce, trademark protection, brand identity, platform liability, digital economy

Introduction

E-commerce is rapidly developing in Vietnam and globally, creating significant opportunities for businesses while simultaneously posing challenges to the protection of intellectual property assets such as trademarks (logos and brand names). According to 2023 statistics, Vietnam’s e-commerce market reached a scale of over USD 20 billion with an average annual growth rate of 20%. This surge requires the legal system to ensure effective trademark protection for enterprises and to prevent counterfeit and infringing goods in the digital environment. This study analyzes the legal framework for the registration and protection of trademarks in e-commerce in Vietnam and China, assessing its effectiveness and identifying shortcomings, thereby proposing solutions for Vietnam. E-commerce has made trademarks become vital intangible assets, serving as indicators of origin for goods and services, and enabling consumers to distinguish products in the marketplace. Effective trademark protection not only safeguards the rights of owners but also encourages innovation and fosters a healthy competitive environment. Many countries, including Vietnam and China, apply the “first-to-file” principle in establishing trademark rights. In the context of cross-border e-commerce, the formulation of enforcement mechanisms to address infringements on online trading platforms has become increasingly urgent.

Overview of Trademark Registration and Protection in E-Commerce

1. Theoretical foundations of trademark registration and protection in e-commerce

A trademark is not only a sign that distinguishes the goods and services of one trader from those of another but also carries significant legal and economic value. From a legal perspective, a trademark is an object of industrial property

rights protected under international treaties such as the Paris Convention and the TRIPS Agreement as well as national laws, granting the owner exclusive rights of use and the authority to prevent infringements such as counterfeiting, imitation, or confusingly similar use. From an economic standpoint, a trademark is regarded as an intangible intellectual asset of great value, contributing to the affirmation of reputation, quality, and origin of goods, while building consumer trust. It also becomes a brand asset that can be valued, transferred, or utilized in mergers and acquisitions. Moreover, trademarks fulfill a social function by ensuring fair competition, protecting consumer interests, and encouraging innovation, thereby enhancing the competitiveness of enterprises and nations in the context of global integration.

In e-commerce, where transactions primarily take place in the online space and trade borders are increasingly expanding, trademarks play a pivotal role in building reputation, affirming the origin of goods, and safeguarding consumer interests against risks of infringement and commercial fraud. The 2022 Amendment to the Intellectual Property Law emphasized the goal of “enhancing the effectiveness of intellectual property protection mechanisms,” in which trademarks are regarded as a crucial legal instrument to promote a fair competitive environment, encourage investment, protect the legitimate rights of enterprises, and strengthen consumer confidence. Accordingly, the trademark protection mechanism not only contributes to ensuring fairness in commercial activities but also serves as a driving force for the sustainable development of the online marketplace in the context of international integration^[1].

Both Vietnam and China adopt the “first-to-file” principle, under which the priority right to protection belongs to the applicant who files earlier, regardless of who first used the

trademark. The intellectual property laws of both countries stipulate that a trademark must be a visible sign such as letters, images, three-dimensional shapes, colors, or a combination thereof, and it must not be identical with or confusingly similar to previously protected trademarks^[2]. In the context of e-commerce, the registration and protection of trademarks in the digital environment continue to follow the general legal principles of industrial property: the application dossier must be valid, the applicant must possess legal capacity, the sign must be distinctive, and it must not fall within the prohibitions prescribed by law. This mechanism is designed to ensure transparency and fairness in business activities while at the same time establishing a legal framework for addressing trademark infringements in cyberspace.

2. Trademark Registration and Protection in E-Commerce under Vietnamese Law

In Vietnam, the registration and protection of trademarks are governed by the Intellectual Property Law of 2005, as amended and supplemented in 2009, 2019, and 2022, together with a system of implementing decrees and circulars. Any applicant seeking registration must submit an application to the National Office of Intellectual Property of Vietnam, accompanied by supporting documents proving the right to register. A prerequisite condition is that the trademark must be distinctive, not identical with or confusingly similar to a previously protected trademark, and must meet the requirements of representation, such as letters, images, colors, or a combination thereof, as stipulated in Clause 16, Article 4 of the 2005 Intellectual Property Law. In addition to ordinary trademarks, Vietnamese law also provides specific regulations for well-known trademarks, collective marks, and certification marks. However, in practice, certain legal gaps remain, most notably the lack of clarity and consistency in defining the criteria and scope of protection for well-known trademarks, which poses difficulties in application and enforcement. This indicates the necessity for more detailed and coherent provisions to ensure effective protection and to meet practical demands in the context of the rapid development of e-commerce.

At present, the Intellectual Property Law and its guiding instruments do not provide specialized provisions specifically for “trademarks in e-commerce”; rather, the general principles of protection continue to apply to all cases of trademark use. In practice, however, e-commerce activities are further regulated by a system of sector-specific legal documents. Notably, Decree No. 85/2021/NĐ-CP on e-commerce establishes mechanisms for the prevention and handling of intellectual property infringements in the digital environment. Article 1(4) of the Decree explicitly prohibits certain acts, including: “Exploiting e-commerce activities to conduct multi-level marketing without having obtained a certificate of registration for multi-level sales in accordance with the law on the management of business activities conducted through multi-level marketing.” In addition, the Decree places emphasis on regulations concerning product labeling, particularly the requirement for supplementary labels on imported goods to ensure transparency of information and the protection of consumer rights. Furthermore, Decree No. 43/2017/NĐ-CP on goods labeling provides more detailed rules on label content, methods of

labeling, and the obligations of traders to supply truthful and complete information.

Recent studies also reveal that the absence of specialized regulations on trademarks in the e-commerce environment has created a certain legal gap. The lack of a dedicated mechanism for trademarks in e-commerce makes it difficult for regulatory authorities to address intellectual property infringements occurring on online trading platforms^[3]. Similarly, the requirement for transparency in product labeling in e-commerce is considered not only a means of protecting consumers but also an indirect instrument for safeguarding trademarks, thereby contributing to the promotion of fair competition in the market^[4].

Practical application demonstrates that Vietnam already has mechanisms to address intellectual property (IP) infringements in general, both online and offline, through administrative, civil, and even criminal measures. According to the Ministry of Science and Technology, from early 2019 to the end of 2022, up to 60% of requests for IP infringement handling were related to e-commerce^[5]. Most of these violations involved the sale of counterfeit or imitation goods (trademark counterfeiting) on e-commerce platforms, causing significant damage to legitimate trademark owners and consumers. When infringements are detected, rights holders may file complaints with competent authorities, such as market surveillance agencies, or initiate civil lawsuits to seek damages or injunctions. Major e-commerce platforms in Vietnam, including Shopee, Lazada, and TikTok, have established internal procedures to handle trademark complaints, requiring sellers to provide valid certification. Nevertheless, the domestic legal system still lacks binding provisions obligating e-commerce platforms to proactively prevent and monitor listings of trademark-infringing goods. The current Intellectual Property Law does not clearly stipulate the legal liability of e-commerce platforms in cases where they “know or ought to have known” of trademark-infringing activities but fail to take action.

Although Vietnam has established a legal framework and sanctions for trademark protection in e-commerce, the effectiveness of enforcement in practice remains limited. Many acts of trademark infringement are currently dealt with primarily through administrative measures, with relatively low fines under Decree No. 99/2013/NĐ-CP, which are insufficient to serve as a deterrent. The number of criminal cases prosecuted for trademark infringement also remains very small. Provisions regarding the obligations of e-commerce platforms under the Law on E-Commerce and the Intellectual Property Law are still incomplete and lack specificity. In practice, most platforms have not yet applied automatic recognition technologies to detect and prevent counterfeit and infringing goods at the stage of product listing. When disputes arise, trademark owners must undergo a complicated complaint process, submitting applications to the platform, waiting for review, providing additional documentation upon request, and only then being able to request removal of infringing content; if this process is unsuccessful, litigation before the courts becomes the only option. Compared to China, which already has a more stringent legal framework and stronger enforcement measures for dealing with infringements, Vietnam needs to adopt comprehensive reforms within its legal system to improve the feasibility and effectiveness of trademark protection in the online environment.

3. Trademark Registration and Protection in E-Commerce under Chinese Law

China also applies the “first-to-file” principle similar to Vietnam but has undertaken significant reforms to tighten trademark registration, particularly to prevent “malicious filings” and trademark squatting. The Trademark Law of China, promulgated in 2019 and effective from 2020, introduced provisions allowing applications to be rejected where there is no genuine intention to use the mark, thereby limiting trademark speculation. Another notable reform is the expansion of opposition rights, under which any individual or organization may file an opposition during the publication period, rather than limiting this right to the relevant trademark owner. At the same time, the China National Intellectual Property Administration (CNIPA) has been empowered to proactively revoke trademarks if evidence of bad-faith registration is found. With respect to sanctions, Article 63 of the 2019 Trademark Law authorizes courts, upon the request of the right holder, to order the destruction of counterfeit goods as well as the tools and equipment used for their production, thereby establishing a stricter enforcement mechanism against infringement [6]. It is evident that China places strong emphasis on control from the stage of application examination to prevent the appropriation of foreign trademarks and to curb the proliferation of counterfeit marks, thereby enhancing the effectiveness of protection in the context of global trade and the rapidly expanding online environment.

China promulgated the E-Commerce Law in 2018 (effective from 2019), which sets forth clear and stringent provisions regarding the handling of intellectual property rights infringements on online trading platforms. According to Article 42, when a rights holder believes that their trademark has been infringed, they are entitled to submit a notice to the e-commerce platform, accompanied by preliminary evidence, to request the adoption of “necessary measures” such as removing the infringing product, disabling links, or suspending transactions. Upon receiving such notice, the platform is obligated to promptly implement the necessary measures and, at the same time, forward the notice to the seller. If the seller responds by claiming no infringement and provides supporting evidence, the platform must then notify the rights holder and request that they initiate legal proceedings within 15 days. Should the rights holder fail to provide proof of litigation within this period, the platform is permitted to revoke the previously applied measures [7].

In addition, Article 45 of China’s E-Commerce Law establishes the joint liability of platforms: if a platform knows or ought to have known of an infringement but fails to take preventive measures, it shall bear legal liability together with the seller. Parallel to the formal legal framework, China also promotes voluntary cooperative mechanisms among e-commerce platforms. A notable example is the “Voluntary Convention on Strengthening the Protection of Intellectual Property Rights,” jointly signed by 81 major platforms under the initiative of regulatory authorities. This Convention requires platforms to adopt internal rules prohibiting the sale of goods that infringe intellectual property rights, to provide transparent channels for receiving notifications, to handle complaints promptly, and to impose strict sanctions on repeat offenders, such as permanent account suspension.

China’s dual approach, combining mandatory legal regulations with a voluntary cooperation mechanism among platforms, has established a trademark protection system in e-commerce that is both coercive and proactive. This model enhances the effectiveness of combating counterfeits and safeguarding the rights and interests of businesses as well as consumers.

Thus, compared to Vietnam, China has developed a more comprehensive legal framework for trademark protection in e-commerce, spanning from the registration and issuance of trademark certificates under the Trademark Law, to online infringement handling mechanisms under the E-Commerce Law, as well as detailed guidelines and voluntary cooperation schemes among trading platforms. A prominent feature is China’s particular emphasis on enforcement and sanctions. In addition to a clearly designed notice–counter-notice–litigation procedure, China also applies stringent measures such as double compensation if the notifying party is proven to have acted fraudulently, and criminal prosecution with severe imprisonment for those engaged in the production and trade of counterfeit goods. The combination of a rigorous legal framework, effective administrative mechanisms, and strict criminal sanctions has enabled China to establish stronger deterrence in trademark protection within the e-commerce environment, even though infringements remain widespread in practice.

Some Lessons for Vietnam

From the above comparison, several lessons can be drawn to enhance the effectiveness of trademark protection in e-commerce in Vietnam:

Firstly, it is necessary to the legal framework and clearly define the responsibilities of e-commerce platforms in protecting intellectual property rights, particularly trademark rights. Vietnamese law should introduce provisions requiring e-commerce platforms to formulate and publicly disclose intellectual property protection policies, while also establishing transparent procedures for handling trademark-related complaints, similar to the mechanism provided under Article 41 of China’s E-Commerce Law. The “notice-and-takedown” mechanism should be codified, whereby once a trademark owner submits a notice of infringement, the platform must promptly review and remove the infringing product, and forward the notice to the seller to ensure the right of response. In addition, specific timelines for handling complaints should be stipulated, along with sanctions in cases where platforms delay or fail to fulfill their obligations, such as liability for damages or administrative penalties. Vietnam could draw lessons from China’s approach, which explicitly requires platforms to “establish rules for the protection of intellectual property rights” and to “forward notices to sellers.” Moreover, measures relating to the management of seller information on e-commerce platforms, such as the requirement to provide names, addresses, and business licenses under Decree No. 85/2021 have already been promulgated, but they need to be enforced more strictly and consistently in order to enhance the effectiveness of trademark protection in the e-commerce environment.

Secondly, it is essential to strengthen the application of digital tools in detecting and addressing trademark infringements. Drawing from China’s experience, Vietnam should encourage and gradually require e-commerce platforms to invest in and deploy automated monitoring

systems based on artificial intelligence, image recognition technologies, and data-matching mechanisms to promptly identify the posting of infringing products. The application of technology not only reduces the burden of manual review but also enhances the early detection of counterfeit and imitation goods at the stage of product listing. The Intellectual Property Law could be supplemented with provisions clearly defining the responsibility of e-commerce platforms to adopt and maintain such monitoring technologies. At the same time, an online “intellectual property complaint box” mechanism should be established, allowing trademark owners to submit requests for removal of infringing content quickly and conveniently. Importantly, the outcomes of complaint handling should be made publicly available on the platform to ensure transparency, strengthen trust among businesses and consumers, and deter infringing conduct in the e-commerce environment.

Thirdly, it is necessary to strengthen sanctions and enforcement mechanisms against trademark infringements in the e-commerce environment. The current Vietnamese regulations on penalties for intellectual property rights violations, most notably Decree No. 99/2013/NĐ-CP and Decree No. 131/2013/NĐ-CP were promulgated long ago, and their low levels of fines have proven insufficient to serve as a deterrent. Therefore, revisions should be made to increase penalty thresholds, while also introducing specific sanctions tailored to online infringements, where the scale and complexity of violations are often greater and more difficult to control. In terms of coordination mechanisms, when market surveillance authorities receive reports of violations through e-commerce platforms, they must proactively engage with the platform to ensure timely resolution, and cooperate with the police where serious infringements are detected, in order to guarantee effective enforcement. E-commerce platforms must also be legally obliged to cooperate closely, in particular by providing transaction records and seller-related data upon request from investigative authorities, in accordance with the information-sharing obligations set forth in Decree No. 85/2021/NĐ-CP. Synchronizing the enhancement of sanctions, the refinement of legal provisions, and the establishment of effective inter-agency coordination mechanisms will contribute significantly to improving the effectiveness of trademark protection in the e-commerce environment.

Fourthly, it is necessary to promote voluntary initiatives and multi-stakeholder cooperation mechanisms in trademark protection. Vietnam may draw lessons from China’s “voluntary convention” model, under which e-commerce platforms proactively sign internal commitments on intellectual property protection and establish common rules to prevent infringement. On this basis, public–private cooperation should be strengthened by setting up regular information-sharing mechanisms between regulatory bodies, such as the Ministry of Industry and Trade, the Market Surveillance Authority, and the National Office of Intellectual Property—and e-commerce platforms. Such cooperation may include the exchange of lists of infringing or repeat-offending sellers to enhance monitoring efficiency. At the same time, given the global nature of e-commerce, Vietnam should proactively participate in international cooperation networks, engaging in data exchange, experience-sharing on enforcement, and joint handling of cross-border trademark infringements. The combination of

voluntary commitments by enterprises, coordination with state authorities, and international support will provide a solid foundation for strengthening the effectiveness of trademark protection in the digital environment.

Conclusion

Vietnam’s Intellectual Property Law, together with existing regulations, has laid the basic legal foundation for trademark registration and protection; however, in the context of e-commerce, significant gaps and loopholes remain. By contrast, China has developed a more comprehensive mechanism, not only through extensive reforms of its trademark registration system to prevent squatting and bad-faith filings but also by promulgating detailed rules on the responsibilities of e-commerce platforms and specific enforcement mechanisms under the E-Commerce Law. This experience suggests that Vietnam should continue to improve its legislation by clearly defining the obligations of online trading platforms in protecting intellectual property, while at the same time tightening sanctions to enhance enforcement effectiveness and deterrence. In addition, strengthening public–private partnerships as well as expanding international cooperation in addressing cross-border infringements are essential. Only by integrating legal reform, effective enforcement, and multi-stakeholder cooperation can Vietnam’s trademark protection regime meet the demands of the digital economy and effectively safeguard the legitimate rights of trademark owners in the e-commerce environment.

References

1. Nguyen Vu Quan, 10 New Points of the 2022 Intellectual Property Law on Trademarks, *LuatVietnam*, 2022.
2. ASL Law. Trademark Registration in China: Definition of a Trademark.
3. Nguyen TTL. Trademark Infringement in E-Commerce: Current Situation and Some Recommendations, *Industry and Trade Journal*, 2024.
4. Ha A. Transparency of Product Information in E-Commerce, Anti-Counterfeiting, *Industry and Trade Journal*, 2020.
5. Vu CM. The Current Situation and Solutions to Intellectual Property Rights Infringement in E-Commerce Activities in Vietnam, *People’s Court Journal*, 2025.
6. Daibieunhandan.vn. China’s New Trademark Law: Strengthening the Protection of Intellectual Property Rights, *Journal of Economics and Finance Online*.
7. E-Commerce Law of the People’s Republic of China.