

TRADEMARK PROTECTION ON E-COMMERCE PLATFORMS: CURRENT SITUATION AND LEGAL REFORM SOLUTIONS

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ABSTRACT

This article discusses the concept, characteristics, roles and impacts of trademarks on e-commerce platforms. It then evaluates the current legal framework for trademark protection in the context of e-commerce and proposes solutions for improving relevant legislation.

Keyword: *trademark; e-commerce; characteristics; impact*

1. INTRODUCTION

In the context of globalization and rapid digitalization, e-commerce has become an inevitable trend of the modern economy. E-commerce not only enables enterprises to expand their markets and reach consumers more quickly but also transforms methods of marketing, as well as the distribution of goods and services. Within the digital environment, trademarks - one of the core objects of intellectual property rights play an especially important role in identifying and distinguishing goods and services among different business entities. However, the rapid and complex development of e-commerce also entails numerous risks, particularly the infringement of trademark rights in cyberspace. Trademark protection on e-commerce platforms currently raises new legal and enforcement challenges, requiring the legal system to be not only comprehensive and timely but also adaptable to the specific characteristics of the digital environment: borderless nature, high speed, anonymity of actors and the operational mechanisms based on intermediary platforms.

This article is the outcome of a university-level scientific research project entitled “Legal Study on Trademark Protection on E-Commerce Platforms” (Project Code: 2025.TDHHN.07.14). The research findings presented here constitute an important part of the project.

2. RESEARCH CONTENT

Theoretical Issues on Trademark Protection on E-Commerce Platforms

2.1. Concept of Trademarks

According to the Law on Intellectual Property of Vietnam [15], a trademark is a sign used to distinguish goods or services of different organizations and individuals. A trademark may consist of words, images, colors, sounds or a combination thereof, which can be perceived visually. Trademarks enable consumers to identify and associate with specific goods or services, while simultaneously building reputation and generating economic value for the right holders.

2.2. Characteristics of Trademarks in the E-Commerce Environment

First, trademarks in e-commerce are highly intangible and digitalized. Unlike in traditional business settings, where trademarks are usually attached to physical products, in e-commerce they primarily appear in electronic forms such as domain names, website logos, social media accounts and online advertisements.

Second, trademarks in e-commerce possess a global outreach, transcending geographical boundaries. A small enterprise in Vietnam can still reach international consumers solely through an online sales platform, owing to the power of the Internet and search engines.

Third, the risk of trademark infringement in the digital environment is extremely high. Copying and unauthorized use of trademarks have become easier than ever, especially in the forms of “cybersquatting,” creating fake fanpages and fraudulent advertising.

Fourth, trademarks in e-commerce are heavily dependent on algorithms and consumer search behaviors. Consequently, the effectiveness of trademark exploitation is closely tied to strategies

such as Search Engine Optimization (SEO), Google advertising and brand identification on e-commerce marketplaces.

2.3. Roles of Trademarks in the E-Commerce Environment

First and foremost, trademarks function as indicators for identifying and differentiating goods and services in cyberspace where consumers cannot physically interact with products. A reputable trademark reassures customers in their purchasing decisions and mitigates the risk of fraud.

Next, trademarks serve as tools for building customer trust and loyalty in the digital environment, which is highly competitive and where trust can be easily lost due to a single negative experience.

In addition, trademarks constitute the core of electronic communication and marketing strategies, enabling businesses to promote their brands, position products and expand market share rapidly and effectively.

Trademarks also play an indispensable role as intellectual property assets that can be valued, transferred or used to raise capital in venture investment transactions - a practice particularly common in today's technology start-up ecosystem.

Finally, trademark registration and protection in the digital environment provide the legal basis for handling infringements, requiring e-commerce platforms, social media networks and competent authorities to intervene in order to safeguard the legitimate rights of businesses.

2.4. Impacts of E-Commerce on Trademark Protection

Raising awareness of intellectual property protection: In the e-commerce environment, businesses are compelled to register trademarks early to protect their brands before introducing products into the digital marketplace, thereby increasing awareness of intellectual property rights.

Enhancing the economic value of trademarks: E-commerce facilitates easier access to larger markets, thereby increasing the commercial value of trademarks and reinforcing their role as

intangible assets that can be valued, transferred, franchised or used as collateral.

Improving the capacity to detect infringements: Digital technologies allow right holders to utilize online monitoring tools to promptly detect trademark violations through automated tracking, reports from platforms or third-party brand protection software.

The impacts of e-commerce highlight the necessity of improving intellectual property law. In Vietnam, Decree No. 85/2021/ND-CP has supplemented obligations of e-commerce platforms in preventing counterfeit goods and cooperating in the protection of intellectual property rights. However, practice shows that enforcement remains slow and sanctions are not sufficiently deterrent. Moreover, Vietnam's participation in new-generation free trade agreements (CPTPP, EVFTA, RCEP) further drives the need to strengthen trademark protection measures in the digital environment, in line with international practices.

In conclusion, e-commerce both creates opportunities for effective trademark exploitation and poses significant challenges in combating intellectual property infringements. Enterprises must proactively register trademarks early particularly in international markets while regulatory authorities need to refine legislation and establish effective coordination mechanisms with e-commerce platforms to ensure efficient trademark protection in the digital era.

2.5. Current Legal Framework for Trademark Protection on E-Commerce Platforms

Strengths

Vietnamese law has recognized and gradually improved the legal basis for trademark protection in the e-commerce environment, reflected in several strengths as follows:

(1) Recognition of intellectual property rights over trademarks used in the digital environment

The Intellectual Property Law [15] of 2005 (amended and supplemented in 2022) does not limit trademark use to the physical environment. Accordingly, Article 124(1) [15] stipulates that the act of using a trademark includes: "Affixing a trademark on goods, packaging of goods, business facilities and transaction documents in business activities; circulating, offering for sale, advertising

or displaying for sale goods bearing the trademark; importing goods bearing the trademark...". This provides a legal basis for addressing unauthorized trademark use on e-commerce platforms, websites, social media and online advertising, since these acts, by nature, constitute circulation, offering for sale or advertising of goods bearing infringing signs.

(2) Availability of provisions and sanctions for handling trademark infringement on e-commerce platforms

Although not yet comprehensive, certain legal provisions already enable competent authorities to handle trademark infringements in the digital environment, including: Articles 11 and 12 of Decree No. 98/2020/NĐ-CP [3], which regulate sanctions for trading in counterfeit trademarked goods, applicable to goods sold on e-commerce platforms; Article 198(3) of the Intellectual Property Law [15] of 2005 (amended 2022), which allows trademark owners to request competent authorities to address infringements through administrative, civil or criminal measures depending on severity. In addition, the Ministry of Industry and Trade issued Circular No. 47/2014/TT-BCT (amended by Circular No. 21/2018/TT-BCT [1]) stipulating the responsibility of e-commerce platforms to remove infringing information and block acts of IP infringement upon request from competent authorities or right holders.

(3) Establishment of support mechanisms for right holders through online submission platforms

A positive development is the proactive adoption of technology by state management agencies to receive and address complaints and denunciations related to trademark infringement. The Intellectual Property Office of Vietnam (under the Ministry of Science and Technology) has launched an online public service portal at <https://dvctt.noip.gov.vn>, allowing users to search, register, monitor trademark applications and submit infringement handling requests online. The Ministry of Industry and Trade has implemented a violation-reporting system via the E-Commerce Management Portal at <http://online.gov.vn>, enabling individuals and businesses to denounce counterfeit, imitation or IP-infringing goods on e-commerce platforms. These platforms help streamline the process of handling infringements, reduce paperwork and

align with the fast-paced and flexible nature of e-commerce.

(4) Reference to and incorporation of international intellectual property treaties

Vietnam is a member of several important international treaties on trademark protection, such as the Madrid Agreement on International Trademark Registration (WIPO), the TRIPS Agreement [20] (WTO) and new-generation FTAs such as CPTPP, EVFTA and UKVFTA. In particular, Article 18.76 of the EVFTA [6] Intellectual Property Chapter requires the parties to establish administrative, civil and criminal mechanisms to address trademark infringements in the digital environment. This provision has been a crucial legal basis for Vietnam to amend the 2022 Intellectual Property Law, expanding the scope and forms of enforcement against infringements in e-commerce.

Limitations

Despite these notable advancements, the current Vietnamese legal framework still contains shortcomings and limitations in protecting trademarks on e-commerce platforms, reflected in the following aspects:

First: Absence of specific legal provisions addressing trademark infringement in the digital environment

The Intellectual Property Law 2005 [15] (amended 2022) provides a general framework for acts of trademark infringement under Article 129. However, it does not specifically address unauthorized use of trademarks in the digital environment, such as: use of trademarks as Internet domain names (cybersquatting); use of another's trademark as account names on social networks or e-commerce platforms; use of competitors' trademarks as paid advertising keywords (keyword advertising) on Google, Facebook or TikTok; or infringing use of logos in digital images and videos (deepfake, AI-generated content). These practices are widespread in e-commerce reality but lack a clear legal basis for identification and resolution, leaving right holders disadvantaged in defending their rights.

Second: Ineffective and slow enforcement mechanisms

Under Article 198 of the Intellectual Property Law [15], right holders may request administrative,

civil or criminal remedies against IP infringements. However, administrative procedures remain cumbersome and time-consuming, whereas e-commerce requires swift responses to prevent widespread damage. There is no dedicated “fast-track” procedure for IP infringements in the digital environment, resulting in prolonged and inefficient enforcement. In practice, the handling of trademark infringements on e-commerce platforms often depends on the goodwill and internal policies of individual platforms (e.g., Shopee, Tiki, Lazada), rather than a binding and uniform legal mechanism. This creates a gap between law and practice, reduces deterrence and harms legitimate businesses.

Third: Lack of mechanisms imposing legal liability on digital platforms for detected infringements

Currently, e-commerce platforms and social media networks generally disclaim liability for infringing goods posted by third parties (sellers or users). Meanwhile, Circular No. 47/2014/TT-BCT (amended by Circular No. 21/2018/TT-BCT [1]) only requires removal of infringing information upon request, but does not stipulate compensation obligations or proactive cooperation in investigation and verification. No legal provision requires e-commerce platforms to implement automated control tools to prevent counterfeit or infringing trademarked goods. This lack of binding obligations leaves enforcement largely dependent on platforms’ voluntary internal mechanisms, leading to inconsistency and lack of transparency across platforms.

Fourth: Difficulties in addressing infringements committed by foreign entities

E-commerce is inherently cross-border. However, identifying the identity and address of foreign infringers is highly challenging, particularly when they use international domains or unverified social media accounts. The current Intellectual Property Law and Civil Procedure Law do not clearly regulate procedures for initiating lawsuits or enforcing judgments against foreign entities infringing IP rights in the digital environment. Although Vietnam is a member of TRIPS [20], Madrid, CPTPP and EVFTA, international cooperation mechanisms for enforcement remain ineffective in practice especially regarding infringements on cross-border platforms such as Facebook, Amazon, TikTok or Shopee Mall

International. This makes it difficult for domestic trademark owners to protect their rights when infringements occur abroad or through platforms without legal representatives in Vietnam.

Fifth: Lack of systems for statistics, monitoring and early warning of trademark infringements on e-commerce platforms

The current law does not require platforms or state authorities to periodically disclose data on trademark infringements on e-commerce platforms or social networks. There is no system for monitoring, early warning or big data analysis to proactively detect trademark infringements. Consequently, infringements are often identified reactively, causing severe reputational and financial damage to businesses.

To overcome these shortcomings and enhance the effectiveness of trademark protection in the e-commerce environment, comprehensive solutions are needed, ranging from legislative improvements to stronger enforcement and international cooperation. Specific solutions will be proposed in the following section.

2.6. Solutions for Improving the Legal Framework on Trademark Protection in E-Commerce Platforms

First, improving legal provisions on trademark infringement in the digital environment is essential. The Intellectual Property Law should be amended and supplemented to specifically regulate acts of trademark infringement on digital platforms. Article 129 of the Intellectual Property Law [15], as amended in 2022, should include specific acts such as using protected trademarks to register Internet domain names, using trademarks as account names or online store names on social networks and e-commerce platforms, advertising goods and services bearing another party's trademark through keyword advertising in a misleading manner and using artificial intelligence or deepfake technology to generate content that infringes trademarks. In addition, detailed guidance should be developed in sub-law documents. A separate decree or amendments to Decree No. 103/2006/NĐ-CP should provide instructions on determining the likelihood of confusion in the e-commerce environment, criteria for assessing the use of identical or confusingly similar signs in cases involving domain names, accounts or digital

images and methods for calculating damages in the digital environment.

Second, establishing fast and effective mechanisms for handling online trademark infringements is crucial. Simplified procedures should be introduced for clear-cut cases with sufficient electronic evidence, allowing the application of summary proceedings or electronic administrative procedures. The ICANN UDRP model for resolving domain name disputes through online arbitration without resorting to court can serve as a reference. More flexible provisional measures should also be allowed. Pursuant to Article 206 of the 2022 Intellectual Property Law and the 2015 Civil Procedure Code, courts should have the ability to freeze seller accounts, block access to infringing domains and remove infringing content at the interim stage, giving priority to resolution within 48 to 72 hours for e-commerce cases causing rapid damage. Developing infringement databases and proactive monitoring systems is also important and the Intellectual Property Office together with the Ministry of Industry and Trade should be tasked with creating an early warning system for infringing e-commerce stores, websites and social media accounts impersonating brands and lists of domain names violating trademark rights.

Third, clearly defining the legal responsibilities of e-commerce platforms and digital intermediaries is necessary. Binding legal obligations should be imposed on platforms and Circular No. 47/2014/TT-BCT should be amended to require e-commerce platforms to process trademark infringement complaints within 24 hours, implement technical tools for image and logo detection as well as keyword filtering and provide seller information when trademark infringement is suspected. A conditional intermediary liability mechanism should be established, drawing from the EU Digital Services Act, where platforms that are notified of infringement but fail to act promptly will bear joint liability for damages. Mandatory disclosure of intellectual property protection policies should also be required, including the publication of trademark infringement handling policies, complaint procedures, timelines and annual statistics on resolved complaints.

Fourth, strengthening enforcement capacity and inter-agency coordination is vital. Resources should be increased and specialized training on

digital intellectual property should be provided for inspectorates, market surveillance forces, courts and economic police. An inter-agency coordination mechanism should be developed among the Ministry of Industry and Trade for e-commerce management and administrative sanctions, the Ministry of Information and Communications for domain name and digital content management and the Intellectual Property Office for verification of trademark ownership. A national online intellectual property support center should also be established to serve as a hub linking enterprises, platforms and state authorities.

Fifth, enhancing international cooperation in trademark protection in e-commerce is necessary. Vietnam should actively fulfill its international obligations, such as Article 18.76 of the EVFTA [6] and Article 18.82 of the CPTPP [5] on online intellectual property enforcement and cooperate with WIPO and INTERPOL in digital evidence investigation and collection. Negotiations should be undertaken with cross-border platforms such as Meta, TikTok and Amazon to establish legal representatives in Vietnam, facilitating infringement handling. Vietnam should also participate in regional trademark protection networks such as ASEAN TM Watch and the ASEAN IP Enforcement Network.

Sixth, raising awareness and supporting rights holders is critical. Legal dissemination on trademark protection in e-commerce should be strengthened through mass media and digital platforms. Legal aid packages should be developed, including online trademark registration consultancy and infringement monitoring services on digital platforms, especially for small and medium-sized enterprises [16]. Enterprises should also be guided to register trademarks abroad via the Madrid System [16], purchase domain names corresponding to their trademarks and safeguard their rights through international tools such as WIPO ALERT [19].

3. CONCLUSION

In the era of digital transformation and the rapid development of the digital economy, e-commerce has become a prevailing mode of transaction, expanding business space, enabling global connectivity and fostering creativity in commercial activities. In this context, trademarks serving as instruments of brand identification,

affirming the origin of goods and building consumer trust have become more essential and valuable than ever. However, the very characteristics of e-commerce - its speed, non-physical nature and borderless operation also generate major challenges to the protection of intellectual property rights, particularly trademark rights. In Vietnam, the legal framework for trademark protection has witnessed notable progress, as reflected in the 2022 amendment of the Intellectual Property Law [15], the promulgation of implementing decrees and circulars, as well as the incorporation of international commitments such as TRIPS, CPTPP, EVFTA and others. Nevertheless, the practice of e-commerce has clearly revealed various shortcomings and legal gaps, such as: the absence of explicit provisions governing trademark infringement in the digital environment; slow and inflexible enforcement procedures; the lack of clear legal responsibility of e-commerce platforms and digital intermediaries; weak cross-border enforcement mechanisms; and limited awareness among enterprises regarding trademark rights in the digital context. Against this backdrop, improving the legal framework for trademark protection in the e-commerce environment is not only an internal requirement of the national legal system but also an obligation in fulfilling international commitments. More importantly, it constitutes a prerequisite for building a transparent, equitable and innovative digital economy. The proposed solutions in this article including the development of specific regulations on acts of trademark infringement on digital platforms; the establishment of rapid, effective and online enforcement procedures; the clarification of the legal liability of e-commerce platforms; the enhancement of enforcement capacity of state authorities; the promotion of international cooperation; and the provision of support for right holders represent feasible and urgent orientations at this stage. It should be emphasized that effective trademark protection in e-commerce is not merely about safeguarding a specific proprietary right, but more fundamentally about ensuring fairness in competition, maintaining consumer trust, fostering innovation and establishing a stable legal order for the digital marketplace. In the near future with the advancement of AI, blockchain and the metaverse, trademark protection will face new challenges, requiring laws to continuously update, adapt and become more flexible. Therefore, the

improvement of trademark protection laws on e-commerce platforms must be regarded as a core component of national digital economy policy and an inseparable element of enterprises' sustainable development strategies in the digital era.

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