

## How wilful trademark infringement is recognised in Vietnam?

In Vietnam, **wilful trademark infringement** is recognized when someone knowingly and intentionally uses a protected trademark without the owner's permission, in a way that causes confusion or exploits the brand's reputation. Wilful trademark infringement is recognized through both administrative and criminal actions. Administrative actions involve imposing fines and other penalties by authorities for infringing activities, while criminal actions, involving more severe penalties, are pursued when the infringement is considered to be on a commercial scale or involves counterfeit goods. The deliberate and intentional nature of an infringement not only affects the severity of penalties but also influences the overall approach to combating counterfeiting and piracy.

KENFOX IP & Law Office discusses how wilful [trademark infringement](#) is recognized and addressed in both criminal and administrative proceedings. This knowledge is not merely academic, it directly impacts the [potential remedies and penalties available](#), making it a central concern for any effective IPR enforcement strategy.

### 1. Willful Trademark Infringement and Criminal Liability in Vietnam

Article 226 of the Vietnamese Criminal Code explicitly states that a person who **"intentionally"** infringes upon industrial property rights, including trademarks, for commercial purposes or illegal profit, can face [criminal penalties](#). The inclusion of the term "intentionally" indicates that the act of infringement must be deliberate and knowing, implying that accidental or unintentional infringement would not fall under this criminal provision. This aligns with the general principles outlined in Article 85 of the Criminal Code, which requires the establishment of "intentional or unintentional acts" when determining criminal liability. Article 85 of the Criminal Code requires the authorities to ascertain the **"presence of guilt, intentional or unintentional acts"** when investigating and prosecuting criminal cases. This means that the prosecution must prove the infringer's intention to commit the crime, further emphasizing the importance of willfulness in trademark infringement cases in Vietnam.

*Specific thresholds for determining penalties:* The applicable standard for willful trademark infringement is outlined in Article 226 of the Criminal Code of Vietnam. The key element is the requirement of **"intentional"** infringement for **"commercial purposes"** or **"to earn an illegal profit"**.

- *Infringement of industrial property rights:* The act must involve the infringement of a trademark that is protected in Vietnam and the goods are "counterfeits" as defined under Article 213.2 of Vietnam's IP Law.
- *Illegal profit* ranging from VND 100,000,000 to over VND 300,000,000
- *Loss incurred* by the trademark owner ranging from VND 200,000,000 to over VND 500,000,000
- *Value of infringing goods* ranging from VND 200,000,000 to over VND 500,000,000

A Vietnamese court would likely consider the intent and motives of the defendant in any criminal case, which could include trademark infringement cases, to determine the appropriate charges and penalties.

To secure a criminal conviction for [trademark infringement in Vietnam](#), the prosecution must prove that the infringer acted intentionally, aiming to profit illegally from the use of another's trademark. The presence of intent can significantly impact the severity of penalties imposed.

### 2. Willful Trademark Infringement in Administrative Proceedings in Vietnam

Additionally, Vietnam indirectly recognizes the concept of willful trademark infringement in [administrative proceedings](#). While the Law on Handling of Administrative Violations No. 15/2012/QH13 does not explicitly use the term "willful infringement", it addresses the issue of intent through the concept of "aggravating circumstances". Article 10 of the law lists several factors that can be considered aggravating, including:

- The administrative violations are committed in an organized manner
- The administrative violations are committed many times or repeated
- Abusing one's positions and powers to commit administrative violations

While not explicitly using the term "willful infringement", the law acknowledges that deliberate, repeated, or abusive infringements warrant harsher penalties. This concept of "aggravating circumstances" effectively differentiates between unintentional and deliberate infringements, with the latter leading to more severe consequences.

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