



Protection of trademarks in e-commerce: A comparative study between Vietnamese and Indian law

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Abstract

E-commerce is reshaping the role and value of trademarks while simultaneously accelerating sophisticated forms of infringement, from counterfeits and keyword-based advertising abuse to domain name hijacking and impersonation on social networks. Both Vietnam and India have recognized these challenges and are moving toward a multi-layered protection model: combining preventive mechanisms on digital platforms, coordinated cooperation among right e-commerce platforms, regulatory authorities, and rapid response measures when violations arise. A key point is to clearly define the boundaries of intermediary liability based on the level of involvement, reducing reliance on a pure “notice-and-takedown” approach and strengthening proactive content-filtering duties for platforms. In parallel, enforcement capacity and deterrence mechanisms must be enhanced, leveraging technology (AI, machine learning, image recognition) and platform-based brand protection programs to detect early and prevent repeat violations. The overarching goal is to build a transparent, safe, and IP-respectful e-commerce ecosystem that protects legitimate businesses and safeguards consumer interests.

Keywords: Trademark, e-commerce, safe harbor, trademark infringement, brand registry

Introduction

In the context of rapid digital transformation, e-commerce has become a critical pillar of the global economy. In both Vietnam and India, the rapid expansion of online platforms and digital business models has heightened the demand for effective trademark protection in the online environment. However, alongside development opportunities, trademark infringement in cyberspace has grown significantly, with acts such as selling counterfeit goods, exploiting trademarks for disguised advertising, registering and using confusingly similar domain names, and impersonating brands on social media. These practices severely affect the lawful rights and interests of trademark owners, undermine fair competition, and harm consumer interests. Trademarks play a fundamental role in identifying commercial origin, building trust, and shaping a brand’s image. When infringed in the e-commerce environment, the distinctive and reputation-building functions of trademarks are compromised, diminishing brand value and creating risks for business operations. Meanwhile, traditional legal mechanisms, largely designed for tangible commercial activities have revealed limitations in addressing sophisticated and diverse forms of infringement on digital platforms. This article focuses on analyzing the theoretical foundations and practical aspects of trademark protection in e-commerce, comparing the legal frameworks and enforcement mechanisms in Vietnam and India. Based on this analysis, the study proposes lessons learned and policy recommendations to improve Vietnam’s legal system and enhance the effectiveness of trademark protection in the digital environment.

Overview Of Trademark Protection In E-Commerce

1. Theoretical Basis for Trademark Protection in E-Commerce

A trademark is defined as a sign used to identify and distinguish the goods or services of one business entity from those of another in the marketplace. In the traditional business environment, trademarks play a pivotal role in

establishing reputation, ensuring product quality, and strengthening consumer trust, thereby contributing to brand positioning in the market. However, the rapid expansion of e-commerce has profoundly transformed the manner in which trademarks are exploited and their value is derived, while simultaneously giving rise to new and more sophisticated forms of infringement. On online trading platforms and across the Internet, trademark violations are no longer limited to the sale of counterfeit goods; they also include the use of identical or confusingly similar signs to misappropriate brand reputation and divert consumers, as well as leveraging another party’s trademark in search keywords, meta tags, and visibility optimization tools to redirect traffic and unlawfully capture the legitimate commercial benefits of trademark owners^[1].

This foundational principle is expressly recognized in Vietnam’s Law on Intellectual Property and is aligned with the minimum standards under the TRIPS Agreement regarding the exclusive right to prevent third parties from using identical or confusingly similar signs for identical or similar goods or services that may cause confusion. Accordingly, trademark rights are not only a unique form of proprietary rights but also a legal protection mechanism designed to maintain fair competition in the marketplace. In terms of function, trademarks serve to identify commercial origin, assist consumers in distinguishing quality, and create a mechanism for accumulating brand reputation through social trust and commercial value developed over time. In the context of rapid digital transformation and the strong growth of e-commerce, trademarks also function as a “cross-platform identity anchor,” ensuring the stability of brand reputation, supporting fair competition, and safeguarding public interests against sophisticated online infringements. Notably, the 2022 amendment to Vietnam’s Law on Intellectual Property expanded trademark protection to include “sound marks,” demonstrating alignment with international trends in protecting non-traditional marks. This development reflects a necessary shift in the legal framework to adapt to the diversification of brand-

positioning strategies and consumer behavior in the digital era [2].

Under Vietnamese law, trademark infringement is understood as the unauthorized use of an identical or confusingly similar sign with respect to protected trademarks for identical or similar goods or services, thereby creating a likelihood of confusion as to commercial origin. Article 129 of the Law on Intellectual Property 2005 (as amended in 2009, 2019, and 2022) identifies typical infringing acts, including affixing infringing signs on products, packaging, or business means; using such signs in transaction documents, advertising, or online environments without the trademark owner's authorization; and treating the registration, appropriation, or use of identical or confusingly similar domain names for the purpose of gaining illicit benefits or causing damage to the rights holder as acts of infringement. The enforcement framework includes civil, administrative, and criminal measures, as well as border control for suspected counterfeit goods, demonstrating that trademark protection not only safeguards the legitimate interests of trademark owners but also serves as a tool to maintain competitive order, ensure a transparent business environment, and promote modern commerce in the context of the digital economy.

In the context of rapid e-commerce development, trademark protection can no longer be confined to traditional mechanisms such as registration with competent authorities and post-infringement enforcement. The speed and complexity of infringement in the digital environment demonstrate that purely ex-post enforcement measures are insufficient to ensure timely and effective protection, requiring a combination of legal instruments and modern technological solutions. Accordingly, the application of artificial intelligence, data-filtering systems, image-recognition algorithms, and product-signature detection to identify early signs of counterfeiting and unauthorized trademark use together with notice-and-takedown mechanisms on online platforms, has become essential in minimizing infringement risks. At the same time, the responsibility of intermediaries such as e-commerce platforms, social networks, and Internet service providers is increasingly emphasized, as they serve as "gatekeepers" managing information flows and transactions. Imposing obligations on these entities to verify merchant identities, retain data, monitor content, and promptly disable infringing storefronts or websites forms the foundation for enhancing trademark enforcement. Thus, trademark protection in e-commerce requires a multilayered approach combining stringent legal frameworks, advanced technology, and clear accountability mechanisms among stakeholders, thereby establishing a transparent, secure, and fair digital business environment in the era of digital transformation.

2. Trademark Protection in E-Commerce under Vietnamese Law

Under the Law on Intellectual Property of Vietnam 2005, as amended in 2009, 2019, and 2022 (hereinafter referred to as the "Law on Intellectual Property"), a trademark is defined as a sign used to distinguish the goods or services of different organizations and individuals, and it is protected only when it has distinctiveness and is not identical or confusingly similar to a previously registered mark. With its core function of indicating commercial origin and ensuring the reputation of the owner, a trademark enables consumers

to identify products and services and reinforces market trust; in particular, within e-commerce, a trademark becomes a crucial "identity marker" across online marketplaces, social networks, and search engines, thereby maintaining a fair and competitive trading environment. Article 129 of the Law on Intellectual Property comprehensively lists infringing acts, including affixing identical or confusingly similar signs on products, packaging, business means, transaction documents, or advertising materials; using confusingly similar signs in the same field of business; advertising or offering counterfeit trademarked goods on digital platforms; and registering or using identical or confusingly similar domain names to protected trademarks. These acts not only cause economic damage to trademark owners but also harm consumer rights and disrupt commercial order. The enforcement mechanism consists of civil remedies (termination of infringement, compensation for damages, destruction of infringing goods), administrative sanctions (monetary fines, removal of infringing content, seizure of counterfeit goods), and criminal liability, supplemented by border-control measures to prevent counterfeit goods from circulating. Notably, in the context of e-commerce, trademark protection requires a multi-layered approach that combines traditional legal mechanisms with modern technological solutions and intermediary liability regimes applying to e-commerce platforms, social networks, and Internet service providers, in order to ensure timely and effective responses to increasingly sophisticated infringements in the digital environment.

Once the Certificate of Trademark Registration is issued by the National Office of Intellectual Property, the trademark owner acquires exclusive rights to use the mark within the territory of Vietnam, including the right to commercially exploit the trademark and to prevent any unauthorized use by third parties. When these rights are infringed, Vietnamese law provides a multi-tiered system of sanctions to protect industrial property rights in general and trademark rights in particular. Firstly, administrative measures currently the most widely applied allow competent authorities to impose monetary fines, confiscate infringing goods and instruments, and even suspend business operations. Secondly, the trademark owner may request the Court to apply civil remedies, including ordering the cessation of the infringing act, compensation for material and moral damages, and destruction of infringing goods. Additionally, for serious, organized, or substantially harmful violations, individuals or organizations may be subject to criminal prosecution under the Criminal Code. The establishment and enforcement of this comprehensive sanctions regime not only protects the legitimate interests of trademark owners but also contributes to maintaining a fair competitive environment, strengthening consumer trust, and fostering innovation and investment in the modern market economy [3].

In the field of e-commerce, Decree No. 52/2013/NĐ-CP establishes a legal framework governing the responsibilities of parties operating on e-commerce platforms, including obligations to ensure the protection of intellectual property rights. Accordingly, operators of e-commerce platforms must require sellers to provide verified information when registering and listing products, implement mechanisms for inspection and supervision, and proactively remove counterfeit goods and industrial property-infringing products upon detection or receipt of notice. Sellers,

meanwhile, are responsible for providing complete and truthful information regarding products, sources, and origins, and for complying with trademark protection laws. This reflects a shared responsibility framework aimed at fostering a transparent and fair business environment. However, in practice, preventing trademark violations on e-commerce platforms faces numerous challenges: notice-and-takedown procedures heavily rely on the initiative of right holders; platform monitoring capacity is limited by massive data volumes and still-developing technological tools; infringing techniques are increasingly sophisticated; and coordination among regulatory authorities, right holders, and platforms remains insufficient. These realities underscore the urgent need to improve both the legal framework and technical solutions, including strengthening seller transparency requirements, raising pre-listing vetting standards, applying artificial intelligence and big-data analytics to detect counterfeit activities, and establishing tripartite cooperation mechanisms to form shared databases of protected trademarks and known violations. Thus, trademark protection in e-commerce does not rest solely on traditional legal mechanisms; it also depends on the governance capacity of digital platforms and the integration of law, technology, and public-private cooperation, oriented toward a secure, transparent, and sustainable online trading ecosystem^[4].

The 2022 amendment to the Law on Intellectual Property introduced Article 198b, under which Clause 3 provides a liability-exemption mechanism for intermediary service providers (such as e-commerce platforms) when they duly perform their obligation to remove or disable access to infringing content upon receipt of notice from the rights holder. This mechanism is essentially analogous to the “safe harbor” model under the U.S. Digital Millennium Copyright Act (DMCA) and the legal framework of the European Union, aiming to enable online platforms to cooperate with rights owners without being exposed to excessive legal liability. However, a notable limitation is that this provision currently applies only to copyright and related rights and has not yet been extended to trademarks and other industrial property rights. In the context where trademark violations in the digital environment particularly in e-commerce are increasing in scale and sophistication, this legal gap creates a dual risk: platforms may be deemed to facilitate infringement if they fail to act promptly, while lacking a sufficient legal basis for exemption when they act in good faith. Therefore, expanding the “safe harbor” mechanism to include trademark rights is necessary to ensure a balanced protection regime between rights holders and intermediary service providers, while improving the legal framework governing e-commerce in the digital economy.

Overall, trademark protection in the e-commerce environment requires a multi-layered mechanism that combines the roles of rights holders, state regulatory authorities, and intermediary platforms. In practice, trademark owners must proactively employ various measures simultaneously, ranging from submitting takedown requests to e-commerce platforms, initiating civil lawsuits, to coordinating with authorities to apply administrative or criminal sanctions in cases of serious violations. Regulatory authorities also play a key role through inspection, supervision, and enforcement activities; however, deterrence remains insufficient, as current penalties are relatively low compared to the damage caused

by infringement. This reality demonstrates that, in addition to continued improvement of the legal framework, there is a pressing need to enhance enforcement effectiveness, strengthen inter-agency coordination mechanisms, and adopt technological tools for monitoring and combating violations. Only by doing so can a robust, timely, and adaptive trademark protection system be established one that aligns with the pace of e-commerce development in the digital era.

3. Trademark Protection in E-Commerce under Indian Law

India possesses a relatively early-developed and independent trademark legal system. The primary legislation governing this field is the Trade Marks Act 1999, which came into force in 2003, replacing the 1958 Act. The 1999 Act provides an official definition of a trademark under Section 2(1)(zb) and comprehensively regulates procedures for registration, protection mechanisms, assignment of rights, and remedies for infringement. India’s trademark system operates on a hybrid basis, combining the principle of registration with the principle of actual use: registration confers legal exclusivity, but prior users’ rights are still protected through the doctrine of passing off a common-law mechanism against unfair competition that applies even to unregistered marks. Therefore, the scope of protection in India is considered broad, including the protection of well-known marks even if they have not been registered in India. In cases where an identical or confusingly similar sign is used without authorization for goods or services of the same nature, the registered trademark owner may file an infringement action, while an owner of an unregistered mark may pursue a passing off claim under common-law principles^[5].

Although the Indian Trade Marks Act does not contain specific provisions on trademark infringement in e-commerce, enforcement against online infringement is governed by the broader information technology legal framework. Specifically, the Information Technology Act 2000 (IT Act) classifies online platforms as “intermediaries” when they merely transmit information provided by third parties without controlling content, as defined under Section 2(w). Under Section 79 of the IT Act, a safe harbor mechanism applies, whereby intermediaries are exempt from liability for user-generated content, provided that they do not proactively initiate transmission, select recipients, or modify the information, and that they comply with reasonable due-diligence measures and the notice-and-takedown process. In other words, e-commerce platforms in India are shielded from liability for trademark infringement committed by sellers if the platforms merely perform a technical facilitation role and do not actively intervene in business activities conducted on their systems.

However, the safe harbor protection for intermediary platforms is not absolute. Under Section 79(3)(b) of the IT Act, once a platform obtains “actual knowledge” of infringing content—such as through notice from the rights holder or an order from a competent authority—it is obligated to promptly remove or disable access to that content. If the intermediary fails to take appropriate action within a reasonable timeframe, it loses its exemption and may be held liable as a contributory or facilitating party to the infringement. This mechanism essentially establishes a “notice-and-takedown” procedure: the trademark owner

submits a takedown request to the platform, and upon receipt, the platform must act within a specified timeframe (which, in practice in India, typically ranges from 36 hours to a few days). This approach reflects an effort to balance the protection of intellectual property rights with the need to avoid excessive interference in the operations of online intermediaries, aligning closely with the U.S. DMCA model of platform liability in the digital environment.

As a common law jurisdiction, judicial precedents in India play a particularly important role in shaping and interpreting trademark law, especially in the context of e-commerce. One of the landmark rulings concerning the liability of e-commerce platforms for trademark-infringing goods is *Christian Louboutin SAS v. Nakul Bajaj & Ors* (Delhi High Court, 2018). In this case, the owner of the Christian Louboutin trademark sued the website *Darveys.com* for distributing products bearing the Louboutin mark that were suspected to be counterfeit. The defendant argued that it merely acted as an intermediary platform for sellers and was therefore entitled to safe-harbor protection under Section 79 of the IT Act. However, the Court held that *Darveys.com* engaged in active participation in the commercial process, including advertising, selecting customers, collecting payments, and being directly involved in the distribution process. These activities placed the defendant beyond the scope of a “passive intermediary.” Accordingly, the Court concluded that the defendant was not entitled to immunity and must bear legal liability for contributing to the sale of infringing products to consumers. The Court also cited U.S. and European case law, such as *Tiffany v. eBay* and *Google France v. Louis Vuitton*, to emphasize that intermediary liability is determined by the degree of “knowledge” and “control” exercised over infringing activities. The core significance of the judgment lies in its affirmation that not all e-commerce platforms may be classified as passive intermediaries; legal liability depends on the level of active involvement in commercial operations. If a platform knows or, under normal circumstances, ought to have known of infringement particularly concerning famous trademarks sold by unauthorized parties, yet fails to take preventive measures, it may be deemed a contributory infringer.

In addition to the *Christian Louboutin* case, Indian jurisprudence has continued to affirm several key principles for protecting trademarks in the digital environment. Courts have consistently held that using another party’s trademark as advertising keywords or meta-tags to increase web traffic constitutes trademark infringement and unfair competition, thereby preventing parties from “free-riding” on brand reputation online. Indian courts have also recognized the doctrine of cross-border reputation, extending protection to international well-known trademarks such as *Whirlpool* and *Rolex* even when they have limited commercial presence in India, in order to prevent unauthorized parties from exploiting these brands’ global goodwill online. These judicial precedents demonstrate that the Indian judiciary maintains a proactive and strict stance in addressing online trademark infringement, combining statutory provisions (the Trade Marks Act and the IT Act) with flexible judicial interpretation to promptly fill legal gaps arising from the realities of digital commerce^[5].

With respect to enforcement, trademark owners in India typically prioritize civil remedies, seeking court injunctions to immediately halt online infringement and claiming damages. The Delhi High Court, in particular, has been

proactive in issuing emergency orders, including directing e-commerce platforms to remove infringing listings or disclose seller information. In addition, Indian criminal law imposes strict penalties for dealing in counterfeit trademark goods, including significant imprisonment and fines. However, due to the high evidentiary standard required, criminal prosecution is less common than civil enforcement similar to the situation in Vietnam. A notable distinction lies in the dynamic role of the judiciary in interpreting the law. Rather than waiting for statutory amendments as in Vietnam, Indian courts may adopt expansive interpretations to address novel circumstances, for example, ruling that a platform loses its safe-harbor protection if it fails to take action after obtaining “actual knowledge” of an infringement. This judicial approach enables India’s legal system to respond flexibly and promptly to new challenges posed by e-commerce and the digital environment.

Lessons For Vietnam

From India’s experience, several important orientations can be drawn to improve the legal framework and enhance the effectiveness of trademark protection in e-commerce in Vietnam.

Firstly, improve the legal framework governing the liability of e-commerce platforms. Although the 2022 amendment to the Law on Intellectual Property introduced a preliminary “safe harbor” mechanism for intermediary service providers (Article 198b), its scope remains limited and does not yet cover trademarks. India’s experience demonstrates the need to clearly distinguish between passive and active intermediaries as a basis for applying liability exemptions. Where an e-commerce platform intervenes directly in commercial transactions—such as by advertising, pricing, organizing delivery services, or receiving commission based on sales—it should not be treated as a purely passive intermediary and must bear joint liability if it “knew or ought to have known” about infringement and failed to act. Vietnam may therefore consider extending Article 198b to trademark rights and supplementing proactive obligations in the E-Commerce Law, including implementing counterfeit-detection systems, establishing a “Brand Registry” to support rights holders, and applying AI and machine-learning technologies to filter infringing content at the upload stage.

Secondly, strengthen sanctions and enforcement measures. Given the high profitability of online counterfeit trading, penalties must be sufficiently deterrent. This requires amending administrative sanctions regulations to significantly increase fines based on the value of infringing goods. Platforms should also bear sanctions if they fail to remove infringing listings or allow repeated violations due to lax management. At the judicial level, Vietnam should promote the use of civil remedies, especially emergency injunctions, similar to India, where courts swiftly order platforms to block infringing sellers and disclose their information. Consideration may be given to establishing specialized IP courts or providing advanced judicial training in e-commerce disputes to expedite resolution. For serious cases, criminal sanctions should be applied to enhance deterrence.

Thirdly, enhance awareness and coordination among stakeholders. India’s experience shows that legal rules alone are insufficient; proactive enforcement by police, regulatory authorities, and courts is crucial. Vietnam should strengthen

online investigation and monitoring capacity for enforcement agencies and create effective collaboration mechanisms among state authorities, e-commerce platforms, trademark owners, and consumers. Platforms must proactively prevent violations, suspend repeat offenders, and provide information for investigations; rights holders must actively monitor and report infringements; and consumers should be educated about the harms of counterfeit goods.

Fourthly, promote international cooperation in enforcement. Given the cross-border nature of e-commerce, Vietnam should actively participate in international cooperation mechanisms, share data on online counterfeit networks, and work with organizations such as WIPO and INTERPOL to combat trademark violations. Vietnam could also consider cooperation agreements with major global platforms (e.g., Amazon, Alibaba) to build shared databases of infringing entities and establish fast-response mechanisms, similar to India's approach with multinational e-commerce companies. This is essential to ensure effective enforcement amid increasingly sophisticated and transnational infringement activities.

Conclusion

Trademark protection in e-commerce is one of the most pressing legal challenges in the digital era, requiring continuous adaptation of legal systems to respond to increasingly sophisticated infringement behaviors. Through comparative analysis, it is evident that both Vietnam and India place strong emphasis on strengthening online trademark protection, yet they adopt distinct approaches: Vietnam is gradually building its legal framework through the Intellectual Property Law and platform-responsibility regulations, whereas India relies on a flexible body of case law combined with intermediary liability provisions under information-technology legislation, forming a relatively mature enforcement structure. India's experience demonstrates that Vietnam should further refine intermediary-liability rules for e-commerce platforms, impose stronger sanctions, enhance enforcement capacity, and empower courts to more proactively adjudicate online disputes. The ultimate objective is to establish a transparent, safe, and IP-respectful e-commerce environment in which all stakeholders regulators, businesses, and consumers, work together to combat trademark infringement, thereby promoting sustainable growth of the digital economy.

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