

“Similar” product packaging: How to handle unfair competition and copyright legislation in Vietnam?

Vietnam’s consumer goods market is booming, and this growth attracts copycats. Many Chinese brands investing in Vietnam discover that soon after their products hit store shelves, competitors launch look-alike packaging. Such imitation not only dilutes brand value but can also mislead consumers and divert sales.

KENFOX IP & Law Office provides analysis on how Vietnamese unfair-competition and copyright law can be used to fight look-alike packaging, highlights real-world cases, and offers practical guidance for Chinese multinational enterprises planning to sell in Vietnam.

Why packaging matters - and why it is copied

[Product packaging](#) is more than decoration - it signals the origin of a product. When a well-known business introduces new packaging, imitation goods often appear almost immediately. Competitors are motivated by unjust profits and, when trademarks or industrial designs are still pending, Vietnamese enforcement bodies are reluctant to take action. The ease of copying combined with slow registration procedures means that look-alike goods can flood the market long before rights are formally protected.

Chinese businesses entering Vietnam, especially in fast-moving consumer goods, cosmetics and food supplements, must therefore plan to protect their “trade dress” (overall look and feel of packaging) from the outset. Doing nothing invites unfair competition, undermines investment and makes subsequent enforcement more difficult.

Legal frameworks for protecting packaging

Packaging may qualify for protection under several Vietnamese laws: [copyright law](#) (as a work of applied art), trademark and industrial design law (collectively “industrial property”), and unfair-competition law. Understanding their interplay is crucial for a robust enforcement strategy.

Unfair competition law (Article 130 IP Law)

Vietnam’s Intellectual Property (IP) Law defines “unfair competition” narrowly for IP purposes. Article 130 of the 2005 IP Law (as amended) lists acts considered unfair competition. It prohibits using commercial indications that cause confusion as to a business entity or the commercial source of goods, or confusion about the origin or features of goods. “**Commercial indications**” include marks, trade names, business symbols, business slogans, geographical indications and **package designs and label designs**. The law also clarifies that the prohibited use covers affixing such indications on goods or packaging, advertising, selling or importing goods bearing them.

To prevail on an unfair competition claim, a rights-holder must show **(a)** prior use of the packaging, **(b)** that the packaging has been **widely and stably used** and is known to consumers, and **(c)** that the competitor’s copy is likely to confuse customers about the origin of the goods. Crucially, Vietnamese authorities require **extensive evidence** of “widespread use” under Circular 11/2015/TT-BKHCN (Article 19.1(d)): advertising campaigns, sales figures, distribution network, media mentions, consumer surveys, etc. – essentially proof that the package design has built a reputation in Vietnam. In practice this can be very hard for a newcomer, since the law gives little guidance on what quantity of sales or publicity suffices. This burden makes unfair-competition actions challenging for new products, but it becomes powerful once a brand has built market presence.

Real-life example - European pain-relief drug: A European pharmaceutical company discovered a Vietnamese medicine with a similar name and packaging colours. [Trademark infringement](#) claims failed because the Vietnamese company had registered a similar name. Lacking registered trade-dress rights, the European company instead used unfair-competition law. By proving that its packaging was widely used and well-known, and by selecting the inspectorate of the Ministry of Science and Technology (MOST) as the enforcement body, the company succeeded. Within three months the authorities ordered the destruction of over 100,000 infringing products and 400 kg of packaging foil. This case shows that administrative actions can be effective when the packaging has acquired goodwill.

Copyright law - a fast but limited tool

Aside from unfair competition, Vietnam’s copyright law can protect packaging that qualifies as an “applied art” work. Vietnam recognises “works of applied art” as copyrightable. Packaging designs that exhibit originality in colours, patterns or graphics can thus be registered as applied-art works. The required creativity threshold is modest: applied designs are protected as long as they are “not easily created by a person with average knowledge in the field”, i.e. not trivial or purely functional.

Registering copyright is inexpensive and quick; a [Copyright Registration](#) Certificate can be issued within 2-2,5 months. Possession of a Copyright Registration Certificate carries several advantages:

- **Burden of proof:** The certificate constitutes prima-facie evidence of ownership; the rights holder does not need to prove creation.
- **Assessment by experts:** The Copyright Registration Certificate is a prerequisite for requesting an infringement assessment from Vietnam’s Expertise Center of Copyright and Related Rights (ECCR). This expert opinion can support administrative or civil actions. Certificates issued by other Berne Convention countries are also recognised for assessment purposes.
- **Legal basis for enforcement:** Vietnamese authorities are reluctant to act against alleged copyright infringements unless the rights holder produces a registration certificate. Thus, copyright registration is, although non-mandatory, strongly recommended. Once a packaging design is copyrighted, any unauthorized reproduction or copying can be infringement under Article 28 of the IP Law. For example, printing a rival box using essentially the same artwork or text without permission would violate the owner’s reproduction and distribution rights. Copyright owners can seek civil relief (injunctions, damages, even disposal of infringing goods) and the same administrative sanctions as for industrial infringements. In serious cases, criminal liability could apply under Articles 225–228 of the Penal Code.
- **Prevention of appropriation:** Early copyright registration prevents third parties from registering the same packaging as their own copyright to obstruct enforcement.

However, copyright protects only the specific **expression** of a design – the exact shapes, colours and arrangement. It does not protect the packaging’s function as a source identifier. If a competitor makes small changes to avoid copying but still creates confusion in the market, it may not infringe copyright but may still commit unfair competition. Therefore, copyright registration should complement, not replace, trademark or industrial design registration.

Trademark and industrial design registration

Registering the packaging (or its key elements) as a [trademark](#) gives exclusive rights to prevent others from using similar marks on identical or similar goods. Packaging that performs a source-identifying function should be registered as a trademark; copyright alone cannot protect this function. Conversely, an **industrial design** registration protects the appearance of a product (shape, lines, colours) provided it is new and has industrial applicability.

Registration offers strong protection but is slow in Vietnam. The examination period for a trademark application can be 16–18 months or longer, during which similar or identical packaging can be released by competitors. Industrial design registration also takes 8-10 months. Despite the delay, obtaining these registrations remains essential because they provide the strongest legal basis for enforcement once granted.

Enforcement strategies against look-alike packaging

[1] Build a strong rights portfolio before entering the market

File early and file broadly. Chinese enterprises should not rely solely on trademarks. Before launching products in Vietnam, they should:

- Register the product name and distinctive packaging elements as **trademarks** and, where appropriate, as **industrial designs**. This builds exclusive rights to the trade dress once the registrations are issued.
- **Register the packaging artwork as a copyright** (work of applied art). The low cost and quick turnaround provide near-immediate proof of ownership and facilitate enforcement actions.
- Consider registering variations of the design (e.g., different colour schemes) to cover incremental changes by imitators.

Having multiple rights creates a layered defence: copyright for quick action, [industrial design](#) for broad design protection, and trademark for the source-identifying function.

[2] Preserve evidence of originality and use

To succeed in unfair-competition claims, companies must prove that their packaging serves as a commercial indication and has been widely and stably used. Businesses should therefore:

- **Document creation:** keep sketches, drafts, correspondence with designers and dated files showing the creation process.
- **Record use:** archive marketing campaigns, invoices, distribution agreements and media coverage. Evidence showing the packaging’s presence in the Vietnamese market before the copycat appears will be essential.
- **Monitor the market:** engage local distributors and consumers to report look-alikes. Early detection enables faster enforcement.

[3] Use copyright to strike fast when competitors copy outright

When a competitor copies the packaging design substantially, copyright is a powerful weapon. Submit [the Copyright](#) Registration Certificate and request an infringement assessment by the ECCR. If the assessment confirms copying, Vietnamese enforcement bodies can seize infringing goods and impose administrative penalties. Many rights holders have successfully used this route because it is fast and efficient. Even local market surveillance forces are prepared to handle copyright infringement cases when accompanied by an ECCR assessment.

Chinese businesses should note that copyright enforcement can also be used **proactively**: If a competitor registers your packaging as their copyright, you can challenge the validity based on prior creation. But because copyright registration is largely based on the applicant’s declaration, it is better to file early to prevent this misuse.

[4] Use unfair-competition actions when the competitor creates confusion rather than outright copying

Copycats often alter a few details to avoid copyright liability but keep the same overall look. This is where unfair-competition law comes in. A rights holder can petition the MOST inspectorate or other competent authority to handle the case. To increase the chance of success, companies should:

- Choose an enforcement body experienced in unfair-competition cases (e.g., the MOST Inspectorate). In the European pharma case, selecting this inspectorate contributed to a swift resolution.
- Present evidence that the packaging has acquired goodwill and that the competitor’s design causes consumer confusion.
- Request an expert opinion from the National Office of Intellectual Property (NOIP) on the likelihood of confusion; although non-binding, such opinions often sway enforcement bodies.
- Be prepared for a longer process; unfair-competition actions require establishing consumer recognition and may take several months.

[5] Consider civil litigation and criminal penalties in serious cases

If the infringer's activities cause significant damage or involve deliberate counterfeiting, civil suits for damages or criminal prosecution under Decree 99/2013/ND-CP (and its amendments) may be appropriate. For instance, counterfeiting a registered trademark – including packaging – can attract fines up to VND 500 million (about US\$20 000) and suspension of production for up to three months. In the **Saigon Beer** case, a former employee created “Bia Saigon Vietnam” packaging and ordered production before the trademark was registered. After investigation, authorities refused his trademark application, prosecuted the company and the court imposed a fine of VND 3.7 billion. The case underscores the deterrent effect of criminal penalties and the need for robust internal controls to prevent insiders from misappropriating brand assets.

Real-world cases and lessons

Case	Key facts	Lessons
European pain-relief drug case (2015)	A Vietnamese drug used packaging colours and design similar to a famous European pain-relief drug. Trademark infringement claim failed because the local competitor had registered its own mark; the rights holder invoked unfair-competition law. The MOST inspectorate ruled in its favour and destroyed the infringing goods.	Even without registered rights, unfair-competition law can stop look-alike packaging if the rights holder proves its packaging is widely known. Choosing the right enforcement agency and providing evidence are essential.
Shenzhen oral-care company vs. Guangzhou competitor (China case)	A Shenzhen company registered its toothpaste packaging design as copyright. It sued a Guangzhou manufacturer and distributor for using similar packaging. The Dongguan court found copyright infringement, ordered cessation of sales, awarded RMB 6 million in damages and fined the defendant for obstructing evidence.	Although decided in China, the case illustrates how copyright can be used to protect packaging and obtain substantial damages. Vietnamese courts and enforcement bodies may be influenced by such precedents when Vietnamese and Chinese businesses litigate similar disputes.
“Bia Saigon” counterfeiting case	A former employee of SABECO applied to register “Saigon Vietnam Beer” and produced beer with similar name and packaging. Authorities refused registration and prosecuted him. The court fined his company VND 3.7 billion.	Register trademarks early and monitor employees. Authorities can impose severe fines when counterfeiting or misappropriation of marks and packaging is involved.

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