

The legal nature of affiliate marketing contracts on e-commerce platforms in Vietnam

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Abstract

Affiliate marketing has become increasingly common on e-commerce platforms, giving rise to contractual relationships with distinctive legal characteristics. However, the legal nature of affiliate marketing contracts has not yet been consistently identified, owing to the intersection of civil, commercial, service related and electronic transaction elements. This article examines the legal characteristics of affiliate marketing contracts and clarifies their relationship with service contracts, commercial contracts and electronic contracts. On that basis, the article identifies the hybrid nature of affiliate marketing contracts and highlights several issues concerning the determination of applicable law and the rights, obligations and liabilities of the parties, and it proposes directions for improving the relevant legal framework in line with the practical development of e-commerce in Vietnam.

Keywords: Affiliate marketing contract, affiliate marketing, e-commerce, electronic contract, legal nature

Introduction

Affiliate marketing is a marketing method that is relatively common in e-commerce. However, the practice of this method in Vietnam currently faces a number of obstacles arising from gaps in the legal framework [5]. The Law on E-commerce 2025 has, for the first time, recognised this activity, but it does not yet identify the affiliate marketing contract as an independent type of contract. In practice, the affiliate marketing relationship intertwines elements of service provision, commerce, electronic transactions and advertising. This makes it necessary to clarify the legal nature of the contract in order to select the appropriate governing rules, and to provide a basis for determining the rights, obligations and liabilities of the parties when disputes arise. The study of the legal nature of affiliate marketing contracts on e-commerce platforms therefore has both theoretical and practical significance.

Materials and Methods

This article relies on the relevant provisions of the Civil Code 2015, the Law on E-commerce 2025, the Law on Electronic Transactions 2023 and the Commercial Law 2005 [1-4], together with existing academic commentary on affiliate marketing contracts [5]. The article applies doctrinal legal analysis to interpret these provisions and to identify the civil, service, commercial and electronic transaction elements present in affiliate marketing relationships. An analytical and evaluative method is then used to assess the adequacy of the current legal framework and to formulate recommendations for its improvement.

Results and Discussion

1. The concept of affiliate marketing contracts on e-commerce platforms

Affiliate marketing is a performance-based marketing method in which the introduction and promotion of goods or services is carried out through tools capable of identifying and recording the source of the referral. Under Vietnamese law, clause 12 of Article 3 of the Law on E-commerce 2025

defines affiliate marketing services in e-commerce as the advertising of goods or services through access links, referral codes or similar methods connected to an e-commerce platform [2]. The Law also distinguishes the organisation or individual providing affiliate marketing services, which creates the links, referral codes or other connecting methods, from the affiliate marketer, who introduces goods or services on a digital platform through these tools.

The formal recognition of affiliate marketing services by the Law on E-commerce 2025 is significant for determining the legal status of the participating parties. However, the current provisions define only the concept of affiliate marketing activity and its participants, without setting out a separate legal concept of the affiliate marketing contract. This requires that the identification of this type of contract be placed within the framework of the general provisions of contract law. Under Article 385 of the Civil Code 2015, a contract is defined on the basis of an agreement between the parties to establish, modify or terminate civil rights and obligations [1]. Accordingly, when the parties reach agreement on carrying out promotional and referral activities for goods or services and establish corresponding rights and obligations, a contractual relationship is formed between them, regardless of whether the law provides a separate name for that contract.

In terms of content, the affiliate marketing relationship displays clear characteristics of a service provision relationship. Article 513 of the Civil Code 2015 provides that a service contract is an agreement under which one party performs work for the service user, and the service user is obliged to pay for the service [1]. Similarly, clause 9 of Article 3 of the Commercial Law 2005 defines the provision of services as a commercial activity in which one party performs a service for another and receives payment [4]. In affiliate marketing, the work performed by the marketer mainly consists of introducing and promoting goods or services through digital content, access links, referral codes or similar technical methods, and the

economic benefit received by the marketer is usually determined by reference to results recorded by the system in accordance with the agreement. The element of performing work in exchange for remuneration is therefore one of the important indicators for identifying an affiliate marketing contractual relationship.

However, the affiliate marketing contract should not be understood simply as a bilateral relationship between the seller and the affiliate marketer. Depending on the organisational model, the affiliate marketing relationship may involve the e-commerce platform, the organisation providing affiliate marketing services, the seller or service provider, and the affiliate marketer. The Law on E-commerce 2025 also separately allocates the responsibilities of the organisation or individual providing affiliate marketing services and the responsibilities of the affiliate marketer, for example concerning identity verification, the removal of links related to infringing goods or services, and the provision of information to state management agencies^[2]. Accordingly, from a contractual perspective, several interconnected contractual relationships may coexist within a single affiliate marketing model, rather than every participant necessarily being a party to a single contract.

Another characteristic of the affiliate marketing contract on e-commerce platforms is that its conclusion and performance take place mainly through electronic means. Participants typically register an account, provide information, and indicate their acceptance of the terms and policies of the programme on the system. Clause 16 of Article 3 of the Law on Electronic Transactions 2023 defines an electronic contract as a contract established in the form of a data message^[3]. Accordingly, where the affiliate marketing agreement is established and stored in the form of electronic data, this relationship simultaneously takes the form of an electronic contract. However, the electronic element mainly reflects the method of concluding and expressing the contract, and does not alter the nature of the rights and obligations that the parties have established.

In addition, the affiliate marketing contract has a distinctive feature in the mechanism used to determine remuneration. Unlike many traditional service contracts, the accrual and determination of payment in affiliate marketing usually depend on results recorded by the technical system, such as access through a link, use of a referral code, or a transaction that satisfies the conditions of the programme. This feature gives electronic data and the platform's recording mechanism a significant role in determining the marketer's entitlement to remuneration, and is one of the factors that distinguishes the affiliate marketing contract from an ordinary service contract.

2. Legal nature of affiliate marketing contracts

2.1 The affiliate marketing contract as a contractual relationship under civil law

Under Article 385 of the Civil Code 2015, a contract is an agreement between the parties to establish, modify or terminate civil rights and obligations^[1]. In the affiliate marketing relationship, the parties reach agreement on the performance of promotional and referral activities for goods or services, the conditions for recording marketing results, the method of determining and paying commission, the right to use content and data, the circumstances for suspending or terminating cooperation, and liability in the event of a breach. Accordingly, although the law does not yet give this

type of contract a separate designation, the relationship between the parties still meets the basic indicia of a contract under civil law.

In terms of its core obligations, the affiliate marketing contract displays the salient characteristics of a service contract. Under Article 513 of the Civil Code 2015, a service contract is formed when one party performs work for the service user and the service user is obliged to pay for the service^[1]. In affiliate marketing, the marketer performs the work of promoting and introducing goods or services through access links, referral codes, digital content or similar methods, and in return receives commission or other economic benefit upon satisfying the conditions agreed between the parties. This structure of performing work in exchange for remuneration shows that the service provision element occupies a central position in the affiliate marketing contractual relationship.

This identification is also consistent with the Law on E-commerce 2025. The Law defines e-commerce activity as commercial activity conducted in whole or in part in an electronic environment, and formally recognises affiliate marketing services in e-commerce and the parties participating in this activity^[2]. The legislature's use of the term affiliate marketing service is an important indication that the relationship between the party organising the marketing programme and the person performing the promotional activity is, in essence, a service provision relationship.

In addition to its civil character, the affiliate marketing contract may also have a commercial character when it is established for a profit-making purpose and falls within the scope of the Commercial Law. Clause 1 of Article 3 of the Commercial Law 2005 defines commercial activity as activity carried out for profit, including the sale and purchase of goods, the provision of services, investment, trade promotion and other profit-making activities^[4]. In the affiliate marketing model, the business uses promotional activity to expand its ability to reach customers and to increase revenue, while the marketer participates in order to receive commission or other economic benefit. Accordingly, where the conditions relating to the parties and the purpose of the transaction are satisfied, this relationship is not merely a civil contractual relationship but also bears the character of commercial activity.

However, the affiliate marketing contract should not be equated with a commercial brokerage contract or a commercial agency contract merely because the marketer receives commission from the results of a transaction. In commercial brokerage, the broker acts as an intermediary between the parties in negotiating and concluding a contract, whereas in commercial agency, the agent, acting in its own name, buys or sells goods or provides services on behalf of the principal in accordance with the statutory mechanism. By contrast, the basic function of the affiliate marketer is to introduce, promote and direct customers to goods or services through connecting tools. Marketers do not usually conclude a sale contract directly with the consumer, do not decide the selling price, and do not automatically represent the seller in the transaction. Accordingly, the classification of the contract must be based on the actual content of the rights and obligations, rather than solely on the commission payment mechanism.

2.2 The commercial character of the affiliate marketing contract

Commercial character is one of the important features for identifying the legal nature of the affiliate marketing contract. Clause 1 of Article 3 of the Commercial Law 2005 defines commercial activity as activity carried out for profit, including the sale and purchase of goods, the provision of services, investment, trade promotion and other profitmaking activities ^[4]. On this criterion, the profit-making purpose is the basic indicator distinguishing a commercial relationship from an ordinary civil relationship. In the affiliate marketing contract, the profit-making purpose is relatively clear on both sides of the relationship. For the seller, the enterprise, or the entity organising the affiliate marketing programme, the use of marketers is intended to expand its ability to reach customers, increase traffic and boost the consumption of goods or services. For the affiliate marketer, the main purpose of carrying out promotional activity is to receive commission or other economic benefit upon satisfying the conditions set by the programme. The affiliate marketing relationship is therefore not merely a socially oriented activity of introducing products, but is formed on the basis of an exchange of economic benefit between the parties.

The commercial character of the contract is also reflected in the object of the obligation. Under the Law on E-commerce 2025, affiliate marketing services in e-commerce consist of advertising goods or services through access links, referral codes or similar methods connected to an e-commerce platform, and the affiliate marketer is the person who introduces goods or services through these tools ^[2]. The Law also defines e-commerce activity as commercial activity conducted in whole or in part in an electronic environment. Accordingly, the activity that the parties pursue under the affiliate marketing contract is directly linked to the promotion and facilitation of commercial transactions in the digital environment.

In addition, the affiliate marketing contract clearly displays the remunerated character of a commercial relationship. The marketer carries out promotional activity not for a purely altruistic purpose but in exchange for commission or another economic benefit. However, unlike many ordinary service contracts, remuneration in affiliate marketing is usually tied to the actual results of the promotional activity, such as visits, orders or transactions that satisfy the conditions of the programme. The marketer's economic benefit is therefore directly linked to the commercial effectiveness that their activity brings to the party organising the programme. This mechanism highlights the business oriented and profit driven character of the contractual relationship.

The commercial character is further reflected in the fact that the affiliate marketing contract exists within a broader chain of business activity. The marketer's activity does not itself give rise to a sale contract with the consumer, but performs a function of supporting and facilitating the transaction between the seller and the customer. In terms of economic function, affiliate marketing is therefore closely related to trade promotion and service provision. However, the fact that it is directed at facilitating transactions and earning commission does not mean that the affiliate marketing contract must be equated with a brokerage or commercial agency contract. Classification must still be based on the

actual content of the rights, obligations and role of the parties in each specific relationship.

It should be noted that not every affiliate marketing contract is automatically a commercial contract governed by the same legal regime. The Commercial Law 2005 applies to traders and to organisations and individuals engaged in trade related activity; accordingly, determining the applicable legal regime requires consideration of the parties, the purpose of the transaction and the nature of the activity together ^[4]. In practice, an affiliate marketer may be an enterprise, a business household, a professional individual, or an individual who participates only occasionally. The fact that one party does not have trader status therefore does not entirely remove the commercial element of the activity, but it may affect the scope and manner in which the Commercial Law applies to the specific relationship.

2.3 The affiliate marketing contract as an electronic contract usually concluded on standard terms

One of the salient features of the affiliate marketing contract on e-commerce platforms is that its conclusion and performance take place mainly in an electronic environment. Unlike traditional conclusion through a paper document bearing the direct signatures of the parties, the affiliate marketer usually registers an account, provides information and indicates acceptance of the terms of the programme directly on the platform. Under Article 35 of the Law on Electronic Transactions 2023, the conclusion of an electronic contract means the use of data messages to carry out part or all of the process of concluding the contract, and the offer and the acceptance may also be made through data messages ^[3]. Accordingly, where the terms of the affiliate marketing programme are published on the system and the participant indicates acceptance by electronic means, there is a basis for the relationship between the parties to be identified as a contract concluded in electronic form.

Conclusion through an electronic platform does not diminish the legal validity of the contract. The Law on Electronic Transactions 2023 recognises that the conclusion and performance of a contract through an automated information system is not denied legal validity merely because there is no direct human review or intervention in each specific operation. At the same time, the conclusion and performance of an electronic contract must still comply with contract law and other relevant legal provisions ^[3]. This is particularly relevant to affiliate marketing, since many steps, such as registration for the programme, the recording of visits, transaction confirmation, reconciliation and the calculation of commission, are carried out automatically through the platform's system.

However, a distinction must be drawn between the legal nature and the form of conclusion of the contract. The fact that the affiliate marketing contract is concluded by electronic means does not mean that being an electronic contract is the sole legal nature of this relationship. The electronic element mainly reflects the method by which the parties establish, communicate and record their intention. The nature of the contract, by contrast, must still be determined on the basis of the content of the rights, obligations, purpose and object of the relationship. Accordingly, an affiliate marketing contract may simultaneously have the nature of a service contract, bear a commercial character, and be concluded in electronic form.

This approach avoids conflating the form of the contract with its substantive type.

In addition to its electronic character, the affiliate marketing contract also often bears the characteristics of a standard form contract or general transaction conditions. In the practice of e-commerce platforms, basic content such as the conditions for participating in the programme, the principles for recording transactions, the level and method of calculating commission, payment periods, prohibited conduct, and the right to suspend an account or terminate the cooperative relationship, is usually drafted in advance by the platform and applied uniformly to a large number of affiliate marketers. Participants generally do not negotiate each term individually, but choose either to accept or not to participate in the programme.

Under clause 1 of Article 405 of the Civil Code 2015, a standard form contract is a contract whose terms are put forward by one party in a standard form for the other party to accept, and where acceptance occurs, it is, in principle, treated as acceptance of the entire content of the contract. Article 406 of the same Code further provides that general transaction conditions are stable terms published by one party for uniform application to the party invited to conclude the transaction. These terms take effect only once they have been published, so that the party entering into the transaction knows or ought to know their content ^[1].

Accordingly, in the affiliate marketing contract, a participant's act of clicking to confirm, registering for the programme, or continuing to use the service after having been fully provided with the relevant information, may constitute a method of expressing acceptance of the published terms. However, conclusion by this method does not mean that the party drafting the contract has absolute freedom in setting its content. The Civil Code 2015 requires that standard form contracts and general transaction conditions be published, and establishes a control mechanism for terms that seriously upset the balance of rights and obligations between the parties. In particular, an unclear term in a standard form contract must be interpreted in a manner unfavourable to the party that put forward the contract, and a term exempting the drafting party from liability, increasing its liability, or removing the legitimate interests of the other party may be invalid under Articles 405 and 406 of the Civil Code ^[1].

3. Limitations in identifying the legal nature of affiliate marketing contracts

Although the Law on E-commerce 2025 represents significant progress in formally recognising affiliate marketing services, the current legal framework does not yet directly designate the affiliate marketing contract, nor does it fully establish criteria for classifying this type of relationship.

First, the absence of a legal concept of the affiliate marketing contract means that the boundary between this contract and a service contract, a commercial brokerage contract, a commercial agency contract, or other cooperative relationships is not yet entirely clear. Whereas the Commercial Law sets out relatively specific rules on commercial agency, under which the agent, acting in its own name, buys or sells goods or provides services on behalf of the principal in exchange for remuneration, the affiliate marketer, in principle, only carries out the introduction, promotion and referral of customers to a transaction ^[4].

Classifying the relationship solely on the basis of receiving commission may therefore lead to an inaccurate identification.

Second, the multi-party structure of affiliate marketing activity makes it complex to determine the parties to the contract and the scope of their liability. A single platform may simultaneously provide technical infrastructure, manage the programme, record data and process payment, while the goods themselves belong to an independent seller. Without clearly identifying each contractual relationship, it is difficult to apportion liability when disputes arise concerning commission, the quality of goods, or advertising content.

In addition, heavy reliance on standard form contracts and on data controlled by the platform also raises questions about the balance of position between the parties. Although the Civil Code 2015 already contains principles protecting the party accepting a standard form contract or general transaction conditions, these provisions are general in nature and have not been specifically designed for digital relationships characterised by frequent reconciliation and policy change, such as affiliate marketing ^[1].

4. Recommendations for improvement

In light of the above limitations, the law need not necessarily develop the affiliate marketing contract into an entirely independent type of contract. Creating a new contractual regime could result in duplication with the existing rules on service contracts and commercial law. A more appropriate direction is to refine the sector specific provisions in order to clearly define the characteristics of, and the principles governing, this relationship.

Accordingly, e-commerce law should further clarify the criteria for identifying the affiliate marketing contract, in particular the marketer's promotional obligations, the mechanism for calculating and paying remuneration, the role of the organisation providing affiliate marketing services, and the platform's responsibility for data management. At the same time, terms relating to changes in commission rates, the recording of transactions, account suspension and termination of cooperation should be required to be published, transparent and accompanied by a reasonable notice mechanism.

With regard to commission disputes, the marketer's right to access data directly relevant to determining their entitlements should be strengthened. The fact that the platform holds the technical data should not mean that the platform has an absolute right to determine the outcome of reconciliation without any mechanism for explanation or complaint.

Conclusion

In conclusion, the affiliate marketing contract is a contract concerning affiliate marketing activity, a relatively new activity in the field of commercial advertising in Vietnam. This study shows that, although general provisions on contracts already exist, the current legal framework still presents a number of shortcomings for the parties engaged in this type of contract. Improving the law on affiliate marketing contracts is therefore necessary, not only to protect the lawful rights and interests of the participating parties, but also to create a healthy business environment amid the strong development of digital technology.

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