

What Are Constituent Elements For Criminal Liability For Trademark Infringement In Laos?

Counterfeiting and trademark infringement pose significant threats to businesses and consumers alike. In Laos, the legal framework for addressing these issues includes provisions for criminal liability. But what exactly constitutes a criminal offense in the context of trademark infringement?

In this article, KENFOX IP & Law Office delves into the core elements that must be proven to hold an infringer criminally responsible under Lao law. We explore the concepts of intent, profit motive, and harm, along with the evidentiary requirements and potential defenses in such cases.

1. Establishing Criminal Liability for Trademark Infringement in Laos

To establish criminal liability for [trademark infringement](#) in Laos, the following key elements must be proven:

[i] Intent: The infringer must have acted willfully or with gross negligence. This means they knowingly or recklessly engaged in activities that infringe on the trademark rights of another party. The burden of proof lies with the accusing party to establish the infringer's mental state. [**Article 246 (Penal Code):** *Criminal penalties in cases of "forging," "fraudulently creating," or "unfairly competing" with the IP of another. These terms imply intentional or reckless actions that harm the rights of others*]; **Article 140 (IP Law):** *This article distinguishes between intentional and unintentional violations, suggesting that intentional infringement carries a higher penalty*; **Article 41 (Law on Criminal Procedure):** *This article requires the investigation to determine the "guilt" of the accused, including whether the act was intentional or negligent. This can be used to establish the mental state of the infringer*].

To establish that the infringer acted willfully or with gross negligence, the following factors can be considered: (i) **Knowledge:** Did the infringer know about the registered trademark and its associated rights? Evidence of prior knowledge or deliberate ignorance can support a finding of willfulness, (ii) **Intent:** Did the infringer intend to deceive consumers or create confusion in the market? Evidence of bad faith or attempts to pass off goods as those of the trademark owner can indicate intentional infringement, and (iii) **Recklessness:** Did the infringer disregard the risk of infringing on the trademark rights of others? Evidence of a lack of due diligence or a failure to take necessary precautions can suggest gross negligence.

[ii] Profit motive: The infringement must be carried out for profit-making purposes. This element distinguishes criminal liability from mere civil liability, emphasizing the commercial intent behind the infringement. Evidence of commercial scale production, distribution, or marketing of infringing goods can support a finding of profit motive [**Articles 118 & 121 IP Law, Article 246 Penal Code**].

[iii] Harm: The infringement must cause or be likely to cause harm to the trademark owner. This can include financial loss, damage to reputation, or dilution of the trademark's distinctiveness. Evidence of lost sales, decreased market share, or damage to brand reputation can be used to support a claim of harm.

[iv] Violation of Law: The act must violate specific provisions of the trademark law or related IP regulations. This includes unauthorized use, reproduction, or imitation of a [registered trademark](#). The act must fall under the prohibited actions as set out in Article 50 of IP Law, including: (i) Using an identical or similar mark on identical, similar, or related goods or services, causing a likelihood of confusion, (ii) Selling, advertising, or marketing goods bearing the infringing mark, and (iii) Importing or exporting goods bearing the infringing mark.

[v] Evidence: There must be sufficient evidence to prove the infringement beyond a reasonable doubt. This includes documentation, witness testimony, and expert analysis demonstrating the infringing activities and their impact.

[Law on Criminal Procedure: Article 27: *Defines evidence as "actual facts" gathered during the investigation process, used to determine the existence of criminal acts and the guilt of the accused. Article 28:* *Lists the types of evidence, including physical evidence, documentary evidence, and evidence from persons (testimonies, expert opinions, etc.). Article 29-33:* *Further details physical and documentary evidence. Physical evidence encompasses material items related to the crime, while documentary evidence includes records, reports, and documents. Article 34-40:* *Details evidence from persons, including testimonies of suspects, accused persons, defendants, witnesses, and opinions of experts. Article 42:* *Information obtained illegally or improperly shall not be considered as evidence. Article 43:* *Grants organizations in charge of criminal proceedings the rights and duties to gather evidence, including taking testimonies, inspecting the incident site, conducting searches, and appointing experts. Article 44:* *Mandates that all gathered evidence must be verified, weighted, and assessed for its truthfulness, completeness, and relevance to the case.*

IP Law: Article 139: Provides for criminal punishment, fines, and civil compensation for individuals, legal entities, or organizations that violate IP rights. This provision necessitates sufficient evidence to prove the infringement and determine appropriate penalties.]

2. Exemptions and Defenses

Even if an infringing act has occurred, there are certain defenses that could negate criminal liability:

- **Lack of Intent:** The infringer can argue they did not intentionally use the mark without authorization.
- **Invalid Rights:** The infringer can challenge the validity of [the trademark rights](#) due to failure to meet protection conditions.
- **Expired Protection:** The infringer can argue that the term of protection for the trademark has expired.

3. Levels of Criminal Liability

Trademark infringement in Laos is a criminal offense. The severity of the offense is determined by the intent and severity of the violation. Intentional infringement carries higher penalties than unintentional infringement. Counterfeiting is considered a severe form of trademark infringement and carries the highest penalties. The severity of the offense is also determined by the extent of the damage caused. Repeat offenders may be subject to more [severe criminal penalties](#).

4. Important Considerations

- **Burden of Proof:** The burden of proving the elements of criminal liability lies with the plaintiff, who must establish the infringer's intent and the specific act of infringement.
- **Penalties:** If found guilty, the infringer can face imprisonment (one to three years) or re-education without deprivation of liberty, and fines ranging from 5,000,000 LAK to 20,000,000 LAK.

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