



Global Scientific and Academic Research Journal of Economics, Business and Management

ISSN: 2583-5645 (Online)

Frequency: Monthly

Published By GSAR Publishers

Journal Homepage Link- <https://gsarpublishers.com/journals-gsarjebm-home/>



THE ROLE OF E-COMMERCE PLATFORMS IN TRADEMARK PROTECTION: A STUDY OF EUROPEAN UNION LAW AND LESSONS FOR VIETNAM

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Article History

Received: 01/10/2025

Accepted: 06/10/2025

Published: 07/10/2025

Vol –4 Issue – 10

PP: -08-12

Abstract

E-commerce is expanding rapidly, offering business opportunities but also intensifying trademark infringement risks. Online platforms serve as essential intermediaries yet often escape clear legal responsibility. In Vietnam, current laws mainly address copyright, leaving trademark protection fragmented. By contrast, the European Union has developed a more comprehensive regime through the E-Commerce Directive, the Digital Services Act, and landmark rulings (L'Oréal v. eBay, Coty v. Amazon, Louboutin v. Amazon). These establish a balance between conditional liability exemptions and proactive duties such as seller verification, product traceability, notice-and-take-down, and transparency reporting. For Vietnam, aligning its framework with EU practices, particularly by extending liability provisions to trademarks and clarifying platform responsibilities would strengthen brand protection, safeguard consumers, and enhance digital commerce integrity.

Keywords: E-commerce, Trademark protection, Intellectual property rights, Online platforms, Intermediary liability

1. INTRODUCTION

In the digital era, e-commerce has become an important business channel, enabling goods to reach consumers rapidly. However, alongside this robust development is the increasing prevalence of trademark infringements on e-commerce platforms. Intermediary service providers, typically online marketplaces and social media platforms, serve not only as effective spaces for business promotion but also as potential sources of risk for trademark owners. A report by a research group at the Foreign Trade University indicates that in many infringement cases, e-commerce platforms primarily act as intermediaries without bearing clearly defined legal responsibilities. The Vietnamese Intellectual Property Law of 2005, as amended in 2009, 2019, and 2022, has made progress by introducing provisions on the liability of intermediary service providers; nevertheless, such provisions mainly apply to copyright and have not yet been extended to trademarks. At the international level, the European Union has gradually established a liability framework for e-commerce platforms through the E-Commerce Directive 2000/31/EC, the Digital Services Act of 2022, and landmark cases such as L'Oréal v. eBay, Coty Germany v. Amazon, and Louboutin v. Amazon. Drawing from these experiences, this article aims to analyze the EU's legal model while proposing recommendations to

improve the framework for trademark protection on e-commerce platforms in Vietnam.

2. OVERVIEW OF THE ROLE OF E-COMMERCE PLATFORMS IN TRADEMARK PROTECTION

2.1. Theoretical Foundations of the Role of E-Commerce Platforms in Trademark Protection

According to intellectual property law, a trademark is defined as a sign used to distinguish the goods or services of different organizations and individuals. Such a sign must be perceptible to the eye, such as letters, images, colors, or a combination thereof so as to enable consumers to identify and differentiate products in the marketplace. A trademark not only carries legal significance in establishing intellectual property rights but also plays an important role in commercial activities. In particular, within the e-commerce environment, a trademark functions as a "digital signal" that allows customers to readily recognize the origin and quality of products and services, thereby reinforcing trust in the enterprise's brand. [1]

The essence of an e-commerce platform is defined as that of a broker, acting as an intermediary that connects sellers and buyers by providing technical infrastructure. In this relationship, the platform neither owns nor directly produces



goods, yet it exercises substantial control over the content uploaded, including product listings, advertising, interface design, and facilitation of payment services. The platform simultaneously derives profits from the very transactions and intermediary services it provides. Notably, when a platform actively promotes or integrates third-party products, its role may extend beyond that of a mere intermediary, effectively rendering the platform a “trademark user” in commercial activities. This reality underscores the necessity for appropriate legal regulation to clearly define the responsibilities and obligations of e-commerce platforms in trademark protection.

The safe-harbor mechanism in European Union law was established through the E-Commerce Directive. Under this framework, intermediary service providers such as transmission services, temporary storage (caching), and information hosting are exempt from legal liability for unlawful user-generated content, provided that certain conditions are met. Specifically, they must demonstrate that they had no actual knowledge of the infringing content and, upon receipt of a valid notice, acted promptly and effectively to remove or disable access to such content. This mechanism is regarded as a “legal shield” that strikes a balance between protecting the rights of intellectual property holders and fostering the growth of intermediary services in the e-commerce environment. [2]

The safe-harbor mechanism applies only to intermediary service providers acting in a passive role, meaning they merely provide technical infrastructure without intervening in the content uploaded by users. If a platform engages in activities such as optimizing, promoting, arranging, or otherwise exercising active control over content, it will be deemed to have assumed an “active role” and therefore will no longer be entitled to liability exemption. This provision carries significant doctrinal importance in delineating the scope of responsibility for e-commerce platforms. It prevents the misuse of the safe-harbor mechanism as a means of evading legal obligations, while at the same time affirming the monitoring role and legal responsibility of platforms with respect to trademark infringements occurring within their systems.

2.2. European Union Law on the Role of E-Commerce Platforms in Trademark Protection

The E-Commerce Directive 2000/31/EC of the European Union, particularly Articles 12 to 14, established the principle of “liability exemption” for intermediary service providers such as transmission channels, temporary storage (caching), and information hosting. This mechanism applies only when service providers act in a purely technical and automatic manner and have no actual knowledge of ongoing infringements. In the case of hosting services, once notified of infringing content, the provider must promptly remove or disable access to such content in order to benefit from the exemption. This provision gave rise to the “notice-and-take-down” mechanism, whereby a trademark owner submits a notification of infringement to the e-commerce platform, and the platform is then obligated to remove the infringing content

in a timely manner. This framework is regarded as a fundamental legal basis for striking a balance between the protection of intellectual property rights and the continued development of online intermediary services.

In the case law of the Court of Justice of the European Union (CJEU), the liability of e-commerce platforms such as eBay and Amazon has been examined from multiple perspectives. For a long period, the CJEU maintained the view that these platforms were not “trademark users” when acting merely as passive hosts of information uploaded by sellers. Landmark decisions such as *Google France v. Louis Vuitton* and *L’Oréal v. eBay* affirmed that platforms are not directly liable where they merely provide hosting services and have no actual knowledge of infringing conduct. However, the CJEU also emphasized an important principle: if an e-commerce platform takes active measures to optimize, promote, or direct the sale of infringing products, for example, by selecting product titles, labeling items as “best-sellers,” or prioritizing their display, the platform may be deemed to be directly “using the trademark.” In such circumstances, the platform would lose its safe-harbor immunity and could be held legally liable for the infringement. This development in the CJEU’s jurisprudence clarifies the boundary between the passive intermediary role and the active role of e-commerce platforms. [3]

The case *Coty Germany v. Amazon* (2020) is one of the landmark decisions concerning the determination of e-commerce platforms’ liability in trademark protection. In this case, Coty Germany a well-known company in the cosmetics and perfume industry filed a lawsuit against Amazon on the grounds that Amazon had stored goods bearing infringing trademarks in its warehouses. These infringing products were distributed through third-party sellers but kept in Amazon’s storage facilities. The Court of Justice of the European Union (CJEU) held that Amazon could not be regarded as a “trademark user” in this instance. The reasoning was that Amazon merely carried out the storage of goods for third parties under a logistics service contract and had neither knowledge nor actual awareness that the goods infringed trademark rights. In other words, purely logistical activities, such as warehousing, without any control or active intervention in the sales process, do not constitute “trademark use” in the legal sense. This judgment is significant as it clarifies the boundary between the technical intermediary role and the role of trademark use by e-commerce platforms. The CJEU affirmed that only when a platform actively exploits, promotes, or directly participates in the commercialization of infringing products may it be deemed to be using the trademark and thus held legally liable. Conversely, if the platform merely provides logistics services such as storage, transportation, or order processing at the request of sellers, it continues to fall within the scope of safe-harbor liability exemption. The *Coty Germany v. Amazon* case thereby reinforced the legal foundation for more clearly delineating the responsibilities of e-commerce platforms within the supply and distribution chain, while maintaining the principle

of balancing the protection of intellectual property rights with the promotion of online commerce. [4]

The case *Louboutin v. Amazon* (2022) is considered a major turning point in determining the legal liability of e-commerce platforms for trademark infringements. In this case, Christian Louboutin a renowned designer known for shoes with red soles registered as trademarks argued that Amazon had infringed his trademark rights by allowing third-party sellers to offer counterfeit goods on its platform. The crux of the case lay in the way Amazon organized and integrated third-party goods into its online business system. Beyond merely providing technical infrastructure or hosting information, Amazon was actively involved in advertising, logistics, product display, and the ordering interface. These activities were carried out in such a way that consumers found it difficult to distinguish between products directly supplied by Amazon and those offered by third-party sellers through the platform. The Court of Justice of the European Union (CJEU) concluded that, in this situation, Amazon could no longer be regarded as a passive intermediary but had instead become a “trademark user” in the legal sense. The reasoning was that, by actively promoting, integrating, and displaying infringing products under its own brand and commercial system, consumers could reasonably believe the products were distributed by Amazon itself. As a result, Amazon was held legally liable for trademark infringement. The judgment in *Louboutin v. Amazon* not only reaffirmed the boundary between the intermediary and the active role of e-commerce platforms but also expanded the scope of liability for major digital platforms. This constitutes a significant development in the CJEU’s jurisprudence, emphasizing that when a platform creates a close integration between third-party goods and its own commercial system, it must assume responsibility comparable to that of a direct trademark user. This decision lays the groundwork for tightening platform liability in Europe and offers important reference value for other jurisdictions, including Vietnam. [5]

The Digital Services Act (DSA, Regulation (EU) 2022/2065), which came into full effect on 17 February 2024, has imposed stricter obligations on e-commerce platforms, reflecting a shift from the “liability exemption” model to proactive responsibility. Under this regulation, platforms must implement a seller traceability mechanism by verifying seller identities and enhancing product traceability; establish procedures for the swift removal of illegal goods; and, when infringing goods have already been sold, notify consumers within six months. In addition, platforms are obliged to ensure compliance and oversight, including random product checks, providing clear information on terms of service, avoiding misleading practices toward users, respecting notices from “trusted flaggers,” and suspending the activities of repeat infringers. The DSA further requires platforms to publish annual transparency reports on the number of products removed and enforcement measures taken, while very large online platforms (VLOPs) must undergo audits, meet stricter reporting obligations, and face potential fines of up to 6% of global turnover in cases of non-compliance. These provisions

demonstrate that the European Union is moving towards requiring e-commerce platforms to proactively monitor goods and sellers on their systems in order to protect intellectual property rights, including trademarks, and to ensure consumer safety. [6]

2.3. Vietnamese Law on the Role of E-Commerce Platforms in Trademark Protection

The Intellectual Property Law of 2005, as amended in 2022, introduced Article 198b, which provides for the legal liability of enterprises offering intermediary services in the online environment. However, its scope of application remains limited to copyright and related rights, without extending to the field of trademarks. Specifically, Article 198b requires intermediary enterprises to implement necessary technical measures and to cooperate with state authorities and right holders in protecting copyright in cyberspace. Enterprises may be exempt from liability when merely engaging in intermediary activities such as information transmission, temporary storage (caching), or content hosting, provided that they have no knowledge of infringing content and take timely action to remove it upon receipt of a valid notice. This provision clearly reflects the incorporation of the “safe-harbor” mechanism into Vietnamese law; nevertheless, it remains limited as it does not cover infringements of trademark rights, which have emerged as a pressing issue in today’s e-commerce environment. [7]

Decree No. 52/2013/ND-CP and its amended version, Decree No. 85/2021/ND-CP, are two key legal instruments directly governing e-commerce activities in Vietnam. Decree 52 established the principle prohibiting the abuse of e-commerce for trading counterfeit goods or goods infringing intellectual property rights, while requiring e-commerce platforms to promptly handle infringements once detected or upon receipt of complaints. Building on this foundation, Decree 85/2021 introduced more specific obligations under Article 36 for traders and organizations providing e-commerce services. These obligations include: providing information on infringing parties to competent state authorities when violations are detected or reported; updating keywords and filtering information related to goods and services in accordance with regulatory guidance before allowing them to be listed online; as well as receiving and resolving consumer complaints and responding to arising disputes. In addition, Decree No. 185/2013/ND-CP prescribes sanctions, stipulating that if an e-commerce platform fails to take measures against infringements once they are detected or reported, it may be fined between VND 30 and 40 million. These provisions demonstrate that Vietnam’s legal framework is gradually shifting from a “passive intermediary” model to one that imposes more proactive obligations on e-commerce platforms in protecting intellectual property rights and safeguarding consumer interests.

The current practice of trademark protection in e-commerce in Vietnam still reveals several limitations. First, the mechanisms for verifying sellers and products remain inadequate, leading to situations where many actors exploit the “no brand” option or use false information to evade

oversight, thereby enabling counterfeit and imitation goods to proliferate on online trading platforms. Second, the detection and proof of infringement are difficult, as regulatory authorities and trademark owners lack effective tools for monitoring transactions, resulting in slow, time-consuming, and costly enforcement processes. Third, the existing legal framework is fragmented, with provisions dispersed across Decree No. 52/2013, Decree No. 85/2021, the Intellectual Property Law, and administrative sanctioning instruments, without a unified and specialized regime dedicated to trademark protection in the digital environment. Finally, the responsibilities of e-commerce platforms remain insufficiently defined. Although Article 198b of the amended 2022 Intellectual Property Law refers to the liability of intermediary service providers, it applies only to copyright and related rights, and does not regulate obligations to remove, prevent, or disclose information in cases of trademark infringement. These shortcomings demonstrate the urgent need to improve the legal framework in order to strengthen the effectiveness of trademark protection in the e-commerce environment.

3. SOME LESSONS FOR VIETNAM

By comparing European Union law with the Vietnamese context, several important practical lessons can be drawn as follows:

Firstly, improving the liability and exemption mechanism for e-commerce platforms. To enhance the effectiveness of trademark protection in e-commerce, Vietnam should refine the liability and exemption framework for e-commerce platforms by both drawing on the EU's safe-harbor model and incorporating proactive obligations. Specifically, platforms must be required to promptly remove infringing content immediately upon receipt of a valid notice from rights holders or competent authorities. However, if a platform goes beyond the role of a passive intermediary and actively engages in promoting, distributing, or attaching its own branding to products supplied by third parties, it should be deemed to be directly "using the trademark" and held legally liable as if it were the seller itself. On this basis, Vietnam should amend and supplement the Intellectual Property Law to expand the scope of Article 198b so that it applies not only to copyright and related rights but also to trademarks. At the same time, the law should set out clearer conditions for exemption and the legal obligations of platforms, thereby both encouraging the growth of e-commerce and ensuring an effective mechanism for trademark protection that safeguards the legitimate rights of owners and consumers.

Secondly, requiring seller identity verification and product traceability. The European Union's Digital Services Act (DSA) explicitly requires e-commerce platforms to verify the identity of sellers and to strengthen product traceability. This is an important requirement aimed at curbing the widespread presence of counterfeit and imitation goods in the online environment. Vietnam could draw on this experience to improve its legal framework by introducing provisions obligating e-commerce platforms to verify and retain basic legal documents of sellers, such as business registration

certificates or personal identification documents together with contact information, phone numbers, and bank account details before allowing transactions to take place. At the same time, a data-sharing mechanism should be established between e-commerce platforms, the tax authorities, and the police to promptly detect and strictly sanction entities engaged in counterfeit trading or intellectual property infringements. Such a mechanism would not only enhance the transparency and safety of the e-commerce environment but also foster consumer trust and safeguard the legitimate rights of bona fide business operators.

Thirdly, a transparent notice-and-take-down mechanism. The European Union requires e-commerce platforms to promptly remove illegal goods once detected or upon receipt of a notice, and to notify consumers in cases where infringing products have already been sold. This mechanism aims to safeguard consumer rights and prevent the spread of counterfeit goods in the digital marketplace. Vietnam may draw on this experience by adopting a notice-and-take-down regime, whereby trademark owners or regulatory authorities may notify platforms of infringements, and platforms are obliged to remove the infringing content as quickly as possible. In addition, to enhance transparency and regulatory efficiency, the law should require e-commerce platforms to periodically publish data on enforcement measures, including the number of products removed and the number of seller accounts suspended. This would not only place pressure on platforms to strictly comply with legal obligations but also allow regulators, right holders, and consumers to more closely monitor platform activities.

Fourthly, strengthening cooperation between businesses and state authorities. Decree No. 85/2021/ND-CP already requires e-commerce platforms to provide information on infringing parties to competent state authorities upon detection or receipt of complaints. However, to ensure the effectiveness of this provision, more detailed guidelines are needed on the process of information transfer, including verification steps, methods of data provision, and specific time limits for processing. Furthermore, a centralized information portal should be established to connect regulatory bodies, e-commerce platforms, and trademark owners. Through such a portal, right holders could directly file infringement notices and track the handling process from submission to resolution. This mechanism would not only increase transparency and accountability for platforms but also facilitate timely cooperation between regulators, businesses, and right holders, thereby shortening the enforcement timeline and improving trademark protection in e-commerce.

Fifthly, raising awareness and technical capacity. Enhancing the effectiveness of trademark protection in e-commerce requires improving the ability to identify and address infringements. Regulators, businesses, and consumers should receive structured training on skills for detecting counterfeit goods and understanding procedures for dealing with infringements on e-commerce platforms. At the same time, platforms should proactively invest in modern technologies such as artificial intelligence (AI) and big data to

automatically detect suspicious signs through keywords, images, or abnormal behaviors. This approach is consistent with the requirement in Decree No. 85/2021 for updating keywords to filter information prior to publication, while also contributing to stronger preventive measures against infringements from the outset. The combination of human training and technological application will establish a mechanism for early prevention and detection, helping to minimize risks for trademark owners, protect consumer rights, and strengthen confidence in the online trading environment.

4. CONCLUSION

The boom of e-commerce brings significant opportunities for businesses but also poses challenges for trademark protection. Experience from the European Union demonstrates that a conditional liability exemption model, combined with proactive obligations of e-commerce platforms, such as seller verification, swift removal of illegal goods, transparency reporting, and strong sanctions has contributed to reducing trademark infringements. Vietnam has made certain progress with Decree No. 52/2013 and Decree No. 85/2021; however, the current legal framework remains fragmented and lacks clear mechanisms specifically addressing trademarks. Amending the Intellectual Property Law and related regulations in line with the EU's approach, while simultaneously strengthening cooperation among stakeholders, would enable Vietnam to better safeguard the

rights of trademark owners and consumers in the digital environment.

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