

The Drastic RP7 Anti-counterfeit Campaign: How to Effectively Handle Intellectual Property Rights Infringements in Vietnam

The production, trade, and distribution of counterfeit goods are becoming increasingly complex, occurring quite blatantly and openly. Those who produce and distribute counterfeit goods demonstrate audacity by violating intellectual property rights and disregarding the law. Rather than concealing their activities, they now operate with such confidence that they use simple and easily recognizable methods to transport fake products.

1. The widespread counterfeiting of RP7 branded products

Case 1: Recently, on April 23, 2024, police in District 11 of **Ho Chi Minh City** temporarily detained Tr.H.Th. (born in 2001 and residing in Tan Binh district, Ho Chi Minh City) for his involvement in transporting, storing, and [trading counterfeit trademark goods](#). During their surveillance, the police arrested Tr.H.Th. while he was carrying a sack containing **2,400 cans of RP7 anti-rust oil spray** (350g each) branded “Selleys”, without any accompanying invoices or documents.

These products were determined to be counterfeit, violating the provisions of Decree 99/2013, as amended by Decree 126/2021, which relate to administrative sanctions in the field of industrial property. Th. also declared that the above goods were counterfeit Selleys-branded items and stated that he had purchased these goods from **Soonwell Industrial Co., Ltd.** to resell for a profit.





Case 2: Also related to the RP7 brand, on January 7, 2023, Market Management Team No. 5 and other related agencies inspected a warehouse at 32/32 D1 Street, Thong Nhat 1 Quarter, Di An Ward, Di An City, **Binh Duong Province**. During the inspection, the authorities discovered and temporarily detained many products showing signs of violation. These included **1,188 bottles of anti-rust and lubricant spray** weighing 175 grams each, and 228 bottles of 159 grams each, all branded as Selleys RP7.

Case 3: On June 22, 2022, the District 10 police in **Ho Chi Minh City** seized a 16-seat car carrying **3,360 bottles of fake rust remover and lubricant spray** branded as Selleys RP7.

Case 4: On January 15, 2021, in Bien Hoa, the city police of Bien Hoa, **Dong Nai province**, conducted an administrative inspection and discovered that nearly 17,000 bottles of various types of Selleys RP7 were counterfeit. After consulting with the shipper and verifying information with Nippon Paint Vietnam, the exclusive manufacturer and distributor of the Selleys RP7 brand in Vietnam, it was determined that all these products were counterfeit.

Continuous raids and seizures of counterfeit goods in recent years demonstrate that enforcement officials are diligently working every day in the fight against counterfeit goods. However, this scenario reveals a different situation: a significant portion of counterfeit production and trading activities are occurring blatantly and require stronger intervention from law enforcement agencies to ensure consumer rights and protect genuine brands.

From the perspective of an IP representative, KENFOX IP & Law Office provides measures to protect and enforce IP rights, equipping IP rights holders with the knowledge to effectively safeguard their intellectual property in Vietnam.

2. Strategies for Protecting and Enforcing Intellectual Property Rights in Vietnam

Overview

Protecting intellectual property rights involves the use of legal measures by state agencies and rights holders to safeguard the ownership of their intellectual property against all infringements and ensure the integrity of their property rights. It is not only about preventing actual acts of infringement but also about handling and resolving such violations to stop the infringement and compensate for damages.

Measures to protect and enforce intellectual property rights in Vietnam

To increase flexibility in protecting and enforcing intellectual property rights, the IP Law of Vietnam stipulates various measures for protecting these rights. Measures to protect intellectual property rights can be categorized into two types based on the “subjects” implementing them:

[1] Self-protection measures

Self-protection measures for intellectual property rights are actions taken by the owners themselves, as stipulated in Article 198 of the Intellectual Property Law. These measures exemplify the self-determination of subjects in legal relationships, allowing them to proactively protect their rights without relying on formal legal procedures. The law grants holders of intellectual property rights - the owners or those to whom the rights have been transferred - the ability to [defend themselves against acts of infringement](#).

Article 198 of the Intellectual Property Law stipulates the right of intellectual property rights holders to self-protection. Accordingly, IP rights holders are entitled to apply the following measures to protect their IP rights:

- (i) *Applying technological measures to protect rights and disseminate information on management of rights, or apply other technological measures to prevent acts of infringing upon intellectual property rights;*
- (ii) *Requesting organizations or individuals that commit acts of infringing upon intellectual property rights to terminate such acts, remove and delete infringing contents in the telecommunications network and the Internet, make public apologies or rectifications, and pay damages;*
- (iii) *To request the competent State body to deal with acts of infringement of its intellectual property rights in accordance with the provisions of this Law and other relevant laws;*
- (iv) *To initiate a lawsuit at a court or a claim at an arbitration centre to protect the legitimate rights and interests of the holder.*

[2] Legal measures are implemented by competent state agencies in Vietnam

Civil remedies

Civil remedies can be applied to address acts of infringement of intellectual property rights, either at the request of the rights holder or the individual or organization harmed by such acts. These remedies may be employed even if the infringement is currently being handled through administrative or criminal measures. The procedures for requesting civil remedies, along with the relevant jurisdiction and processes, are governed by the provisions of civil procedure law. Depending on the specifics of each case, the court may apply the following measures:

- (i) *Compulsory termination of the infringing acts;*
- (ii) *Compulsory public apology and rectification;*
- (iii) *Compulsory performance of civil obligations;*
- (iv) *Compulsory payment of damages for loss;*
- (v) *Compulsory destruction, distribution or use for non-commercial purposes of goods, raw materials and materials, and facilities used principally for the production or trading of goods which infringed intellectual property rights, provided that such destruction, distribution or use will not affect the exploitation of rights by intellectual property right holders.*

Administrative measures

Administrative measures are applied to address acts of intellectual property rights infringement in situations specified in Article 211 of the Intellectual Property Law. These measures can be initiated at the request of the rights holder, the individual or organization that suffers damage, the individual or organization that detects an infringement, or by a competent authority acting proactively to detect violations.

Forms, levels of fines, authority, and [procedures for sanctioning](#) acts of infringement, as well as remedial measures, comply with the provisions of the Intellectual Property Law and the laws on sanctioning administrative violations related to copyright, industrial property rights, and plant variety

rights. These measures apply to acts of infringement that do not rise to the level requiring criminal prosecution. Enforcement is carried out by the police, market management, inspection, customs, and People's Committees at competent levels.

Criminal measures

Criminal measures are applied to protect intellectual property rights, as specified in Article 212, to address acts of infringement that are considered crimes under the Penal Code. The goal of these measures is to prosecute criminal liability for acts that constitute crimes, ensuring that authority, order, and procedures comply with criminal procedural law. Both individuals and commercial legal entities that commit acts of IP infringement meeting all elements of a crime will be subject to prosecution. The 2015 Penal Code, amended in 2017, has increased the severity of penalties for IP violations, thus better protecting the rights and interests of authors and owners. Specifically, the law defines two crimes: The Crime of infringement of copyright and related rights (Article 225), and The Crime of infringement of industrial property rights (Article 226).

3. Legal issues related to RP7 counterfeit goods: How to apply?

3.1. Acts of transporting, storing, and trading counterfeit trademark goods: How are they handled?

According to current regulations, the owner of the "RP7" trademark can request that the competent enforcement agency apply administrative, civil, or criminal sanctions for acts of transporting, storing, and trading counterfeit goods bearing the "RP7" trademark. The sanctions applied depend on the severity and nature of the infringement:

- **Administrative sanctions:** Include fines, confiscation of counterfeit goods, and suspension of business operations.
- **Civil sanctions:** Include measures such as requiring an end to the violation, compensation for damages, and other remedies.
- **Criminal sanctions:** Applicable in cases where acts of infringement of intellectual property rights are considered crimes under the Penal Code.

3.2. Criminal prosecution of trademark infringement: When?

Factors Considered for Applying Criminal Measures in Trademark Infringement Cases in Vietnam

[i] Constituting a crime: Authorities first determine whether an act incorporates enough elements to constitute a crime. These elements include socially dangerous behavior, the consequences of the behavior, a cause-and-effect relationship between the behavior and its consequences, the tools and means used, the circumstances of the crime, and the mens rea of the perpetrator.

[ii] Infringement of trademark rights: According to the provisions of Article 226.1 of the 2015 Criminal Procedure Code, criminal proceedings will only be initiated for intentional acts of infringement of industrial property rights related to two subjects that are protected in Vietnam: "trademarks" and "geographical indications".

Article 226.1 of the 2015 Criminal Procedure Code in Vietnam stipulates that intentional acts of infringing upon industrial property rights involving protected trademarks or geographical indications, when carried out on a commercial scale and resulting in illegal profits or significant financial losses, will be subject to criminal prosecution. Specifically, this behavior is addressed criminally when:

- Gaining illegal profits from 100,000,000 VND to under 300,000,000 VND.
- Causing damage to the trademark owner from 200,000,000 VND to less than 500,000,000 VND.
- The value of the violated goods is from 200,000,000 VND to under 500,000,000 VND.

Thus, for trademark infringement to be criminally prosecuted according to Article 226.1 of the 2015 Criminal Procedure Code, the following four conditions must be satisfied:

- (a) Nature of the goods: These must be “**counterfeit goods**” with a trademark that is protected in Vietnam. Counterfeit trademark goods are defined as goods or packaging of goods that bear a trademark, sign, stamp, or label with signs that are **identical** or **so similar to a currently protected trademark used for the same product that they are difficult to distinguish**, all without the permission of the trademark owner (Article 213.2 of the Intellectual Property Law 2022)
- (b) The "intentional" nature of the act: The act of infringement must be “intentional”. The offender must be aware that they are consciously and deliberately committing trademark infringement, not inadvertently or accidentally.
- (c) Commercial scale: The infringement must be committed on a "commercial scale". This includes distributing, manufacturing, or selling counterfeit goods for commercial purposes and profit.
- (d) Level of illegal profit or certain financial loss: Must reach a level of illegal profit from 100,000,000 VND to less than 300,000,000 VND, or cause damage to the owner of the trademark or geographical indication from 200,000 VND 000 VND to under 500,000,000 VND, or value of infringing goods from 200,000,000 VND to under 500,000,000 VND.

If all of these conditions are satisfied, trademark infringement may be considered for criminal liability. In cases where the specified thresholds for profit or financial loss are not met, trademark infringement can only be handled through administrative measures.

[iii] Seriousness of the act: Authorities will assess the level of danger and the impact of the act on intellectual property rights. Depending on the nature and severity of the behavior, criminal measures that can be applied range from warnings and fines to criminal prosecution.

[vi] Evidence and evidence: Authorities will collect and review [evidence](#) related to acts of intellectual property rights infringement. This includes examining records, documents, vouchers, and information from relevant parties.

KENFOX IP & Law Office, with its extensive practical experience and expertise, has successfully supported many IP rights holders in handling and enforcing their IP rights. Please contact us if you need a professional IP representative to effectively handle IP infringements in Vietnam.

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