



## Trademark protection mechanisms on E-Commerce platforms: A legal analysis of the European Union and lessons for Vietnam

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### Abstract

In the context of rapid digital transformation, e-commerce has become an important distribution channel that enables businesses to expand their markets, but at the same time increases the risk of trademark infringement through sophisticated forms such as misleading advertising, trading in counterfeit goods, cybersquatting, and exploiting platform functions to disseminate infringing products. Traditional legal regulations, originally designed for physical transactions are no longer flexible enough to promptly address infringements that occur with great speed and wide reach in the online environment, thereby requiring a combination of legal frameworks, monitoring technologies, and the responsibilities of intermediary platforms. In Vietnam, the State has undertaken notable reforms such as strengthening the obligations of e-commerce platforms to control information and goods, expanding regulatory authority, and concurrently applying civil, administrative, and criminal measures against trademark infringement. However, enforcement effectiveness remains limited due to the heavy reliance on right holders to detect violations on their own, inadequate monitoring capacity of competent authorities, and sanctions that are not sufficiently deterrent. Meanwhile, the European Union has established a comprehensive and harmonized legal framework across Member States, clearly defining the responsibilities of intermediary service providers, mechanisms for online content regulation, and procedures for resolving domain-name disputes, thereby creating a foundation for cross-border trademark protection. These experiences offer valuable insights for Vietnam in improving its legal system, enhancing transparency, applying technological solutions, and strengthening cooperation among stakeholders to build a safe and sustainable e-commerce environment.

**Keywords:** Trademark, e-commerce, protection, trademark infringement, intellectual property

### Introduction

The rapid expansion of digital technologies in recent years has propelled e-commerce into an essential component of the economy, while simultaneously creating an urgent need for trademark protection in the online environment. The open nature of cyberspace, together with the speed and difficulty of controlling information dissemination, has enabled increasingly sophisticated forms of trademark infringement from the use of identical or confusingly similar signs and the trade of counterfeit goods to the exploitation of social media platforms for promoting infringing products. These acts not only diminish the distinctiveness and reputation of trademark owners but also pose significant risks to consumers, who face difficulties in distinguishing genuine from counterfeit goods. Meanwhile, the traditional legal system originally designed for physical transactions has not fully met the demands of contemporary regulatory challenges, resulting in gaps in mechanisms for preventing and addressing infringements in the digital environment. Recognizing these challenges, this article focuses on clarifying the theoretical foundations of trademark protection in e-commerce, analyzing the current legal framework and enforcement practices in Vietnam, and comparing them with the legal system of the European Union a jurisdiction widely regarded as having a relatively comprehensive and harmonized framework for online trademark protection. Based on this comparative perspective, the article identifies several lessons to support the improvement of Vietnamese law, aiming to enhance the effectiveness of trademark protection in an e-commerce environment that is rapidly evolving yet fraught with challenges.

### Overview of Trademark Protection Mechanisms on E-Commerce Platforms

#### 1. Theoretical Foundations of Trademark Protection Mechanisms on E-Commerce Platforms

From a legal perspective, a trademark is understood as a sign used to distinguish the goods or services of different organizations or individuals. This is a fundamental provision of Vietnam's intellectual property law and is also consistent with the minimum standards set out in the TRIPS Agreement, under which the owner has the exclusive right to prevent third parties from using identical or confusingly similar signs for identical or similar goods or services if such use is likely to cause confusion among consumers. Functionally, a trademark not only identifies commercial origin and differentiates product quality but also helps build and maintain the owner's reputation in the market. In the digital context, trademarks act as a "core identifier" across various online platforms, contributing to brand consistency, promoting fair competition, and protecting consumer interests. Notably, Vietnam's Intellectual Property Law (as amended in 2022) officially expanded the scope of protection to include non-traditional trademarks, such as sound marks, reflecting Vietnam's integration with international developments in intellectual property law <sup>[1]</sup>. Under intellectual property law, trademark infringement is understood as the act of using, without the permission of the trademark owner, a sign that is identical or confusingly similar to a protected trademark for identical or related goods or services, thereby causing a likelihood of confusion among consumers as to the commercial origin of the goods or services. Article 129 of the Law on Intellectual Property 2005 (as amended in 2009, 2019, and 2022) provides a

detailed list of infringing acts, including affixing the sign to products, packaging, business instruments, transaction documents, or using it in advertising, display, or circulation of goods. In addition, the registration or use of domain names that are identical or confusingly similar to a protected trademark is also regarded as an act of trademark infringement. The current legal system establishes multiple enforcement mechanisms civil, administrative, and criminal to protect right holders, and also incorporates border control measures to prevent counterfeit goods from entering the market. It can be seen that trademark protection is not only a legal tool for safeguarding intellectual property rights but also plays an essential role in maintaining competitive order, protecting consumers, and fostering a modern, transparent, and sustainably developed commercial environment.

Acts of trademark infringement in the e-commerce environment are becoming increasingly diverse, sophisticated, and difficult to control, negatively affecting the rights of trademark owners, consumers, and market competition. One of the most common manifestations is the advertising, sale, or distribution of infringing products through e-commerce platforms. Many online storefronts intentionally use identical or confusingly similar signs to well-known trademarks to attract consumer attention, thereby creating a risk of confusion regarding the commercial origin of goods. This behavior has become widespread due to the anonymity of online users, the ease of quickly creating storefronts, and the limited screening capacity of digital platforms. At the same time, the posting of advertisements or listings for counterfeit trademarked goods is occurring on a large scale, directly harming the economic interests of trademark owners and posing potential risks to consumer safety and health. Another form of infringement is the unauthorized use of identical or similar signs for products of the same category in online channels, causing consumers to mistakenly believe there is an affiliation or endorsement relationship between the infringer and the legitimate trademark owner. Notably, the act of cybersquatting registering or exploiting domain names identical or confusingly similar to registered trademarks has become increasingly common, often used to divert traffic to fraudulent websites for illicit gain. This situation highlights the urgent need to strengthen digital transaction monitoring mechanisms, improve legal frameworks, and enhance cooperation among regulatory bodies, rights holders, and e-commerce platforms to promptly detect and address infringements<sup>[2]</sup>.

In the context of booming e-commerce, trademark protection can no longer rely solely on traditional legal measures such as registration procedures or post-infringement enforcement. The rapid spread of information, the anonymity of online users, and the diversity of infringing acts in the digital environment render “ex post” mechanisms slow and insufficient to meet practical needs. Therefore, combining the existing legal framework with advanced technological solutions has become an inevitable trend. Technologies such as artificial intelligence, data filtering and big data analytics systems, image-recognition tools, and product-specific identifier detection can support the early identification of counterfeit goods or unauthorized trademark use. In addition, notice-and-takedown mechanisms on e-commerce platforms can significantly limit the dissemination of infringing content if effectively implemented.

At the same time, the responsibilities of intermediaries including e-commerce platforms, social networks, and Internet service providers are becoming increasingly important. These entities act as “gatekeepers” with the ability to control information, advertising content, and transactional activities on their platforms. Requiring them to implement measures such as verifying seller identities, storing transaction data, proactively preventing or disabling storefronts showing signs of infringement is essential to enhance the effectiveness of trademark protection in the digital space. Accordingly, trademark protection in e-commerce must be developed in a multi-layered approach combining legal frameworks, technological solutions, and the responsibilities of relevant stakeholders in order to build a transparent, safe, and fair online business ecosystem.

## **2. Trademark Protection Mechanisms in E-Commerce Under Vietnamese Law**

Under the Vietnamese Law on Intellectual Property 2005, as amended and supplemented in 2009, 2019, and 2022 (hereinafter referred to as the “Intellectual Property Law”), a trademark is defined as a sign used to distinguish the goods or services of different entities. A trademark is protected only when it satisfies the requirement of distinctiveness and is not identical or confusingly similar to a previously registered mark. In terms of function, a trademark serves to identify commercial origin, safeguard reputation, and build consumer trust in products and services. In the context of e-commerce, trademarks also operate as key identifiers on online marketplaces, social media platforms, and search engines, thereby contributing to the maintenance of fair and transparent competition.

Article 129 of the Intellectual Property Law provides detailed regulations on acts considered trademark infringement, including affixing identical or confusingly similar signs onto goods, packaging, or business instruments; using such signs in advertising, offering for sale, or warehousing; using confusingly similar signs within the same business sector; advertising or offering counterfeit trademarked goods on e-commerce platforms; as well as registering or using domain names identical or confusingly similar to protected trademarks for illicit gain. These acts not only directly harm the economic interests of trademark owners but also cause damage to consumers and disrupt the commercial environment. The current enforcement system includes civil measures (cessation of infringement, compensation for damages, destruction of infringing goods), administrative measures (sanctions, confiscation, compulsory removal of infringing content), criminal measures for serious violations, and border control mechanisms to prevent the importation of counterfeit goods. In the e-commerce context, trademark protection requires not only the application of the existing legal framework but also the integration of modern digital solutions and enhanced responsibilities of intermediaries such as e-commerce platforms, social networks, and Internet service providers, thereby moving toward a more multi-layered, flexible, and effective protection mechanism.

When a trademark is granted a Certificate of Registration by the Intellectual Property Office of Vietnam, the owner is officially vested with the exclusive right to use the trademark within the territory of Vietnam. This right not only enables the commercial exploitation of the trademark but also provides the legal basis for preventing any

unauthorized use by third parties. In cases where infringement arises, Vietnamese law establishes a multi-layered system of sanctions to protect industrial property rights, particularly trademark rights. First, administrative sanctions are widely applied, including monetary fines, confiscation of infringing goods and instruments, and suspension of business activities of the infringing organization or individual. In addition, the trademark owner may file a civil lawsuit before the court to claim compensation for material and reputational damages and request that the infringer cease the infringing acts. For particularly serious cases those that are organized, systematic, or cause significant damage trademark infringement may also be subject to criminal prosecution under the Penal Code. The establishment and enforcement of such a comprehensive sanctioning system not only protect the legitimate interests of trademark owners but also help maintain a fair competitive environment, strengthen consumer confidence, and create incentives for innovation, investment, and economic development<sup>[3]</sup>.

In the field of e-commerce, Decree No. 52/2013/ND-CP serves as the foundational legal instrument regulating the activities of entities operating on e-commerce platforms, particularly concerning the responsibility to ensure the protection of intellectual property rights. Under the regulation, operators of e-commerce marketplaces must require sellers to provide complete and accurate identification information when registering accounts and when listing products; at the same time, they must establish mechanisms for inspection and monitoring to promptly detect, warn, or remove counterfeit goods and goods infringing industrial property rights as soon as signs of violation arise or when feedback is received from consumers or right holders. On the sellers' side, they are obliged to provide clear information regarding the origin and characteristics of their products, and to comply with legal provisions related to trademark protection and other intellectual property rights. This allocation of responsibilities aims to create a transparent, fair, and safe transactional environment.

However, practical implementation shows that controlling trademark infringements on e-commerce platforms still faces numerous challenges. The current notice-and-takedown mechanism relies heavily on the initiative of trademark owners, while the monitoring capacity of platforms remains limited due to the overwhelming volume of product listings and the insufficient strength of technological tools. At the same time, infringing acts are becoming increasingly sophisticated, easily concealed under various forms, and the coordination among state authorities, right holders, and e-commerce platforms has not yet been truly effective. Therefore, improving both legal and technical aspects has become essential, including enhancing the transparency of seller information, raising standards for product verification prior to listing, applying advanced recognition and data-filtering technologies, and promoting tripartite cooperation mechanisms to establish a centralized database of protected trademarks and resolved infringement cases. Thus, trademark protection in e-commerce does not rely solely on traditional legal provisions but also depends on the governance capacity of digital platforms and the interconnectedness between law, technology, and social cooperation<sup>[4]</sup>.

The 2022 amendment to the Intellectual Property Law introduced Article 198b, in which Clause 3 establishes a liability exemption mechanism for intermediary service providers such as e-commerce platforms on the condition that they duly remove or disable access to infringing content immediately upon receiving a valid notice from the right holder. This mechanism is similar in nature to the "safe harbor" model under the U.S. DMCA and relevant directives of the European Union, aiming to encourage online platforms to cooperate in the protection of intellectual property rights without fear of being exposed to excessive legal liability. However, a notable limitation is that this exemption currently applies only to copyright and related rights and has not been extended to trademarks or other industrial property rights. In the context of increasingly widespread and sophisticated trademark infringements in the digital environment particularly on e-commerce platforms the absence of an equivalent legal mechanism creates a significant gap in determining responsibilities and the scope of liability exemptions for intermediaries. As a consequence, e-commerce platforms face a difficult situation: on the one hand, they risk being considered accomplices or facilitators of infringement if they fail to promptly address infringing content; on the other hand, they lack adequate legal safeguards to protect themselves even when they have acted in good faith but infringements still occur. Therefore, developing and incorporating a "safe harbor" mechanism applicable to trademark protection is necessary to safeguard the rights and interests of trademark owners while ensuring a reasonable balance in the allocation of legal responsibilities among intermediaries in today's digital economy.

In summary, trademark protection in e-commerce requires a multilayered mechanism involving the cooperation of right holders, regulatory authorities, and intermediary platforms. In practice, right holders must proactively apply multiple measures simultaneously, ranging from requesting the removal of infringing content and initiating civil lawsuits to coordinating administrative or criminal actions in cases of serious violations. State authorities play a role in inspection, supervision, and sanctioning; however, the deterrent effect remains limited due to relatively low penalty levels. Therefore, in addition to improving the legal framework, it is essential to strengthen enforcement, enhance inter-agency coordination, and apply monitoring technologies, thereby establishing a timely and effective trademark protection system aligned with the dynamic development of e-commerce.

### **3. Trademark Protection Mechanisms in E-Commerce under European Union Law**

The European Union has developed a relatively comprehensive legal framework for trademark protection within its single market. The foundation of this system is Regulation (EU) 2017/1001 on the European Union Trade Mark (EUTM), which allows a trademark registered with the European Union Intellectual Property Office (EUIPO) to be simultaneously valid in all 27 Member States. In addition, Directive (EU) 2015/2436 was adopted to harmonize the national laws of Member States, ensuring consistency in protection standards, registration procedures, and dispute-resolution mechanisms, thereby facilitating trademark protection at both the national and regional levels. Through this structure, right holders may choose to

register an EUTM for EU-wide protection or opt for national registrations depending on their strategic needs. In terms of enforcement, the EU has established various tools to combat cross-border industrial property infringements. The Court of Justice of the European Union (CJEU) may issue injunctions with effect across the entire single market under the civil procedure framework of Brussels I Recast, enabling timely prevention of widespread infringements. At the same time, Regulation 608/2013 empowers customs authorities to detain, inspect, and take action against suspected infringing goods at the border, ensuring that violations are stopped at the point of entry. This system demonstrates that the EU not only focuses on establishing strong legal protection standards but also places significant emphasis on the effectiveness of enforcement mechanisms, aiming to maintain a balance between the free movement of goods and the legitimate interests of trademark owners within a unified commercial space<sup>[5]</sup>.

In the online environment, the European Union has also developed specialised approaches to address issues arising from advertising and content distribution on digital platforms. Regarding advertising through search keywords, the CJEU has issued several landmark rulings. In *Google/Google France v. Louis Vuitton* (2010), the Court held that an undertaking's use of a competitor's trademark as an advertising keyword does not automatically constitute infringement, provided such use does not mislead consumers as to the commercial origin of the advertised goods or services. However, in *Interflora v. Marks & Spencer* (2013), the CJEU determined that using a competitor's trademark in advertising may constitute infringement if it impairs the trademark's function of indicating origin, thereby creating confusion about a possible commercial connection between the two undertakings. These two precedents reinforce the principle that the use of trademarks in search advertising is not absolutely prohibited, but must be carefully assessed in light of the likelihood of consumer confusion.

Regarding the responsibilities of digital platforms, the EU maintains the notice-and-takedown mechanism under the E-Commerce Directive 2000/31/EC, under which service providers such as e-commerce marketplaces, domain registrars, or hosting services are exempt from liability if they promptly remove infringing content after being notified. However, with the adoption of the Digital Services Act (DSA, 2022), the obligations of major platforms have been significantly strengthened: they must conduct risk assessments, increase transparency in content-moderation mechanisms, ensure timely handling of illegal content, prevent repeat offenders, and store information about professional sellers. The DSA thus establishes a higher standard of responsibility for e-commerce platforms, aiming to enhance consumer protection and safeguard intellectual property rights in the digital environment. In addition to its harmonized trademark protection framework, the European Union also places particular emphasis on dispute-resolution mechanisms related to domain names a matter closely associated with e-commerce activities. At the global level, the Uniform Domain Name Dispute Resolution Policy (UDRP), administered by WIPO, is considered a widely used arbitration tool, enabling the swift resolution of disputes between trademark rights and improperly registered international domain names. For the ".eu" country-code domain, EURid operates an Alternative Dispute Resolution

(ADR) procedure under similar principles to prevent cybersquatting, misuse, or exploitation of protected trademarks within the EU's digital space. This demonstrates that the EU legal system not only focuses on trademark registration and enforcement mechanisms but also integrates administrative, judicial, and international cooperation measures in a flexible manner. As a result, the EU has established a comprehensive brand-protection framework that meets the demands of an increasingly expansive and complex cross-border e-commerce environment.

### Lessons Learned for Vietnam

From international experience and recent legal developments, several lessons can be drawn for Vietnam, as follows:

Firstly, it is necessary to strengthen the responsibilities of e-commerce platforms. The Draft E-Commerce Law 2025 and Decree No. 147/2024 have introduced requirements for pre-upload content screening, seller identity verification, and shared liability for damages if platforms fail to address infringements promptly. Tightening legal obligations will compel e-commerce marketplaces to proactively remove counterfeit and trademark-infringing goods rather than merely reacting to takedown requests from right holders.

Secondly, transparency and traceability must be enhanced. Maintaining complete records of goods, sellers, and transactions is essential for protecting consumer interests and assisting trademark owners in gathering evidence when violations occur. International trends particularly in the EU show that traceability requirements for professional sellers have become a standard to reduce anonymity and limit fraudulent activities in the digital environment.

Thirdly, the mechanisms for domain-name dispute resolution and identity verification should be improved. Decree No. 147/2024 allows administrative handling and revocation of ".vn" domain names that infringe trademarks, providing a more effective tool compared to solely initiating court proceedings. At the same time, requiring digital platforms to verify the identity of sellers or livestream hosts will increase accountability in cases of infringement.

Fourthly, cooperation with platforms and the application of digital technologies should be strengthened. Trademark owners should proactively monitor the online environment, use automated tools to detect infringements, and take advantage of each platform's reporting mechanisms. Participation in brand-protection programs enables faster detection and resolution of infringements.

Fifthly, the legal framework and sanctions should continue to be refined. Article 198b of the 2022 Intellectual Property Law recognizes, for the first time, a liability-exemption mechanism for digital intermediaries, but it is currently limited to copyright. Given the growing frequency of trademark infringements in the digital environment, this mechanism should be expanded to include trademark protection. Furthermore, the Draft E-Commerce Law should fully incorporate provisions on seller transparency, notice-and-takedown procedures, and platform monitoring obligations. Administrative and criminal penalties should also be increased to reflect the higher economic value and potential harm in the digital era.

### Conclusion

E-commerce enables businesses to expand their markets but also increases the risk of trademark infringement. The

European Union has developed a comprehensive legal framework including the EUTM system, harmonization directives, and the Digital Services Act establishing a unified and cross-border online trademark protection regime. In Vietnam, the amended Intellectual Property Law 2022, Decree No. 147/2024, and the Draft E-Commerce Law demonstrate a trend toward strengthening the legal responsibilities of intermediary platforms and regulatory authorities, gradually aligning with international practices. To ensure effective trademark protection, legal measures, technological solutions, and coordinated efforts among right holders, platforms, and state authorities must be combined. Trademark protection is not only a legal obligation but also a key factor in ensuring fair competition and sustainable development of e-commerce; therefore, right holders must proactively safeguard their brands, and regulatory agencies need to enhance monitoring and strictly address violations.

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