

## Punitive Damages in Trademark Infringement: From a Chinese Precedent to a Legal Void in Vietnam

The act of “*repeat infringement*” has long been considered a basis for imposing harsher sanctions, including punitive damages. China’s legal system expressly allows this approach, but proving repeat infringement in practice requires a clear and convincing chain of evidence. A recent ruling by the People’s Court of Yuexiu District, Guangzhou, in a dispute involving Cartier, illustrates how Chinese courts evaluate evidence to establish [repeat infringement](#) and justify punitive damages. The case highlights the practical methods right holders can employ to strengthen their claims, while also exposing the current legal gap in Vietnam, where punitive damages remain unavailable.

### Background

Cartier, a globally recognized luxury brand, owns well-known trademarks repeatedly affirmed by the China National Intellectual Property Administration (CNIPA) and the courts.

In 2020, Cartier sued an individual, Mr. Zhang, for selling counterfeit watches on the Weidian e-commerce platform. The parties reached a settlement in January 2021: Zhang acknowledged Cartier’s trademark rights, agreed to cease all infringing activity, destroy counterfeit goods, and paid RMB 120,000 in damages. However, Zhang failed to comply. Instead of removing the infringing content, he shifted sales to other platforms and continued to promote counterfeit Cartier watches. Cartier subsequently filed a new lawsuit, seeking an injunction and RMB 3 million in punitive damages along with other reasonable costs.

### Court’s Findings

The Court established that Zhang:

- **Had clear knowledge** of Cartier’s rights and the illegality of his acts, as evidenced by the prior settlement.
- **Redirected traffic** from his Weidian store to WeChat by posting QR codes, then promoted counterfeit watches on his WeChat Moments.
- **Opened additional Weidian stores**, advertised new product lines, and continued to use Cartier’s marks on watch faces.
- **Acted deliberately and maliciously**, even noting in transactions that the goods were illegal.
- **Used relatives’ identities** to operate accounts and processed payments via WeChat Pay and Alipay to evade enforcement.

The evidence - preserved through notarization, timestamping, and court-ordered [investigations](#) - formed a coherent chain proving repeat infringement.

### Court’s Ruling

The Court held that Zhang’s conduct constituted repeat and malicious infringement, warranting punitive damages. It ordered him to:

- **Immediately cease** all sales of infringing Cartier watches.
- **Remove infringing content** and trademarks from his online platforms.
- **Pay RMB 723,723** in total, comprising: RMB 668,723 in punitive damages (double the base compensation), and RMB 55,000 in reasonable costs.
- **Bear evidence preservation costs** of RMB 5,000.

### Vietnam’s Legal Gap: Absence of Punitive Damages in IP Cases

Under the 2015 Civil Code (Articles 13 and 585), Vietnam adopts a **purely compensatory approach**: damages must “fully and promptly” cover actual losses, but cannot exceed them. In contrast to common law systems such as the U.S. or UK, punitive damages - designed to penalize and deter willful or repeat conduct - are not recognized.

In intellectual property (IP) cases, this legal gap has become increasingly problematic. Infringement in Vietnam is now more diverse and sophisticated, spanning counterfeit goods in physical markets to violations on e-commerce platforms, social media, and cross-border livestreaming. While Article 205 of the IP Law allows for **statutory damages** between VND 5 million and VND 500 million when actual damages are difficult to prove, these amounts are often **disproportionate to the infringer's illicit profits** and fail to deter repeat violations.

Judicial practice confirms this weakness: compensation awarded in many IP cases is symbolic, far below the market value of infringing goods. This fosters a **“high profit, low risk” mentality**, encouraging repeat infringement.

As Vietnam deepens its international economic integration, it faces mounting pressure. The country has become both a target market and a transit hub for counterfeit goods. With more multinational corporations investing and [transferring technology](#) into Vietnam, the **absence of punitive damages** undermines investor confidence and weakens the deterrent effect of the legal system. Introducing such a mechanism is increasingly urgent to protect innovation and ensure fair competition.

## Conclusion

The Cartier case in China shows how courts can impose punitive damages for repeat infringement - provided right holders construct a **robust evidentiary chain** through notarized records, online activity monitoring, and court-ordered investigations. This practical path empowers right holders to combat intentional, recurrent infringements.

In Vietnam, however, the lack of a punitive damages regime leaves right holders with limited remedies. Legal scholars and practitioners have therefore urged lawmakers to consider incorporating punitive damages, particularly in areas such as [intellectual property](#), **food safety**, and **consumer protection**, where infringements are deliberate, organized, and socially harmful.

China's experience is instructive: in 2020, it amended its Civil Code to expressly authorize punitive damages in IP cases, permitting courts to award **1–5 times the actual loss**. Vietnam could adopt a similar model. On the **legislative front**, this would mean amending the IP Law and Civil Code to authorize higher multipliers for damages in cases involving willful, repeated, large-scale, or socially harmful infringements - subject to strict criteria defining “intentional” and “recurrent” to prevent abuse.

On the **business front**, companies should not wait for legislative change. They can strengthen IP asset management and monitoring systems; preserve evidence proactively through notarization and technological tools; file lawsuits promptly to establish favorable judicial precedents; and engage in policy consultations to advocate for stronger remedies.

By combining proactive enforcement with gradual legislative reform, Vietnam can move closer to an effective punitive damages regime - enhancing deterrence, protecting innovation, and reinforcing international confidence in its IP protection system.

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